

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: January 09, 2023**

Pronounced on: February 17, 2023

+ **W.P.(C) 159/2019**

PRABHAT DAS

..... Petitioner

Through: Ms. Pallavi Awasthi, Mr. Arjun
Kalra & Mr. Ravi Rathore,
Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anshuman, Senior Panel
Counsel with Mr. Sub Inspector
Prahlad Singh Devenda & SI Amit
Kumar, CISF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present writ petition has been preferred by the petitioner against the order dated 03.06.2016 passed by the respondents vide which penalty of reduction in pay at stages for one year has been imposed upon the petitioner. In addition, setting aside of order dated 27.09.2017 passed by the learned Appellate Authority and Order dated 18.05.2018 passed by the learned Revisional Authority, is also sought, whereby his appeal and revision against the order dated 03.06.2016 stood rejected.

2. The background of the petition is that petitioner was recruited in Central Industrial Security Force ('CISF') on 26.07.2010 on the post of Constable/GD. After completion of his training at RTC, Mundali, he was posted at Intergovernmental Panel on Climate Change ('IPCC') at Delhi on 25.03.2011. Thereafter, petitioner was posted at Seventh RB Kishtwar in Jammu and Kashmir on 26.07.2014.

3. On 19.10.2015, an information through e-mail was received by the CISF authority that on 12.10.2015 a written complaint for the offences under Sections 376/417/313 IPC was received at police station Salema, Dhalai, Tripura, against the petitioner, on the basis of which he was arrested on 13.10.2015 and remanded to Kamlapur Jail Custody. The petitioner was placed under deemed suspension w.e.f 13.10.2015 vide office order dated 20.10.2015, which was extended for further 90 days w.e.f. 11.01.2016.

4. The petitioner was issued an office Memo dated 13.01.2016 whereby he was given Articles of Charges wherein the first charge levelled against him was that he had concealed the factum of having married one Smt. Bishakha Devnath on 14.11.2012 and the second Article of Charge was that petitioner had failed to inform CISF authorities with regard to his arrest on 13.10.2015 by the Salema Police (Tripura), for allegedly committing offences under Sections 376/417/313 IPC. Accordingly, petitioner had tarnished the image of CISF with his indiscipline and *mala fide* intention. However, the respondents in exercise of powers under sub-rule (5) of Rule 33 of CISF Rules, 2001 revoked the suspension of petitioner vide order dated 30.01.2016.

5. An enquiry under Rule 36 of CISF Rules 2001 for the afore-noted Article of Charges was initiated against the petitioner. The Enquiry Officer conducted the departmental enquiry on day to day basis and after recording the evidence of prosecution witnesses, Court witness and considering the documentary evidence along with defence evidence, submitted the Enquiry Report. The petitioner submitted his defence representation on 24.05.2016, wherein he pleaded that he had taken fifteen days' casual leave from 07.10.2015 to 02.11.2015 to visit his home town. But on 13.10.2015, on the basis of the complaint in question, he was arrested and he remained in custody from 13.10.2015 to 13.12.2015. Petitioner was released on regular bail on 14.12.2015 and he claims to have give information with regard to this case to his department from time to time vide his applications dated 14.12.2015; 16.12.2016; 27.01.2016 and 11.02.2016.

6. The competent authority of CISF, after considering the Enquiry Report dated 20.05.2016, vide order dated 03.06.2016 exonerated the petitioner from the first Article of Charge i.e. relating to his marriage with the complainant. However, with regard to second Article of Charge, petitioner was held guilty for not informing the competent authority of CISF about his arrest by the civil police. It was held as under:-

“14. Thus after carefully considering all the recodes during the inquiry, statements of prosecution witnesses and the evidences produced by them, the defence representation submitted by accused and tile evidence which is available in the record and the facts concerned with the case, during the inquiry I come to this finding that Charge No. 1 leveled on No. 102301609

Constable/GD Prabhat Das is not proved, but also Charge No. 2 is fully proved. Therefore now I the undersigned exercise the powers conferred under Rule 32 (1) Schedule -1 of CISF Rules 2001, I punish with the punishment of "the pay scale of Rs. 7830+2000 Grade Pay is reduced to Rs. 7260+2000 Grade Pay, two (02) Stage for a period of One (01) year of No.102301609 with immediate effect under Rule 34(iv) of CISF Rules 2001. It is also directed that the force member will not earned the increment of pay during the period of demotion and due to the education, his future pay increments will also be affected.

15. Suspension of total 169 days from 3.10.2015 to 29.03.2016 of No. 102301609 Ct./GD Prabhat Dass will be treated as suspension period."

7. Against the order dated 03.06.2016, the petitioner preferred an appeal before the Appellate Authority, which stood rejected by the competent authority vide order dated 27.09.2017. The petitioner thereafter also sought revision of the order dated 27.09.2017 passed by the learned Appellate Authority, which also stood dismissed by the Revisional Authority vide order dated 18.05.2018. Aggrieved by the orders of the competent authority dated 03.06.2016; Appellate Authority dated 27.09.2017 and Revisional Authority dated 18.05.2018, the present petition has been preferred by the petitioner.

8. In support of petitioner's case, learned counsel appearing on his behalf submitted before this Court that out of the two Articles of Charge framed against him, the complainant vide letter dated 02.05.2016 had tendered an affidavit declaring that out of maladjustment on the issue of

recovery of goods costs, she had filed the said complaint against the petitioner and also that she never shared a relationship of husband and wife or mistress with the petitioner. Therefore, the competent authority in the impugned order dated 03.06.2016 exonerated the petitioner with regard to first charge of concealing the factum of his marriage with the complainant. Even the learned court vide order dated 25.05.2017 acquitted the petitioner of the charges framed under Sections 376 (i)/313/ 417 IPC.

9. With regard to second Article of Charge, learned counsel appearing on behalf of petitioner submitted that the learned Enquiry Officer did not consider the circumstances that prevented the petitioner from informing about his arrest to the department. It was submitted that since petitioner was under the judicial custody, he was unable to directly communicate with his department. It was submitted that petitioner was enlarged on bail on 14.12.2015 and only thereafter, he could inform his department regarding filing of complaint against him and his arrest.

10. It was brought to the notice of this Court that vide order dated 25.05.2017 passed by the learned court, the petitioner was acquitted of the charges under Sections 376 (i)/313/ 417 IPC levelled against him. It was therefore submitted that Enquiry Officer as well as the Appellate and Revisional Authority failed to consider that the petitioner was unable to inform his department about his arrest while being in judicial custody and also failed to consider the instructions of Ministry of Home Affairs vide No.39/59/54-Estt.(A) dated 25.02.1955 that the police authorities are under the obligation to inform about the arrest and release on bail of Central Government employees. Hence, it was submitted that penalty

imposed upon the petitioner vide second Article of Charge deserves to be set aside.

11. On the other hand, learned senior panel counsel appearing on behalf of the respondents submitted that the petitioner had proceeded on casual leave for 15 days w.e.f. 10.10.2015 to 02.11.2015 on the ground of urgent domestic affairs. On 19.10.2015 an e-mail message was received from SI Goutam Debbarma, Salema P.S. Dhalai, Tripura intimating that petitioner has been arrested on 13.10.2015 in connection with P.S. Case No.2015SLM039 dated 12.10.2015 under Sections 376/313/417 IPC. Since petitioner failed to inform his department about his arrest within 48 hours of his arrest, he was placed under deemed suspension from 13.10.2015 i.e. the date of his arrest. The petitioner was released on interim bail on 14.12.2015 and got regular bail on 16.02.2016; whereas in terms of CCS Rules, 1965 and with reference to MHA OM No.30/59/54-Estt. (A) dated 25.02.1955, it is the duty of the Government Servant to immediately inform about his/her arrest.

12. Learned Senior Panel Counsel next submitted that pursuant to preliminary Enquiry Report dated 25.12.2015, it was found that petitioner had not intimated his department about his arrest and, therefore, Article of Charge Memorandum bearing No.(331) dated 13.01.2016 was issued against him. The Enquiry Officer conducted the Departmental Enquiry as per rules and petitioner was granted all opportunities to defend his case as per law. The findings of the Disciplinary Authority were submitted vide Enquiry Report dated 20.05.2016, while giving liberty to make a representation against thereof. The Disciplinary Authority after careful

examination of the Enquiry Report dated 20.05.2016 and his representation, imposed the penalty of reduction of pay. Even the Appellate Authority found no cogent reason to consider petitioner's appeal and the Revisional Authority also rejected petitioner's revision petition and passed a detailed order holding that there was no procedural lacuna either in the departmental enquiry or passing orders by the concerned authorities. Lastly, it was submitted that failure on the part of any Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone. Thus, it was prayed that the present petition deserves to be dismissed.

13. In rebuttal, learned counsel appearing on behalf of petitioner submitted that the information of arrest of the petitioner was passed on to the department by the civil police itself, as it was not possible for the petitioner, being under police/judicial custody to communicate directly with the department. Thus, there is no substance in the submissions advanced on behalf of the respondents.

14. Upon hearing learned counsel representing both the sides and on perusal of material placed before this Court, we find that the petitioner had proceeded on 15 days casual leave w.e.f. 10.10.2015 to 02.11.2015 and during this period, he was arrested on 13.10.2015 on a complaint filed by one Ms. Bishakha Debnath, under Sections 376/313/417 IPC, registered at P.S. Salema, Ohalai, Tripura and was remanded to judicial custody till 27.12.2015. The intimation of his arrest was sent to CISF from SI Goutam Debbarma, PS Salema, Dhalai, Tripura on 19.10.2015 through

e-mail and he was put under deemed suspension. Thereafter, departmental enquiry was initiated against him and Memo dated 13.01.2016 was served, informing the Charges framed against him, which are as under:-

“Charge No. 01

No. 102301609 Reserve/GD/ Prabhaat Dass, CISF 7th Reserved Battalion, Kishatwad had married with Smt. Bishakha Devnath D/o Sh. Paresh Devnath, Village Salema District Dhalai (Tripura) on 14.11.2012 and has concealed this fact from the department. In this regard the constable has not given any kind of information to the department. Knowing this very well that he being a married person despite conversant very well with the Rules of the Department, to conceal about his true information to the department for a very long time is a serious offence. Thus the above said act of the charged force member shows the wrong intention, serious indiscipline, dishonesty. Therefore it is the charge.

Charge Article No.- 02

On the basis of written complaint dated 12.10.2015 of Smt. Bishakha Devnath D/o Sh. Paresh Devnath, Village Salema District Dhalai (Tripura), No. 102301609 Reserve/GD/ Prabhaat Dass, CISF 7th Reserved Battalion, Kishatwad has been arrested on 13.10.2015 by the Salema Police (Tripura) under Section 376,417 and 313 IPC. In this regard the force member has not given any intimation of any kind to the department before 14.12.2015. From this act of the force member the reputation of CISF has been lowered down. Thus the above act of the said force member shows wrong intention and serious indiscipline.

Therefore it is the charge.”

15. With regard to first Article of Charge noted above, the learned Enquiry Officer in report dated 20.05.2016 has observed as under:-

“9 **FINDINGS:**

After seriously considering on all the documentary evidences available on the case file, all the documents during the departmental inquiry, tatements of prospection witnesses recorded and the documentary evidence filed by them, and the Brief Note filed in the case by the Presenting Officer, I, the Enquiry Officer arrived at this finding that Charge No.under which No. 102301609 Ct/GD Prabhat Dass has married with Smt. Bishakha Debnath D/o Shri Paresh Debnath, Village Salema, District Dalai (Tripura) on 14.11.2012 and charge no.1 of concealing this fact from the department, is not proved because the affidavit given by Smt. Bishakha Debnath D/o Shri Paresh Debnath received through the CISF Unit ASG Agartala District West Tripura received, in which the Smt. Bishakha Debnath has declared that:--

(i) That, I had filled a case against Sri Prabhat Das out of maladjustment on the issue of recovery of goods cost.

(ii) That, In fact I had no such relationship of husband & wife or mistress at any time however before the Enquiry Officer out of grudge Istated many thing which has no evidential value in the eye of law.

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From this it is clear that Ct/GD Prabhat Das had no valid married relationship neither official/ legal reconsider and nor socially with Smt. Bishakha Dev Nath D/o Shri Paresh Dev Nath. According to the statement of charged Member Prabhat Das, it is also establishes that they had mental sentient with each other on the basis of which they had talked of marriage, the said marriage has no recognition neither officially nor socially.”

16. With regard to second Articles of Charge, the learned Enquiry Officer has observed and held as under:-

“.....But in the light of the abovesaid whole case, on considering and analyzing the fact it is clearly proved that the charge Force member has not given the information of his arrest to the Department intentionally before 14.12.2015, canceled with wrong intention and from this whole case (arrest and court case) reputation of CISF has been lowered down. Therefore charge No. 2 leveled vide Memo No. V 5014/CISF/7th RB/Disc -36/ Pr.D. 16- 331 dated 13.01.2016 is found fully proved.”

17. Upon the aforesaid observations of the learned Enquiry Officer, the competent authority vide order dated 03.06.2016 held as under:-

“Thus after carefully considering all the recodes during the inquiry, statements of prosecution witnesses and the evidences produced by them, the defence representation submitted by accused and the evidence which is available in the record and the facts concerned with the case, during the

inquiry I come to this finding that Charge No. 1 leveled on No. 102301609 Constable/GD Prabhat Das is not proved, but also Charge No. 2 is fully proved. Therefore now I the undersigned exercise the powers conferred under Rule 32 (1) Schedule -1 of CISF Rules 2001, I punish with the punishment of "the pay scale of Rs. 7830+2000 Grade Pay is reduced to Rs. 7260+2000 Grade Pay, two (02) Stage for a period of One (01) year of No. 102301609 with immediate effect under Rule 34(iv) of CISF Rules 2001. It is also directed that the force member will not earned the increment of pay during the period of demotion and due to the reduction, his future pay increments will also be affected.

15. *Suspension of total 169 days from 13.10.2015 to 29.03.2016 of No. 102301609 Ct./GD Prabhat Dass will be treated and suspension period.*

16. *If the force member wants then he can file and appeal against the final order within 30 days of the receipt of this order addressed to the Deputy Inspector General CISF NZ-1, Headquarter Saket, New Delhi."*

18. The Appellate Authority vide order dated 27.09.2017 observed that no cogent reason was found to consider petitioner's appeal. Similarly, the learned Revisional Authority vide order dated 18.05.2018 also rejected petitioner's revision petition while passing a detailed order holding that there was no procedural lacuna either in the departmental enquiry or passing orders by the concerned authorities. The aforesaid orders have been impugned before us.

19. It is not disputed by the respondents that pursuant to his arrest on 13.10.2015, petitioner was released on interim bail on 14.12.2015. It is also not disputed that on 19.10.2015, an application dated 14.12.2015 written by the petitioner was received by the respondent regarding his arrest on 13.10.2015. Meaning thereby, as soon as petitioner was released on interim bail on 14.12.2015, he had informed the competent authority of his department regarding his arrest. Moreover, as per instructions of Ministry of Home Affairs contained in order No.39/59/54-Estt.(A) dated 25.02.1955, the police authorities are under the obligation to inform about the arrest and release on bail of Central Government employees and it is the own case of respondents that SI Goutam Debbarma, PS Salema, Dhalai, Tripura on 19.10.2015 through e-mail had informed about arrest of petitioner in the said case.

20. At this juncture it is pertinent to mention here that vide order dated 20.05.2017, the learned Court in the complaint in question acquitted the petitioner for the charges under Sections 376/417/313 IPC while observing and holding as under:-

“Ld. Addl. P.P. very fairly submits that in this case there is no incriminating materials against accused Prabhat Das.

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From the evidence adduced by prosecution witnesses. I do not find any incriminating materials against the accused person. As, there is no iota of evidence against the accused person, I propose to proceed U/S 232 Cr.P.C. and record an order of acquittal of accused Prabhat Das

from the charges U/s 376(i)/313/417 of IPG. He is already on bail and is, therefore, set at liberty.”

21. In our considered opinion, the Appellate Authority while passing order dated 27.09.2017 as well as Revisional Authority vide order dated 18.05.2018 failed to appreciate as to when the competent authority of respondent has itself accepted that the Article of Charge No.1 framed against the petitioner is not made out and he has already been acquitted of the offences charged with under the orders of the court dated 20.05.2017, how the question of non-disclosure of marriage of petitioner to the concerned authorities arise. The question of marriage of petitioner with the complainant had come to the knowledge of respondents only after SI Goutam Debbarma, PS Salema, Dhalai, Tripura on 19.10.2015 through e-mail had informed, which marriage in the eyes of respondents does not exist. Moreover, when petitioner was released on interim bail on 14.12.2015, he had informed the competent authority of his department regarding his arrest, no occasion arose for imposing any kind of penalty upon the petitioner. In our considered opinion the Appellate Authority as well as Revisional Authority did not apply its mind to the facts of the present case in its entirety while passing the impugned orders.

22. In the light of what has been observed by us, we find that the impugned penalty of reduction in pay scale and increment, imposed upon the petitioner is bad in law and is accordingly set aside. Consequently, the respondents are directed to exonerate the petitioner from the allegations charged with and grant him pay and increments as per rules and his entitlement within four weeks.

23. With directions as aforesaid, the present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 17, 2023

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