

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 14464 OF 2018
WITH
INTERIM APPLICATION NO. 1964 OF 2021**

Ram Sahodar Rajwade	}	Petitioner
Versus		
The Director-General, Central	}	
Industrial Security Force and Ors.	}	Respondents

Mr. Rajeev Kumar for the petitioner.

Mr. Ashok Shetty with Ms. Anamika Malhotra for the respondents and applicant in IA/1964/2021.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

**Reserved on: JUNE 17, 2022
PRONOUNCED ON: JUNE 27, 2022**

JUDGMENT: (Per the Chief Justice)

1. The petitioner, a constable of the Central Industrial Security Force (hereafter "CISF", for short), following disciplinary proceedings, was removed from service by an order dated 27th November 2017 of his disciplinary authority on the ground of proved misconduct. Such order of removal was made in terms of the provisions contained in Rule 34(ii) read with Rule 36 of the Central Industrial Security Force Rules, 2001 (hereafter, "CISF Rules", for short).

2. Aggrieved by the order of removal, the petitioner carried such order in an appeal under Rule 46 of the CISF Rules. The appellate authority, by an order dated 5th February 2018, upheld the order of the disciplinary authority to the extent it

held that the charges levelled against the petitioner stood proved; however, considering the length of service put in by the petitioner and liability towards his family, a lenient view was taken by the appellate authority and the penalty of removal was modified by awarding the penalty of compulsory retirement from service with full pensionary benefits.

3. A revision petition at the instance of the petitioner did not prove successful. The revisional authority, by its order dated 8th August 2018, dismissed the revision and affirmed the order of the appellate authority.

4. By instituting this writ petition dated 26th September 2018, the petitioner seeks a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the orders of the disciplinary authority, the appellate authority and the revisional authority referred to above. He further prays that by a writ of mandamus, the respondents be directed to reinstate him in service forthwith with effect from 22nd November 2017 with all consequential benefits, including arrears of pay, pay fixation, seniority etc. Also, the petitioner prays for a direction on the respondents for treating the period of suspension as spent on duty for all purposes.

5. Facts as pleaded in the writ petition, which are considered relevant for a decision on this writ petition are these. The Senior Commandant, CISF Unit, Jawaharlal Nehru Port Trust, Nhava Sheva, Navi Mumbai, being the petitioner's disciplinary authority, issued memorandum of charge-sheet dated 4th August 2017 under Rule 36 of the CISF Rules and called upon him to submit a written statement in his defence within 10 (ten) days. The Articles of Charge read as follows: -

"Charge Article-1

Force No. 0114500 Constable/GD Ram Sahodar, has been charged that on 13/07/2017 at time about 05.43 hrs while force members were returning from completing night shift duty a surprise checking of the them, their belongings and bus was conducted by Shri. P. S. Rawat, Assistant Commandant, Shri. Rajesh Kumar, Assistant Commandant and Intelligence Wing personnel at unit line. During checking, Constable/GD Ram Sahodar threw a roll of paper out of the bus window. When that rolled paper was retrieved and opened, a sum of Rs. 540/- (Indian Currency) was found in it. The said act of member indicates palpable violation of office order No. 487 dated 11.02.2010. The said act of the member of the force indicates his involvement in illegal gratification and also shows gross misconduct at his instance. Hence has been charged.

Sd/-

Senior Commandant
CISF Unit JNPT Sheva

Charge Article-2

Force No. 011450025 Constable/GD Ram Sahodar, is charged with habitually indulging in illegal gratification which amounts for gross misconduct. Hence has been charged.

Sd/-

Senior Commandant
CISF Unit JNPT Sheva"

6. The petitioner denied the charges, whereupon, the charges were inquired into by an inquiry officer appointed under Rule 36(5)(a) of the CISF Rules. Several witnesses deposed in support of the prosecution case and there is no dispute that the petitioner was extended full opportunity to cross-examine them. The inquiry officer submitted a report dated 31st October 2017 holding the petitioner guilty of both

the charges. A copy of the inquiry report was shared with the petitioner seeking his comments and upon consideration of the petitioner's representation dated 30th November 2017, the disciplinary authority proceeded to remove him from service, as noted above.

7. Multiple contentions have been advanced by Mr. Kumar, learned advocate representing the petitioner and Mr. Shetty, learned advocate representing the respondents for and against the relief claimed in the writ petition. Several decisions have also been cited by learned advocates for the parties for our consideration.

8. Having heard the learned advocates for the parties and on meticulous perusal of the evidence adduced by the prosecution witnesses and the other materials on record, and on due consideration of the authorities cited at the bar, we have no hesitation to hold that there are several reasons for which interference with the impugned order of penalty would be appropriate and also that this is a fit and proper case where, upon setting aside the impugned order of compulsory retirement from service with full pensionary benefits, the petitioner ought to be reinstated in service for the limited purpose of concluding the disciplinary proceedings from the stage that we propose to indicate in our judgment.

9. The reasons for our abovestated conclusion follow.

10. The first charge against the petitioner alleges that after completing night shift duty, he was returning in a bus; that the occupants thereof were all members of the CISF; that in course of conducting of a surprise check on 13th July 2017 early in the morning by an inspection team, *inter alia*, led by

Shri. P. S. Rawat, the Assistant Commandant (hereafter "PW-1"), PW-1 saw the petitioner throwing a roll of paper out of the window of the bus; that when such roll was retrieved and opened, a sum of Rs. 540/- (Indian currency) was found in it; and such an act of the petitioner was found to be violative of an office order dated 11th February 2010. The charge was that this indicated his involvement in illegal gratification, amounting to gross misconduct.

11. The second charge was that the petitioner had been habitually indulging in illegal gratification thereby amounting to gross misconduct.

12. Having regard to the nature of the second charge, its proof would obviously depend upon proof of the first charge.

13. Now, Appendix-3 to the memorandum of charge was the list of documents to substantiate the charges made against the petitioner. Sr. No. 2 of such list was a confiscation/seizure list dated 13th July 2017.

14. PW-1, in course of his deposition, said thus: -

" I No 854650099 Assistant Commandant P S Rawat, have been on regular posting in CISF Unit JNPT Sheva, Navi Mumbai since July 2015 and presently performing duties of Assistant Commandant ADM. On 13.07.2017 approximately 0535 hrs. I, along with Shri Assistant Commandant Rajesh Kumar, SI/Exe Jakki Ahmed I/C CIW, SI/Exe Nitin Kumar CIW, SI/Exe Raunak Ali and other members of CIW carried out anti corruption surprise check of the personnel returning to Unit Line after completion of C shift duty. While first shift bus was being checked by Assistant Commandant Rajesh Kumar, I was waiting near the gate (RP-2) for the second shift bus. As soon as the second shift bus arrived near the RP-2 gate approximately at 0545 hrs., I approached near to the bus and saw that CT/GD Ram Sahoder who had been detailed for C shift duty from 2100 hrs. on

12.07.2017 to 0500 hrs. on 13.07.2017 (PW-01 Exb.-01, P-01) threw something out of the window of the bus which dropped a few step ahead from me. I immediately shouted that this constable has thrown something from the window of the bus and picked of small roll thrown by CT/GD Ram Sahoder, from the ground which was a small cigar like rolled packed, wrapped with the carbon paper. As I boarded the second shift bus for physical checking of the bus, I handed over that rolled paper to SI/Exe Jakki Ahmed after completion of bus checking, personal search of the individual and there belonging, the rolled packed which was thrown by CT/GD Ram Sahoder and packed up by me, was opened at the quarter guard and amount of Rs. 540/- was found inside that wrapped paper roll. Accordingly a seizure list was prepared which I am producing as an exhibit. (PW-01-Exb-02,P-02). A special report in this regard was submitted to senior commandant by me on 13.07.2017 which I am producing as an exhibit (PW-01-Exb-03,P-03). This is my statement which I am giving without any stress and without duress."

15. Other prosecution witnesses did support the version of PW-1 that there was indeed a surprise check of the bus in which the petitioner was travelling on the return trip after night shift duty and that PW-1 had handed over a roll of paper to Sub-Inspector Jakki Ahmed. However, none of the other prosecution witnesses testified that they had seen the petitioner throw something out of the bus through its window.

16. In course of cross-examination, PW-1 was asked as to how, while being stationed outside the bus, he could see the petitioner throw a roll of paper through a window of the bus. PW-1 was categorical in his answer that though he was outside the bus, the petitioner was quite visible to him. PW-1, however, conveniently avoided the question of the petitioner with regard to number of duty personnel present inside the

second shift bus by answering that he was not deputed to count the personnel, but deputed to carry out anti-corruption surprise check. Although the version of PW-1 sounds absolutely improbable and does not inspire confidence, yet, we would give him the benefit of doubt and hold that he did see the petitioner throw a roll of paper out through a window of the bus and it was hard cash.

17. In our view, if only this version of PW-1 and the other witnesses were on record, finding of guilt arrived at against the petitioner based thereon may not have required interference in judicial review proceedings. This is because of the caution sounded by the Supreme Court in a plethora of decisions that it is impermissible for a writ court to reappreciate or reanalyze evidence adduced in course of a departmental inquiry. The decisions cited by Mr. Shetty reported in (1995) 6 SCC 749 (**B. C. Chaturvedi vs. Union of India and Ors.**) and (2015) 2 SCC 610 (**Union of India and Ors. Vs. P. Gunasekaran**) are authorities providing such guidance.

18. However, **B. C. Chaturvedi** (supra) permits the writ court to determine whether the inquiry, *inter alia*, was conducted in compliance with rules of natural justice and that such court may interfere where the authority holds the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the rules of mode of inquiry (emphasis ours) or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would

have ever reached, the Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

19. Also, **P. Gunasekaran** (supra) permits the High Courts to see whether, *inter alia*, the conclusion, on the very face of it, is wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.

20. Bearing in mind the aforesaid guiding principles, the deposition of PW-1 has to be examined further, not for picking holes in it but for ascertaining whether on the basis of other evidence led by him in the inquiry, his oral version finds support or suffers from patent contradiction.

21. After referring to the incident in question pinpointing the role of the petitioner, we find that PW-1 went a step further and proved the confiscation/seizure list (hereafter "Exhibit 02"). According to PW-1, Exhibit 02 was prepared after it was ascertained that the roll of paper thrown out by the petitioner had Rs.540/- in it. As noted above, Exhibit 02 was one of the documents included in Appendix 3 since, based thereon, Article of Charge No. 1 against the petitioner was sought to be proved by the prosecution. We have perused Exhibit 02. It was prepared on 13th July 2017 at 5.35 hours. *Inter alia*, it records that from the second shift bus, i.e., the bus in which the petitioner was travelling, Rs. 1240/- was recovered together with 5 (five) mobile phones. PW-1 was the seizing officer. While Exhibit 02 bears out that a total of Rs. 3010/- (Rs.1770/- + Rs.1240/-) was recovered from the occupants of the first and the second shift buses, it also reveals that 5 (five) mobile phones were recovered from 4 (four) constables

named therein. All the 4 (four) constables, from whom mobile phones were recovered, were made to sign on Exhibit 02. However, curiously, Exhibit 02 does not contain the signature of the petitioner. In fact, the signature of the other constables, from whom money was recovered, also do not appear on Exhibit 02. In such circumstances, at best, Exhibit 02 is evidence of seizure of currency notes amounting to Rs. 3010/-. However, in the absence of the signature of the petitioner on Exhibit 02, it cannot be concluded with any degree of conviction that the petitioner had acknowledged recovery and seizure of Rs. 540/- from him by signing on Exhibit 02. We had repeatedly inquired of Mr. Shetty as to why the constables, from whom mobile phones were confiscated/seized, were required to sign on Exhibit 02 and why the constables, from whom currency notes were confiscated/seized, were not made to so sign. Mr. Shetty could not answer. The inquiry officer has reasoned in his report that based on all the documentary evidence adduced in course of the inquiry, Article of Charge No. 1 is proved (emphasis ours). Unfortunately, Exhibit 02 certainly does not nail the petitioner.

22. We, therefore, hold that on the basis of Exhibit 02, which was a document purportedly adduced in course of inquiry by the prosecution, it could not have been held to be successful in driving home Article of Charge No. 1 against the petitioner. The inquiry officer having returned a finding of guilt ignoring relevant evidence, which the prosecution had adduced, must be held to have erred in law.

23. The second ground on which we take exception to the conduct of the disciplinary proceedings is a gross infraction of

clause (b) of Rule 36(18) of the CISF Rules. The entirety of sub-rule (18) is set out below: -

"36. Procedure for imposing major penalties.-

(18)(a) The evidence on behalf of the enrolled member of the Force shall then be produced. The enrolled member of the Force may examine himself in his own behalf if he so prefers. The witnesses produced by the enrolled member of the Force shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(b) The inquiring authority may, after the enrolled member of the Force closes, his case, and shall, if the enrolled member of the Force has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the enrolled member of the Force to explain any circumstances appearing in the evidence against him.

(c) The inquiring authority may, after the completion of the production of evidence, hear the presenting officer, if any, appointed and the enrolled member of the Force, or permit them to file written briefs of their respective case, if they so desire.

(d) Whatever any inquiring authority, after having heard and recorded the whole or any part of the evidence in any inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or penalty recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(e) If the enrolled member of the Force to whom a copy of the articles of charge has been delivered,

does not submit written statement on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte*."

24. A disciplinary proceeding, it is well known, must be conducted in accordance with the governing rules. The procedure postulates that reasonable opportunity of being heard in respect of the charges is given to the delinquent. Reasonable opportunity of hearing is considered to be synonymous to 'fair hearing' and is an important ingredient of the rule of *audi alteram partem*. The rule of 'fair hearing', which embraces almost every facet of fair procedure, requires that the delinquent proceeded against and who could be affected by reason of any final order passed in the proceedings, is given the opportunity to meet the case against him effectively. What this means is that, reasonable and adequate opportunity to raise effective defence should be given to the delinquent or else the ultimate action of imposition of penalty based on such procedure which falls short of the requirements of a 'fair hearing' could be annulled if the procedural safeguards that the statutory rule envisages are not adhered to. The facet of fair hearing which stems from the opportunity of the nature extended to a delinquent member of the CISF by a provision like clause (b) of sub-rule (18) of Rule 36 of the CISF Rules has to be regarded as an integral part of the principles of natural justice.

25. Division Benches of this Court in its decisions reported in 2011 (2) Mh.L.J. 983 (**Vijay s/o Shamrao Bhale vs. Godavari Garments Ltd., Aurangabad**) and 2021 (5) ABR 470 (**The State of Maharashtra vs. Wasudeo**

Madhukarrao Pande), considering *pari materia* provisions in sub-rule (2) of Rule 20 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, have construed the same to be mandatory. On the same reasoning, we hold the provision in clause (b) of sub-rule (18) of Rule 36 of the CISF Rules to be a mandatory requirement if, of course, the charged member of the CISF has not examined himself in defence.

26. We have looked into the proceedings of inquiry and find that the inquiry officer did, in fact, put certain questions to the petitioner after re-examination of the prosecution witnesses but all such questions were not of the kind required by clause (b) of sub-rule (18) of Rule 36. Since the petitioner had not examined himself in defence, it was the mandatory duty of the inquiry officer to put all such circumstances appearing in the evidence against him not only in terms of the mandate of the statute but also in compliance with natural justice principles. Not a single question was put to the petitioner in respect of the circumstances appearing against him in the evidence. We, therefore, are of the clear opinion that the inquiry was not conducted in accordance with the statutory mandate of clause (b) of sub-rule (18) of Rule 36 of the CISF Rules, and the disciplinary authority, the appellate authority and the revisional authority by failing to notice such infraction of the statutory mandate has occasioned a failure of justice.

27. Mr. Shetty is right in his contention that the petitioner did not bring infraction of clause (b) of sub-rule (18) of Rule 36 of the CISF Rules to the notice of the disciplinary, appellate

and revisional authorities and, therefore, must be held to have waived his statutory right.

28. We are conscious of the decision reported in (1996) 3 SCC 364 (**State Bank of Patiala vs. S.K. Sharma**), where the Supreme Court has held that a mandatory procedural provision, which is in the interest of the person proceeded against and not in public interest, could be waived by such person; and in such an eventuality, non-compliance with the mandatory procedural provision would not vitiate an action. The provision in clause (b) of sub-rule (18) of Rule 36, as observed above, undoubtedly incorporates natural justice principles of fairness in decision making process and is intended to offer the member of the CISF proceeded against protection against consideration of evidence without bringing to his notice the circumstances appearing in such evidence against him. Such a provision is indeed in the interest of the member proceeded against. Question is, notwithstanding the failure of the inquiry officer to act in terms of clause (b) of sub-rule (18) of Rule 36 of the CISF Rules and notwithstanding that the entire action of imposition of penalty under Rule 34 thereof suffers from a statutory violation, whether, because of the omission of the petitioner to raise the point before the statutory authorities, such action of imposition of penalty which otherwise stands vitiated should be saved or not?

29. Our answer to the question is in the negative. The procedural safeguards incorporated in the CISF Rules, which are mandatory in nature, cannot be regarded as waived merely because the petitioner did not raise such issue initially

before the inquiry officer and later before the disciplinary, appellate and revisional authorities in view of the several decisions of the Supreme Court which we propose to refer now.

30. The question whether failure to observe the principles of natural justice matters at all, if such observance would have made no difference was considered by a bench of three learned Judges of the Supreme Court in its decision reported in (1980) 4 SCC 379 (**S.L. Kapoor vs Jagmohan**). The Court ruled:

“24. *** The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. ***”

(emphasis ours)

31. A Constitution Bench of the Supreme Court in its decision reported in (1985) 3 SCC 398 (**Union of India vs. Tulsiram Patel**) held in paragraph 95 as follows: -

“95. *** Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.”

(emphasis ours)

32. Another Constitution Bench of the Supreme Court in its decision reported in AIR 1986 SC 180 (**Olga Tellis vs. Bombay Municipal Corporation**) held that the observations made in **S.L. Kapoor** (supra) "*sum up the true legal position regarding the purport and implications of the right of hearing*". Following the decision of a previous Constitution Bench of the Supreme Court reported in AIR 1959 SC 149 (**Basheshar Nath vs. CIT**), it was also held in **Olga Tellis** (supra) that there cannot be a waiver of a fundamental right.

33. In its decision reported in (1988) 2 SCC 602 (**A.R. Antulay vs. R.S. Nayak**), a Constitution Bench of the Supreme Court of seven learned Judges expressed in paragraph 55, *inter alia*, as follows:

"55. *** No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. ***"

34. Natural justice has, therefore, been regarded by the Supreme Court as part of Article 14 of the Constitution of India. We hold that breach of the procedural safeguard such as the one clause (b) of sub-rule (18) of Rule 36 of the CISF Rules envisages is not merely a violation of a statutory rule but also a breach of the principles of natural justice. That, in turn, is a violation of Article 14 of the Constitution. Drawing guidance from the aforesaid decisions, we also hold that the petitioner's right under Article 14 has been invaded, and such right could not have been waived. The prejudice being self-evident, **S.K. Sharma** (supra) will have no application.

Contention of Mr. Shetty that the petitioner has waived the requirement to comply with clause (b) of sub-rule (18) of Rule 36 of the CISF Rules cannot be accepted in view of the authoritative pronouncements in **S. L. Kapoor** (supra), **Tulsiram Patel** (supra), **Olga Tellis** (supra) and **A.R. Antulay** (supra) and, accordingly, stands rejected.

35. There is one other serious flaw in the proceedings that we have noticed. The inquiry officer, the disciplinary authority as well as the appellate authority have cited non-production of evidence by the petitioner to be a ground for holding that the charges levelled against him stand proved. Even in a departmental inquiry, the delinquent officer is entitled to maintain silence. It is for the prosecution to prove the delinquent guilty of the charges by adducing adequate evidence. Once such evidence is adduced, the onus would shift to the delinquent to disprove the charges. However, in the present case, the confiscation/seizure list not having supported the case of the prosecution and also there being no independent evidence led by any co-constable, who was travelling along with the petitioner in the bus, to the effect that he had seen the petitioner throw a roll of paper outside through a window of the bus, the entire approach of the prosecution produces a fetid smell.

36. We, therefore, see no reason to sustain the impugned revisional order as well as the appellate order and the order of the disciplinary authority which have merged in the former. Such orders stand set aside. The matter stands remitted to the inquiry officer, to resume the inquiry from the stage of clause (b) of sub-rule (18) of Rule 36. There shall be

no further examination/cross-examination/re-examination of witnesses except to the extent permitted by the first proviso to clause (d) of sub-rule (18) of Rule 36 and only in accordance therewith. However, further examination/cross-examination/re-examination of witnesses whose evidence has already been recorded shall not be resorted to without recording prior reasons. The inquiry shall be completed within two months of resumption and the final order on the disciplinary proceedings must be passed within a month and a half thereafter. The disciplinary authority shall entrust the same inquiry officer to continue the inquiry; however, in the event he is not readily available to so conduct, any other officer may succeed him as the inquiry officer. Let such order be issued as early as possible but not later than a fortnight from date of receipt of a copy of this judgment and order. The petitioner shall be reinstated for the limited purpose of completing the departmental inquiry within the aforesaid period, but deemed to be under suspension.

37. The inquiry, upon resumption in terms of this order, shall be conducted strictly in accordance with law. The petitioner shall cooperate with the inquiry officer and the disciplinary authority, and not seek any unnecessary adjournment.

38. It is made clear that if the inquiry officer fails to complete the inquiry in terms of this order within two months of resumption or the disciplinary authority fails to pass the final order within a month and a half of submission of inquiry report, it will be deemed that the disciplinary authority is not keen to proceed against the petitioner and the disciplinary proceedings, in such eventuality, shall stand dropped.

However, if any adjournment is prayed by the petitioner and such prayer is granted, the period of adjournment will be excluded from the time-frame fixed hereby.

39. From the date of reinstatement and till such time the final order is passed terminating the disciplinary proceedings, the petitioner shall be entitled to subsistence allowance as per law.

40. The petitioner shall be entitled to retain the official accommodation till one week after the disciplinary authority passes the order.

41. With these directions, the writ petition stands disposed of. No costs.

42. In view of the aforesaid order, Interim Application No. 1964 of 2021 also stands disposed of.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2022.06.27
19:31:16 +0530

(M. S. KARNIK, J.)

(CHIEF JUSTICE)