

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 12984 of 2011
Nani Gopal Biswas
Versus
Union of India & Others

For the petitioner : Mr. Ramkrishna Biswas

.....Advocate

For the Union of India : Mr. Rajesh Kumar Shah

.....Advocate

Heard lastly on : 18.11.2022

Judgment on : 16.02.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondents to quash the impugned order dated 06.02.2011 passed by Inspector General/NES, Central Industrial Security Force.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The petitioner had been working as No. 844350330 Constable Sukhani N.G. Biswas of CISF Unit FBP, Farakka, being an

unarmed member of the Marine Wing Staff for about eleven years until removal from service, in the capacity of Sukhani, doing job of Motor Boat man. He was removed from service on 5th October, 1994 by the Commandant, CISF Unit in accordance with the report of Inquiry Officer on finding him guilty of all three charges – (i) he failed to attend the regimental duties like Parade on certain number of dates without information or permission; (ii) he failed to attend the orderly room of Assistant Commandant on diverse dates on three occasions in spite of order passed in evening roll call; and (iii) he was found absent from Barrage duty post when checked by Inspector Ramesh Ram on 20.04.1993, was found at Marineghat without obtaining prior permission from the 'C' shift incharge and also he had cut down his name in the duty chart without any permission from the competent authority. On the above three charges, the Commandant, CISF Unit, FBP Farakka initiated a disciplinary proceeding against the charged official and appointed Inquiry Officer who, after examining the witnesses, submitted a report to the Commandant with the observation that all three charges were proved and the charged official was found guilty of all charges. Vide Order dated 5th October, 1994 passed by the Commandant, CISF Unit, the petitioner was removed from service. On 3rd May, 1995 petitioner preferred an appeal against the said order before the Deputy Inspector General, CISF, Eastern Zone on the ground that the report of the enquiry officer was perverse and the disciplinary authority had not applied his mind to the

depositions given by the witnesses. Further, the impugned penal order of removal from service was disproportionate. It was submitted that the Deputy Inspector General dismissed the appeal without considering the materials on record vide his Order dated 9th May, 1996. The petitioner preferred a writ petition before this Hon'ble High Court and this Court set aside the impugned order of removal in the writ petition being C.O. No. 10083 (W) of 1996. The finding of the learned Trial Judge was that the disciplinary authority was entitled to pass final order in accordance with law after completion of inquiry upon examination of all witnesses. Aggrieved by the order dated 9th August, 2001, the respondents herein filed MAT No. 4026 of 2001. The Hon'ble Division Bench, despite agreeing with the learned Single Bench that there was in fact non-examination of a defence witness, reversed the finding of the learned Single Judge by allowing the appeal and setting aside the order dated 9th August, 2001. Thereafter, the petitioner preferred a Special Leave Petition in the Hon'ble Apex court being SLP (Civil) No. 110 of 2003 (Civil Appeal No. 5264 of 2003). It was pertinent to note that when Civil Appeal No. 5264 of 2003 (Nani Gopal Biswas vs. Union of India & Others) along with another matter being Civil Appeal No. 5265 of 2003 (Panchanan Roy vs. Union of India & Ors) came up for hearing before the Hon'ble Apex Court on 28th July, 2010, the learned Senior Advocate appearing on behalf of the petitioners/appellants submitted that both the appellants were seeking permission to withdraw the petitions with liberty to the

petitioners to file fresh representations before the Departmental Authority in view of the fact that some other Constables, in spite of having almost similar charges against them, were given lighter punishments. The Hon'ble Apex Court considered such submission and dismissed the said Civil Appeals as withdrawn and granted liberty as prayed for. Accordingly, the writ petitioner submitted representation to the Commandant CISF Unit, FBP Farakka praying for withdrawal of the order of removal from service and imposition of minor penalty as in cases of the other two Constables namely Constable/Sukhani K.K. Das and Constable S.Biswas, who were dealt with under rule 35 of CISF Rules, 1969 despite charges against them for non-participation in regimental parade, non-attendance in the orderly room of Asstt. Commandant and sleeping during duty hours. Those representations of the petitioners namely, N.G. Biswas and Panchanna Roy were considered by the Inspector General, CISF/NES in place and stead of Deputy Inspector General, CISF Unit. Although the Deputy Inspector General, CISF Unit was the competent authority to consider those representations in view of the fact that said authority had considered the departmental appeals of two other Constables and imposed minor punishments considering their young age, however, the petitioner chose not to place that point before this Court for the reason that admittedly the above two Constables were dealt with under Rule 35 for misconducts relating to absence from Parade, not attending the orderly room and sleeping while on duty. It was also

apparent from the impugned order of the Inspector General, CISF. The charges which were levelled against the other two constables were quite similar to some of the charges framed against the petitioners. The petitioners were not at fault and the findings of the Inquiry Officer were perverse and vitiated by bias because the charges other than the charges as framed against Constable/Sukhani K.K. Das and Constable S.Biswas were not at all proved during trial. Those charges were ornamentally levelled against them so as to fulfil the remote interest of the prosecution officials. PW-3 (Inspector Ramesh Ram) stated that the delinquent was found at Feeder Canal/Marine Ghat in "C" shift and after checking the duty register Inspector, Ramesh Ram found that duty register was cut down in front of the names of the charged constables. The Barrage duty in charge told him that charged official(s) cut down the duty post and himself made it Feeder Canal/Marineghat. The evidence of Ramesh Ram was only hearsay. The "C" shift duty in-charge was not cited as witness. No statement of the duty in-charge was on the record. The attention of this Court might be drawn to the relevant observations of the Commandant while passing the final order in this regard to the effect that the statement of PW 3, Inspector Ramesh Ram is quite clear that the charged official had changed his duty place and hence, there was no need to obtain the statement of ASI V.D. Ojha. The "C" shift duty in-charge V.D. Ojha was very much available for being citing as witness. But, he was not produced. So, it was not proved that the charged officials themselves

cut down the duty chart. Thus, the Charge No. III of constable N.G. Biswas and the Charge No. V of Constable Panchanan Roy was neither dealt with in accordance with the rule of evidence nor was it proved during inquiry. On examination of documents on the record it transpires that fine to the amount of 5 days'/3 days' pay only were taken from the other Constables as penal action for the charges like, absenting from Parade, not attending orderly room and sleeping during duty hours, considering their young age and long service period ahead. The same authority, while imposing major punishment of 'removal from service' did not consider the young age of the petitioner; he was left for being dealt with under rule 34 of CISF Rules, which prescribed for major penalty against the delinquent. So, it was established beyond reasonable doubt that the petitioner suffered differential treatment and Article 14 of the Constitution of India was grossly violated. So, the punishment of removal from service awarded to the writ petitioner should be set aside.

3. Learned counsel representing the respondents submitted as follows. On the above referred three number of charges, the Commandant, CISF Unit, FBP Farakka initiated a disciplinary proceeding against the charged official and appointed Inquiry Officer who after examining the witnesses submitted a report to the Commandant with observation that all three charges were proved and the charged official was found guilty of all charges. Vide Order dated 5th October, 1994 passed by the Commandant, CISF Unit, the

petitioner was removed from service. On 3rd May, 1995 petitioner preferred an appeal against the said order before the Deputy Inspector General, CISF, Eastern Zone on the ground that report of the enquiry officer was perverse and the disciplinary authority had not applied his mind to the depositions given by the witnesses; further that the impugned penal order of removal from service was also disproportionate. It was submitted that Deputy Inspector General dismissed the appeal without considering the materials on record vide his Order dated 9th may, 1996. The petitioner only wanted to enjoy the lee way of the judgment delivered in Supreme Court Civil Appeal 5264 of 2003. Moreover in the middle portion of written argument also the petitioner enunciated that “under clause (b) “Removal from Service” has been imposed upon the petitioner for almost similar charges, but not “similar and identical charges” as ordered by Hon’ble Apex Court.

4. I heard the learned counsels and perused the writ petition, the affidavits and the written notes.

5. It appears that the departmental proceeding was started against the petitioner on three charges. The third charge was the most significant one and was of far graver nature than the other ones. It was alleged that without obtaining prior permission from the shift in charge, the petitioner was found absent from Barrage duty post on 20.04.1993 and was found that Marine Ghat checked by an Inspector. It was also alleged that he cut down his name in the duty register

without permission of the competent authority. The Commandant of the CISF unit at FBP Farakka initiated a disciplinary proceeding against the charged official and appointed an Enquiry Officer who after examining witnesses submitted a report with the observation that all three charges were proved. The Commandant of the CISF unit passed an order removing the petitioner from service. The petitioner preferred an appeal before the Deputy Inspector General CISF, Eastern Zone but the same was dismissed. Then the petitioner moved a writ petition before this Court. This Court held that the disciplinary authority was entitled to pass final order on completion of enquiry upon examination of all witnesses. Aggrieved by this order, the respondents herein filed an appeal being MAT No. 4026 of 2001. The Hon'ble Division Bench reversed the finding of the learned Single Judge and allowed the appeal. The petitioner then filed a Special Leave Petition before the Hon'ble Supreme Court. The petitioner's Civil Appeal No. 5264 of 2003 came up before the Hon'ble Apex Court along with a similar matter being Civil Appeal No. 5265 of 2003 on 28.07.2010. The petitioners' advocate submitted that both the Civil Appeals were sought to be withdrawn with liberty to the petitioners to file fresh representations before the departmental authority in view of the fact that some other Constables having almost similar charges were given lighter punishments. Accordingly, representations were made before the Commandant CISF FBP Farakka for withdrawal of order of removal from service and imposition of a minor penalty as in the case of the

other two Constables namely, Constables Sukhani K.K. Das and Constables S.Biswas.

6. Therefore, the order of the Hon'ble Division Bench of this Court holding the petitioner guilty was not set aside on merits. However, the Hon'ble Apex Court granted liberty to the petitioner to approach the disciplinary authority on a limited point i.e., whether the petitioner had been given equal treatment like similarly circumstanced others. Thus, the merits of the case vis-a-vis the holding of the petitioner guilty for the said wrong doings is beyond reproach.

7. Looking at the instant case from such angle, one first has to compare the charges involved in the petitioner's case and in the cases of the two others who were allegedly standing on similar footing.

8. It appears that although there were some common minor charges against all the purported delinquents, the graver charge of not attending duty without permission, being found somewhere else at the relevant time coupled with the charge of cutting one's name in the duty register was attributed only to the present petitioner and another (Panchanan Roy) and not to the personnel namely, K.K.Das and S.Biswas whose examples were sought to be cited by the petitioner.

9. It is thus abundantly clear that the petitioner was not standing on the same footing as the others. Therefore, he was quite rightly not treated equally as the two others.

10. This Court also does not find any patent illegality in the reasoned order passed by the respondent authority on the petitioner's representation.

11. Absence from duty by cutting down one's name from the duty register is a more serious wrongdoing and this was rightly dealt with under a more stringent Rule. Accordingly, a major penalty was also imposed.

12. Entering into the merits of the case except on the question of imposition of sentences vis-a-vis equal treatment with others, is beyond the scope of this petition. Therefore, this Court would refrain from going into such other issues.

13. In view of the above discussions, I do not find any merit in this application.

14. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

15. 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.)