

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3947 of 2022

Anil Raibhanji Sarve,
aged 59 years, Ex-Head Constable,
RPF, Central Railway,
R/O, Sai Nagar, No. 2,
Hudkeshwar Road,
Nagpur – 440034.

.... Petitioner

..VERSUS..

(1) Principal, Training Centre,
Nasik, Central Railway,
Samangao Road,
Nasik – 422101.

(2) Chief Security Commissioner,
Central Railway, 3rd Floor,
Parcel Office Building,
RPF Headquarter,
Mumbai CSTM – 400001.

(3) Principle Chief Security Commissioner,
Central Railway, 3rd Floor,
Parcel Office Building,
RPF Headquarter,
Mumbai CSTM – 400001.

.... Respondents

Mr. B. Lahiri, Advocate for the petitioner
Mr. N. S. Deshpande, D.S.G.I. for the respondents

**CORAM : ROHIT B. DEO AND
Y. G. KHOBRAGADE, JJ.**

DATED : 15-2-2023

JUDGMENT : (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith.

2. Heard finally with consent of learned counsel for the parties.
3. Petitioner is challenging the punitive order dated 30-9-2021 passed by respondent 1 – Principal, Railway Protection Force (RPF), Zonal Training Centre, Nasik inflicting punishment of “removal from service”, the order dated 5-1-2022 rendered by respondent 2 – appellate authority whereby the appeal preferred by the petitioner is dismissed and the confirmatory revisional order rendered by respondent 3 – revisional authority dated 2-3-2022.
4. Petitioner was appointed as Constable, RPF on 2-12-1983 and was promoted as Head Constable on 23-12-2006. The petitioner asserts that his service record is exemplary. In support of such assertion, reliance is placed on the annual performance appraisal reports, the citations and cash awards earned.
5. Petitioner was served charge-sheet dated 26-3-2018 under Section 9(i)(ii) of the RPF Act, 1957 read with Rule 153 of the RPF Rules, 1987. The gist of the charge-sheet is the allegation that the petitioner, while discharging duties as Head Constable at Wardha, conspired with

Mr. Peter Garwin and demanded and accepted bribe of Rs. 5,000/- (Rupees Five Thousand) from Mr. Nitin Meshram on 29-9-2015 to permit Mr. Nitin Meshram to sell tea in train running between Wardha and Nagpur. It is alleged that after bribe amount of Rs. 5,000/- (Rupees Five Thousand) was accepted by Mr. Peter Garwin, Inspector, RPF, Wardha, the petitioner demanded Rs. 3,500/- (Rupees Three Thousand Five Hundred) as his share.

6. An Enquiry Officer was appointed. During the course of the enquiry, complainant Mr. Nitin Meshram was examined as witness 1. The petitioner asserts, after making an elaborate reference to the deposition of Mr. Nitin Meshram, that the said complainant unambiguously exonerated the petitioner of any wrongdoing. It is further asserted that the other witnesses also did not allege any wrongdoing on the part of the petitioner, and there was no evidence whatsoever on the record of the enquiry proceedings to give rise to even a suspicion.

7. Undisputedly, the Enquiry Officer submitted report dated 19-6-2019 exonerating the petitioner.

8. The disciplinary authority, however, disagreed with the finding of innocence rendered by the Enquiry Officer and issued notice

dated 26-6-2019 calling upon the petitioner to show cause why he should not be held guilty.

9. Petitioner submitted a detailed reply to the note of disagreement and emphasized that not even one witness has accused the petitioner of any misconduct.

10. The disciplinary authority, however, held the charge proved and imposed punishment of “dismissal from service”.

11. Petitioner preferred appeal, which was dismissed vide order dated 28-8-2019. The revision preferred by the petitioner met a similar fate vide order dated 5-11-2019.

12. Petitioner approached this Court in Writ Petition 736/2020 which was disposed of vide order dated 28-7-2021 which directed the disciplinary authority to pass a fresh order in accordance with law.

13. The disciplinary authority passed a fresh order, which is impugned herein, directing “removal from service”. As noted supra, the appeal and the revision preferred by the petitioner stand dismissed.

14. We have heard learned counsel Mr. Lahiri for the petitioner and learned Deputy Solicitor General of India Mr. Nandesh Deshpande for the respondents.

15. The short submission canvassed by Mr. Lahiri is that the punitive order is based on “no evidence”. Mr. Nandesh Deshpande did make an attempt to support the punitive order. However, for reasons articulated hereinafter, we find formidable substance in the submission that the punitive order is based on “no evidence”.

16. As a sequitur to such findings, we are satisfied that while the jurisdiction of the constitutional court to review punitive order rendered is extremely limited, considering the punitive order is based on “no evidence”, and dangerously borders on the perverse, interference in writ jurisdiction is imperative.

17. With the assistance of Mr. Lahiri and Mr. Deshpande, we have scrutinized the material on the record of the enquiry including the deposition of complainant Mr. Nitin Meshram. We find from the deposition of the complainant that he has exonerated the petitioner in entirety. The complainant has further deposed that he was asked by two constables of the GRP to falsely implicate the petitioner. We have further perused the deposition of the other witnesses examined during the course

of the enquiry. Mr. Gopal Varma, who is examined to identify the voice of Mr. Peter and the petitioner, has deposed that neither of the panchas identified the voices. Similarly, Mr. Sanjay Nagorao Dalne, RPF Constable, who is examined in the enquiry to identify the voice, outrightly denied having identified the voice of the petitioner. The Investigating Officer of the Anti Corruption Bureau deposed that amount of Rs. 5,000/- (Rupees Five Thousand) is recovered from Mr. Peter Garwin. The evidence of the Investigating Officer is of no assistance to the RPF to bring home the charge against the petitioner in as much as all that the Investigating Officer says is that there is a reference to amount of Rs. 1500/- (Rupees One Thousand Five Hundred) in the conversation between the complainant Nitin Meshram and the petitioner.

18. We have noted that there is no identification whatsoever of the voices in the recording. We have further noted that complainant Mr. Nitin Meshram has absolved the petitioner of any wrongdoing. The complainant has categorically stated that there was no demand from the petitioner nor was any amount paid to the petitioner and as a fact he was asked by certain constables to falsely implicate the petitioner.

19. The Enquiry Officer recorded a finding that it is not established that the petitioner demanded bribe amount as alleged in the

complaint. Inspector Mr. Peter Garwin from whom the alleged bribe amount was recovered in the trap, is also exonerated by the Enquiry Officer. The Enquiry Officer holds that in so far as the petitioner Constable Anil Sarve, he neither demanded nor accepted the bribe amount nor is the charge that he later on demanded his share in the bribe amount paid to Mr. Peter Garwin, established.

20. The note of disagreement records that the material in the enquiry is sufficient for a prudent man, on the touchstone of preponderance of probabilities, to arrive at the conclusion of guilt.

21. We have given due consideration to the note of disagreement and the observations of the disciplinary authority in the punitive order. While the disciplinary authority does refer to some part of the deposition of the complainant, the version of the complainant that there was no bribe demanded by the petitioner nor was any amount paid is brushed under the carpet with the observation that the complainant's statement that some constables of the GRP asked him to falsely implicate the petitioner is not reliable. The disciplinary authority then refers to the conversation allegedly recorded between the complainant and the petitioner and holds that the demand of bribe is proved. We have already noted supra, that there is absolutely nothing on record to show that the voices in the

recorded conversation are of the complainant and the petitioner, much less that the conversation suggests that the petitioner demanded certain amount as bribe. Referring to the deposition of the Investigating Officer of the Central Bureau of Investigation, the disciplinary authority observes that according to the deposition, while the petitioner did not directly demand bribe of Rs. 5,000/- (Rupees Five Thousand), recorded conversation shows that the complainant talked with the petitioner about the demand. The disciplinary authority further observed that the complainant further referred to the demand of Rs. 1500/- (Rupees One Thousand Five Hundred) by the petitioner.

22. It is true, as submitted by Mr. Nandesh Deshpande, that in a Departmental Enquiry, the finding of guilt can rest on some reasonable evidence, and in exercise of writ jurisdiction, the constitutional court is not expected to act as the appellate authority and disturb the finding of fact recorded. We have no quarrel with the proposition that the jurisdiction of writ court is extremely limited. However, one situation which justifies exercise of writ jurisdiction is “no evidence” or perversity. In the present case, the exoneration by the complainant apart, we have not come across any material on record as can be considered as a

reasonable material on the basis of which the order of punishment can be justified.

23. In our considered view, the punitive orders impugned are unsustainable. We accordingly quash and set aside the orders impugned. The petitioner shall be entitled to every consequential benefit including continuity of service and back wages including reinstatement, if the petitioner is yet to reach the age of superannuation.

24. We direct that every consequential benefit including continuity of service and back wages including reinstatement, if the petitioner is yet to reach the age of superannuation shall be granted to petitioner within the next eight weeks.

25. The petition is allowed in the aforestated terms.

(Y. G. Khobragade, J.)

(Rohit B. Deo, J.)

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