

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 14336 of 2012

Ashok Das
Versus
Union of India & Ors.

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

For the Union of India : Mr. Hemonta Coomer Mitter

Heard on : 28th February, 2024

Judgment on : **28th February 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the proceeding, which culminated in the final order dated 24th February, 2011, whereby the petitioner was awarded a minor penalty, *inter alia*, including the appellate and the revisional orders dated 18th April, 2011 and 23rd December 2011 respectively.
2. The petitioner is an employee in the Central Industrial Security Force (hereinafter referred to "CISF"). At the material point of time he was posted at the CISF Unit, Kolkata Port Trust, when he was served with a memorandum of charge under Rule 37 of the CISF Rules 2001

(hereinafter referred to as the said Rules). The statement of allegations as appearing from the translated copy of the memorandum of charge dated 7th February, 2011, calling upon the petitioner to make a representation within 10 days from the date of receipt of the said memorandum, is extracted hereinbelow: -

Statement of allegation under rule 37 of CISF Rules 2001 against No.904490833 constable Ashok Das of CISF Unit, KoPT, Kolkata, A Coy.

That No.904490833 Constable Ashok Das of CISF Unit, KoPT, Kolkata, A Coy, was detailed for duties from 0500 hrs to 1300 hrs on 27.01.2011 at KPD – II Gate No.13 along with ASI/Exec S K Baskey, HC/GD Md Giasuddin and Constable Hare Krishna. During the surprise area checking from 1130 hrs to 1230 hrs by Shri R K Vaish, Deputy Commandant, Inspector/Exec. Kishor Kumar, (Coy commander a Coy), Sub-Inspector/Exec. A K Biswas (Coy 21/C) , and Constable D Majhi (CIW), an amount of Rs.150/- was found wrapped in old DDP paper behind the wall of Coy Office, near KPD Gate No.2, which exhibits collection of illegal money by the on duty personnel in the Gate. The above act is tantamount to violation of the Order, negligence on duty, irresponsible and discipline act. Which is not expected from a disciplined member of the Armed Force like CISF. Hence the charge.

3. The petitioner had duly responded to the said memorandum by a communication in writing dated 16th February, 2011, denying all

material allegations therein. The said proceeding was, however, finally disposed of by a final order/report dated 24th February, 2011 whereby the Assistant Commandant upon arriving at a finding that money was illegally collected by the members of the force, the charge having been established and the petitioner having been found guilty of the allegations levelled against him, had imposed a penalty of stoppage of one increment for one (1) year which will not have the effect on his pension.

4. Although, the petitioner had preferred a statutory appeal, the same was, however, rejected by an order dated 18th April, 2011. The petitioner had thereafter filed a revisional application. The revisional authority also did not interfere with the order passed by the disciplinary authority or the appellate authority.

5. Challenging the aforesaid orders and the disciplinary proceeding, the present writ petition has been filed.

6. Mr. Mahapatra, learned advocate representing the petitioner by drawing attention of this Court to the memorandum of charge submits that a serious allegation of illegal gratification has been levelled against the petitioner. Although, the petitioner had duly responded to the memorandum of charge by denying all material allegations, the respondents without holding a proper enquiry had concluded that the charge levelled against the petitioner had been proved. It is submitted that even from the final order it would not appear that there is any proof of the petitioner taking illegal gratification. There is no proof of

any document as regards the factum of receipt of such illegal gratification and having regard to the same, no inference can be drawn that the petitioner was involved in accepting illegal gratification on the basis of suspicion, in absence of any proof. In support of his aforesaid contention, he has relied on a judgment delivered by the Hon'ble Supreme Court in the case of **Commissioner of Police, Delhi & Ors. vs. Jai Bhagwan** reported in **(2011) 6 SCC 376**. He submits that in the given fact, the final order of punishment including the orders passed by the appellate and the revisional authority cannot be sustained and the same should be set aside and quashed.

7. Mr. Mitter, learned advocate representing the respondents on the other hand submits that admittedly a search operation had taken place and during such operation Rs.150/- was recovered wrapped in three old DDP behind the wall near Coy office. According to Mr. Mitter, the aforesaid is sufficient proof of the fact that the petitioner as a member of the force, who was on duty was involved in collection of illegal money. It is still further submitted that collection of illegal money is a serious misconduct and also constitutes dereliction of duty on his part, the same cannot be taken lightly. In the facts as noted hereinabove, the disciplinary authority in exercise of power conferred on him had imposed a penalty of withholding of one increment for a period of one year without cumulative effect. There is no irregularity in the order passed by the disciplinary authority or by the appellate or the revisional authority and no interference is called for. This Hon'ble

Court, in exercise of its extra-ordinary writ jurisdiction ought not to afford any relief to the petitioner.

8. Since, despite direction the respondents did not file affidavit-in-opposition, I had directed the respondents to produce the records of this case. Mr. Mitter, learned advocate representing the respondents has since, produced the records.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, the parties agree that a very serious charge of illegal gratification has been levelled against the petitioner. Unfortunately, despite such seriousness of charge no regular enquiry was conducted. On the basis of the statement recorded by the petitioner the final order was passed. From a perusal of the final order, it does not appear that the authorities have been able to establish the factum of illegal gratification. There is also no proof of the petitioner receiving the money. What is evident from the aforesaid charge-sheet and the final order is that Rs.150/- was found wrapped in three old DDP. It is, therefore, clear that there is no proof of the factum of the petitioner either demanding money or the petitioner receiving the same. In absence of any proof, the charge of illegal gratification could not have been established against the petitioner. In this context I must note that the Hon'ble Supreme Court in the case of **Commissioner of Police, Delhi & Ors.**(supra), in paragraph 15, 16 and 17 has been inter alia pleased to observe as follows:-

“15. In the present case, although there is some evidence that an amount of Rs.100/- was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination. It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs.100/- to the complainant by way of a link-up.

16. It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The allegation of receiving Rs.100/- as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs.100/- by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs. Ranjan Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs.100/-note nor noted down its number. Mr. Narang was also not examined during the course of departmental proceedings. Non-examination of

the complainant and P.S. Narang during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules 1980.

17. In absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence.”

10. Admittedly, since in this case there is no definite and clear proof supporting the case of the respondents or the finding that the petitioner had accepted illegal gratification, it is difficult to come to a conclusion that the petitioner was involved in taking illegal gratification.

11. Having regard to the aforesaid, I am of the view that the final order dated 24th February 2011 passed by the disciplinary authority is perverse, cannot be sustained and the same should be and is accordingly, set aside and quashed. The appellate authority also did not appropriately take all these aspects into consideration and there is no finding returned by the appellate authority supporting the respondents' case of illegal gratification. Similarly, the revisional authority did not appropriately deal with the matter. Having regard to the aforesaid, the orders passed by the appellate authority as also the revisional authority on 18th April 2011 and 23rd December 2011

respectively also cannot be sustained and the same are accordingly set aside.

12. The petitioner shall be entitled to all consequential benefits.

13. With the above observations/directions the writ petition stands disposed of.

14. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J)