

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 23983 of 2014

R. Kasivelu

-Vs.-

Union of India & Ors.

For the Petitioner : *Mr. Kedareshwar Chakraborty,*

For the C.I.S.F. : *Mr. Uttam Basak.*

Heard on : *24.04.2024*

Judgment on : *26.06.2024*

Partha Sarathi Chatterjee, J.:-

Prelude:

1. The legal conflict revolving around the present writ petition originated from an incident of scuffling with a colleague, which eventually entailed the petitioner's removal from service.

Facts:

2. To appreciate the conflict, the necessitous facts, as unfurled by the parties in their pleadings, need to be noticed.
3. The petitioner joined the Central Industrial Security Force (in short, CISF) as Constable (no. 831550107 HC/GD) on 13.09.1983. Subsequently, he was promoted to the post of Head Constable and posted in CISF Unit at ONGC Nazira, Assam.
4. In 2003, the petitioner was served with a Charge Memorandum *vide* dated September 24, 2003, which was issued in terms of the Rule 36 CISF Rules, on the allegation that, on 01.09.2003, while he was posted in SLAA Rig Out of Lakwa Sector, he was involved in a scuffle with a constable namely, Jaibir Singh (no. 834150087) at about 12.25 hours resulting in the constable suffering a head injury and being admitted in ONGC hospital at Sivasagar.
5. The Inspector/Exe. Mr. A. N. Tiwari reported the incident to the Lakwa Sector Control Room which was registered as GDSL no. 28 and 45 dated 01.09.2003.
6. The petitioner submitted his written representation dated 13.10.2003 to the charge memo dated 24.09.2003 denying the allegations levelled against him in the charge memo.
7. *Vide* an order dated 15.10.2003, an Enquiry Officer was appointed to enquire into the allegation and as such, the preliminary enquiry was conducted on 23.10.2003. The deliberation, as made by the petitioner on the allegation was recorded.

8. The petitioner, through his letter dated 2.11.2003 and subsequently, by a representation dated 4.11.2003 requested the Enquiry Officer to allow the petitioner to engage a Defence Representative. The petitioner even produced a consent letter of the proposed defence representative. However, the enquiry officer refused to issue a notice to the proposed defence representative, ultimately, depriving the petitioner of the opportunity to defend himself through a defence representative.
9. The Management produced as many as seven witnesses to bring home the charge. The Inspector/Exe. Mr. A.N. Tiwary, S.I./Exe. P.L Pareek, HC/GD, B.A. Choudhury, Constable R.N.Yadav and HC/GD. S.R. Nair testified as prosecution witnesses as PW-1, PW-2, PW-4, PW-5 and PW-7 respectively providing an account of the incident even though they were not present at the spot at the material point of time. The Constable, Mr. Singh, the alleged victim, who deposed as PW-3, however, supported the allegation but the PW-6, HC/GD, Dilip Dutta did not make any statement in support of the allegation.
10. The finding of the enquiry officer dated 17.02.2004 was communicated to the petitioner by the respondent no. 5 *vide* his letter dated 19.02.2004.
11. The petitioner making an application dated 05.03.2004 sought for additional time for ten days to submit his response to the finding of the enquiry officer but turning blind eye to the petitioner's application, an order of removal dated 08.03.2004 was served upon the petitioner.
12. The order of punishment was carried in appeal by the petitioner but the appellate authority dismissed the appeal by an order dated 31.05.2004 and

the petitioner presented a petition for revision but the same also suffered dismissal on 10.07.2004.

13. Situated thus, the present writ petition has been instituted to question the legality of the charge-memo, enquiry report, and the order of punishment, the order of the appellant authority and the order passed in revision.

14. The parties have exchanged their affidavits, as directed.

Submissions:

15. Mr. Chakraborty, learned advocate, advanced his argument in support of the writ petition. The main thrust of his argument is that the disciplinary proceeding was conducted and concluded in a mechanical manner, with a pre-conceived notion in sheer violation of the Rules in vogue and the principles of natural justice. His next line of argument was without affording any opportunity to the petitioner to engage his defence assistance, the CISF Rules have been violated, and the hearsay evidence have been used to come to a finding and a shockingly disproportionate punishment has been imposed.

16. He elaborated his argument contending that the petitioner, who happened to be a Head Constable, made applications seeking permission to engage a defence assistance to defend himself. However, the enquiry officer left the applications unattended, in derogation of the Sub-rule (8) of Rule 36 of the CISF Rules, 2001. He asserted that such omission on the part of the enquiry officer offended the principles of natural justice.

17. He next contended that all documents relied on by the Management had not been provided to the petitioner and according to him, the proceeding

was conducted and concluded in wanton violation of sub-rule (4) and (15) of Rule 36 of CISF Rules.

18. He argued that the petitioner sought for only ten days' time to submit his reply to the enquiry report. However, the respondents were so determined to remove the petitioner from his service that they did not grant this time and thereby, acted to the serious prejudice of the petitioner.
19. Mr. Chakraborty argued that the alleged incident was not related to any official duty of the petitioner. Furthermore, he contended that neither did the alleged victim, Mr. Singh ever make any allegation nor did he set the criminal law in motion by lodging any FIR against the petitioner. However, it was the Inspector/Exe. Mr. Tiwari who set the ball rolling of his own accord by reporting the incident to the control room. He alleged that Mr. Singh attempted to assault the petitioner with a sharp weapon but the Management simply overlooked such fact.
20. He contended that even no FIR had ever been lodged by anyone. He argued that although an allegation of involvement of a scuffling was made against the petitioner but the other employee involved in the scuffling has been allowed to go free which reflects the mind-set of the respondents.
21. It was urged by him that besides the PW-3, no other witnesses was present during the alleged incident. Despite this, the enquiry officer based his conclusion on hear-say evidence. He contended that the enquiry officer incorrectly assumed that the PW-4 had witnessed the incident. Additionally, he asserted that even if it is assumed that the evidence of PW-3 lent support to

the case of the Management, the punishment of removal for one single incident of scuffling was excessively harsh.

22. *Per contra*, Mr. Basak, learned advocate, representing the respondents contended that PW-3, the victim and PW-1, the complainant supported the prosecution case. He asserted that other witnesses corroborated the evidence of the PW-3 and PW-4. Mr. Basak reiterated the established principle that the Court is not empowered to re-evaluate the evidence presented during a departmental inquiry, nor can it function as an appellate body over the determinations made by the disciplinary authority. He asserted that there were no irregularities and/or illegalities in decision-making process. He sought to justify the decision by arguing that such unruly behaviour is unacceptable from a disciplined force. According to him, the punishment cannot be claimed to be shockingly disproportionate.

Analysis:

23. Heard the learned advocates appearing for the respective parties and perused the materials on record.
24. The judicial review is based on illegality, irrationality say, *Wednesbury* unreasonableness and procedural impropriety. The concept of reasonableness is complemented by the doctrine of proportionality. Judicial review of administration actions aims to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. The Article 14 of the Constitution of India mandates fairness in State action. While the scope of judicial review primarily focuses on the decision making process but if a decision is perverse,

irrational, or grossly disproportionate, it falls within the realm of judicial scrutiny.

25. The fundamental principles of fair play in action are directly relevant across the administrative, judicial, and quasi-judicial domains. When an authority undertakes quasi-judicial duties, it must do so fairly, impartially, and without bias or pre-conceived notions. This principle also extends to departmental inquiries. If the Court finds that authority has acted arbitrarily with a closed mind and, in violation of rules of natural justice or statutory rules, it can broaden the scope of judicial review to ensure justice is served.
26. The provisions of Section 8 of the CISF Act has empowered a supervisory officer to remove any enrolled member of the forces while, the Rule 36 of the CISF rules prescribe the procedure to be followed in imposing major penalties on such enrolled member of the forces.
27. For clarity and convenience, it would be apt to reproduce the provisions of Section 8 of CISF Act and the relevant provisions of Rule 36 of CISF Rules, which prescribe for shedding light on the issue addressed in the writ petition, which are as follows:

“8. Dismissal, removal, etc., of members of the Force :-
Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may -
(i) dismiss, remove, order for compulsory retirement of or reduce in rank any enrolled members of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or
(ii) award any one or more of the following punishments to

any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:-

- (a) fine to any amount not exceeding seven days pay or reduction in pay scale;*
- (b) drill, extra guard, fatigue or other duty;*
- (c) removal from any office of distinction or deprivation of any special emolument.*
- 5 (d) withholding of increment of pay with or without cumulative effect;*
- (e) withholding of promotion;*
- (f) censure”.*

Rule 36. Procedure for imposing major penalties:

- (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850), no order imposing on an enrolled member of the Force any of the penalties as specified in clauses (i) to (v) of rule 34 shall be made except after inquiries held, as far as may be, in the manner hereinafter provided.*
- (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an enrolled member of the Force, it may itself inquire into, or appoint an authority to inquire into the truth thereof.*

.....

.....

(8)(a) The enrolled member of the Force so charged may be permitted by the inquiring authority to present his case with the assistance of any other Member of the Force posted at the place of inquiry. He will give three choices for his defence

assistance and the controlling officer will depute any one of the three indicated by him;
 (b) The member of the Force can not have more than three cases in hand in which he is rendering defence assistance. However, the controlling authority of such persons who is sought to be engaged may refuse permission for his working as defence assistant if the public interest so demands.

(19) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -
 (a) the article of charge and the statement of the imputations of misconduct or misbehaviour;
 (b) the defence of the enrolled member in respect of each article of charge;
 (c) an assessment of the evidence in respect of each article of charge;
 (d) the findings on each article of charge and reasons thereof-
 Explanation - If, in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original article of the charge, it may record its findings on such article of charge; Provided that the findings on such article of charge shall not be recorded unless the enrolled member has either admitted the fact on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

.....

Rule 21 (i)

Rule 21 (ii) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record

its own findings on such charge if the evidence on record is sufficient for the purpose.

(iii) The disciplinary authority shall forward or cause to be forwarded a copy of the report or the enquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the Inquiring Authority, a copy of the report or the Inquiring Authority together with the reasons for disagreement, if any and record its own findings on any article of charge to the enrolled member of the Force who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days irrespective of whether the report is favourable or not to the enrolled member of the Force.

(iv) The disciplinary authority shall consider the representation, if any, submitted by the enrolled member of the Force before proceeding further in the manner as provided in sub-rule 22 of Rule 36.

(22)(i).....

(ii) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the course of inquiry, is of the opinion that any of the major penalties specified in rule 34 should be imposed on the enrolled member, it shall make an order imposing such penalties and it shall not be necessary to give the enrolled member any opportunity of making representation on the penalty proposed to be imposed”.

28. Now, let me focus on Mr. Chakraborty's argument, which centres on the fact that the petitioner was not afforded the opportunity to engage his preferred defence assistance.
29. Record reveals that the petitioner was posted at CISF Unit, ONGC Nazira. At the stage of recording his plea, he abjured his guilt and sought 15 days' time to engage his defence assistance before the enquiry officer. However, the enquiry officer granted 10 days. The petitioner proposed the name of an employee to serve as his defence assistant but the suggested employee was stationed in CISF Unit, ONGC Tripura. The matter was taken up with Commandant, CISF Unit, ONGC Tripura who initially declined to send that employee to act as defence assistant of charged employee due to administrative reason and public interest.
30. However, the enquiry report indicates that ultimately, the authority permitted the suggested employee to act as defence assistance of the petitioner but that employee did not appear on 17.11.2003 and 20.11.2003. Thereafter, the petitioner did not provide the name or names of any alternative employees for his defence assistance citing a reason that no employee from the place of inquiry intended to act as his defence assistance.
31. Thereafter, the petitioner took station leave permission to attend his sister's wedding, and after returning from leave, he participated in the inquiry.
32. A bare perusal of the Sub-Rule 8 of Rule 36 of CISF Rules, 2001 empowers a charged employee to present his case with the assistance of any other Member of the Force posted at the place of inquiry. The charged

employee shall give three choices for his defence assistance and the controlling authority will depute any one of three indicated by him.

33. Although the controlling authority was not obligated to allow the charged employee to engage any specific employee as his defence assistance, they nonetheless discussed the matter with the controlling authority of the suggested employee. However, ultimately, permission was granted to that employee to defend the petitioner during the inquiry. Unfortunately, the suggested employee did not appear on the scheduled dates to act as the petitioner's defence assistance. However, even in light of this circumstance, the petitioner did not furnish any alternative name or names of employee or employees from the place of inquiry. This failure cannot be ascribed to the disciplinary authority.

34. I may usefully refer a decision, reported at (1997) 9 SCC 1 (Major General Inderjit Kumar v. Union of India) wherein the Hon'ble Supreme Court ruled that if, in spite of several opportunities being granted, the delinquent does not appoint a defending officer he cannot turn around and complain of violation of natural justice. Therefore, such argument of Mr. Chakraborty lacks merit.

35. In the writ petition, the petitioner claimed that the petitioner was not given a chance to reply to the findings presented by the inquiry officer. According to the record, 10 days were initially provided to him for this purpose, but the petitioner asked for an extra 15 days to prepare their response. However, the statutory rules do not require the disciplinary authority to extend this additional time. Consequently, I do not find any justification to conclude that the authority breached the statutory rules.

36. Mr. Chakraborty argued that the findings of the enquiry officer were based on hearsay evidence. As observed earlier, the judicial review should focus on the decision-making process. It is trite law that the Court exercising the power of judicial review shall not be involved in re-evaluating evidence unless there's clear evidence of perversity or a lack of evidence. In the case at hand, the Court can take judicial notice that PW-3 recounted the sequence of events, and medical documents corroborated his testimony. It's worth noting that credible sole evidence can indeed form the basis for a conclusion.
37. Mr. Chakraborty argued that the authority acted unreasonably and impartially by not taking action against the other employee involved in the incident of scuffling. He further argued that the punishment imposed is shockingly disproportionate.
38. A scuffle typically is a physical altercation between at least two or more persons. It is often characterised by pushing, shoving and other physical contact usually, in a brief and disorderly manner. The term "scuffle" implies a level of physical altercation or conflict between individuals. Therefore, when the term 'scuffle' is referred to in a legal discussion, it is assumed that more than one persons were involved in the incident.
39. In the present case, one employee has been punished for an incident of scuffle, while the other was not held accountable. It is unreasonable to assume that just because one employee sustained an injury, the other should bear full responsibility for the entire incident. Basically, no investigation was conducted to uncover the actions of the other employee or determine who initiated the aggression.

40. The incident occurred suddenly and was not a premeditated act, and the petitioner's actions cannot be considered unprovoked. In order to demonstrate impartiality and equality among all employees, the authority could have taken action against the other employee involved as well. However, it cannot be concluded that for this omission, the entire departmental inquiry conducted against the petitioner stood vitiated.
41. The imposition of punishment falls within the purview of the disciplinary authority. The appellate authority or the authority handling the petition for revision can intervene in the severity of the punishment. However, ordinarily, such power is not available to the Court. However, a limited scope of judicial review is permissible if it's determined that the punishment does not align or is not commensurate with the proven misconduct or if the punishment is shockingly disproportionate, egregiously illogical, or irrational, indicating a lack of good faith and violating Article 14 of the Constitution of India.
42. As mentioned previously, the incident was not a premeditated action by the petitioner. It was a sudden outburst or the result of a sudden quarrel. Such behaviour cannot be deemed unprovoked. In service jurisprudence, dismissal from service is often referred to as "capital punishment," and similarly, removal from service carries a lesser degree of severity than capital punishment.
43. The consequences of a punishment like dismissal or removal from service extend beyond the individual employee to their dependents who depend on his earning. Those entrusted with the power to administer

punishment must consider that such actions entail the deprivation of fundamental or other rights of the wrongdoer. Therefore, punishment must be proportionate, justified, and in line with the gravity of the offense. Before resorting to the deterrent theory of punishment and imposing the severest penalties, the administering authority must be convinced that the wrongdoer is incorrigible and beyond the influence of rehabilitative measures. Furthermore, they must provide reasoned justification for imposing the harshest punishment.

44. The order of punishment (Annexure-P/9 to the writ petition) demonstrates that the disciplinary authority awarded punishment of removal from service in the following words :

“The undersigned, therefore, considering the gravity of the offence committed by the charged official and in exercise of power conferred under rule 32 read in conjunction with schedule-I and rule 34(ii) of Rules 2001 orders that no. 83150107 HC(GD) R. Kasivelu is Removed from Service with immediate effect.”

45. Therefore, it is evident that the authority did not provide any specific rationale for selecting such a severe punishment for the proven misconduct of a single incident. Based on these grounds, I believe that the punishment is excessively severe and the same is shockingly disproportionate, outrageous in defiance of logic. Such issue has been glossed over by both the appellate authority and the authority dealing with the petition for revision. The records indicate that the petitioner has already attained the age of superannuation. As such, notional benefits may be awarded to him so that he can find some respite in the December of his life.

Order:

46. In this context, the decisions made in appeal and revision are set aside. The punishment of dismissal imposed on the petitioner was far too harsh in the facts and circumstances of the case and to put a quietus to the matter, it would be appropriate to direct substitution of the punishment of dismissal. As such, the order of dismissal from service is set aside.
47. In such conspectus, I am of the view that the punishment of reduction to a grade lower than what the petitioner was holding at the time he was punished, be imposed on him since in a case where the original punishment is set aside, only to be substituted by a new punishment, pursuant to an order of judicial review, then ordinarily such substituted punishment would relate back to the date of original punishment.
48. However, it would not be proper to grant back-wages to the petitioner for the period during which he has not worked. But, as the petitioner was deprived of the employer's contribution towards the Provident Fund, the payment of gratuity, pension and the leave encashment because his dismissal of services, therefore, to serve the ends of justice I direct that the petitioner be provided notionally the benefit of continuity of service not for the payment of back-wages for the period that he did not serve the force, but for the purpose of retirement benefits like employer's contribution towards provident fund, payment of gratuity, pension and leave encashment.
49. For the aforesaid purpose the petitioner would be treated to be in service on a grade lower than what he held, with effect from the date he was dismissed till he attained the age of superannuation. The entire exercise of payment of retiral dues, as indicated above will be carried out by the

respondents within a period of two months from the date of communication of this order.

50. With these observations and order, the present writ petition is, thus, disposed of, however, without any order as to the costs.
51. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
52. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)