

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 7660 of 2009

Jagdish Jatav
Vs.
Union of India & Ors.

For the petitioner : Mr. K.B.S. Mahapatra,
MR. Kasinath Bhattacharya.

For Union of India : Ms. Chandreyi Alam.

Heard on : 03.02.2023

Judgment on : 24.03.2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the final order passed by the disciplinary authority as well as the orders passed by the appellate and the revisional authority in connection with the disciplinary proceedings initiated against the writ petitioner.
2. The writ petitioner is an employee in the Central Industrial Security Force (hereinafter referred to as 'C.I.S.F'). At the material point of time, he was posted at the CISF unit, Seetalpur, District Burdwan. In course of his employment, he was served

with a memorandum of charge dated 7th July, 2007 issued by the disciplinary authority of the petitioner intimating that the disciplinary authority proposes to hold an enquiry against him in respect of the charges detailed in annexure to such memorandum. A brief excerpt of the particulars of the articles of charge leveled against the petitioner, is set out herein below:-

“An act prejudicial to good order and discipline of the Force in that No. 932293950 Constable Jagdish Jatav, RJML Camp of CISF Unit ECL Seetalpur was detailed for “C” shift duty on the night of 03/04.07.07 at CHP Interim Crusher and CHP-II area. During his duty hours a theft of Computer Accessories (Approx. cost of Rs.74000/- only) installed in the Cabin of Interim CHP was occurred. Being the duty sentry of that post he failed to protect the Govt. property for which he was deployed.

The above act on the part of No. 932293950 Constable Jagdish Jatav tantamounts to gross negligence, carelessness and dereliction of duty unbecoming of a member of a discipline Force, like CISF. Hence the charge.”

3. Along with the aforesaid memorandum, he was supplied with a list of documents and a list of witnesses. The petitioner duly responded to the said show-cause by a communication in writing dated 19th July, 2007. Although the writ petitioner admitted being on duty on the night of 3/4th July, 2007, when the incident of theft had taken place, yet, he claimed that the lock which was

broken, was rusted on the cut points, so as to suggest that the cuts were old and did not occur on the date of the incident as alleged.

4. The petitioner claims to be innocent and had only detected such theft on the following morning when his reliever Satish Kumar had invited his attention to the broken locks.
5. Record reveals that the disciplinary authority after receipt of the reply to the show-cause cum charge-sheet decided to proceed with the departmental enquiry. Such fact would corroborate from a notice dated 30th July, 2007.
6. A regular domestic enquiry was conducted. After conclusion of the domestic enquiry, the report of the enquiry was served on the petitioner for the petitioner to respond to the same. Such fact would appear from the communication in writing dated 3rd November, 2007. The petitioner consequent upon receipt of the aforesaid enquiry report submitted a detailed representation dated 8th December 2007. The disciplinary authority upon considering the petitioner's reply and taking into consideration the report of the enquiry officer was, *inter alia*, pleased to hold vide its order dated 19th December 2007 that the articles of the charge framed against the petitioner is fully established and on the basis of powers conferred under Rule 32 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to the

said Rules) was, *inter alia*, pleased to impose a penalty to the following effect.

*“Therefore, taking into account all the aspects, I fully agree with the findings of the Enquiry Officer and hold the charged official guilty of article of charge framed against him. During his duty hours charged official failed to protect the Govt. property for which he was detailed. Hence he deserves severe punishment. I, therefore, in exercise of powers conferred upon me under Rule-32 read in conjunction with schedule-I and with Rule (v) of CISF Rules, 2001 ordered that **“THE PAY OF NO. 932293950 CONSTABLE JAGDISH JATAV BE REDUCED BY 03 (THREE) STAGES FROM RS. 3880/- TO RS. 3625/- IN THE TIME SCALE OF PAY FOR A PERIOD OF 02 (TWO) YEARS. IT IS FURTHER DIRECTED THAT NO. 932293950 CONSTABLE JAGDISH JATAV 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.”***

7. Being aggrieved the petitioner preferred an appeal. The appellate authority by an order dated 29th February, 2008 by taking into consideration the entirety of the facts of the case, concluded that it did not find any mitigating circumstances to interfere with the order of penalty dated 19th December, 2007 passed by the disciplinary authority and having found the appeal devoid of merit, rejected the same.

8. That a revisional application though filed by the petitioner was ultimately turned down by the revisional authority by its order dated 11th November, 2008.
9. Challenging the aforesaid orders, *inter alia*, including the enquiry proceedings the present writ application has been filed.
10. Mr. Mahapatra learned Advocate representing the writ petitioner by referring to the complaint dated 4th July, 2007 forming annexure to the memorandum of charge, says that it is on the basis of this particular document that the entire enquiry proceedings had been initiated. He says that in order to establish the factum of theft, it was necessary for the respondents to prove the aforesaid letter. The aforesaid letter had only surfaced during the investigation and as such, the same is required to be proved, before the same could be considered by the disciplinary authority.
11. In support of his aforesaid contention that till such time a document is proved the same cannot be relied on in course of enquiry proceedings, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank and Ors.**, reported in **(2009) 2 SCC 570**.
12. He says that the charges leveled against the petitioner are vague and on the basis of the aforesaid charges the petitioner could not have been held guilty. Simply because the petitioner

had participated in the enquiry proceedings the same does not improve the charges. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Sawai Singh v. State of Rajasthan***, reported in **(1986) 3 SCC 454**.

13. The enquiry officer did not conduct the enquiry in accordance with the rules. Admittedly, in this case, the petitioner did not produce any witness. As such, in terms of Rule **36(18)(b)**, it was the obligation of the enquiry officer to put general questions to the petitioner on the circumstances appearing against him in the evidence, for the purpose of enabling the enrolled members of the force, to explain any circumstances appearing in the evidence against him. Non-compliance of the aforesaid procedure is not a mere irregularity the same goes to the very root of the matter and vitiates the entire enquiry. In support of his aforesaid contention, he places reliance on the judgment delivered by this Hon'ble Court in the case of ***R.K. Sharma v. Union of India & Ors.***, reported in **(2011) 3 CAL LT 210**.

14. It is the obligation of the enquiry officer to act freely and fairly, whenever the enquiry officer deviates, the enquiry stands vitiated. In support of his contention, he places reliance on another judgment delivered by the Hon'ble Supreme Court in the

case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors.***, reported in ***(2006) 4 SCC 713***.

15. By drawing attention of this Hon'ble Court to the final order passed by the disciplinary authority and the appellate order passed by the appellate authority, he says that both the aforesaid authorities committed procedural irregularity in taking into consideration the evidence adduced by Shri H.C. Lamba since, H.C. Lamba was not a named witness. The respondents have taken into consideration his statements to fill up the lacuna in the case, which is not permissible in terms of Rule 36 (16) of the said Rules. The petitioner has not only been inflicted with a punishment but had been held guilty of charges of negligence, which would scar the petitioner for life. The respondents have attached a stigma on the petitioner, without holding a proper enquiry. The entire enquiry proceedings stand vitiated. The order of punishment inflicted on the petitioner should be set aside.

16. *Per contra*, Ms. Alam, learned Advocate representing the respondents submits that there has been no procedural irregularity in connection with the enquiry conducted by the respondents. Admittedly, the petitioner was on duty when the incident had taken place. Subsequent to such incident being detected the same was reported by the ECL Authorities and a G.D. Entry was also lodged on 4th July, 2007 by the CISF

personnel. The petitioner was charge-sheeted and was supplied with not only, the statement and articles of charge but also list of documents and the list of witnesses. Both the G.D. Entry as well as complaint lodged by the ECL Authorities forms part of such disclosure.

17. The petitioner had responded to the charge-sheet. The response of the petitioner was duly taken into consideration by the disciplinary authority, prior to the disciplinary authority deciding whether or not to continue with the enquiry. A regular enquiry was held against the petitioner. The petitioner was given adequate opportunity to defend. The petitioner participated in such enquiry and did not raise any issue as regards violation of principles of natural justice. After conclusion of the enquiry, the report of the enquiry officer was forwarded to the petitioner, for the petitioner to respond to the same. By drawing attention of this Court to the enquiry report, she says that the petitioner did not disown the factum of his presence and also did not deny the occurrence. The only defense that the incident may have taken place earlier that to on the basis of an analogy that there were rust marks on the locking device. The petitioner did not question the jurisdiction or authority of the enquiry officer to adduce evidence during the enquiry proceedings. Neither did he object to the witness being examined. She says that the petitioner while replying to the charge-sheet or while responding to the enquiry

report, did not question the charge-sheet and had never claimed the charge-sheet to be vague. The aforesaid claim that the charge-sheet is vague is an after thought.

18. By referring to the final order dated 19th December, 2007 she says that the petitioner had also cross-examined H.C. Lamba and in course of such cross-examination the said witness confirmed that the cut marks on both the locks “were fresh and not rusting”. The enquiry officer had conducted the enquiry as per the procedure laid down in the said rules. Not only the prosecution witness was examined in presence of the petitioner, the statement of the prosecution witness, including his cross-examination was also recorded in his presence. As such, it cannot be said that there had been non-compliance of Rule **36(18)(b)** of the said rules.

19. There are no procedural irregularities committed by the disciplinary authority or by the appellate authority. The order passed by the disciplinary authority is also not disproportionate to the charges which have been proved and as such, the present writ application deserves to be dismissed with costs.

20. Considered the submissions made by the learned Advocates appeared for the respective parties and have considered the materials on record. I find that the petitioner has been charge-sheeted by a memorandum of charge dated 7th July, 2007. From the nature of charges leveled against the petitioner,

it would appear that notwithstanding the petitioner being posted as a security personal to protect life and property, he failed to do so, for which he has been charged with gross negligence, carelessness and dereliction of duty, unbecoming of a member of a disciplined force like CISF. It also appears that a distinct incident of theft which occurred on the night of 3rd – 4th July, 2007 at the CHP Interim Crusher, when the petitioner was on duty, had been highlighted in the charge-sheet, wherein the petitioner has been charged of having failed to protect government property for which he was deployed. From the aforesaid charge-sheet and the documents it would appear that the duty roaster for the shift duty as on 3rd July, 2007 has been annexed. Not only the name of the petitioner, the place of posting, but the duty post of the petitioner also appears recorded on such roaster. I find that the factum of the petitioner being on duty at the relevant date has not been denied.

21. Record reveals that the writ petitioner had responded to the charge-sheet and in his response he had, *inter alia*, claimed as follows:-

“the petitioner feels that no occurrence in the night of 3rd – 4th July, 2007 took place in CHP II area which is mentioned in annexure 1.”

22. The aforesaid would demonstrate that the petitioner could not assert with conviction that no theft had taken place on the

night of 3rd – 4th July, 2007. It would also appear from the aforesaid reply that the petitioner had claimed that no FIR has been lodged with regard to the aforesaid incident. Incidentally, however, one of the annexures to the memorandum of charge is the G.D. extract, which appears to have been signed by the Deputy Commandant and such G.D. extract records the factum of theft.

23. Record reveals that the disciplinary authority after taking into consideration the reply filed by the petitioner had proposed to proceed with the enquiry, by appointing an enquiry officer to enquire into the charges levelled against the petitioner. The petitioner appears to have participated in such enquiry without raising any objection. In course of such enquiry the petitioner did not claim there had been violation of the principles of natural justice or infraction of any rule. Although Mr. Mahapatra learned Advocate representing the petitioner has claimed that the enquiry officer committed irregularity in procedure, in permitting H.C. Lamba to be examined, the petitioner however, did not object to the said H.C. Lamba being examined and on the contrary, had duly cross-examined him. I find that it is well-within domain of the enquiry officer to examine any person as witness if he is of the opinion that production of such evidence or witness is necessary in the interest of justice. The relevant portion of Rule 36(16) of the said Rules is extracted herein below:

“Rule 36(16) *If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the enrolled member of the Force or may itself call for new evidence or recall and re-examine any witness and in such case the enrolled member of the Force shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence, exclusive of the day of adjournments and the day to which the enquiry is adjourned. The Inquiring Authority shall give the enrolled member of the Force an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the enrolled member of the Force to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.”*

24. Although Mr. Mahapatra, has attempted to contend that the enquiry officer is precluded from calling any witness to fill up any gap in the evidence or to cover up inherent lacuna or defect, I am of the view that by examining H.C. Lamba who had in fact, visited the spot, and confirmed theft of computer and its accessories, the enquiry officer did not commit any irregularity in procedure. I am afraid that the objection raised by Mr. Mahapatra cannot be sustained. The judgment relied on by Mr.

Mahapatra in this case of **R.K. Sharma** (*supra*) does not assist the petitioner. The aforesaid judgment is distinguishable on facts. In any event, the Hon'ble Court in paragraph 17 to 19 has recognized the jurisdiction and or authority of the enquiry officer to permit evidence not included in the list. The relevant portion of the aforesaid judgment is set out herein below.

“17. Admittedly, the disciplinary authority did not appoint any presenting officer and counsel for the petitioner has submitted that the lapse has vitiated the whole inquiry. According to counsel for the respondents appointment of a presenting officer was not a mandatory requirement of law. The inquiry was conducted in terms of the provisions of rule 36 of the Central Industrial Security Force Rules, 2001.

18. Clause (c) of sub-rule (5) of Rule 36 provides as follows:

“(c) Where the Disciplinary Authority itself inquiries into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the ‘Presenting Officer’ to present on its behalf the case in support of the articles of charge.”

Clause (b) of sub-rule (10) of Rule 36, provides as follows:

“(b) The Inquiring Authority shall, if the enrolled member of the Force fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an

order that the enrolled member of the Force may, for the purpose of preparing his defence—

.....
.....”

Sub-rule (15) of Rule 36 provides as follows:

“(15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the enrolled member of the Force. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.”

19. While sub-rule (16) of Rule 36 provides that if it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the presenting officer to produce evidence not included in the list given to the enrolled member of the Force, clause (c) of sub-rule (18) of the rule provides that 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 cases, if they so desire.”

25. Mr. Mahapatra, has also, *inter alia*, claimed since the petitioner has not adduced any evidence, and it was the duty and obligation of the enquiry officer to put general questions to the petitioner on the circumstances appearing against him in the evidence for the purpose of enabling the petitioner to explain the circumstances appearing in the evidence against him and the enquiry officer having not done so, the enquiry proceedings stand vitiated. I, however, find from the final order passed by the disciplinary authority that the enquiry officer after recording the statement of the prosecution witness, had also examined the petitioner. Such fact would corroborate from relevant portion of Paragraph 2 of the final order which is extracted herein below.

“2.....
.....The Enquiry Officer has conducted the enquiry as per laid down procedures and CISF Rules. The statements of all Prosecution Witnesses (PWs) have been recorded in presence of the charged official and exhibits produced thereon. Charged official was afforded all reasonable opportunity to defend his case either by himself or by appointing any serving member of the Force as his Defence Assistant. But the charge official neither submitted the name of Defence Assistant nor Defence Witness. The Enquiry Officer has examined the prosecution exhibits produced by the PWs. After recording the statements of PWs and examination of the charged official, the Presenting Officer submitted his written brief and handed over to the Enquiry Officer. The copy of PO’s brief note was supplied to the charged

official on 24.09.07. Accordingly, the charged official submitted his reply on 29.09.07 to the Enquiry Officer. On receipt of reply of the PO's brief note from the charged official, the Enquiry Officer submitted his Enquiry Report to the Disciplinary Authority holding the charge as proved."

The aforesaid objection raised by Mr. Mahapatra, thus, fails.

26. Although Mr. Mahapatra has, *inter alia*, argued that the prosecution was required to prove the documents and the prosecution having not proved the complaint lodged by Eastern Coalfields Limited, the proceedings stand vitiated. I find that the prosecution has been able to prove most of the documents including the G.D. Entry. The judgment delivered by the Hon'ble Court in the case of **Narinder Mohan Arya** (*supra*) is also distinguishable, the same does not assist the petitioner. Similarly, the judgment delivered by the Hon'ble Supreme Court in the case of **Roop Singh Negi** (*supra*) also does not assist the petitioner.

27. Admittedly, in this case the petitioner has not disputed that he was on duty on the night shift of 3/4th July, 2007. In the instant case, the factum of the lock being cut open, is also not in dispute and the petitioner with conviction could not disclaim that there had been no theft on the night shift of 3/4th July, 2007. The complaint lodged by Eastern Coalfield Limited is not the only document based on which the enquiry officer had reached its

findings. H. C. Lamba who visited the spot had confirmed the theft. As such, the contention of Mr. Mahapatra that the factum of theft had not been proved, cannot be sustained.

28. The next point argued by Mr. Mahapatra is that the charge-sheet is vague. I find that the petitioner in reply to the charge-sheet had never raised such an issue. Although by relying on the judgment delivered by the Hon'ble Supreme Court in the case of **Sawai Singh** (*supra*) it is claimed that mere participation in enquiry proceeding does not improve the charges if the same is vague, I am of the view that such judgment does not assist the petitioner. The petitioner had never questioned the charge-sheet and had never claimed the same to be vague either while responding to the charge-sheet or in course of the enquiry. I am afraid that the aforesaid contention raised by Mr. Mahapatra is by way of an afterthought and does not assist the petitioner at all.

29. I find that the enquiry officer upon detailed discussions by considering the materials on record all of which were made available to the petitioner, had arrived at a finding that the charges have been proved against the petitioner. The petitioner had duly responded to the enquiry report. The disciplinary authority upon taking into consideration all relevant factors, *inter alia*, including the charge-sheet, reply by the petitioner, the

enquiry proceedings, the response to the enquiry report by the petitioner, having arrived at the finding to hold the petitioner guilty of the charges, had, *inter alia*, inflicted a punishment of reduction of pay of the petitioner by 3 stages from Rs. 3880/- to Rs. 3625/-. Although the petitioner had preferred an appeal, the appellate authority having found no mitigating circumstances to interfere with the order of the penalty, passed by the disciplinary authority, rejected the appeal as being devoid of merit. The revisional application filed by the petitioner met with the same fate.

30. I do not find that the order directing the reduction of pay of the petitioner by 3 stages in the time scale of pay for a period of 2 years, with a further direction that he shall not earn increments of pay during the period of reduction and that on expiry of the period, the reduction will have the effect of postponing his future increments of pay, does not appear to be shocking or disproportionate. It appears that the disciplinary authority who is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of the misconduct, had imposed the aforesaid penalty on the petitioner, the appellate authority also did not interfere with the same.

31. I do not find that the order of punishment to be shockingly disproportionate, for this Court to interfere with the same. If

CISF personnel who is entrusted with the duty of security is permitted to disown his failure, despite committing an act of gross dereliction of duty, and is permitted to go scot-free, then in my opinion the same would tantamount to failure of justice. I do not find any illegality, far less jurisdictional error, committed by the disciplinary authority, either in holding the petitioner guilty or in confirming the charges and in inflicting punishment on the petitioner. I also do not find any procedural irregularity committed by the enquiry officer in conducting the enquiry proceedings or the appellate authority in rejecting the appeal.

32. The writ application being WPA No. 7660 of 2009 fails and is accordingly, dismissed.
33. There shall be no order as to costs.
34. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)