

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13798 of 2016

**Yogesh Kumar Sharma
Versus
Union of India & Ors.**

For the petitioner : Mr. K.B.S.Mahapatra

For the Union of India : Ms. Chandreyi Alam

Heard on : 09.04.2024

Judgment on : **09.04.2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging not only the charge sheet dated 25th/26th March, 2015, the final order dated 14th July, 2015, the order passed by the appellate authority on 9th October, 2015, but also the order passed by the revisional authority on 22nd February, 2016.
2. The petitioner was an employee of the Central Industrial Security Force (hereinafter referred to as the "CISF") and at the relevant point of time was posted at CISF, Farakka, Super Thermal Power Project. It is the petitioner's case that by an office order dated 13th March, 2015, the petitioner was placed under suspension. Following the aforesaid, the

petitioner was served with a memorandum of charges dated 25th/26th March, 2015 issued by the Commandant, CISF Unit.

3. According to Mr. Mahapatra, learned advocate appearing for the petitioner, since, the allegations leveled against the petitioner insofar as charge no. 1 is concerned did not relate to any misconduct in relation to discharge of his duties, the respondents were incompetent to frame a charge of this nature. In support of his contention, he has placed reliance on Sections 8 and 18 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as the “said Act”). He has also placed reliance on the following judgments:

- *Rasiklal Vaghajibhai Patel versus Ahmedabad Municipal Corporation & another*¹.
- *A.L.Kalra versus Project and Equipment Corporation of India Ltd.*²
- *M/s Glaxo Laboratories (I) Ltd. versus Presiding Officer, Labour Court, Meerut and ors.*³
- *Unreported judgment delivered by the Division Bench of Calcutta High Court on 11.12.2023 in MAT 493 of 2020*

4. Without prejudice to the above, Mr. Mahapatra submits that the enquiry conducted by the authorities is based on no evidence. According to him, insofar as charge no. 1 is concerned, although a specific allegation as regards the petitioner misbehaving with NTPC employee was alleged, the management witness namely, L.P.Bundopadhyay, an employee of NTPC, Farakka during cross examination had specifically stated that the petitioner did not misbehave with him.
5. Insofar as the allegation of smashing the rear glass of the personal car of B.N.Halder is concerned, there is no evidence to support the same.

¹ AIR 1985 SC 504

² (1984) 3 SCC 316

Although, in total 8 witnesses were examined on behalf of the management, none of such witnesses claimed to have seen the petitioner smashing the rear glass of B.N.Halder's personal car. By drawing attention of this Court to the evidence of B.N.Halder, it is submitted that the witness had admitted while being cross examined that he did not see the petitioner smashing the rear glass of his car. Having regard to the aforesaid, it is submitted that the consequential allegation against the petitioner causing nuisance with violent behavior was also not proved. According to Mr. Mahapatra, both the enquiry report as also the final order passed by the disciplinary authority, insofar as charge no. 1 is concerned is perverse, based on no evidence and on such ground, the proceeding stands vitiated.

6. By placing reliance on charge no.2, it is submitted that the time for duty of the petitioner was from 21.00 hours on 12th March 2015 till 5.00 hours of 13th March 2015. Since, at the relevant point of time, he was escorted to the control room by the respondents, so as to enquire his conduct in relation to the charge no. 1, the petitioner had no opportunity to report for duty, as he had no personal conveyance and the control room was far away from Kendua gate where he was posted for duty. Having regard to the aforesaid, it is submitted that the writ petition should be allowed by setting aside the final order and the appellate order and the petitioner should be reinstated in service.
7. Per contra Ms. Alam, learned advocate appearing for the respondents submits that in a domestic enquiry, the burden of proof is not as high as in a criminal trial. While, in a criminal trial evidence must be led to establish charges beyond reasonable doubt, in a domestic enquiry the

same is based on preponderance of probability. According to her if the evidence adduced during a domestic enquiry is read as a whole, the charges against the petitioner would stand established. Simply because none had seen the petitioner smashing the rear glass of B.N.Halder's personal car, the same does not establish the innocence of the petitioner.

8. While referring to the final order passed by the disciplinary authority as also to the order passed by the appellate authority, it is submitted that the aforesaid aspect of the matter was considered both by the disciplinary authority as also by the appellate authority and it had been concluded that circumstantial evidence clearly establish that the rear glass of the car of B.N.Halder was broken by none other than the petitioner.
9. By placing reliance on a letter dated 14th March, 2015 written by the L.P.Bandupadhyay which forms part of the enquiry proceeding, it is submitted that the factum of the petitioner misbehaving with Prabhat Bhattacharya stood established. Simply because Mr. Bandupadhyay had, in his deposition, stated that the petitioner did not misbehave with him, the same does not absolve the petitioner of the charge insofar as misbehavior is concerned. Insofar as charge no. 2 is concerned, it is an admitted position that the petitioner did not report for his duty on 12th March, 2015 at 21.00 hours and as such, the said charge stands established. On the question whether the respondents could issue a charge sheet in respect of an incident not in relation to discharge of duties, it is submitted that since, the petitioner was scheduled to report for duties on 12th March, 2015 at around 21.00 hours and the incident occurred on the said date at around 20.15 hours, it cannot be said that the same was not in relation to discharge of duties by the petitioner. It is obvious that the petitioner by the time the incident occurred would have started for

reporting for duties, and as such there is no irregularity on the part of the respondents in framing such charge. Insofar as the judgments relied upon by Mr. Mahapatra are concerned, it is submitted that the same are distinguishable on facts. In this case, the petitioner was to report for duty and as such, it cannot be said that the charge no.1 is not in relation to discharge of duties by the petitioner.

10. According to Ms. Alam, in the facts as noted hereinabove, no case for interference has been made out.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Before proceeding to decide on the question raised by the petitioner, it would be relevant to consider the charges leveled against the petitioner vide memorandum of charges dated 25th/26th March, 2015. To morefully appreciate the same, the statements of articles of charge framed against the petitioner are extracted hereinbelow:-

“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST NO. 120514942 Y.K. SHARMA (U/S) OF “D” CoY, CISF UNIT FSTPP FARAKKA

ARTICLE OF CHARGE NO. I

“That CISF No. 120514942 Constable/GD Y.K. Sharma of “D” CoY CISF Unit FSTPP Farakka, under the influence of alcohol, misbehaved with an NTPC employee at about 2015 hrs on 12.05.2015 on the road adjacent to the Unit Quarter Guard. He also smashed the rear glass of the personal car of Insp/Exe B.N. Halder (RI) bearing Regn. No. WB 52-U-1554, which was parked at PTS Unit Line, threatened Inspector B.N. Halder of dire consequences showing gestures of assaulting him and created nuisance with violent behavior uttering abusive and filthy language.

The above act on the part of CISF No. 120514942 Constable/GD Y.K. Sharma tantamount to gross indiscipline, misconduct of very serious nature, sheer negligence towards government bona-fide duty, violation / disobedience of lawful orders thereby exhibiting behavior unbecoming of a disciplined member of an Armed Force of the Union i.e. CISF. Hence the charge.”

ARTICLE OF CHARGE NO. II

“That CISF No. 120514942 Constable/GD Y.K. Sharma of “D” CoY CISF Unit FSTPP Farakka was detained for ‘C’ Shift Duty at “Kendua Gate” duty

post of "D" CoY from 2100 hrs on 12.03.2015 to 0500 hrs on 13.03.2015, be he did not turn up for his duty without any intimation to / permission of the Competent Authority.

The above act on the part of CISF No. 120514942 Constable/GD Y.K. Sharma tantamount to gross indiscipline, sheer negligence towards government bona-fide duty and disobedience of lawful orders thereby exhibiting unbecoming member of a disciplined Armed Force of the Union i.e. CISF. Hence the charge."

12. It may be noticed that Mr. Mahapatra by placing reliance on the provisions of Sections 8 and 18 of the said Act has claimed that unless a charge is made out which is in relation to discharge of duties, the respondents are not permitted to enquire into the same. I find that in support of the aforesaid contention Mr. Mahapatra has placed reliance on three several judgments delivered by the Hon'ble Supreme Court and an unreported judgment passed by the Division Bench of this Court.

13. I may, however, note that from the perusal of statements of articles of charges it would transpire that the charges had been drawn in connection with an incident which had taken place on 12th March, 2015 at around 20.15 hours, which was barely forty-five minutes prior to the petitioner reporting for duty. The time of occurrence of the incident would indicate when the incident occurred, the petitioner would have been on his way to report for duty. As such, in my view, it cannot be said that the same is not in relation to discharge of duties by the petitioner. In view thereof, the judgments relied upon by Mr. Mahapatra, I am afraid, do not assist the petitioner.

14. On the question of proof of the charges, Mr. Mahapatra has taken me not only through the evidence on record but also through the enquiry report. From the aforesaid, it would be apparent and clear that there is no evidence to support, the petitioner having smashed the rear glass of the personal car of Inspector B.N. Halder. On that score I find substance in the

submissions of Mr. Mahapatra. It is true that a Court while exercising its power under Article 226 of the Constitution of India is not called up to re-appreciate evidence, however, if a charge in an enquiry is proved which is based on no evidence, this Court has the power and competence to interfere in such a case.

15. On the question whether the petitioner had misbehaved with the employee of NTPC Ltd., I find that though the complaint dated 13th March, 2015 made by Mr. L.P. Bandupadhyay, had been exhibited, in the enquiry proceeding, Mr. L.P. Bandupadhyay has claimed that the petitioner had not misbehaved with him. Notwithstanding the above it cannot be said that there is no evidence to support the said charge. The Complaint dated 13th March, 2015 is not limited to misbehavior with Mr. L.P. Bandupadhyay. It is well settled that the quality of evidence may not be to the liking of the petitioner but the same does not and cannot empower this Court to conclude that the same is based on no evidence.
16. Insofar as consequential allegation of the petitioner's violent behavior is concerned, I find that in the light of the observations made hereinabove, as regards failure on the part of the respondents to prove the factum of the rear glass of Inspector B.N. Halder's personal car being smashed by the petitioner, the same cannot be sustained.
17. Insofar as charge no. 2 is concerned, although, the petitioner has claimed that the petitioner was prevented from reporting for his duties, I have been able to ascertain from Ms. Alam that the spot, where the petitioner was detained at around 22.00 hours, was 3 kms away from the place of reporting. The same is also not disputed by the learned advocate for petitioner. Having regard to the aforesaid, I do not find that the petitioner was prevented from reporting to the place of duty.

18.I, thus find that charge no. 2 has been proved. Taking an overall view of the matter it would be apparent and clear that though charge no. 2 and part of charge no. 1 has been proved but the entirety of the charge no. 1 has not been proved. I find that the disciplinary authority, by its final order dated 14th July, 2015 having concluded that the charges against the petitioner, *inter alia*, including the charge of smashing the rear glass of B.N.Halder's personal car having been proved, has been pleased to order imposition of penalty of removal from service. In the light of the observations made hereinabove and in absence of proof of the charge of rear glass of Inspector B.N.Halder's personal car being smashed, the penalty imposed does not appear to commensurate with the misconduct proved against the petitioner. The same appears to be shockingly disproportionate.

19.Accordingly, I find that the order of removal from service is not sustainable. At the same time, I must note that it is the disciplinary authority is the best judge to decide on the basis of the proof of charges, the nature of punishment to be inflicted against the delinquent.

20.Having regard to the aforesaid, while setting aside the final order dated 14th July, 2015, I direct the disciplinary authority of the petitioner to take a decision on the punishment to be inflicted on the petitioner on the basis of the proof of charges noted hereinabove. Accordingly, I direct the respondents to reinstate the petitioner in service, the period from the date of removal from service till the date of reinstatement shall be treated as extraordinary leave. The petitioner having not discharged any duties, shall not be entitled to back wages, however, the said question is left open to be decided by the disciplinary authority. The petitioner shall not be entitled to actual pay, however, be entitled to all notional benefits.

21. The disciplinary authority shall take a decision in this matter within a period of 6 weeks from the date of communication of this order. Since the appellate authority and the revisional authority did not take into consideration the aforesaid aspect, I am of the view that the orders passed both the appellate authority and the revisional authority cannot be sustained and the same are accordingly quashed.

22. With the above observations/directions, the writ petition stands disposed of. There shall be no order as to costs.

23. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)

Saswata