

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 16084 of 2009

**Arun Roy Sarkar
versus
The Union of India & Ors.**

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

For the respondents : Ms. Dipika Sarkar
Ms. Shreya Deashi

Heard on : 16th January, 2024

Judgment on : **16th January, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging not only the final order of dismissal dated 10th December, 2004, but the order passed by the Appellate Authority dated 3rd October, 2005 as also the order passed by the Revisional Authority dated 7th April, 2009.
2. The petitioner was employed in the Central Industrial Security Force (in short, "CISF") and was initially appointed as a Constable. After successfully completion of his basic training and

after discharging his duties in various units of CISF, he was selected as Head Constable (Driver) and had been performing his duties as the Head Constable (Driver).

3. It is the petitioner's contention that until he was posted on Subansiri Unit he had no issue with his senior. Unfortunately, in the aforesaid unit, the Deputy Commandant by misusing his power had started harassing the petitioner. The petitioner was inflicted with a penalty of seven days pay cut. However, at the intervention of the Inspector General of the unit, he was transferred to CISF unit of ONGC, Tripura.
4. The petitioner contends that the Commandant of the Agartala Unit, where he was transferred, behaved indifferently with the petitioner. The petitioner had succumbed to the extreme mental pressure exerted by the said Commandant and had tendered his resignation vide letter dated 30th September, 2003. However, before such resignation letter was accepted by the respondents, the petitioner had applied by a communication in writing dated 16th October, 2003, for withdrawal of the said resignation.
5. Records reveal that the petitioner claims that he was driven away by the Commandant of the unit from the campus where the petitioner was residing and ultimately, was compelled to move the Hon'ble High Court at Gauhati, Agartala Bench. In the interregnum, however, a memorandum of charge dated 28th April/3rd May, 2004 was issued on the petitioner. The said

charge-sheet ultimately culminated in the final order of removal from service dated 10th December, 2004 whereby, a punishment of removal from service was inflicted on the petitioner.

6. Challenging the aforesaid order of removal from service, the petitioner had preferred a statutory appeal. The Appellate Authority by a communication in writing dated 3rd October, 2005 was, *inter alia*, pleased to reject the same as being time-barred. Although, a revisional application was filed by the petitioner, by an order dated 4th July, 2006, the said revisional application met with the same fate, as being time-barred.
7. At the intervention of a Coordinate Bench of this Court, the Inspector General of the Force was directed to exercise his revisional power for examining the validity, legality and/or propriety of the order passed by his subordinate in respect of the disciplinary proceeding initiated against the petitioner and to pass an appropriate order.
8. Pursuant to the aforesaid, by an order dated 7th April, 2009, the Revisional Authority by passing a detailed reasoned order was, *inter alia*, pleased to hold that the Disciplinary Authority had passed the final order after considering all aspects of the matter and the Appellate Authority had rightly rejected the appeal. The penalty awarded by the Disciplinary Authority was held to commensurate with the gravity of proven act of misconduct and the Revisional Authority having not found any mitigating

circumstances to interfere with the order dated 10th December, 2004 passed by the Disciplinary Authority for good and sufficient reasons, rejected the said revisional application.

9. Being aggrieved, the present writ petition has been filed.
10. Mr. Mahapatra, learned advocate representing the petitioner at the outset files the affidavit in reply in Court today, which is taken on record. While acknowledging that the petitioner did not participate in the disciplinary proceeding has, however, called in question the legality and/or validity of the disciplinary proceeding, including the issuance of memorandum of charge no.2 against the petitioner. By referring to the memorandum of charge dated 28th April/3rd May, 2004, it is submitted that the Disciplinary Authority could not have included the charge no.2 in the article of charges as it related to previous misconduct. By referring to the proviso to Section 18 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as the “said Act”), it is submitted that despite the Act specifically provided that no person shall be punished twice for the same offence, the charge no.2 had been framed. Based on the aforesaid charge no.2, the Disciplinary Authority had taken a final decision and had passed the order inflicting punishment of removal from service. The aforesaid has the effect of vitiating not only the charge-sheet but also the consequent order of punishment. In support of his aforesaid contention he has placed reliance on an

unreported judgment delivered by a Coordinate Bench on 17th June, 2004 in the case of ***Haradhan Gorai v. Union of India & Ors.***, in **WP No. 11659 (W) of 2002.**

11. Although, Mr. Mahapatra had subsequently tried to canvass before this Court that the Disciplinary Authority in the given facts ought not to have proceeded against the petitioner at all by placing reliance on the statements made in the writ petition, he, however, could not subsequently identify any contemporaneous document so as to justify the same.
12. Ms. Sarkar, learned advocate representing the respondents at the very outset submits that although, an affidavit-in-opposition had been affirmed and a copy thereof, had been supplied to the writ petitioner, however, the same is not found in the records. As such she prays that leave may be granted to the respondents to rely on a copy of the affidavit-in-opposition. Accordingly, as prayed for, let a copy of the affidavit-in-opposition, as made over by Ms. Sarkar in Court today, be retained with the records.
13. Ms. Sarkar, by placing the records of the Disciplinary Proceeding which she has produced in Court today, *inter alia*, including the representation made by the petitioner dated 27th May, 2004 submits that the writ petitioner was well-aware with regard to not only the charge-sheet but the enquiry proceeding as well. Despite having notice and knowledge of the charge-sheet and the consequential inquiry proceeding, the petitioner did not

appear before the enquiry officer to defend the same. The enquiry proceeding was concluded *ex parte* against the petitioner. Even after the enquiry order was passed, no steps were taken by the petitioner to challenge the said final order before the Appellate Authority within the prescribed period of limitation. The Appellate Authority had rightly rejected the appeal. By referring to the revisional order dated 7th April, 2009, it is submitted that the Revisional Authority by a detailed order, pursuant to direction issued by a Coordinate Bench of this Court found that there is no scope for interference and accordingly had dismissed the same. She submits that in the given facts, no interference is called for.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the arguments advanced, it would appear that the petitioner challenges the final order including the disciplinary proceeding on two-fold grounds; firstly, that the respondent no.6, being the Disciplinary Authority himself, could not have proceeded with the disciplinary proceeding against the petitioner since, he was instrumental in driving away the petitioner from the unit and, secondly, not only the charge-sheet but the order of punishment stands vitiated since, charge no.2 is a repetition of previous charge for which the petitioner has already suffered a punishment.

15. Insofar as the first ground is concerned, I find that there is no contemporaneous document for the petitioner to sustain the same. The allegation made by the petitioner appears to be an afterthought and as such I refuse to accept such contention of Mr. Mahapatra. However, insofar as the second contention of petitioner is concerned, I find that the proviso to Section 18 of the said Act provides that no person shall be punished twice for the same offence. From a perusal of the memorandum of charge dated 28th April/3rd May, 2004, it would appear that the charge no.2 is in respect of a previous punishment suffered by the petitioner. To morefully appreciate the aforesaid article of charges, the article of charges no. 1 and 2 are extracted hereinbelow:-

Article of Charge No.I

That No. 944652217 Head Constable/Driver Arun Roy Sarkar of CISF Unit ONGC Tripura left the unit lines HQrs (Sidhi Ashram Camp) on 1.10.2003 at his own. Thereafter, he was issued with 10(ten) call up notices at his home address vide Call up notice No. E-42014/CISF/ONGC(T)/Adm.II/03/6890 dated 26.11.2003, No. E-24014/CISF/ONGC(T)/Adm.II/03/7163 dated 6.12.2003, No. E-24018/CISF/ONGC(T)/Doc/03/7325 dated 15.12.2003, No. E-24018/CISF/ONGC(T)/Doc/03/7103 dated 4.12.2003, No. E-24018/CISF/ONGC(T)/Doc/03/7710 dated 30.12.2003, No. E-24018/CISF/ONGC(T)/Doc/04/181 dated 08.01.2004, No. E-24018/CISF/ONGC(T)/

Doc/04/712 dated 1.2.2004, No. E-24018/CISF/ONGC(T)/ Doc/04/876 dated 10.2.2004, No. E-24018/CISF/ONGC(T)/ Doc/04/1361 dated 26.2.2004, and No. E-24014/CISF/ONGC(T)/ Doc/04/2120 dated 26.3.2004 directing to report for duty forthwith but he individual did not report for duty and remained absent from duty/unit lines till date at his own. This act on the part of No.944652217 Head Constable/Driver Arun Roy Sarkar shows gross misconduct, indiscipline and unbecoming of a member of disciplined force like CISF. Hence the charge.

Article of Charge No.II

That No.944652217 Head Constable (Driver) Arun Roy Sarkar of CISF Unit ONGC Tripura was appointed in CISF on 4.7.1994 . As per his service records during his service in CISF he has been awarded 02 (two) punishments for committing offence of a) misbehaviour with unit Commander at CISF Unit NHPCL Subansiri and b) quarrel and assault on Constable D. Hazarika of CISF Unit NHPCL Subansiri at unit lines. He was offered opportunities to improve upon himself by awarding lenient punishment but failed to do so and thereby proving himself to be incorrigible. Such acts of indiscipline set a wrong precedent for other force personnel in the unit. The act on the Part of No.944652217 Head Constable/Driver Arun Roy Sarkar shows habitual offender, misconduct, indiscipline and thereby unbecoming of a member of an Armed Force like CISF. Hence the charge.”

16. Having read the aforesaid charge no.2 and having considered the proviso to Section 18 of the said Act, I find that there is no scope for repeating the charge in respect whereof, a punishment has already been inflicted. The same could not, in my view, form the basis for a subsequent enquiry. The aforesaid finds support from the unreported judgment relied on by Mr. Mahaparta in the case of **Haradhan Gorai** (*supra*). It, however, appears that the entire proceeding was conducted *ex parte*. Although, Ms. Sarkar, learned advocate representing the respondents, has strenuously argued that the petitioner having not raised the question of maintainability of the disciplinary proceeding on the ground of repetition of charge is not entitled to raise the same for the first time before this Court, I am afraid and unable to accept the same.

17. Framing of charge contrary to the statutory provision not only goes to the very root of the matter but is a point of law which in my view can be raised even for the first time before this Court.

18. Coming to the final order passed by the Disciplinary Authority, I find that the Disciplinary Authority by taking note of both the charges, *inter alia*, including proof of charge no.2 and by holding that despite the punishment being awarded to the petitioner, he had failed to improve himself and ultimately, passed the final order inflicting punishment of removal from service. Having regard to the above, in my view the final order of punishment

cannot be sustained and the same is accordingly set aside. As a sequel thereto, the orders passed by the Appellate Authority and by the Revisional Authority are also set aside.

19. However, having regard to the fact that charge no.1 stands proved, I am of the view that the respondents ought to be afforded an opportunity to reconsider the quantum of punishment inflicted on the petitioner on the basis of the findings noted hereinabove. Although, I was of the view that the present Commandant of the concerned unit should reconsider the punishment, however, since, Ms. Sarkar submits that at present there is no unit in Tripura as it has been dissolved and since, according to her the unit has been shifted to the Group Headquarter Gauhati, I direct the Commandant Group Headquarter Gauhati to reconsider the quantum of punishment inflicted on the petitioner in the light of the observations made hereinabove.

20. The writ petition to the aforesaid extent succeeds and is accordingly disposed of, without any order as to costs.

21. 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.)