

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 29637 of 2016

Pinku Sarkar.

VS

Union of India & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Ms. Pampa Dey (Dhabal),

Ms. Sangita Banerjee,

----- for the petitioner.

Mr. Pulakesh Banerjee,

----- for the respondents.

Hearing concluded on :

01.04.2024

Judgment On :

12.04.2024

M.V. Muralidaran, J.:

Heard Ms.Pampa Dey Dhabal, learned counsel for the petitioner and Mr. Pulakesh Banerjee, learned counsel for the respondents.

2. This writ petition has been filed by the petitioner to quash the orders of the disciplinary authority dated 25.8.2015; appellate authority dated 2.1.2016 and the revisional authority dated 2.8.2016.

3. The petitioner who is employed in the Central Industrial Security Force (CISF) was issued with a charge memo dated 24.7.2015 under Rule 37 of the CISF Rules, 2001 alleging that the bill submitted by him was found inconsistent and not in order. Not satisfied with the reply submitted by the petitioner to the charge memo, the disciplinary authority passed the final order dated 25.8.2015 inflicting the penalty of withholding of one increment for a period of three years. Aggrieved by the order of the disciplinary authority, the petitioner has preferred an appeal before the appellate authority and the appellate authority under order dated 2.1.2016 rejected the appeal of the petitioner. Being

aggrieved by the order of the appellate authority, the petitioner has preferred a revision petition on 2.6.2016. Under the order dated 2.8.2016, the revisional authority rejected the revision petition. Challenging all these three orders, the petitioner has filed the present writ petition.

4. Assailing the impugned orders, the learned counsel for the petitioner submitted that the charge memo is vague and illogical and the petitioner is innocent and that the allegation levelled against him is not true. She would submit that the charge memo allege that the bills were found inconsistent and not in order, which is vague allegation, inasmuch as the charge memo failed to disclose as to what are the inconsistency and why the bills are not in order. Further, the charge memo did not disclose any complainant to initiate proceedings.

5. The learned counsel further submitted that there is no evidence to sustain the allegation and, as such, the penalty has been inflicted without any enquiry. In the impugned order passed by the disciplinary authority, new allegation has been leveled that in the register of the hotel, the name of the petitioner has not been entered. That was not a charge and that there was no opportunity to defend the same. In fact,

the photocopy of the register was filed by the petitioner which reveals that the name of the petitioner is available in the register.

6. The learned counsel for the petitioner urged that the respondents have proceeded in the matter on the basis of doubt, surmise and conjecture. All the three authorities have proceeded behind the back of the petitioner. The respondent authorities have proceeded bias and arbitrarily, violating the principles of natural justice and, in fact, the petitioner was denied reasonable opportunity to defend. The purported penalty has been inflicted without any good and sufficient reason. Arguing so, the learned counsel for the petitioner prayed for setting the impugned orders and to direct the respondents to pay the petitioner all the arrear salaries and allowance to which he would have been entitled to had there not been the purported penalty.

7. Per contra, the learned counsel for the respondents submitted that the petitioner was issued with charge memo on 24.7.2015 and the reply submitted by him was duly considered by the disciplinary authority and after coming to a conclusion that the reply is unsatisfactory, the petitioner was awarded the penalty of withholding of one increment for a period of three years which will not have the effect of postponing his

future increments of pay. The petitioner exercised right for filing appeal and the appellate authority duly considered the appeal and rejected the same on 2.1.2016 in accordance with law. The petitioner, thereafter, filed revision petition. The revisional authority duly considered the same and found it to be devoid of merit and rejected the same vide order dated 2.8.2016.

8. The learned counsel for the respondents further submitted that prior to the punishment in question, the petitioner was punished on four occasions. As far as the present punishment is concerned, the learned counsel submitted that the petitioner very cleverly managed to get his name entered into the booking registers of both the hotels to evade his guilt. Moreover, in order to substantiate his defence, managed to get the statements of both the hotel managers which are in same handwriting and the contents of the statements are almost the same.

9. The learned counsel next submitted that the departmental proceedings was drawn against the petitioner and the same was also completed duly by following the extant rules and/or law and the punishment is also in commensuration with the gravity of offence committed by him. The petitioner was given ample opportunities to

defend his case at every stage by adhering to the principles of natural justice. Thus, a prayer has been made to dismiss the writ petition.

10. This Court considered the rival submissions and also perused the materials available on record.

11. The petitioner is aggrieved by the impugned order of penalty imposed upon him by the disciplinary authority. The appeal and the revision preferred by the petitioner are dismissed. The petitioner challenges the same in the present writ petition.

12. The case of the respondents is that the petitioner was detailed for temporary duty at CISF NEZ, Hqrs, Kolkata for recruitment duty on 19.7.2014. After completion of the said duty, the petitioner submitted TA/DA claim on 18.12.2014. The Commandant, CISF Unit FSTPP Farakka forwarded the above claim to the DIG, CISF NEZ for verification on 15.5.2015. Inspector/Exe Devender Kumar of NEZ, Hqrs. Kolkata was detailed to verify the above claim from concerned hotels. The said Inspector on verification submitted his report dated 9.6.2015 stating that the name of the petitioner was not found in the register of RICKO Guest House for the period from 31.8.2014 to 6.9.2014 for Rs.2,850/- and

MAITY Villa Guest House for the period from 21.10.2014 to 30.10.2014 for Rs.4,275/-, whereas the petitioner claimed the aforesaid amounts for his stay during the said period respectively. Further case of the respondents is that on receipt of the verification report, the disciplinary authority conducted a preliminary enquiry by detailing Sub-Inspector A. K. Singh of CISF Unit, FSTPP, Farakka. The said Sub Inspector of Police submitted his report dated 11.5.2015. According to the respondents, the said Sub Inspector of Police failed to reach a conclusion as the petitioner had succeeded to get his name entered into the registers of both the hotels as well as to manage the statements from the hotel managers in his favour. Finding that the petitioner had manipulated the registers of both the hotels to evade his guilt, the disciplinary authority after going through the records, came to the conclusion that the petitioner was guilty of the charge.

13. The Article of Charge framed against the petitioner reads thus:

"An act of misconduct in which No.993610583 ASI/Clk Pinku Sarkar of this unit submitted TA/DA Claim duly enclosing hotel bills towards his stay at Kolkata. Out of which Bill No.955 dated 06.09.2014 for Rs.2850/- of RICKO Guest House as well as Bill No.292 dated 30.10.2014 for Rs.4275/-- of MAITY VILLA Guest

House was found inconsistent and not in order on being verified through NEZ CISF HQ, Kolkata.

Such act on the part of No.993610583 ASI/Clk Pinku Sarkar tantamount to an attempt to mis-appropriation of govt. fund for personal benefit which aggregates to gross indiscipline and unbecoming member of an armed force of the union i.e. CISF. Hence, the charge."

14. The petitioner submitted his reply, *inter alia*, stating that he was a customer of the said hotels and, as such, paid the amount of Rs.2850/- (RICKO Guest House) as well as Rs.4275/- (MAITY VILLA Guest House) and he took the original bills from the concerned hotels according to their norms and rules during his duty at Kolkata. Hence, no question has arisen to an attempt to misappropriate the government fund for personal benefit which aggregates to gross indiscipline and unbecoming member of an armed force i.e. CISF and the charge framed against the petitioner is false and concocted.

15. The disciplinary authority passed the impugned final order holding as under:

"05. Therefore, I the undersigned, considering all aspects and in exercise of powers conferred by Rule-

32 read with Schedule-I and in conjunction with Rule-34(ix) of CISF Rules, 2001 hereby impose the punishment of "withholding of one increment for a period of 03 (three) years which will not have the effect of postponing his future increment of pay to No.993610583 ASI/Clk Pinku Sarkar."

16. The whole impugned order of the disciplinary authority refer to the article of charge and the reply averments of the petitioner. After stating so, the disciplinary authority came to a conclusion that the charged official has managed false bills for fraudulently claiming his TA/DA for his stay at Kolkata which proves his *mala fide* intention. Therefore, the charged official is guilty of the charge leveled against him. Accordingly, inflicted the punishment stated supra. On a thorough reading of the order, this Court finds that there is no whisper about the personal hearing given to the petitioner before inflicting the punishment. No enquiry was conducted. That apart, no complainant for the charge levelled against the petitioner.

17. A perusal of the charge memo would clearly show that the charge memo failed to disclose as to what the inconsistencies are and why the bills are not in order. When the respondents allege that the bills were found inconsistent and not in order on being verified through NEZ

CISF HQ, Kolkata, it is their bounden duty to prove the same in the manner known to law. However, in the instant case, nothing on record to show that proper enquiry was conducted and concerned persons were examined before arriving at a conclusion that the petitioner has managed false bills for fraudulently claiming his TA/DA for his stay at Kolkata. Nothing on record to show that how can the disciplinary authority crystal clear that the unproven two bills are false.

18. It is trite that there must be ever present to the mind of men the fact that our laws of procedure are grounded on the principle of natural justice which require that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings which affect their lives and property should not continue in their absence and that they should not be precluded from participating in such proceedings.

19. As rightly argued by the learned counsel for the petitioner, "*inconsistent*" and "*not in order*" cannot be an attempt of misappropriation. Assuming but not admitting that there was inconsistency in the bills, there was no scope for imposing the impugned punishment. On the other hand, the authority may pass or may not pass

the TA/DA claim submitted by the petitioner. Thus, the argument of the learned counsel for the petitioner that the disciplinary authority has proceeded bias and arbitrarily by violating the principles of natural justice passed the final impugned order merits acceptance.

20. Aggrieved by the order of the disciplinary authority, the petitioner has filed an appeal on 3.10.2015 to the Commandant, CISF Unit, FSTPP, Farakka. The appellate authority, under order dated 2.1.2016, rejected the appeal. The operative portion of the appellate order reads thus:

"05. Therefore, in view of records available in the case file, it is observed that the appellant has failed to bring out any new and convincing arguments or cogent reasons before the appellant authority, which warrants reconsideration of his appeal. Moreover the disciplinary authority has elaborately discussed/countered the pleas undertaken by the appellant while issuing final order. I, therefore, find no mitigating substances to interfere with the Final Order No. No.V-15015/Disc/Min-15/(PS)/FSTPP(F)/2015-35 dated 24.08.2015 passed by the Disciplinary Authority. The appeal petition dated 03.10.2015 submitted by the appellant is therefore considered and rejected being devoid of any merit either form the point of facts or of law."

21. According to the learned counsel for the respondents, the averments made by the appellant in the appeal are vague, baseless and an afterthought to cover up the misdeed committed by him. The learned counsel for the respondents urged that on being verified Bill No.955, dated 6.9.2015 for Rs.2850/- and Bill No.292 dated 30.10.2015 for Rs.4275/- submitted by the petitioner along with the TA claim were found to be forged.

22. In view of the finding arrived at by this Court that there is no proof produced by the respondents to show that the bills in question are fabricated, the argument of the learned counsel for the respondents that the bills submitted by the petitioner along with TA/DA claim are forged cannot be countenanced.

23. On a perusal of the appellate order, it is seen that no opportunity of hearing was afforded to the petitioner by the appellate authority before passing the order. The appellate authority simply stated that he has gone through the appeal preferred by the appellant, entire records held in the case file vis-à-vis the pleas put forth by the appellant in his appeal petition, reply to charge memorandum and final order dated

25.8.2015. Except stating so, there is no whisper about personal hearing granted to the petitioner.

24. Being aggrieved by the order of the appellate authority, the petitioner has preferred review petition to the Deputy Inspector General, CISF NEZ Hqrds, Kolkatta. By the order dated 2.8.2016, the revisional authority rejected the revision petition holding as under:

"06. Therefore, the disciplinary action for claiming such false bills has rightly been initiated against the petitioner and awarded the penalty, which the petitioner rightly deserved. There is also no material irregularity or miscarriage of justice in this case. The penalty of 'withholding of one increment for a period three years which will not have the effect of postponing his future increments of pay' awarded by the Deputy Commandant, CISF Unit FSTPP Farakka, vide Final Order No.15015/Disc/Minor(15)/P/Sarkart/FSTPS)/35 dated 25.8.2015 and subsequently, rejection of Appeal by the Appellate Authority i.e. Commandant, CISF Unit FSTPP Farakka vide order No.V.11014/Disc/Apl-06/(PS)/2015/04 dated 02.01.2016 is quite commensurate with the proven delinquency. I also find that the petitioner has not come up with any cogent and logical reason that warrants sympathetic consideration."

25. A perusal of the order of the revisional authority would clearly show that without hearing the petitioner personally, the revisional authority has passed the order. Further, the finding arrived at by the revisional authority that the petitioner had produced false hotel bills with an intention to gain financial benefit in deceitful manner and such act on the part of the petitioner is grave misconduct which deserve severe penalty. When the principles of natural justice is totally ignored by the disciplinary authority, the order passed by the disciplinary authority inflicting punishment cannot be sustained in the eye of law. The aspect of violation of the principles of natural justice canvassed by the petitioner has not been considered by the appellate authority and the revisional authority while passing their respective impugned orders. When the order of the disciplinary authority is not sustainable in the eye of law, the subsequent orders of the appellate authority and the revisional authority affirming the order of the disciplinary authority also cannot be sustained.

26. In the instant case, no question has arisen of attempt to misappropriation of government fund for personal benefit which aggregates to gross indiscipline and unbecoming member of an armed force. As rightly argued by the learned counsel for the petitioner, the disciplinary authority without any enquiry and without any reasonable

basis, by his purported final order dated 25.8.2015, inflicted the penalty of withholding of one increment for a period of three years. The respondent authorities have also failed to consider the statements of the hotel managers. There is no evidence to sustain the allegation levelled against the petitioner. Though allegation has been levelled that in the registers of the hotels the name of the petitioner has not been entered, the same was not the charge. There was also no opportunity to defend on those charges. Therefore, this is a fit case to hold that the disciplinary authority has proceeded biasedly and by violating the principles of natural justice has passed the impugned order. Hence, this Court is of the considered opinion that the impugned orders are unsustainable in the eye of law. Thus, they are liable to be set aside.

27. At this juncture, it is to be pointed out that there was no scope of punishment. On the other hand, the authority concerned may pass or may not pass the bills submitted by the petitioner. Therefore, on the said ground also the impugned order of the disciplinary authority is unsustainable in law.

28. In the result,

- (i) The writ petition is allowed.

- (ii) The impugned orders of the disciplinary authority dated 25.8.2015; appellate authority dated 2.1.2016 and the revisional authority dated 2.8.2016 are set aside.
- (iii) The respondent authorities are directed to pay the petitioner all the arrear salaries and allowances to which he would have been entitled to had there not been the purported penalty.
- (iv) No costs.

(M. V. Muralidaran, J.)