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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 02.06.2022

+ W.P.(C) 9181/2022

NIMIT KUMAR

..... Petitioner

Through: Mr. Mukund K. Upadhyay,
Advocate

Versus

CENTRAL INDUSTRIAL SECURITY FORCE
AND ORS.

.... Respondents

Through: Mr. Anshuman, Senior Panel
Counsel

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By virtue of the present writ petition, the petitioner has challenged as many as three orders on the ground that the punishment awarded to him is disproportionate to the misconduct committed by him, *inter alia*, praying as under:

“(a) Writ of Certiorari setting aside the final order dated 16.04.2020 passed by the Disciplinary Authority (Respondent No.2) as well as the disproportionate penalty imposed on the petitioner in the very same order and/or



(b) Writ of Certiorari setting aside all the orders upholding the final order dated 16.04.2020 passed by the Disciplinary Authority which include the order dated 08.01.2021 passed by the Appellate Authority and the order dated 25.11.2021 passed by the Revisional Authority and/or

(c) Writ of Certiorari commanding the respondents to transfer all the records pertaining to the case of the petitioner so that conscionable justice may be done and/or

(d) Writ of Mandamus directing the respondents to furnish the continuous CCTV footage from 1000 hours to 1100 hours of the petitioner performing his duties on 14.11.2019 for the purposes of adjudication by this Hon'ble Court and/or

(e) Writ of Certiorari quashing the entire proceedings initiated against the petitioner with respect to the events of 14.11.2019, its related orders and the Charge Memorandum dated 28.11.2019 and/or

(f) Writ of Mandamus directing the respondents to restore the petitioner to the same pay scale he was in before the final order dated 16.04.2020 and/or”

2. Briefly put, the petitioner was enrolled as a member/ Sub-Inspector (Executive) with the Central Industrial Security Force (hereinafter referred to as “CISF”) and was first posted in the CISF Unit, ASG, Goa.

3. On 14.11.2019, when the petitioner was deployed in 'A' shift duty from 0530 hours to 1300 hours at the International Security Hold Area (hereinafter referred to as “SHA”), Goa Airport and performing his duty of frisking and screening as



per the Standing Operating Procedures with respect to these duties issued by the Chief Airport Security Officer, CISF Unit, ASG Goa at the International Security Hold Area and at the Staff Gate. In one such Standing Operating Procedures issued on 25.05.2019 it was mentioned that officers like the petitioner (i) shall not leave the duty post until and unless properly relieved, and (ii) shall not bring mobile phone and shall not bring and read any reading material on duty.

4. After a few days of his posting at the International SHA, Goa Airport, the petitioner was served with a Charge Memorandum dated 28.11.2019 issued by the Commandant/ Chief Airport Security Officer (CASO), CISF Unit, ASG Goa Airport. The said Charge Memorandum laid down two Articles of Charge against the petitioner, as under:

ARTICLE OF CHARGE-01

“On 14.11.2019 No. 180400397 SI/Exe Nimit Kumar of ASG Goa was deployed in 'A' shift duty from 0530 hrs to 1300 hrs at International SHA of NITB Goa Airport. It was observed that at around 1040 hrs while working at X-BIS No.1 he was involved in reading magazine on duty. Further, in course of duty, he allowed CMS Staff to screen belongings through X-BIS rather than doing himself being a screener deployed there. At about 1045 hrs, an immigration staff was getting out from International SHA frisking booth without any checking of bona fide. At about 1047 hrs a concessionaire trolley was allowed to go in Domestic SHA by him without proper checking of the trolley. It has also been noticed that he was not paying attention in AEP checking of staff going outside international SHA. At about 1048 hrs, some electrical items (3 air conditioner filter)



of the AC repairing staff were allowed inside SHA without proper check. All these lacunae noticed on the part of No. 180400397 SI/Exe Nimit Kumar show serious dereliction, ignorance and callous attitude, which might result in unlawful interference in civil aviation. The above act on the part of No. 180400397 SI/Exe Nimit Kumar tantamount to gross negligence towards his duty and shows' clear violation of SOP and guidelines issued through orders by high formation and also communicated regularly in briefing/debriefing session of shift by supervisory officer. Being an enrolled member of the disciplined Armed Force, he is duty bound to follow lawful orders. But he failed to do so. Hence, the charge."

ARTICLE OF CHARGE-02

"On 14.11.2019, No. 180400397 SI/Exe Nimit Kumar of ASG Goa was deployed in A shift duty from 0530 hrs to 1300 hrs at International SHA. At about 1057 hrs, he was seen leaving his duty post without being properly relieved through reliever and prior permission of his senior officer. The above act on the part of No. 180400397 SI/Exe Nimit Kumar tantamount to gross indiscipline, disobedience of lawful order of his senior officer, dereliction and negligence towards his duty. Hence, the charge."

5. Subsequently, an enquiry was conducted on the misconduct by the petitioner and a Departmental Enquiry Report under Rule 36 of The Central Industrial Security Force Rules, 2001 (hereinafter referred to as "CISF Rules") was submitted by the Enquiry Officer on behalf of the Disciplinary Authority viz. the Deputy Inspector General, CISF West Zone, Airport Headquarters on 22.02.2020 qua charges levied against the petitioner. The said Disciplinary Authority, upon due consideration of the facts, documents and evidence on record, especially the



report of the Enquiry Officer and the written defense of the petitioner, vide a final order dated 16.04.2020 found both the Article of Charge-01 and Charge-02 'Proved' against the petitioner as he was found to have violated the instructions contained in the BCAS Guidelines. Vide the impugned final order dated 16.04.2020 the Disciplinary Authority held that taking into account the vulnerability of the duty of SHA the petitioner deserved exemplary penalty to deter other Force personnel for casual attitude and dereliction of duty. But as this was his first airport and since the petitioner had just served one year and half in CISF a lenient view was taken and in exercise of the powers conferred under Rule 32 read in conjunction with Schedule-I of the said Rule and Rule 34(v) of the CISF Rules, 2001 the Disciplinary Authority imposed a penalty of "Reduction of pay by one stage from Rs. 37,600/- to Rs. 36,500/- in the pay matrix level-6 (Rs.35,400/- to 1,12,400/-) for a period of two years with immediate effect with further direction that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of Postponing his future increments of pay" on the petitioner to meet the ends of justice.

6. Being aggrieved, the petitioner preferred an appeal against the said order dated 16.04.2020 before the Appellate Authority, who, upon due consideration of



the materials on record and the contents of the appeal of the petitioner vide its order dated 08.01.2021 held that the disciplinary proceedings had been conducted following the laid down procedure and the petitioner was afforded all reasonable opportunities to defend himself and that the articles of charges had been proved against him in the enquiry. The Appellate Authority also categorically held that it had not come across any procedural flaw or miscarriage of justice and that the penalty awarded by the Disciplinary Authority was well commensurate with the gravity of proven delinquency and also that the petitioner, in the appeal petition had not brought out any new facts requiring my interference in the orders passed by the Disciplinary Authority. It was therefore that in exercise of powers conferred under Rule 52 of the CISF Rules 2001, the Appellate Authority vide the impugned order dated 08.01.2021 confirmed the penalty awarded to the Petitioner by the Disciplinary Authority and rejected the appeal of the petitioner, being devoid of merit.

7. Once again being aggrieved, the petitioner preferred a revision against the said order dated 08.01.2021 before the Revisional Authority, which upon due consideration of the materials on record and the contents of the revision of the petitioner, vide order dated 25.11.2021 rejected the same and dismissed the revision of the petitioner, holding that as the departmental proceedings had been



conducted as per the laid down procedures and both the Articles of Charge(s) had been safely proved during the course of enquiry by the Enquiry Officer and that there was no procedural flaw of miscarriage of justice in the case and thus the penalty imposed upon the petitioner was justified and completely proportionate to the misconduct by the petitioner and that there was no reason to reduce or reconsider it. It was therefore held vide the impugned order dated 25.11.2021 that the penalty awarded by the Disciplinary Authority and further rejection of the appeal by the Appellate Authority being devoid of merit, were both justified. In view thereof, the revision of the petitioner was rejected after due application of mind, being devoid of merit.

8. It is thence and after facing much commotion in the earlier rounds of litigation and staring at the impugned final order dated 16.04.2020 passed by the Disciplinary Authority and the subsequent order of rejection vide impugned order dated 08.01.2021 passed by the Appellate Authority and the subsequent order of rejection of review vide impugned order dated 25.11.2021 passed by the Revisional Authority that the petitioner has now approached this Court by way of the present writ petition. Considering the fact that the petitioner has all throughout, in all proceedings before all the forum(s) including this Court, always raised common grounds of challenge which have always been similar in nature



and has never raised any new and/ or additional ground of challenge at any point of time, this Court is of the opinion that it would be fit, proper, appropriate and in the interest of justice that all the three impugned orders are disposed off by a common order. Thus this Court is disposing off all the three impugned orders after dealing with them collectively.

9. Upon carefully perusing all the documents on record and after extensively hearing the learned counsel for the petitioner at length this Court finds that the proceedings before the respondents, i.e. the Disciplinary Authority, the Appellate Authority and the Revisional Authority were just, proper and fair wherein, following the principles of *audi alteram partem*, the petitioner was accorded a proper and ample opportunity of being heard and following the principles of natural justice, fair play and conscience, the respondents issued proper notice(s) to the petitioner and supplied all the relevant documents to the petitioner and considered all the documents along with other materials on record and examined all the witnesses prior to passing of each of the three impugned order(s). A bare perusal of the three impugned order(s) show that they are well reasoned, detailed and speaking. Suffice it to say that the petitioner has, *rightly*, not made any allegations nor raised any grievance of nor challenged any of the three impugned order(s) on the ground of malafide and/ or bias and has also, *rightly*, not claimed



that he was not granted any opportunity of being heard by the respondents at any time whatsoever.

10. Moreover as the facts of the case are admitted and indisputable there is only one conclusion possible under the circumstances, which is to uphold all the three impugned order(s) under challenge by virtue of the present writ petition before this Court. It is worthwhile to note that none of the three impugned order(s) are causing any kind of prejudice to the petitioner.

11. In view of the aforesaid, this Court is of the opinion that the said punishment granted by the Disciplinary Authority vide order dated 16.04.2020 is not disproportionate to the misconduct committed by the petitioner and the subsequent order of rejection of the appeal dated 08.01.2021 passed by the Appellate Authority and the subsequent order of rejection of the review dated 25.11.2021 passed by the Revisional Authority do not need any interference by this court and need to be sustained.

12. We find no merit in the present petition and the same is, accordingly, dismissed.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JUNE 2, 2022/rk/So