



WEB COPY



W.P.No.9102 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.9102 of 2022 and  
W.M.P.No.8888 of 2022

Swetank,  
Deputy Commandant-CISF,  
Residing at C-3, First Flor,  
ChPT Officer's Quarters,  
Chennai – 600 001.

... Petitioner

Versus

1.The Union of India,  
Represented by its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi-110 001.

2.The Director General,  
Central Industrial Security Force,  
Ministry of Home Affairs,  
13, CGO Complex,  
Lodhi Road, New Delhi – 110 003.

3.The Deputy Inspector General (Legal),  
Central Industrial Security Force,  
Ministry of Home Affairs,  
13, CGO Complex,  
Lodhi Road, New Delhi – 110 003.

4.The Inspector General,  
CISF South Sector Hqrs.,  
Chennai Port Trust Office Premises,  
Near War Memorial, George Town, Chennai.

... Respondents



W.P.No.9102 of 2022

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue an order or a direction more fully in the nature of Writ of Certiorari calling for the records pertaining to the Order dated 08.02.2022 passed by the 3<sup>rd</sup> respondent and quash the same.

For Petitioner : Mr.Rajnish Pathiyil  
For Respondents : Mr.R.Rajesh Vivekananthan,  
Deputy Solicitor General of India

### ORDER

Challenging the impugned order, dated 08.02.2022 in No.V-15014/15/2018/L&R/39 passed by the 3<sup>rd</sup> respondent, this Writ Petition has been filed.

2.The crux of the charge is as follows:

(i)The petitioner was working as Deputy Commandant, CISF Unit, ONGC Plant, Hazaria, Surat, State of Orissa. Despite advance information given by the Incharge Security, addressed to the DCP Zone-4, Surat and Deputy Commandant, CISF Unit, ONGC Hazira *vide* letter, dated 07.05.2018 requesting to ensure that no demonstration should be held at the Plant Gate by the Project Affected People of Village Bhatpor, the petitioner did not take requisite precautionary measures to deal with the situation. On 09.05.2018, at about 17:10-17:16 hours Shri.Rajiv Tiwari, Production Manager, ONGC Hazira went outside from the Plant through the Main Gate



in his car. When, he had exited from the Gate, a group of agitators of Bhatpor village blocked his car and manhandled and pulled him out of the car. This incident happened just 50 metres away from the main gate and was in the vicinity of the ONGC Plant wherein CISF personnel deployed at the gate remained mute spectators. Shri.Rajiv Tiwari was gheraoed by the mob and it was reported by SI(Exe) Karampal Singh to the petitioner, who was present in the pass section at the Main Gate. For nearly 2-3 minutes, the CISF personnel remained complete mute spectators. As per CCTV footage, the DGM was being pulled by his collar by lady civilians when he was trying to escape from their clutches. It is only at a later stage CISF personnel under the command of the petitioner intervened.

(ii)Further, the petitioner being present did not react immediately and remained a mute spectator for few minutes which were very crucial for rescuing the ONGC Officer. He not only failed to control the situation, but also failed to take prompt action to rescue Shri.Rajiv Tiwari from being roughed up by the unruly mob. He failed to ensure to assess real time situation despite having resources at his disposal in the form of Crime & Intelligence Wing, duty personnel at the Gates and QRT. By his act, the



W.P.No.9102 of 2022

petitioner not only tarnished the image of the Force but also acted in a manner unbecoming of an officer of his status in an Armed Force of the Union and thereby violated the instructions contained in Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 and Section 10(d) of Central Industrial Security Force Act, 1968.

(iii)Based on the above charge memo, a reply has been sought from the petitioner and the same was submitted by the petitioner on 29.05.2019. On the basis of the reply and after obtaining opinion from the Union Public Service Commission, dated 22.03.2021, the impugned order, dated 08.02.2022 has been passed under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 imposing punishment i.e., *'Reduction to a lower stage in the time scale pay by one stage for a period of one year without cumulative effect not effecting his pension.'*

3.The learned counsel appearing for the petitioner submitted that the punishment has been imposed without following the Principle of Natural Justice and the entire allegations are factual and the same has been disputed. Without even furnishing any documents, unilateral punishment has been



W.P.No.9102 of 2022

imposed against the petitioner. Though it appears to be a minor punishment, it will have serious impact on the petitioner's promotion in future. Since the enquiry has been conducted without giving any opportunity to the petitioner to defend himself, the impugned order has to be set aside. In support of his submissions, the learned counsel relied upon the decision of the Hon'ble Apex Court in the case of “***O.K.Bhardwaj Versus Union of India and others*** reported in (2001) 9 Supreme Court Cases 180” and decision of this Court in the case of “***N.Subramanian Versus the Group Commandant Central Industrial Security Force and Ors.***, reported in ***MANU/TN/0725/2009.***”

4.The stand taken by the respondents in the counter is that on 09.05.2018 at about 17:00 hrs, few women from the Bhatpor village started gathering outside the main gate. At about, 17:09:40 hrs, the crowd stopped the car of Shri.Rajeev Tiwari, DGM (Production), ONGC Hazira at about 50 meters outside the gate and assaulted him. Just before the exit of DGM's car at 17:09:45 hrs, Constable on duty reached at the exit gate but when the car was blocked by miscreants and they started manhandling him, the SI (Gate Incharge) who was sitting in a room came out at 17:10:21 hrs after a lapse



of 30 seconds and again went inside probably to inform and alert others.

Further, for nearly 2-3 minutes, the CISF personnel available at the gate remained idle. The petitioner, who was available in the Pass Section just adjacent to the gate also came out only at 17:11:12 hrs. In CCTV footage, it was seen that the DGM was being pulled by his collar by lady civilians and it was only at a later stage at 17:16:10 hrs, CISF intervened when he was entering the IN gate. It is the contention of the respondents that the petitioner failed to assess the situation and to respond effectively and thereby failed to rescue Shri.Rajeev Tiwari, DGM who was waylaid by some villagers, hence, departmental proceedings has been conducted against the petitioner invoking Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. Further contention is that no personal enquiry was sought by the petitioner and there is no provision for making cross examination of the witnesses during preliminary enquiry. As far as the minor punishment is concerned, no enquiry is contemplated under the said Rule. Hence, opposed this Writ Petition.

5.Heard the submissions made on both sides and perused the entire materials.



6.No doubt, the petitioner was imposed only minor punishment, however, the fact remains that the charge is not related to any incident happened inside the premises or just nearby the main gate. The alleged assault on the DGM took place some distance from the main gate due to some other reason. This fact is not disputed by the respondents. The said DGM is said to have been assaulted by the lady civilians for some other reasons, but the charge against the petitioner is, there was some delay in rescuing the DGM. The impugned order itself clearly indicates that the incident took place 50 meters away from the main gate. When the charges are factual and they are denied by the delinquent/petitioner, this Court is of the view that proper opportunity ought to have been given to the petitioner to defend himself eventhough Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 does not contemplate oral enquiry. It is relevant to extract Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the same is as follows:

*“(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-*

*(a) informing the Government servant in writing of the proposal to take action against him and of the imputations*



*of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;*

*(b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;*

*(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;*

*(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and*

*(e) recording a finding on each imputation or misconduct or misbehavior.*

*(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to*



*withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14, before making any order imposing on the Government servant any such penalty.*

*(2) The record of the proceedings in such cases shall include-*

*(i) a copy of the intimation to the Government servant of the proposal to take action against him;*

*(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;*

*(iii) his representation, if any;*

*(iv) the evidence produced during the inquiry;*

*(v) the advice of the Commission, if any;*

*(vi) representation, if any, of the Government servant on the advice of the Commission;*

*(vii) the findings on each imputation of misconduct or misbehavior; and*

*(viii) the orders on the case together with the reasons therefor.”*

7.The Sub Clause (1-A) also makes very clear that the minor punishment is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative



effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14. Though the petitioner was imposed punishment of stoppage of increment for a year without cumulative effect, when this Court pointed out whether it will affect the petitioner's promotion, it is fairly submitted by both sides that it will affect the petitioner's promotion in future. Such being the position, this Court is of the view that eventhough Rule 16 Central Civil Services (Classification, Control and Appeal) Rules, 1965 does not contemplate any oral enquiry, the fact remains that the minor punishment imposed against the petitioner will have serious impact on the petitioner's promotion in future. Therefore, proper opportunity ought to have been given to the petitioner to defend himself. Admittedly, in this case, no oral enquiry has been contemplated and no documents have been furnished to the petitioner, which is the clear violation of Principle of Natural Justice.

8.In the case of O.K.Bhardwaj (*cited supra*), the Hon'ble Apex Court has held as follows:

*“3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without*



W.P.No.9102 of 2022

*cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”*

9.In the light of the above decision and also considering the fact that there is a clear violation of Principle of Natural Justice, this Court quashes the impugned order, dated 08.02.2022 passed by the 3<sup>rd</sup> respondent. Accordingly, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.08.2023

Index : Yes/No  
Internet: Yes/No  
Neutral Citation: Yes  
Speaking Order/Non-Speaking Order

vv2

To

1.The Secretary, Union of India,  
Ministry of Home Affairs, North Block,  
New Delhi-110 001.



WEB COPY



W.P.No.9102 of 2022

N.SATHISH KUMAR, J.

vv2

- 2.The Director General,  
Central Industrial Security Force,  
Ministry of Home Affairs,  
13, CGO Complex,  
Lodhi Road, New Delhi – 110 003.
- 3.The Deputy Inspector General (Legal),  
Central Industrial Security Force,  
Ministry of Home Affairs,  
13, CGO Complex,  
Lodhi Road, New Delhi – 110 003.
- 4.The Inspector General,  
CISF South Sector Hqrs.,  
Chennai Port Trust Office Premises,  
Near War Memorial,  
George Town, Chennai.

W.P.No.9102 of 2022

23.08.2023