

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 20842 of 2010
with
CAN No. 1 of 2021**

Jasdev Debas
Vs.
Union of India & Ors.

For the petitioner : Mr. Kedareshwar Chakraborty
Mr. Saptarshi Chakraborty

For Union of India : Mr. Debu Chowdhury

Heard on : 20.12.2022 & 20.01.2023

Judgment on : 17.02.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the memorandum of charge dated 7th November, 2005, brief note of the Presenting Officer, inquiry report dated 22nd August, 2006, the final order of punishment issued by the Disciplinary Authority, dated 4th October, 2006, order of the Appellate Authority dated 5th July, 2007 and the order passed by the Revisional Authority dated 20th November, 2007.

2. The petitioner claims to have joined the service of Central Industrial Security Force (hereinafter referred to "CISF), as Constable on 21st April, 2002. While the petitioner was posted at the CISF unit at Durgapur Steel Plant (DSP), he was served with a memorandum of charge dated 7th November, 2005, proposing to conduct an inquiry in terms of rule 36 of the CISF Rules 2001 (hereinafter referred to as the said Rules). The petitioner duly responded to the said charge-sheet by a communication in writing dated 14th November, 2005, *inter alia*, claiming therein certain information, statement of witness and other relevant documents, for him to appropriately defend the charges. He also responded to the brief note of the presenting officer by communication in writing dated 2nd August 2006. The petitioner participated in the inquiry proceedings and after completion of the inquiry proceedings an inquiry report dated 22nd August, 2006 was forwarded to the petitioner. The petitioner duly responded to the said inquiry report by a communication in writing dated 18th September, 2006, whereupon the Disciplinary Authority passed a final order dated 4th October, 2006 and imposed the punishment of removal from service on the petitioner with immediate effect.
3. Challenging the said final order, the petitioner had preferred an appeal, which was addressed to the Deputy Inspector General, CISF. The said appeal was ultimately disposed of by an order dated 5th July, 2007 whereby the Appellate Authority was, *inter*

alia, pleased to, in terms of Rule 52 of the said Rules, confirm the order of punishment passed by the Disciplinary Authority, thereby rejecting the appeal and recording that the appeal filed by the petitioner was devoid of merits.

4. Against the aforesaid Appellate Order, the petitioner filed a revisional application. By an order dated 20th November, 2007, the Revisional Authority was, *inter alia*, pleased to reject such application by holding that he did not find any mitigating circumstances to interfere with the order dated 4th October, 2006 passed by the Disciplinary Authority, which had since been upheld by the Appellate Authority vide order dated 5th July, 2007.
5. Challenging the aforesaid orders, a writ application was filed before the Hon'ble High Court at New Delhi, which was registered as WP(C)13293 of 2009. By an order dated 20th November, 2009, the Hon'ble High Court of Delhi at New Delhi was pleased to dismiss the said application on the ground of lack of territorial jurisdiction.
6. Challenging the aforesaid order, the petitioner had approached the Hon'ble Supreme Court by filing a Special Leave Petition. By an order dated 26th July, 2010, such Special Leave Petition was dismissed.

7. Since then, the present writ application has been filed. By an order dated 25th April, 2011, a coordinate Bench of this Hon'ble Court while entertaining the present writ application and while directing exchange of affidavits had kept the point of maintainability of the writ application open. Since then, affidavits have been exchanged and the present writ application has come up for final disposal.
8. Mr. Chakraborty, learned advocate representing the petitioner at the very outset submits that the petitioner has been inflicted with grave charges of misconduct and irregularity. A criminal case was initiated by the respondents. The petitioner was not even impleaded in such criminal case, as a co-accused. He says that the petitioner is innocent. The petitioner had only acted on the orders/ instructions issued by his superiors, *inter alia*, including the order issued by Shri V. Sachidanand, head Constable.
9. By drawing attention of this Court to the reply given by the petitioner to the findings arrived at by the Inquiry Officer, he says that the duty of the petitioner was to lift the barrier on the instruction/signal to be given to him by his superiors. It was not the duty of the petitioner, either to check the vehicles or its contents. The petitioner had acted on the instructions issued by his superiors, as such, it cannot be said that the petitioner is guilty of the charges levelled against him.

10. By drawing attention of this Court to paragraphs 14, 15 and 22 of the writ application, he says that the petitioner had been falsely implicated, although the petitioner had not committed any misconduct and had no role to play in the alleged theft of coal. He says none of the witnesses examined by the prosecution were eyewitness. None of such witnesses have identified the petitioner. By referring to the inquiry report he says that the prosecution witnesses had only identified a person with yellow T-shirt and as such, based on the aforesaid testimony it cannot be said that the charges against the petitioner were proved.

11. He says that punishment inflicted on the petitioner is disproportionate to the charges and this Court in exercise of its power of judicial review is entitled to interfere with the punishment. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***U.P. State Transport Corporation & Ors v. Mahesh Misra & Ors***, reported in **(2000) 3 SCC, 450**. He says neither did the Disciplinary Authority, nor did the Appellate Authority take into consideration the fact that the petitioner was only required to lift the barrier and had no other role to play in the alleged theft except, to carry out the directions issued by his superiors, including instructions/orders issued by Shri V. Sachidananda, the head Constable. He says that the order of removal from service is shockingly disproportionate, to the gravity of the charge

and this Hon'ble Court should not only set aside the final order of punishment issued by the Disciplinary Authority but also the order issued by the Appellate Authority and the order passed by the Revising Authority.

12. Mr. Chakraborty also attempted to highlight the fact that the accused persons in the criminal case had been honourably acquitted. He further submits that the respondents in their affidavit-in-opposition have not denied the fact that the petitioner's duty was limited to lifting the barrier.

13. *Per contra*, Mr. Chowdhury, learned advocate representing the respondents submits that the petitioner was engaged to man, the gate no.2A of Durgapore Steel Plant (in short DSP). He says that it was not only the duty of the petitioner to lift the barrier but also to man the gate. By drawing attention of this Court to the inquiry report he says that the dumper carrying nut coke could not have passed through the gate no.2A without the petitioner failing in his duty. He says when the dumper was speeding away from the loading point, Prabir Pal tried to stop the dumper by shouting at the driver. Since the driver did not stop, they chased the dumper and also shouted at the CISF personnel manning the gate to stop the dumper. Despite the aforesaid, CISF personnel manning the gate including one of the person wearing yellow T-shirt waived at the dumper so as to let it go. The CISF personal did not stop

there, they prevented the officials/persons including Prabir Pal from chasing the dumper outside the CISF gate on their motor bikes, *inter alia*, on the pretext that they were not wearing helmets.

14. By taking this Court to the relevant portions of the inquiry report including the particulars of exhibits, he says that the petitioner was duty-bound while manning the gate as a CISF personnel of the disciplined force, to stop the dumper from fleeing away. Unfortunately, the petitioner not only failed to stop and prevent the dumper, bearing Registration No. WB 39 1291, which was loaded with nut coke but permitted the same to pass through gate no. 2A at about 17.55 hours on 10th June, 2005.

15. He says that although diverse allegations have been made by Mr. Chakraborty as regards the prosecution witnesses not identifying the petitioner, the reply given by the petitioner to the inquiry report does not highlight the same. He says that in the fourth paragraph of the reply to the Inquiry Officer's report, the petitioner had only contended that it was his duty to lift the barriers when instructed by his superior. He did not in such response, highlighted any of the other factual inconsistencies, which have been set forth in the writ application. He says that the writ application has been filed as and by way of an afterthought. He says this Hon'ble Court in exercise of its power of judicial

review, ought not to interfere with the final order of dismissal passed by the Disciplinary Authority and the order affirming the order of dismissal passed by the Appellate Authority, especially when the petitioner has failed to establish procedural irregularity in connection with holding the inquiry proceedings.

16. He says that no case of violation of principle of natural justice has also been made out. There has been no irregularity in procedure in conducting the disciplinary proceedings. The judgment cited by Mr. Chakraborty does not assist him. He says that the aforesaid judgment, was rendered by the Hon'ble Supreme Court in a different set of facts and a little variation of facts may alter the very basis of the judgment. As such, no case has been made out by the petitioner for interfering with the order of punishment. By referring to the FIR lodged in connection with the aforesaid theft, he says that the FIR has been lodged against all the CISF personnel who were manning the gate. He says that the standard of proof in a criminal case is different from the standard of proof in an inquiry proceeding, as such the acquittal of the accused in the criminal case cannot come in aid of the petitioner.

17. Heard learned advocates appearing for the respective parties and considered the materials on record. From the statement of article of charge it would, *inter alia*, appear that the petitioner while performing in the general shift, for barrier duty from 0800

to 1800 hrs. on 10.06.2005 at gate no. 2A DSP, under the jurisdiction of 'D' Coy had failed to stop and prevent one Dumper bearing No. WB-39-1291, loaded with nut Coke unauthorisedly, as required, while the said Dumper passed through gate no.2A at about 17.55 hours on 10.06.2005, though the said Dumper was chased by DSP Management Officials by a Jeep from Stripper Bay to Gate No.2A. The aforesaid act, tantamount to gross misconduct, negligence, dereliction of duty being a member of disciplined force and accordingly, the petitioner was charge sheeted.

18. Record would reveal that the petitioner had responded to the said charge-sheet by his communication in writing dated 14th of November, 2005 and had by such letter sought for following information and documents. The relevant portion of the petitioner's response is extracted herein below:-

"4. However, it is decided to conduct any enquiry, albeit unlawful and not maintainable, I respectfully submit that the following documents and/or information may kindly be supplied for my defence:

- (i) *The entry slip of vehicle/dumpr No. No. WB-39-1291*
- (ii) *Gate pass of vehicle/dumper No. No. WBG-39-1291*
- (iii) *Statement of Shri Prabir Pal, PW-1*

- (iv) *Statement of Shri S. K. Roy, PW-2*
- (v) *Statement of Shri Tanmoy Sarkar, PW-3*
- (vi) *Statement of Shri Amar Sarkar, PW-4*
- (vii) *Statement of Shri Anindo Ghosh, PW-5*
- (viii) *Statement of Shri. K Virmani, PW-6*
- (ix) *Statement of Shri D P Singh, PW-7*
- (x) *Copy of the P.E. Report*
- (xi) *Information regarding the entry of the dumper, when and how it gained entry.*
- (xii) *Particulars of the officers who was controlling the gate a the relevant point of time.*
- (xiii) *Whether an enquiry by the CBI has been ordered or not.”*

19. Records would reveal that the petitioner participated in the enquiry and was given opportunity to present his case and adduce evidence, the enquiry officer after conducting the enquiry, had submitted his report which was served on the petitioner, for him to respond to the same. By communication in writing dated 18th September, 2006, the petitioner while responding to the report of the enquiry officer had, inter alia, highlighted the following:

- a) that his job was limited to lifting barrier upon receiving signal given by checking head constable.
- b) Checking of vehicles and their contents do not fall within his duty, for the same some other

persons are there, it is only on their satisfaction that they give the signal and as per their signal, the barrier is lifted.

- c) He acted on the basis of instruction issued by his superiors. The witness examined the inquiry do not disclose his involvement in the misconduct.
- d) The finding reached by the inquiry officers was based on no evidence. His Superior, Shri Sachidananda personally instructed him to lift to gate/barrier.

20. The Disciplinary Authority upon considering the enquiry report and the reply given by the petitioner passed a final order dated 4th October, 2006, inter alia, imposing punishment of removal from service in terms of Rule 32 Schedule No.1 read with Rule-34 (ii) of the said Rules.

21. Being aggrieved the petitioner had preferred an appeal. The appellate authority, however, was, inter alia, pleased to dispose of the said appeal by recording as follows:

“07. I, therefore in exercise of powers conferred upon me under Rule 52 of CISF Rules, 2001 hereby CONFIRM the order of penalty passed by the disciplinary authority in the instant case and accordingly, REJECT the appeal petition preferred by

No.024340250, Constable Jasdev Debas, being devoid of any merits.”

22. The petitioner had filed an application before the revisional authority, such application was also disposed of by order dated 20th November, 2007, without interfering with the order passed by the Disciplinary Authority or by the Appellate Authority.

23. I find that petitioner has, inter alia, contended that he had never been implicated even as a co-accused in the criminal case lodged by the respondents and as such in ordinary course he ought not be charged with misconduct, especially when he was acting on the orders issued by his superiors. He says even the co-accused in the criminal proceedings have been honourably acquitted, as such no departmental proceedings could have been proceeded against him.

24. To consider the aforesaid contention raised by the Mr. Chakraborty, it would be relevant to refer to a portion of the report prepared by the disciplinary authority wherein the statement of the second prosecution witness is recorded.

“They shouted the CISF personnel on duty to stop the dumper, he responded but could not reach the road in time to stop the dumper. In the mean time they also reached on the road and waved their hands to stop the dumper but the dumper did not stop. At about 1740 hrs

they met with DSP officials sh. T.K. Sarkar (AGM). Shri Anindya Ghosh (Manager) and Shri Amar Sarkar all are from the raw material department, who were driving towards that spot in departmental Jeep. Shri S K Roy identified the dumper to them. At about 1750 hrs said dumper went towards the gate 2A CISF personnel allowed the dumper to go out without checking. At that time the barrier was opened, the dumper was laded with 8-9 tone nut coke. One yellow t-shirt wearing person standing with some CISF personnel inside the gate waved the dumper to got out side. CISF personnel did not allow them to chase the dumper outside as they where not wearing the helmet.”

25. I find the other witness have categorically stated that the barrier of gate No.2A was found to be opened when the dumper was being chased and despite shouting out at the CISF personnel, which included the petitioner, no steps were taken by the petitioner to close the barrier or to stop the dumper and check it. I find the petitioner has not questioned the findings of the enquiry officer as regards the statement of the witnesses, only a general statement has been made that the statement of witnesses examined in enquiry did not disclose his involvement in the misconduct. I am afraid the petitioner having not specifically questioned the findings of the

enquiry report as regards the prosecution statement or prosecution witness cannot, inter alia, contend that there was no eye-witness.

26. Although, it has been strenuously argued by Mr. Chakraborty to, inter alia, contend that petitioner's duty was only limited to opening and closing the barrier upon receiving instructions from his superiors, I am not in agreement with the same. I find that on the day of incident as would be apparent from the statements of the four prosecution witnesses that the management upon detecting the dumper was un-authorisedly loading nut coke, had not only attempted to stop the said dumper but had also chased the said dumper when it started fleeing. It is also the statement of the prosecution that they had shouted out to the CISF men to stop the dumper.

27. The petitioner was admittedly present at the gate, he did not stop the dumper. It is, therefore, difficult to accept that the petitioner on the instructions issued by his superiors, had not closed the gate or on specific instruction of his superior had opened the gate, despite the officers of the respondent shouting out at CISF men to stop the dumper. Such fact coupled with the resistance put up at the gate to stop the officers of the respondents from chasing the dumper on the ground that such men not wearing helmet, draws an inevitable conclusion that there had been dereliction duty on the part of the CISF personal present at the gate, which included the petitioner.

The petitioner had also not disowned that he was present at the gate and was on duty through which the dumper was allowed to pass.

28. Records do not reveal that the petitioner had taken steps to examine his superiors being Shri V. Sachchidanand, Shri Rajnis and D. N. Mondal, who according to petitioner were his instructing authority and at whose instance he has acted. The defence which the petitioner is trying to setup, could only be granted to him provided the petitioner had made out a case that he had acted on the lawful orders of his superiors. The aforesaid facts as enumerated above, leave no room for doubt that the charges against the petitioner has been proved.

29. The acquittal of the other accused CISF personal in connection with this incident in the criminal case is not a bar for the respondents from proceeding with the disciplinary proceedings. It is well settled that the standard of proof in a criminal case and that in disciplinary proceedings are different. Unlike a criminal case, in a disciplinary proceedings the standard of proof is based on preponderance of probabilities. I thus find that the disciplinary authority while taking note of the entire factual scenario had concluded, the petitioner to be guilty of charges.

30. I find neither the petitioner complained of any serious irregularity in procedure, nor has he been able to identify one. The petitioner has also not argued violation of principles of natural justice or that he was prevented from producing evidence. There are sufficient

reasons to support finding reached by the Inquiry Officer. As such, the report of the inquiry officer cannot be faulted on such ground. Insofar as inflicting punishment of removal from service is concerned, I am of the view that in the given facts, the same does not tantamount to be shocking disproportionate to the gravity of the offence and the charges levelled against the petitioner, the judgment relied on by the petitioner in the case of **U.P State Road Transport Corporation (supra)** does not assist the petitioner. In paragraph 7 of the said judgment the Hon'ble Supreme Court was, inter alia, pleased to observe as follows:

“7. A three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] laid down as under: (SCC p. 762, para 18)

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate

authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

31. I do not find that the order of removal from service to be shocking disproportionate, for the ratio of the aforesaid judgement to apply, for this Court to interfere with the order of punishment. If CISF personal who is entrusted with the duty of security, is permitted to disown his failure or 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 any irregularity or jurisdiction error committed by the disciplinary authority, either in framing charges against the petitioner, holding the enquiry or in passing the final order thereby directing removal from service, or the appellate authority confirming such an order.
32. The writ application fails and is accordingly dismissed. The connected application being CAN No. 1 of 2021, which is an application for early hearing, having become infructuous, stands disposed of.
33. There shall be no order as to costs.
34. Urgent certified copy of this order and judgment, if applied for, be given to the parties as expeditiously as possible upon compliance with all necessary formalities.

(Raja Basu Chowdhury, J.)