

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 12159 of 2003

Nandi Lal Sikari

Versus

Union of India & Ors.

Mr. K.B.S. Mahapatra

Mr. Kashinath Bhattacharyya

.....For the Petitioner

Mr. Basudev Chatterjee

Mr. Santosh Kumar Pandey

.....For the U.O.I.

Heard on : 01.12.2022 & 09.02.2023

Judgment on : 06.04.2023

Krishna Rao, J.:

The petitioner has filed the instant writ application challenging the order passed by the Deputy Inspector General, Central Industrial Security Force, dated 28th February, 2003 wherein the Appellate Authority has dismissed the appeal filed by the petitioner.

On 30.01.1998, the Disciplinary Authority had issued a Memorandum against the petitioner along with Article of charges on the allegation that the

petitioner was detailed for temporary duty to CISF RTC Deoli for collection of clothing and equipments on 16th September, 1997 afternoon as party in-charge along with Constable O.P. Meena and Constable Sailender Kumar vide Movement order dated 15th September, 1997. Constable O.P. Meena, one of the party members, deserted from Agra Railway Station on 18th September, 1997 at about 1300 hours without any permission from the petitioner being the party in-charge but the petitioner failed to lodge any FIR or G.R.P at Agra Railway Station regarding desertion of Constable O.P. Meena. The petitioner along with Constable, Sailender Kumar arrived at CISF RTC Deoli on 19th September, 1997 at about 1830 hours but the petitioner did not make any G.D. entry immediately after arrival at Deoli regarding desertion of Constable, O.P. Meena from Agra Railway Station. The petitioner made G.D. entry at main gate of CISF RTC Deoli regarding their arrival and desertion of Constable O.P. Meena on 20th September, 1997 at about 0910 hours only after being asked by HC/GD R.C. Lal, CHM, Hq of CISF RTC Deoli and thereby the petitioner tried to conceal the fact of desertion of Constable O.P. Meena from Agra Railway Station.

On completion of enquiry, the Disciplinary Authority issued an order dated 17th June, 1998 by imposing punishment of reduction of pay by three stages from Rs. 4135 to Rs. 3880 in the scale of pay for a period of three years with effect from 17th June, 1998. In the said order, it was further directed that the petitioner will not earn increment 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. The petitioner had

preferred an appeal against the order of punishment before the Appellate Authority but the Appellate Authority had rejected the appeal filed by the petitioner.

Mr. K.B.S. Mahapatra representing the petitioner, submitted that the Disciplinary Authority had passed the order mechanically and without any application of mind. He submits that mere not lodging an FIR about the alleged desertion of Constable O.P. Meena does not constitute misconduct.

Mr. Mahapatra submits that Constable, O.P. Meena had deserted from Agra Railway Station has been reinstated and the punishment awarded to him is lesser than which has been awarded to the petitioner. He submits that the Disciplinary Authority as well as the Appellate Authority failed to consider that the desertion of Constable, O.P. Meena was brought to the notice of L/NK, A.K. Yadav but he has not made any G.D entry and the blame has been shifted upon the petitioner.

Mr. Mahapatra submits that in the charge memo, it is the admitted case of the authorities that the Constable, O.P. Meena deserted the party of his own without any intimation of permission from the petitioner but the respondents have imposed punishment upon the petitioner.

Mr. Mahapatra submits that nature of punishment is prescribed under Section 31 of the Central Industrial Security Force Rule, 1969 but in the said Section, there is no provision for penalty of increments. He submits that if the provision is not provided under law, the authorities cannot impose punishment upon the employee.

Mr. Mahapatra relied upon unreported judgment passed by the Coordinate Bench of this Court in **WP No. 17354 (W) of 2001 (Deonath Mishra versus Union of India & Ors.)** and **WP No. 972 (w) of 2002 (Shivanand Hari versus Union of India & Ors.)** and submits that this Court had set aside the order of punishment with regard to the increment.

Mr. Bhudev Chatterjee representing the respondent authorities submits that the petitioner being the in-charge had the duty to inform about the desertion of the Constable, O.P. Meena but he failed to perform his duty and had suppressed the fact about the desertion of Constable, O.P. Meena.

Mr. Chatterjee submits that the petitioner had the knowledge about the desertion of Constable, O.P. Meena at Agra Railway Station itself but he failed to inform the railway police at Agra and even after reaching at Deoli, the petitioner has not informed the desertion of Constable, O.P. Meena till the morning of 20th September, 1997.

Mr. Chatterjee submits that due to the misconduct of the petitioner, the Disciplinary Authority had initiated proceeding by issuing Memorandum along with Article of charges and on receipt of the Memorandum, the petitioner has submitted his reply. On receipt of reply, the Disciplinary was not satisfied with the explanation and accordingly regular enquiry was conducted.

Mr. Chatterjee submits that during the enquiry, three witnesses were examined and the petitioner has cross-examined the witnesses. The Enquiry

Officer has submitted report and the enquiry report was duly supplied to the petitioner and the petitioner has submitted his reply.

Mr. Chatterjee submits that the Disciplinary Authority after considering the materials on record had passed the order of punishment and the Appellate Authority had also considered the evidence and the document and had rejected the appeal filed by the petitioner. He submits that the Disciplinary Authority after considering the materials on record and the evidence has passed the order of punishment and as such this Court cannot re-appreciate the evidence under the writ jurisdiction.

Mr. Chatterjee submits that even in Section 31 as well as in Section 41 of the CISF Act, 1968, provision for withholding of increment is provided and thus the Disciplinary Authority has passed the order of punishment in accordance with law.

In the order of punishment dated 17th June, 1998, the Disciplinary Authority has described about the charge leveled against the petitioner and the procedure adopted by the authorities for conducting disciplinary proceeding against the petitioner. It is on record, that the petitioner was given proper opportunity of hearing during the disciplinary proceeding. During the enquiry, three witnesses were examined to prove the charge leveled against the petitioner and from the evidence the witnesses and record, it is established that the Constable, O.P. Meena had deserted from Agra Railway Station and the same was within the knowledge of the petitioner being the in-charge but the petitioner has not reported the matter to the Railway Police at Agra Railway Station. Even it is also established that

the petitioner reached Deoli on 19th September, 1997 at 1830 hours but he has not made any G.D. entry at Deoli and only on the next day i.e. on 20th September, 1997 at about 0910 hours only after being asked by the Head Constable R.C. Lal, the petitioner has made G.D. entry at Deoli regarding the desertion of Constable, O.P. Meena.

Section 31 and Section 40 of Central Industrial Security Force Rule, 1969 reads as follows:

“31. Nature of penalties :- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely-

(a) dismissal;

(b) removal;

(c) compulsory retirement;

(d) reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time-scale of pay;

(e) withholding of increment or promotion;

(f) removal from any office of distinction or deprivation of special emolument;

(g) fine to any amount not exceeding 7 days pay;

(h) censure.”

40. Withholding of increment :- In the case of withholding of increment as a punishment, the order shall state the period for which the increment is to be withheld and whether it shall have the effect of postponing further increments.”

In the above provisions withholding of increment is prescribed as penalties and as such the submission made by Mr. Mahapatra is not

sustainable. As regard the judgment relied by the petitioner, in the said case, the Learned Advocate for the respondent has admitted that the authorities specifically do not empower to withhold increment and the provision of Section 31 and Section 41 of CISF Rule, 1969 was not produced before the Hon'ble Court.

In view of the above, this Court finds that the Disciplinary Authority had imposed penalty upon the petitioner by conducting proper and regular enquiry, and this Court did not find any irregularity in the said enquiry and thus the petitioner is not entitled to get any relief.

WPA 12159 of 2003 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)