

ML- 05.08.2022
296 Ct.15
rkd

W.P.A. 3621 of 2020

Shri Akhilesh Kumar Sharma

-vs-

Union of India & Ors.

Mr. Utsav Dutta

....for the petitioner.

Ms. Smita Das De

....for the respondent.

The writ petition relates to order of punishment in the nature of Censure which was imposed upon the petitioner by the Sector Commander/DC CISF Unit ISP Burnpur being the Disciplinary Authority. Such order of punishment dated 9th May, 2016 imposing minor penalty of Censure is questioned by the petitioner on the ground that in terms of Rule 37 of the Central Industrial Security Force Rules, 2001 (hereinafter to as the “said Rules of 2001”) petitioner is required to be provided with an opportunity to make representation on receipt of charge sheet/imputation of misconduct but the failure on the part of the disciplinary authority to provide particulars of nine gate passes has eventually denied the right of the petitioner to make effective representation before the disciplinary authority as contemplated under said Rule 37(1) (a).

A charge sheet was issued on 26th April,

2016 by the disciplinary authority against the petitioner on the allegation that during the period from 9th January, 2015 to 15th January, 2015 nine gate passes have been processed for preparation without any recommendation of appropriate authorities and also the relevant documents were not kept properly. On receipt of such charge sheet/imputation of misconduct petitioner sent a letter dated 27th April, 2016 whereby he requested for supply of details of those nine gate passes since it was stated in his letter that he was unable to identify those nine gate passes.

However, on receipt of such letter of the petitioner dated 27th April, 2016 the disciplinary authority instead of sharing the details of those nine gate passes as prayed for passed the final order of punishment imposing penalty of Censure against the petitioner. Subsequently, petitioner preferred departmental appeal and the appellate authority vide order dated 24th August, 2016 on dismissing such appeal confirmed the order of disciplinary authority which led the petitioner to prefer revisional application and the same stood dismissed vide order dated 26th October, 2016 rejecting the contention of the petitioner. In the present writ petition petitioner has also questioned

the order dated 24th August, 2016 issued by the appellate authority and the order dated 26th October, 2016 issued by the revisional authority.

Ms. Das De, learned advocate appears on behalf of the authorities of Central Industrial Security Force being the principal respondents. During course of her submission the attention of this Court has been drawn to Rule 37 of the said Rules of 2001 and it has been submitted that for imposing minor penalty of Censure there has been no contemplation in the relevant rules for conducting enquiry.

It has further been submitted that in compliance with said Rule 37 imputation of misconduct was served upon the petitioner and in receipt of the same petitioner responded vide letter dated 27th April, 2016. Ultimately the disciplinary authority on consideration of such letter dated 27th April, 2016 found it fit to impose penalty of Censure not being satisfied with the explanation offered by the petitioner in support of his case. Therefore, there is no infirmity in the order of the disciplinary and the same may not be interfered with by this Court.

This Court has heard the learned advocates representing the parties and perused the relevant

materials available on record and also considered the affidavits exchanged between the parties.

It is true that in terms of the relevant provisions of the said Rules of 2001 for imposing penalty like Censure holding of enquiry is not *sine qua non* and the same depends upon the discretion of the disciplinary authority. However, for better understanding of the issue involved in this writ petition said Rule 37 is quoted below:

“37. Procedure for imposing minor penalties.- (1) No order imposing any of minor penalties specified in rule 34 shall be made except after-

- (a) informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;
- (b) holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) of rule 36;
- (c) taking the representation, if any, submitted by the enrolled member under

clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and

- (d) recording the findings on each imputation of misconduct or mishaviour.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the government servant or to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period an inquiry shall be held in the manner laid down in sub-rules (3) to (22) of rule 36 before making any order imposing on the enrolled member of the Force any such penalty.

(3) The records of the proceedings in such cases shall include-

- (i) a copy of the intimation to the enrolled member so charged of the proposal to take action against him;
- (ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to

- him;
- (iii) his representation, if any,
- (iv) the evidence produced during the enquiry, if any;
- (v) the findings on each imputation of misconduct or misbehaviour;
- and
- (vi) the orders on the case together with the reasons therefor.”

On perusal of said Rule 37, it appears that even for imposing punishment of Censure the disciplinary authority is required to offer reasonable opportunity of making representation as the delinquent employee wishes to make against the proposal. On minute reading of said Rule 37 (1) (a), it appears the exact expression used there is “reasonable opportunity”. Use of such expression of “reasonable opportunity” has far reaching effect and it appears to this Court that the expression has been used consciously by the framers in order to provide opportunity to the delinquent to make detailed representation before the disciplinary authority in support of his case since it has been provided in Rule 37 that drawing up of enquiry proceeding is dependant upon the discretion of the disciplinary authority.

In the present case, it appears that vide letter dated 27th April, 2016 petitioner has specifically prayed for supplying of particulars of those nine gate passes since petitioner was unable to identify what are those nine gate passes.

Considering the contemplation as contained in Rule 37 of the said Rules of 2001 as discussed above it appears to this Court that it would have been incumbent upon the disciplinary authority to supply the details of those nine gate passes as prayed for by the petitioner. Unfortunately, without supplying the details of those nine gate passes straightway the disciplinary authority passed final order of punishment deciding to Censure the petitioner. Such exercise made by the disciplinary authority appears to have been carried out in hot haste without following the prescription of law.

Accordingly, the decision of the disciplinary authority dated 9th May, 2016 imposing punishment of Censure on the petitioner stands set aside. Resultantly the order of the appellate authority dated 24th August, 2016 and the order of the revisional authority dated 26th October, 2016 also stand set aside.

However, the disciplinary authority shall be at liberty to supply the materials as sought for by

the petitioner within thirty days from this date. If such details are shared by the disciplinary authority in terms of the aforesaid direction, petitioner shall offer a comprehensive representation to the disciplinary authority within a period of seven days thereafter.

On receipt of such representation, the disciplinary authority shall also be at liberty to take decision in accordance with law and the same to be communicated to the petitioner within fortnight thereafter.

With the aforesaid direction, the writ petition stands disposed of.

However, There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)