

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 6908 of 2010

Reserved on : 11.12.2023

Pronounced on: 20.02.2024

Gautam Bose

...Petitioner

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Anjan Bhattacharyya

....for the petitioner

Mr. Bhudeb Chatterjee

... for the Union of India

Rajarshi Bharadwaj, J:

1. The instant writ petition has been preferred challenging inter alia , final order dated 09.11.2009 of the Disciplinary Authority imposing punishment of reduction of pay for five years and postponing future increments of pay against one Goutam Bose herein the writ petitioner and successive order dated 31.12.2009 rejecting appeal of the petitioner against the penalty imposed by the aforesaid order, all such orders being passed by Senior Commandant , CISF unit, Durgapur Steel Plant, Durgapur herein respondent No. 6 and Deputy Inspector General, CISF Unit, Durgapur Steel Plant, Durgapur herein respondent No. 4 respectively.

2. The facts of the case in brief are that the writ petitioner working as constable in Durgapur Steel Plant was served a memorandum of charges on 11.04.2009 by Commandant, CISF Unit, Durgapur Steel Plant, Durgapur alleging *“Gross negligence, indiscipline and failure to maintain absolute integrity”*

The charged memorandum was served upon the petitioner on 14.04.2009. An Enquiry Officer appointed by the Disciplinary Committee on 02.05.2009 vide order No. 4054 conducted enquiry on 23.05.2009 but owing to administrative reasons was replaced by another Enquiry Officer on 01.10.2009. Successive enquiry was conducted on 20.09.2009 wherein officials were examined to prove the charges of misconduct and misbehavior levelled against the writ petitioner. One Praveen Kumar, the courier representative of DTDS Courier Cargo Limited Durgapur at whose instance the complaint was instituted deposed that the petitioner forcibly collected Rs.20/- (Rupees twenty only) as illegal gratification from him though he was having a valid gate pass and thereafter only allowed him to go inside the plant premises to deliver a parcel which was in the name of GM/NSPCL Durgapur. The petitioner denied the allegations of such charges against him.

3. A Departmental Enquiry was conducted against the petitioner. In the course of departmental enquiry under Rule 36 of CISF Rules 2001, eight prosecution witnesses, one court witness and the petitioner were examined and respondent No.6 imposed punishment vide Final order No. V-15014/ DSP/ Disc/ Maj/ GB/ 2009-11509 on 09.11.2009 to the effect that:

“The pay of No. 902295915 constable Gautam Ghose is reduced to minimum of his present time scale of pay for a period of five years with immediate effect. It is further directed that No. 902295915 constable Gautam Bose will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing of his future increments of pay.”

“ With respect to regularization of his suspension period, I find that the charged official remained under suspension w.e.f. 22.03.09 owing to the pendency of the proceedings drawn against him within the ambit of Rule 36 of CISF Rules 2001. Now that the proceedings have been finally concluded, I find that suspension in his respect was absolutely necessary and justified. Accordingly I pass the order that the period of suspension w.e.f. 22.03.09 to till the date of passing of this order shall be treated as "Not on duty" i.e. the charged official is not entitled to any pay and allowances for the period he remained under suspension other than what he has already been paid as subsistence allowance under the rules. ”

4. The petitioner aggrieved by the purported order of penalty preferred an appeal dated 30.12.2009 before respondent No. 4 being the appellate authority which was rejected vide Order No. V-15014/ CISF/ DSP(D)/ Disc/ GB/2009-1906 dated 31.12.2009 as well as preferred a revision petition on 09.05.2010 before the revisioning authority, The Inspector General, CISF herein respondent No. 3 which was not taken into consideration vide order No. V-11014/NES/LC/Rev 24/ 2010-6444 on 27.08.2010. Being, aggrieved by the preceding orders of the respondent authorities, the petitioner preferred this writ petition.

5. The Learned Counsel for the writ petitioner submits that the enquiry report and the findings prepared by the Enquiry Officer is perverse and is not sustainable either in fact or in law. The petitioner declared that on finding a Rs.20/- note on the ground, he assumed that the same belonged to the courier representative and proceeded to hand over the note to his superior. Such self-declaration as corroborated by unimpeachable testimonies of superior officers to the petitioner, Head Constables (General Duty) prima facie negate the charges against him. The respondents without considering the explanation given to the charge have put the petitioner in a detrimental position.

6. The Learned Counsel for the writ petitioner further states that the alleged taking of gratification is nothing but a concocted, ill motivated story by the courier representative tutored by the respondents because during the departmental enquiry he turned hostile and changed his earlier statement and deposed that a Rs.20/- note had fallen from his pocket without his knowing and that no demand for illegal gratification for entry was made by the petitioner. On the basis of evidences produced and adduced during the departmental enquiry, the only logical conclusion possible was that the charge could not be proved.

7. The Appellate Authority failed to consider the vindictive attitude of the respondents as instead of the first Enquiry Report dated 23.05.2009 exonerating the petitioner from charge as 'not proved' by the presenting officer, the second Enquiry Report dated 22.09.2009 by the same presenting officer holding the petitioner 'guilty' of the same charge was taken into account by the Disciplinary Authority. It is a settled principle of law that once a finding had been arrived at by an enquiry officer, a succeeding enquiry officer has no authority to reverse the said findings of the same charge. The appellate order simply confirmed the findings of the Enquiry Officer and Disciplinary Authority.

8. The Learned Counsel for the respondents admits that the final order awarding punishment to the petitioner is the result of departmental enquiry in due compliance of the CISF Rules 2001 and Regulations. The enquiry dated 23.05.2009 could not be completed due to administrative contingency as the earlier enquiry officer was deployed for election duty. The Disciplinary Authority on observing such procedural infirmities returned case files to the successive enquiry officer following Rule 36 of CISF Rule, 2001. Previous irregularities were corrected in the fresh enquiry in the presence of the petitioner, witnesses, and presenting officer and the subsequent enquiry officer completed enquiry as per provision contained in Rule 36 (19) (i) of CISF Rules, 2001. Thus, findings of disciplinary authorities have been arrived at by

acting on evidence recorded in successive enquiry as per Rule 36(18)(d) of CISF Rule, 2001.

9. The Learned Counsel for the respondents further submits that the petitioner was given reasonable opportunity to rebut the charges levelled against him. He did not produce any defense witness rather defended the case himself. The defense statement of the petitioner is of no consequences as it is not backed by cogent and logical evidence. Testimony of the courier representative being a hostile witness lacked credibility and was therefore not accepted. The corroborative written statements of the remaining prosecution witnesses and court witness undoubtedly attest to the fact that while the charged petitioner was on duty at the main incoming gate, a courier representative reported at the main gate to deliver parcels to NSPCL, such representative was detained for some time and then allowed to enter. The charged petitioner could not satisfactorily account for the possession of the aforesaid amount. Therefore, penalties were rightfully awarded under Rule 32 (1) read with Annexure -1 and Rule 34(v) of CISF Rules, 2001.

10. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the disciplinary proceedings instituted against the writ petitioner and the final order of penalty is unreasonable and erroneous. The allegation of the respondents that the petitioner has accepted illegal gratification could not be proved without reasonable doubt because there has been no conclusive confirmation on part of the prosecution witnesses produced during the enquiry proceedings that the petitioner demanded the alleged bribe. The total rejection of the testimony of the representative of the courier is improper on part of the respondents. Contrary evidence of a hostile witness cannot be considered as 'no evidence'. The plaintiff has provided sufficient cause to the charges framed against him and it is imperative that the admission of the plaintiff as to how he recovered the money be taken into consideration.

11. The testimony of a hostile witness is acceptable to the extent it is corroborated by that of reliable witnesses. It is the duty of the court to cull out the nuggets of truth from evidence available on record, when there is a reason to believe that the discrepancies are not so glaring as to destroy the confidence in the credibility of the primary witness. The Hon'ble Supreme Court in the case of **Rameshbhai Mohanbhai Koli v. State of Gujarat** reported in **2011 11 SCC 111** held that “16. *It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.*” The statement of such hostile witness shall be taken into account while evaluating the guilt of the petitioner, if and only if it aligns with the facts of the case. However, in the instant case the hostile witness is the primary witness who lodged the complaint against the petitioner which initiated disciplinary action. Such witness denying payment of incentives coupled with the self-declaration of the petitioner regarding the amount recovered and his conduct of handing over of the retrieved amount to his superior officer, one of the prosecution witnesses is indicative of the petitioner's innocence.

12. For the reasons discussed above, the writ application is allowed. Final Order passed through memo no. V-15014/ DSP/ Disc/ Maj/ GB/ 2009-11509 on 09.11.2009 and Appellate Order No. V-15014/ CISF/ DSP(D)/ Disc/ GB/ 2009-1906 dated 31.12.2009 is quashed and set aside. The respondents are directed to take appropriate steps in restoring the status and position of the writ petitioner by regularizing his Service Book.

13. With the above observations and directions, the writ application is disposed of. There shall, however, be no order as to costs.

14. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

20.02.2024

PA (BS)