

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

% **Reserved on: February 13, 2023**

Pronounced on: April 11, 2023

+ **W.P.(C) 11007/2020**

EX SI/EXE AMIT KUMAR

.....Petitioner

Through: **Mr.Himanshu Gautam &
Mr.Lokesh Sharma, Advocates**

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: **Ms.Shubhra Parasar, Senior Panel
Counsel & Mr.Virender Pratap
Singh Charak, Advocate with
Inspector Sanjay Kumar, CISF**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. Vide present petition, petitioner is seeking setting aside and quashing of orders dated 16.08.2019 and 22.01.2020 passed by the respondents directing his 'removal from service' and writ of mandamus directing the respondents to reinstate him in service, with all consequential benefits.

2. The brief facts mentioned in the petition are that the petitioner was working as Sub Inspector in CRPF and was deployed at CISF Unit ASG Goa Airport and he was allotted an official quarter at Mangoor Hills Barrack by the respondents. The said quarter had no fixtures for domestic usage and so, petitioner requested one Mr. Mohd. Shakir; working as Supervisor to look after the maintenance work, equipments and staff deployed by M/s Raj Kumar Aggarwal, whose services were hired by Airports Authority of India; to send someone to get the fixture done at his quarter. However, Mr. Mohd. Shakir told him no spare worker was available and petitioner may check in the basement if any spare drilling machine is available, he can carry that to get the fixtures fixed himself and return it after finishing his work.

3. On the next day i.e. 28.04.2019, with the permission of Mr. Mohd. Shakir, Supervisor, the petitioner picked one drilling machine from the basement, after marking it, however, he decided to carry it home on the next day i.e. 29.04.2019 when he was on night duty, with the intention to finish the task in minimum time and return it on the next morning.

4. On the next day i.e. 29.04.2019, petitioner was deployed in night duty shift at Western Finger Staff Gate. At around 0030 hours petitioner sought permission from the Control Room Incharge for a reliever, which was granted and after arrival of the reliever, petitioner left his duty post to go to basement area. He picked up the said drilling machine, kept in his bag and left the bag with the female frisking booth with the intention to pick up the same before leaving the Airport. Thereafter, petitioner came back to his duty post. At around 03:43 AM the respondent-Authority

checked the baggage of the petitioner and alleged him of stealing the drilling machine. The petitioner was served with a Memorandum dated 05.05.2019 alleging misconduct and misbehaviour on the following Articles of Charge:-

“ **MEMORANDUM**

CISF No. 1402022 12 SI/Exe Amit Kumar (U/S) of CISF Unit ASG Goa Airport is hereby informed that disciplinary action under Rule-36 of CISF Rules-2001 (Amended from time to time) is proposed to be held against him. The substance of imputation of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputation of misconduct or misbehaviour in support of the articles of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV) respectively.

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ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST NO.140202212 SI/EXE AMIT KUMAR (U/S) OF CISF UNIT ASG GOA AIRPORT UNDER RULE-36 OF CISF RULES-2001

CHARGE-1

“On 29.04.2019, No.140202212 SI/Exe Amit Kumar of ASG Goa was deployed with Arms (9mm Pistol Butt No. 39 & 30 Rds) in night shift duty from 2100 hrs to 0530 hrs at western finger staff gate (Alfa-09). As per CCTV footage dated

30.04.2019 from 0107 hrs to 0113 hrs, he intentionally carried a drilling machine from BMA/basement area (near to old delta-08 duty post) in a bag with malafide intention of taking it outside the airport premises in planned manner. The above act on the part of No. 140202212 SI/Exe Amit Kumar tantamount to gross misconduct, theft, and unbecoming on the part of a member of the discipline Armed Force. Hence, the charge.”

CHARGE-2

“On 29.04.2019, No.140202212 SI/Exe Amit Kumar of ASG Goa was deployed with Arms (9mm Pistol Butt No.39 & 30 Rds) in night shift duty from 2100 hrs to 0530 hrs at western finger staff gate (Alfa-09). As per CCTV footage dated 30.04.2019 from 0107 hrs to 0113, he was found absent from his duty post without prior permission of his senior officer. He went to BMA/basement area (near to old delta-08 duty post) without any official business/work in violation of the standard operating procedure. The above act on the part of No. 140202212 SI/Exe Amit Kumar tantamount to gross indiscipline, disobediences of lawful order of his senior officer, dereliction and negligence towards his duty. Hence, the charge.”

5. The petitioner denied the aforesaid charge levelled against him with the assertion that the drilling machine was picked up by him after taking due permission of Mr. Mohd. Shakir, Supervisor and he had left his duty post for 05 minutes on 30.04.2019 only after seeking prior permission from the control room Incharge and after arrival of the reliever. On 08.05.2019, an Enquiry officer and Presenting Officer were appointed by the respondents to conduct an enquiry into the charge levelled against the

petitioner. Six prosecution witnesses were examined by the respondents. One witness by Court and one witness in defence were also examined.

6. The Presenting officer submitted his brief note dated 28.05.2019 to the Enquiry Officer, holding petitioner guilty of misconduct for both the charges. The Presenting Officer vide enquiry report dated 04.07.2019 held petitioner guilty of misconduct and opined that the charges levelled against the petitioner stood proved and a copy thereof was served upon the petitioner. The petitioner vide his reply dated 20.07.2019, denied the charges levelled against him. Vide order dated 16.08.2019 the respondents held petitioner guilty of misconduct in respect of the charges levelled and inflicted the penalty of 'removal from service' with immediate effect.

7. Against the aforesaid order dated 16.08.2019, petitioner preferred a statutory appeal on 02.09.2019, which was rejected by the Appellate Authority vide order dated 22.01.2020. Aggrieved against the rejection of his statutory appeal, petitioner preferred a Statutory Revision dated 18.02.2020, which was returned by the respondents vide letter dated 05.03.2020 with liberty to prefer the revision petition to the Director General CISF instead of SDG APS. The petitioner again preferred an appeal dated 06.03.2020 before the Director General, CISF, which is said to be still pending consideration.

8. At the time of final hearing, counsel appearing on behalf of petitioner submitted that petitioner had produced Mr.Shakir, Supervisor, as defence witness who has specifically deposed that he is authorized power of attorney holder of M/S Rajkumar Agarwal and he had permitted the petitioner to take the drilling machine from the basement and return it

within reasonable time. Also, the petitioner had asked for a reliever from Control Room In charge, which was allowed and only after arrival of the Reliever, the petitioner had left the duty post.

9. Learned counsel for petitioner next submitted that petitioner intended to show the drilling machine to the authorities before de-briefing, hence he had kept the same near the female frisking area. Also submitted that before picking up the drilling machine, the petitioner had sought permission of the Supervisor and so, the allegations of theft are not made out. Learned counsel submitted that the Enquiry Officer while holding petitioner guilty of misconduct overlooked the provisions of Section 378 IPC and even the Appellate Authority passed a cyclostyled order in an arbitrary and illegal manner, without there-being any material on record to support the findings arrived at by the Disciplinary Authority. Since the revision preferred against the order of the Appellate Authority is still pending, the present petition has been filed by the petitioner.

10. Learned Senior Panel Counsel appearing on behalf of respondents, on the other hand submitted that against the charges framed on 07.05.2019, the petitioner had filed a reply wherein he had partially accepted the allegations levelled against him. Further submitted that the enquiry proceedings were conducted as per procedure laid down, wherein reasonable opportunities were afforded to the petitioner and based upon the deposition of the witnesses and evidence on record, the charges levelled against the petitioner stood proved. Based upon the enquiry report, the Disciplinary Authority held petitioner guilty of the charge for carrying a drilling machine with mala fide intention and absence from his

duty post without prior permission of his senior officer on 30.04.2019 from 0107 to 0113 hours and awarded penalty of “removal from service”.

11. According to learned Senior Panel Counsel for respondents, the Appellate Authority examined the case of petitioner and held that the act committed by the petitioner was grave in nature and such misconduct was not acceptable and upheld the order passed by the Disciplinary Authority. Against the order of the Appellate Authority, the petitioner preferred a revision petition and the Revisional Authority held that the penalty awarded by the disciplinary authority is commensurate with the gravity of offence committed by the petitioner and rejected petitioner’s revision petition vide order dated 06.03.2020.

12. To substantiate the orders passed by different authorities of respondents, learned Senior Panel Counsel submitted that the petitioner took false permission for wash room I/C and got the reliever. However, he went to the basement area with a shoulder bag and carried the drilling machine in it and kept it behind the ladies frisking booth and all activities were captured in CCTV footage. Leaned Senior Panel submitted that being a member of the disciplined Armed Force, the petitioner was duty bound to maintain integrity and his case has rightly been considered under Rule 36 of the CISF Rules, 2001 and charges were proved on the basis of evidence conducted in the departmental enquiry.

13. Learned counsel submitted that Mr. Mohd. Shakir was only an employee of M/S Raj Kumar Aggarwal and had only limited authority for the purpose of the business and since he was not the legal owner of the drilling machine, he could not have permitted the petitioner to carry it. It

was also submitted that petitioner had brought the shoulder bag in a pre-planned manner and his movements in the basement area speaks about his intention in taking the drilling machine. Moreover, there are contradictions in the version put-forth by the petitioner and Mr. Mohd. Shakir, as petitioner stated that he had met Mr. Mohd. Shakir, Supervisor 4-5 days ago, but during defence examination, he said that he had met him on 26.04.2019 and on 28.04.2019 and in case petitioner had obtained permission from the custodian of the drilling machine, he should have informed to RI, Coy. CHM.

14. Learned Senior Panel Counsel for respondents also submitted that it has been proved that the petitioner was absent from 0107 hours to 0113 hours, when he had gone to the basement to take the drilling machine with an ulterior motive for his personal gain. The plea of petitioner that he was not absent from duty and he had left the post after arrival of the reliever is not tenable, as while asking for a reliever, the petitioner had not disclosed or informed about his intention to visit basement area to take drilling machine. It was submitted that even if he left the post after coming of reliever, the acts of petitioner cannot be considered as genuine, as he had not informed the authorities about picking up of drilling machine. Further submitted that the Disciplinary Authority after considering the deposition of prosecution and defence witnesses, awarded the punishment of “removal from service” and, therefore, the petitioner cannot take the plea that his case is not covered under Section 378 IPC. Lastly, it was submitted that the Disciplinary Authority, Appellate Authority and the Revisional Authority after considering the case of petitioner found him

guilty and has therefore rightly inflicted and upheld the punishment of “removal from service” and therefore, the present petition devoid of merits deserve to be dismissed.

15. In rebuttal, learned counsel for petitioner submitted that the Disciplinary Authority has levelled frivolous charges against the petitioner and the Appellate Authority as well as Revisional Authority without appreciating the evidence brought on record by the petitioner in his defence, have passed impugned orders and, therefore, the petitioner deserves to be exonerated from the offences charged with.

16. The rival contentions urged by both the sides were heard at length and the material placed on record has been carefully perused by this Court.

17. It is not in dispute that on 29.04.2019, the petitioner was apprehended by the respondent- Airport Authority at Goa for allegedly stealing a drilling machine and carrying it in his bag. The Memorandum of Charge dated 05.05.2019 was served upon the petitioner wherein charge of (i) stealing and carrying a drilling machine in his bag with an intention to take it outside the Airport Authority and (ii) absenting himself from his duty post without prior permission of his senior, had been framed against him.

18. A perusal of material placed before this court shows that the petitioner denied the aforesaid Charges framed and a departmental enquiry was initiated against him. The Disciplinary Authority held the petitioner guilty of misconduct and awarded the penalty of “removal from service” upon him. Aggrieved against his removal from service, petitioner

preferred a statutory appeal. The Appellate Authority vide order dated 22.01.2020 confirmed the penalty of “Removal from Service” imposed upon the petitioner, against which petitioner preferred a Statutory Revision, wherein petitioner was granted liberty to make an appeal and he filed one before the Director General, CISF, which is said to be still pending.

19. There is no dispute to the settled legal position that the Courts should be slow in interfering with the findings of facts recorded by the disciplinary proceedings, however, if the findings returned are unsupported by the evidence on record, the writ Court is well within its jurisdiction to interfere with the orders of the punishment.

20. In ***Union of India and Others Vs. Managobinda Samantaray*** 2022 SCC OnLine SC 284, wherein the petitioner working as a Constable in CISF, was found sleeping while on duty and had abused, misbehaved and assaulted the Officer who found him sleeping, was suspended from service by the Disciplinary Authority and the Appellate Authority dismissed him from service but the High Court of Orissa directed his reinstatement in service with other benefits, the Supreme Court in the appeal preferred by the Government reversed the order of the High Court and observed as under:-

“9. Impugned judgment by the Division Bench is difficult to sustain as it equates appellate power under Rule 52 of the CISF Rules, with power of judicial review exercised by constitutional courts. Rule 52 of the CISF Rules, 2001 empowers the appellate authority to examine whether the penalty imposed is

excessive, adequate or inadequate and pass consequential order confirming, enhancing, reducing or setting aside the penalty. In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decisions are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.”

21. In the present case, the first Charge framed against the petitioner is of carrying the drilling machine with the *mala fide* intention to carry it outside the airport premises. The disciplinary authority of respondent has alleged it gross misconduct and theft. The offence of “theft” defined under Section 378 IPC reads as under:-

“378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

22. Relevantly, the moveable property in the present case i.e. the drilling machine was owned by M/S Rajkumar Agarwal, whose services were hired by Airports Authority of India. Mr. Mohd. Shakir was deployed as Supervisor and authorized by M/S Rajkumar Agarwal and thereby, was the Incharge of all tools available at the site. Mr. Mohd. Shakir in his evidence has deposed that the petitioner had taken his prior permission to carry the drilling machine with him. Hence, carrying of drilling machine by the petitioner was well within the knowledge of its rightful owner and only with his consent it was removed from its place and, thence, petitioner cannot be alleged to have committed “theft” within the definition of Section 378 IPC.

23. So far as plea of respondents that the petitioner had deliberately carried a bag with a modus to take away the drilling machine and he was apprehended with the drilling machine in his bag and that he had not informed the RI/ Coy before taking it away, we find that it is not the case that petitioner had removed the drilling machine without bringing it to the

knowledge of its owner/ Supervisor. Rather, Mr. Mohd. Shakir, Incharge / Supervisor of M/S Rajkumar Agarwal has categorically stated that petitioner had taken prior permission from him before taking the drilling machine. The petitioner has claimed he would have informed the authorities at the time of de-briefing. The petitioner was apprehended while he was coming out of the basement premises and not while he was leaving his duties. Hence, it is not misplaced to presume here that given the time, he would have informed the authorities about carrying away the drilling machine. Given the fact that petitioner had not caused theft of the drilling machine, it cannot be alleged that petitioner had indulged in any misconduct or misbehavior to the Force. Moreover, at this juncture it is not misplaced to mention here that no complaint whatsoever has been made by the actual owner-M/S Rajkumar Agarwal regarding missing/ theft of drilling machine but the respondent- Airport Authority without having any ownership of the allegedly stolen item, has taken cognizance of the offence, which cannot be sustained.

24. With regard to second Charge that the petitioner had absented himself from his duty post without prior permission of his Senior, we find that it is an admitted case of both the sides that petitioner had called the Control Room to send a reliever and it is only after the reliever came to his post, the petitioner left his seat. The respondents have taken a vague stand that generally a reliever is sent to enable the officer on duty to attend washroom or have refreshment etc. However, respondents have not been able to establish as to whether any query was made by the Control Room asking petitioner the reason for his relieving. The petitioner only after

being relieved had left the duty post hence, it cannot be said that there was any dereliction of duty. There is nothing on record to establish that the petitioner had left his duty post unattended. Hence, charge of absenteeism from duty is not made out against the petitioner.

25. For the reasons noted above, we find that the Disciplinary Authority as well as the Appellate Authority committed a grave error in inflicting major punishment of removal from service. Accordingly, the orders dated 16.08.2019 and 22.01.2020 passed by the respondents directing and affirming petitioner's 'removal from service' are set aside. Consequently, petitioner is directed to be reinstated in service forthwith, with consequential benefits such like fixation and arrears of pay, promotion and seniority etc. The respondents shall pass necessary orders to this effect within four weeks.

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

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 11, 2023

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