

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 15848 of 2011

CAN 1 of 2022

Pradip Kumar Debnath

Versus

Union of India & Ors.

For the petitioner : Mr. Jayok Kumar Gupta
Mr. Pranab Halder
..... Advocates

For the UOI : Mr. Arijit Majumdar
..... Advocate

Heard lastly on : 27.07.2022

Judgment on : 05.09.2022

Jay Sengupta, J.:

1. This is an application praying for direction upon the respondents to cancel and/or withdraw the final order, the appellate order and the revisional order and reinstate the petitioner in service forthwith.

2. The petitioner joined his service with the Central Industrial Security Force as a Constable and was posted at the India Steel Plant, Burnpur Unit. On 17.08.2009, the petitioner was detailed at the light casting department “C” area, in B shift from 13.00 hrs to 20.00 hrs. After completion of duty, the petitioner handed over charge to Constable H.K. Mondal who, upon assuming charge for the said area, checked the area and found marks of removal of three numbers of iron plates from the machine shop of the LCD area. He informed the superiors that led to holding of an enquiry against the petitioner and two others who had been given the duty of manning the said place. First, the petitioner was served with a memorandum of charge along with articles of charge and statement of imputation. An enquiry was conducted thereafter. After completion of such enquiry, the competent authority issued a final order on 15.02.2010. The petitioner was awarded the punishment of compulsory retirement from service with admissible pension and gratuity. Thereafter, the petitioner preferred an appeal and then a revision, which were rejected. During pendency of the matter, the petitioner died and the applicants being the wife and the two daughters filed the connected application being CAN 1 of 2022 with a prayer for substitution. The prayer for substitution was allowed on 27.07.2022.

3. Learned counsel, appearing on behalf of the petitioner/applicant, submitted as follows. First, the earlier charges of overstaying in leave or absence without leave were of the years 1991, 1992, 1993, 1994 and lastly of 2002. The present incident was of 2009. The earlier circumstances were too far off to become a part of the same charge sheet or to sway the

respondent authorities to conclude that the petitioner was a habitual offender. The Enquiry Officer was biased. Yet, the petitioner's prayer for his removal was not accepted. Despite demand, the Beat Book i.e., the book which would have borne out the factum of handing over of the charge was not supplied to the petitioner. However, during the proceeding it was learnt that the book contained an 'OK' remark at the time of handing over of the charge by the petitioner. Two constables namely, Rimal Singh and Hitler Soren were asked to inspect the place after the reliever allegedly detected the missing plates. Those two constables were not examining during the proceeding. Another officer who inspected the plates was also not examined. In fact, the statement of the ASI to the Company Commandant implied that the issue of the missing plates did not appear to be new. Yet, the said Company Commandant was also not examined. It was not conceived of that the reliever could be an interested witness. No one was concerned about the alleged theft. In fact, the owner of the property being the SAIL did not even lodge a complaint. The local police was also not informed. Instead, a belated GD Entry was lodged. This was a case where all were biased against the petitioner. Even the witnesses conjectured that since the petitioner had earlier committed wrong, he must have done so this time as well. There was no record as to the area which the petitioner was supposed to cover. After all, the watch was divided into different areas and the guards were working there in shifts. It was the petitioner who had taken charge from the earlier guard. Non-examination of two constables was raised first in revision. The impugned Memorandum dated 29th August, 2009 proposing to hold enquiry

by framing Articles of Charges against petitioner whereby Disciplinary Authority before holding enquiry determined and/or came to a conclusion that the petitioner was guilty of misconduct showed the close mind of the Disciplinary Authority. The Report of the Enquiry Officer was nearly same as was filed by the Presenting Officer in his written brief. By not allowing the petitioner to examine Rimal Singh and Hitler Soren and by not producing the Beat Book, the Authority had denied the petitioner an opportunity to defend the charges, thus violating the principles of natural justice. On the basis of mere concocted facts made out in the enquiry report, the Disciplinary Authority, without any proper explanation and with a closed mind, passed the order of punishment despite the facts that the alleged incident took place after 1½ hours from handing over the charge to H.K. Mondal, the Reliever Constable of the next shift and no such complaint about the alleged theft of 3 small iron plates was lodged by the Steel Authority of India. The Disciplinary Authority, without issuing Show Cause Notice about proposed punishment as per Article 311 (2) of the Constitution of India, straightaway passed the Final Order of Punishment as per report of the Enquiry Officer who came to a conclusion that the delinquent employee failed to protect Government property and he was awarded 5 minor punishments during his tenure of service and as such, the charges had been proved. Reliance was placed on the decision in the case of A.L. Kalra reported in AIR 1994 SC 1361, on the question of equal treatment. Denial of equal protection of law could be judicially reviewed. In the instant case, the petitioner and other two employees were on duty on 17.08.2009 at the same

shift, but they were awarded minor punishments. Yet, the petitioner was awarded major punishment. This tantamounted to violation of Article 14 of the Constitution of India. An executive action denying equal protection could be reviewed judicially. Reliance was placed on AIR 1979 SC 1022.

4. Learned counsel representing the Union of India submitted as follows. There was no infirmity whatsoever in the procedure adopted by the respondent authorities in respect of the disciplinary proceeding. The enquiry was conducted in terms of Rules 36 of the CISF Rules 2001. The petitioner was allowed all opportunities to defend himself in the course of enquiry. The petitioner was given every possible opportunity to cross-examine each and every witness. The statements of witnesses bear the signatures of the witnesses, the petitioner, the enquiry officer and the presenting officer. The depositions given during disciplinary enquiry were all corroborated by other evidence. As regards the facts of the case the petitioner was deployed at the light casting department 'area of ISP', Burnpur and asked to keep a strict vigil and guard for the plant and its machinery and the other items as it came under his area of patrolling. As per entries 4, 5 and 6 of the duties and responsibilities in the Standard Operating Procedure issued by the Deputy Commandant, ISP, Burnpur unit, the petitioner was to monitor his area in respect of trespass or any illegal/criminal activity. Yet, he failed to protect the property belonging to the plant. As per clause 3.8 of the CISF Discipline and Appeal Manual, 2004 the disciplinary authority ought to impose penalty on a member of the forces only on the strength of the evidence on record and enhanced penalty or previous instance of mis-conduct in service record

could be imposed only if these instances had been included in a separate charge in the memorandum of charges. In the present case, the disciplinary authority included all the previous mis-conducts of the petitioner in the article of charges no. (ii). In a disciplined force, habitual offenders are a threat to one's own administration. On merits, sufficient number of witnesses were examined, more pertinently the reliever. The beat book, even if produced, would have hardly come to any aid of the petitioner in view of the abundance of evidence present. Other staffs charged with the petitioner had different punishments given because there was hardly any reason to book them for enhanced punishment. On the question of judicial review, reliance was placed on the decision of the Hon'ble Apex Court in B.C. Chaturvedi vs. Union of India and another (1995) 6 SCC 749 and it was submitted that a judicial review was not an appeal from a decision but a review of the manner in which the decision was made. The relief could be appropriately moulded by a High Court or a Tribunal only if the punishment imposed by the disciplinary authority or the appellate authority shocked its conscience, which was not the case here. In the present case, when the charges were proved against the petitioner in the disciplinary proceeding, the competent authority duly considered the length of the service of the petitioner, the pensionary entitlement, the series of mis-conducts and only thereafter, passed the final order. Reliance was also placed on Union of India Versus P. Gunasekaran (2015) 2 SCC 610. Relying on the decision in Om Kumar & Ors. Versus Union of India, (2001) 386, it was submitted that the Court would not apply proportionality because no issue of fundamental

freedoms nor of discrimination under Article 14 applied in the context. The petitioner was given several opportunities to rectify himself, yet he continued with the mis-conducts. Even then the disciplinary/competent authority took a lenient view by not imposing the strictest punishment considering the facts such as length of service, pensionary entitlement, etc.

5. I heard the learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits and the written notes.

Effect of earlier charges:

6. The petitioner's grievances were that the earlier charges of overstaying in leave or absence without leave of the years 1991, 1992, 1993, 1994 and 2002 were made of part of the charge sheet although the present incident was of 2009 and this swayed one and all to come to an adverse inference that since the petitioner was charged with so many earlier incidents, then he must be the one responsible for the present incident. There is a provision for including earlier incidents of indiscipline in a charge that would include the present incident. The Discipline and Appeal Manual of the CISF provides that if the charge is that the delinquent personnel indulged in the misconduct frequently, the frequency with full particulars of the earlier incidents should also be brought out. In fact, paragraph 3.18 of the document specifically deals with previous conduct reference. It provides that enhanced penalty on the ground of existence of previous instances of misconduct in service record should be imposed only if these instances have been included as a separate charge in the memorandum of charge. In the instant case, this condition was complied with. The enquiry and the

proceeding were all conducted after considering the depositions given by different persons as also upon examination of the relevant records. There is nothing on record to show that the authorities were influenced or swayed by the petitioner's earlier misdemeanour. Moreover, if such incidents had taken place in a span of so many years, then the same can be said to have some kind of consistency and the time gap between the last incident of 2002 and the present one of 2009 was not too far wide.

Non-production of Beat Book

7. A Beat Book would, at best, bear out the factum of handing over the charge. If any infirmity is noticed immediately as regards earlier patrol, the same might find a place in the Beat Book or in any other contemporaneous documents. But, if a thing like removal of three iron plates is discovered in course of the next patrol a little after the change of guards, the same may not find a place in the Beat Book. Therefore, one cannot find fault with the non-production of the Beat Book or cast an unnecessary shadow of doubt over such issue.

Number of witnesses or its quality?

8. It is settled law that the number of witnesses in an adjudication is not important, but the quality is. Some witnesses, who had detected the missing plates, were indeed examined. Therefore, non-examination of two other constables namely, Rimal Singh and Hitler Soren cannot be said to be fatal to the case against the petitioner. Moreover, the ASI's purported reference to a conversation with the Company Commandant does not necessarily show that the going missing of the plates was an old issue.

Reliever's evidence

9. The guard, who relieved the petitioner of his duty, is perhaps the best witness. By no stretch of imagination, can he be termed as an interested witness. Sometime after taking charge, the going missing of plates was detected and were brought to the notice of others.

No complaint by the Steel Authority of India

10. That no separate complaint was lodged by the Steel Authority of India for going missing of the three iron plates is of no consequence whatsoever. After the detection of theft, the same was notified to the superiors in the CIS Force. A G.D. Entry was lodged. In such matters, it is not necessary that the authorities, whose property the CISF was protecting, would themselves have to come down to lodge a formal complaint.

Report of Enquiry Officer vis-a-vis the Presenting Officer

11. The report of Enquiry Officer and the Presenting Officer and the version of the Presenting Officer may fairly be little similar as they deal with the same facts and issues. One cannot cast unnecessary insinuation if the same are found to have something in common.

Power of review

12. The power of reviewing the actions of a Disciplinary Authority is very limited indeed. As was held in B.C. Chaturvedi (Supra), a judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. An interference is warranted only if the punishment, imposed by the Disciplinary Authority or the Appellate Authority, shocks the conscience of the High Court or the Tribunal. Although the nature and

certain facets of the evidence were referred to earlier, the same were only for the purpose of comprehending whether the punishment could be termed as 'shocking'. In fact, instead of awarding the maximum punishment of removal from service, a relatively lenient view was taken considering the petitioner's length of service and pensionary entitlement. Therefore, in the facts of the present case the punishment awarded to the present petitioner is found quite appropriate, far from what can be termed as shocking. That apart, no apparent irregularity could be found in the manner in which the authorities dealt with the disciplinary proceeding, the appeal and the revision.

Unequal treatment meted out to the petitioner

13. It appears that the others who were charged with the petitioner for the same final act were awarded different punishments. As would be evident from the revisional order, punishments were awarded to the persons charged based on the roles they were performing. Besides, there is nothing on record to show that the authorities could find any reason to award enhanced punishment to those others. However, in the case of the present petitioner, there was a consistent series of earlier acts of indiscretion which coupled with the role played by the petitioner could fairly prompt the authority to award a harsher punishment to him than to those others.

14. In view of the above, I do not find any worthwhile reason to interfere with the final order, the appellate order and the revisional order passed by the respondent authorities.

15. Accordingly, the writ petition is dismissed.

16. However, there shall be no order as to costs.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

P. Adak