

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**W.P.A. 382 of 2011
with
IA No. CAN 4 of 2021**

**Rama Prosad Pan
versus
Union of India & Ors.**

For the Petitioner	: Mr. Sujash Ghosh Dastidar Mrs. Maheswari Sharma Mrs. Tulika Banerjee Mrs. Sayori Mukherjee Ms. Sankari Roy	advocates
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For the Union of India	: Mr. Pulakesh Bajpayee Ms. Kausiki Bose	... advocates
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Reserved on : 18.07.2024

Judgment on : 07.10.2024

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for setting aside the enquiry report, the final order of punishment of the disciplinary authority, the appellate order and the revisional order in this writ petition. The disciplinary authority passed an order of dismissal of the petitioner from service. The petitioner has

prayed for setting aside of the order of dismissal from service and for reinstatement in service with back wages.

2. Petitioner joined as a Constable (GD) in the year 1988 and while he was posted at ISP Unit, Burnpur he was placed under suspension. The petitioner was served with a memorandum of charges dated 12.08.2008 containing four Article of Charges. The charges levelled against the petitioner are as follows.

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- I. *On Sainik Sammelan for the month of August, 2008 at recreation hall, the petitioner came up with certain grievances regarding proposed gift of wrist watch by the ISP Burnpur management, encashment of compensatory leave for the period from January 2008 and June 2008 and entry of contractor labourers through new gate. It was contented that in spite of the DIG giving suitable responses to the grievances, the petitioner indulged in undesired arguments with the DIG in loud voice and indecent manner. This act amounted to insubordination and misbehavior with the senior officer which amounts to gross misconduct, indiscipline and unbecoming of a member of the disciplined force like CISF.*
- II. *While on patrolling duty at Modernization site with rifle and ammunitions on 22.07.2008, the petitioner left the area of his duty unguarded and went to a village which is not within his duty jurisdiction of CISF, where are truck with few criminals were present. This amounted to abandonment of his duty for making unauthorized and illegal contact with criminals for wrongful gains.*
- III. *While on patrolling duty on 22.07.2008, the petitioner brought with him a mobile phone which is against the office orders. Therefore, the petitioner has exhibited an act of gross misconduct and indiscipline which is unbecoming of a member of the CISF.*
- IV. *The petitioner had inculcated and incorrigible habit of committing offence and despite being charge sheeted and awarded with several punishments for his act of various misconduct and discipline he failed to improve upon his conduct and has proved himself to be a habitual offender which tantamount to gross misconduct and indiscipline which is unbecoming of a member of CISF."*

3. Petitioner submitted a representation against the said charge memo denying the charges levelled against him. An Enquiry Officer and Presenting Officer were appointed. After completion of departmental enquiry the Enquiry Officer submitted his report before the disciplinary authority on 23.09.2008 holding that all the charges against the petitioner have been proved. Petitioner submitted his representation against the enquiry report and the disciplinary authority after considering the enquiry report and the materials on record, which awarded the penalty of compulsory retirement from service with pension and gratuity admissible to him on the date of compulsory retirement from service in terms of Rule 40 of CCS Pension Rules. Being aggrieved by the aforesaid penalty order, the petitioner, filed an appeal petition and the appellate authority by an Order dated 30.12.2008 rejected the same. Thereafter, the petitioner filed a revision petition dated 28.02.2009 which was disposed of by the revisional authority thereby observing that there are some irregularities in conducting the disciplinary enquiry by the Enquiry Officer and there are also technical defects at the appellate stage. The revisional authority directed reinstatement of the petitioner in service by setting aside the enquiry report the penalty order and the appellate order and directed a de novo enquiry to be conducted from the stage of appointment of Enquiry Officer and Presenting Officer by giving reasonable opportunity to the petitioner.
4. Thereafter, the petitioner was reinstated in service on 03.06.2009. Enquiry Officer and Presenting Officer were appointed to conduct de novo enquiry into the charges framed against the petitioner. The Enquiry Officer after conducting the departmental enquiry submitted the Enquiry Report dated 18.01.2010 before the disciplinary authority observing that the charges against the petitioner are proved.
5. Petitioner submitted a written statement of defense against the enquiry report. The disciplinary authority after considering the enquiry report, the

written statement of defence submitted by the petitioner and other relevant records awarded the punishment of dismissal from service.

6. Being aggrieved by the said penalty order, the petitioner submitted an appeal petition which was rejected by the appellate authority by order dated 05.06.2010.
7. Petitioner submitted a revision petition before the revisional authority and such authority rejected the revision petition upon holding that the same is devoid of any merit.
8. The learned Advocate appearing for the petitioner contended that the departmental enquiry is vitiated as the same was conducted in violation of Sub-Rule 15, 16 and 18 (b) of Rule 36 of the Central Industrial Security Force Rules, 2001 (for short the "2001 Rules"). In support of such contention the learned advocate for the petitioner placed reliance on the decisions in the case of ***State of Maharashtra vs. Wasudeo Madhukarrao Pande*** reported at **2021 Supreme (Bom) 1185** and ***Ram Sahodar Rajwade vs. The Director-General, Central Industrial Security Force and Others*** reported at **2022 Supreme (Bom) 842**.
9. The learned advocate appearing for the respondent seriously disputed the submissions made by the learned advocate for the petitioner. He contended that the departmental enquiry was conducted in accordance with the principles of natural justice. He further contended that such proceedings were conducted strictly in accordance with the 2001 Rules. He further submitted that the Enquiry Officer in his report held that the charges against the petitioners are proved. Considering the gravity of the charges proved, the disciplinary authority inflicted the punishment of dismissal from the service. The appellate authority after considering the appeal petition has rejected the same by a speaking order. The revisional authority also held that the revision petition is devoid of any merit and accordingly rejected the same.

10. Heard the learned advocates for the parties and perused the materials placed.
11. Record reveals that the revisional authority on an earlier occasion observed that there are some irregularities in conducting the departmental enquiry by the Enquiry Officer and there were certain technical defects even at the appellate stage. The revisional authority accordingly directed reinstatement of the petitioner in service after setting aside the Enquiry Report dated 23.09.2008, Penalty Order of the disciplinary authority dated 17.10.2008 and the Appellate Order dated 30.12.2008. The revisional authority further directed a de novo enquiry to be conducted from the stage of appointment of Enquiry Officer and the Presenting Officer.
12. Thereafter, the de novo enquiry proceedings started with the appointment of Enquiry Officer and Presenting Officer to enquire into the charges framed against the petitioner. The Enquiry Officer submitted his report dated 18.01.2010 before the disciplinary authority. The petitioner was given opportunity to submit written statement of defence against the enquiry report. Petitioner duly submitted his written statement against the enquiry report. The disciplinary authority after considering the enquiry report, the written statement of defence submitted by the petitioner as well as other materials on record passed the final order of penalty.
13. Petitioner was given opportunity to cross-examine the PWs. Petitioner also examined himself when the petitioner was asked as to whether he wants to produce any defence witness, he replied in the negative. The written brief of the Presenting Officer was also forwarded to the petitioner. Petitioner also filed his representation against the Enquiry Report. After going through the enquiry report this Court finds that the departmental enquiry was conducted in accordance with the principles of natural justice. The disciplinary authority took into consideration the written statement of defence filed by the petitioner against the enquiry report and passed the Final order assigning cogent reasons in support of the ultimate conclusion.

It further appears from the order of the disciplinary authority that considering the gravity of the charges proved against the petitioner, the order of penalty of dismissal from service was passed.

14. The appellate authority also took into consideration the grounds taken by the petitioner in the appeal petition and passed a detailed and speaking order. The appellate authority held the penalty of dismissal from service awarded to the petitioner is well commensurate with the gravity of the misconduct.
15. The petitioner, thereafter, preferred a revision petition. After going through of the order of the revisional authority this Court finds that each and every ground raised by the petitioner in the revision petition was considered and the same were dealt with by passing a reasoned order. The revisional authority further observed that the past record of 15 punishments is part of the charge which indicates that despite giving several chances to improve, the petitioner preferred to remain an undisciplined member of the Force.
16. At this stage it would be relevant to take note of the decision of the Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran*** reported at **(2015) 2 SCC 610** wherein the Hon'ble Supreme Court laid down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India in matters relating to disciplinary proceedings. The Hon'ble Supreme Court held thus-

"12.The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible*

and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not.

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

17. It is a settled proposition of law that the scope of interference with the order passed by the authorities in disciplinary matters is very limited. This Court has to consider whether the case on hand falls within the exceptions carved out in **P. Gunasekaran** (supra).
18. This Court has already observed that the departmental enquiry was held in accordance with the principles of natural justice. This Court has to now consider the contention of the petitioner that the departmental enquiry was held in violation of the procedure laid down under the 2001 Rules.
19. The learned Advocate appearing for the petitioner would contend that the Presenting Officer cross examined the witnesses produced on behalf of the disciplinary authority in violation of Rule 36 (15) of the 2001 Rules. He further submitted that the Presenting Officer put questions to the witness of the management in order to fill up the gap in the evidence in violation of Rule 36 (16) of the 2001 Rules.
20. After going through the order of the revisional authority this Court finds that more or less similar nature of objection was raised by the petitioner before the revisional authority and such authority after considering the materials on record arrived at a factual finding that neither the Presenting Officer has cross examined the witnesses of the management nor asked them any leading questions. It was further observed in the said order that during the course of de novo enquiry the Presenting Officer raised queries in the

presence of the petitioner which is clarificatory in nature. It was further observed that the petitioner did not raise any objection when the Presenting Officer raised such queries.

21. This Court has also gone through the portion of the evidence placed by the learned advocate for the petitioner and is of the considered view that the Presenting Officer has not cross examined the witnesses of the management. The learned advocate for the petitioner in course of his argument could not satisfy this Court that the Presenting Officer tried to fill up any gap in the evidence. This Court is, therefore, not inclined to accept the contention of the learned Advocate for the petitioner that the departmental enquiry was conducted in violation of Sub-Rule 15 and 16 of Rule 36 of the 2001 Rules.
22. The learned Advocate for the petitioner would further contend that the inquiry authority did not put any question to the petitioner on the circumstances appearing against him in the evidence as per the mandate of Sub Rule 18(b) of Rule 36 of 2001 Rules. In order to decide the said issue it would be relevant to take note of Sub Rule 18(b) of Rule 36 of the 2001 Rules which is extracted hereinafter.

"18(a)

(b) The inquiring authority may, after the enrolled member of the Force closes, his case, and shail, if the enrolled' member of the Force has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the enrolled member of the Force to explain any circumstances appearing in the evidence against him.

(c)

(d)

(e) "

23. On a plain reading of the aforesaid Sub Rule this Court holds that the same shall come into play when the enrolled member of the Force has not examined himself.

24. It is not the case of the petitioner that he has not examined himself. Record reveals that the petitioner examined himself in the departmental enquiry. This Court is, therefore, of the considered view that Sub-Rule 18(b) of Rule 36 of the 2001 Rules cannot come to the aid of the petitioner.
25. That apart, the learned advocate for the petitioner could not demonstrate that the *de novo* enquiry was conducted in violation of the directions passed by the revisional authority while directing reinstatement of the petitioner. Therefore, the decision of the Hon'ble Supreme Court in **Govt. of A.P and Others vs. Gudepu Sailoo and Others** reported at (2000) 4 SCC 625 also cannot come to the aid of the petitioner in the case on hand.
26. The order of the revisional authority is a speaking order. The same does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.
27. There is, however, no quarrel to the proposition of law laid down in **Ram Sahodar Rajwade** (supra) that, if the enrolled member of the Force had not examined himself in defence, it was the mandatory duty of the Enquiry Officer to put all such circumstances appearing in the evidence against him not only in terms of the mandate of the statute but also in compliance with the principles of natural justice. The said decision cannot come to the aid of the petitioner as it is not the case of the petitioner that he had not examined himself in defence.
28. In **Wasudeo Madhukarrao Pande** (supra) the delinquent therein also did not examine himself. The said decision being distinguishable on facts cannot be applied to the case on hand.
29. For all the reasons as aforesaid the writ petition stands dismissed. The application also stands disposed of. There shall be, however, no order as to costs.

30. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.- Sanchita, Rinki)