

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO. 6781 OF 2021

Sushilkumar Subhashrao Patil. ... Petitioner.
V/s.
The Senior Commandant, CISF and others. ... Respondents.

Mr.Pankaj Vijayan with Mr.Shyamdhar Upadhyay i/b.
Intralegal for the Petitioner.
Ms.Shehnaz V. Bharucha for Respondent Nos.1 to 4.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE: 27 March 2024.

P.C. :

The Petitioner was a constable in the Central Industrial Security Force. He was dismissed pursuant to the disciplinary proceedings initiated against him. The Petitioner has challenged the order passed on 9 July 2019 dismissing him from service, the order dated 18 December 2019 dismissing the appeal, and the order dated 27 April 2020 dismissing the revision preferred by him.

2. The Petitioner joined the services of the Central Industrial Security Force (CISF). The Petitioner was posted as part of security at the Hindustan Petroleum Corporation Limited plant (HPCL). A Senior Commandant of CISF, HP-BPCL, Mumbai,

issued a charge memorandum to the Petitioner on 26 April 2019 under Rule 36 of the Central Industrial Security Force Rules, 2001 (CISF Rules). The Petitioner was suspended on 22 April 2019.

3. The charge was that while the Petitioner was deployed in the general shift on 14 April 2019 at the 7th Gate-In of HPCL, he contacted one Ramanand Kushwah of OM Construction Company and assured him of assistance in illegally taking out scrap Jetty Pump from HPCL plant. It was also stated that the Petitioner talked to a constable, C.C. Shankar, on his mobile phone and told him to make a fake pass for Ramanand Kushwah. Not only was Ramanand Kushwah allowed to enter from the North gate through the vehicle, but he was also allowed to go in without checking, and the vehicle exited from the North gate without any obstruction. It was alleged that this act of the Petitioner, apart from using a mobile phone, which was banned in the plant area, amounted to gross dereliction of duty, indiscipline and serious indifference towards duty and damaging the reputation of the CISF.

4. The Petitioner submitted his reply on 5 May 2019, denying the charges. The Disciplinary Authority- Senior Commandant, CISF Unit, HP-BPCL, by order dated 7 May 2019, ordered an enquiry under Rule 36 of the CISF Rules. The Assistant Commandant of CISF was appointed as an Enquiry Officer. The Inspector of CISF Unit was appointed as the Presenting Officer on 7 May 2019. The Enquiry Officer conducted a preliminary hearing on

9 May 2019. The Petitioner denied the charges. The Petitioner did not take assistance from any CISF members as a Defence Assistant. The Petitioner did not produce any defence witness or documentary evidence. The enquiry was conducted. The Enquiry Officer completed the enquiry and submitted the report to the Disciplinary Authority on 11 June 2019, under which the charge levelled against the Petitioner was proved. The Disciplinary Authority furnished the report of the Enquiry Officer to the Petitioner to make his representation. The Petitioner submitted his representation. Thereupon, after going through the enquiry report and the representation of the Petitioner, the Disciplinary Authority imposed the penalty of dismissal from service on the Petitioner.

5. The Petitioner filed an appeal on 18 July 2019 to the Deputy Inspector General, CISF, Western Zone- the Appellate Authority. The Appellate Authority, considering the record, dismissed the appeal by order dated 18 December 2019. The Petitioner, after that, preferred a revision on 30 December 2019 to the Inspector General, CISF, Western Zone. The Revisional Authority found that the enquiry was conducted in a proper manner and rejected the revision petition by order dated 27 April 2020. Thereupon, the Petitioner has filed the present petition.

6. We have heard Mr.Pankaj Vijayan for the Petitioner and Ms. Shehnaz Bharucha for Respondent Nos.1 to 4.

7. The learned counsel for the Petitioner sought to assail the findings in the enquiry report raising various factual issues; however, the limited scope of writ jurisdiction to enter into disputed questions of fact needs to be kept in mind. The record and orders of the Appellate and Revisional Authorities would show that the charges against the Petitioner were serious. In the enquiry, a reasonable opportunity was given to the Petitioner. An Enquiry Officer was appointed. The statements of prosecution witnesses were recorded in the presence of the Petitioner and the Presenting Officer. The Petitioner had an option to cross-examine the witnesses. Statements of Ramanand Kushwah and the constable C.C. Shankar were recorded in the presence of the Petitioner. A copy of the enquiry report was given to the Petitioner.

8. The Petitioner was deployed in the HPCL Refinery. He brought a mobile phone inside the Refinery contrary to the regulations. C.C. Shankar had deposed before the Enquiry Officer that the Petitioner had called him on his mobile phone. Similarly, Ramanand Kushwah also deposed in detail regarding the conspiracy. The Petitioner did not deny that he knew Ramanand Kushwah. The Petitioner had exchanged mobile phone numbers with Ramanand Kushwah. The Enquiry Officer also found that there was no reason for the CISF constable to be in touch with the driver of a private entity, whom the Petitioner, being a security guard, was

supposed to have checked. No explanation was given as to why the Petitioner shared his mobile phone number with Ramanand Kushwah. Ramanand Kushwah deposed that he was suitably guided on every step on his mobile phone by the Petitioner to facilitate vehicle entry. One Rashid Khan, who loaded the scrap jetty pump and drove the vehicle, was absconding. The enquiry found that the deposition of Ramanand Kushwah and the activities recorded on the CCTV camera at the North gate matched. The HPCL Management lodged the FIR of the incident with the RCF Police Station. The Police filed a charge sheet in Metropolitan Magistrate Court, Kurla, under sections 379, 120b, 411 and 34 of the Indian Penal Code, and the Petitioner is one of the accused. Therefore, the Petitioner was part of a systematic conspiracy of theft of the material from the Refinery when, in fact, the Petitioner, being part of CISF, was entrusted with preventing theft. The Appellate and the Revisional Authorities considered the material on record and found that the charges are proved.

9. The learned counsel for the Petitioner then sought to contend that though under Rule 36(16) of the CISF Rules, the Authority has the power to call for new evidence or recall and re-examine any witness, the delinquent employee is entitled to the adjournment of the enquiry for three clear days. It was stated that Rule 36(16) was breached and, therefore, the Petitioner could not cross-examine Ramanand Kushwah. The learned counsel submitted that this, being a pure question of law, can be raised at any time.

10. The Petitioner has relied on the decision of the Supreme Court in the case of *K. Lubna and Ors. v. Beevi & Ors*¹ and the decision of the learned Single Judge of Guwahati High Court in the case of *Naba Kanta Kalita v. Union of India*².

11. It is an admitted position that the Petitioner has not raised this ground during the enquiry, in the representation of the enquiry report, in the appeal or in the revision. The enquiry proceedings commenced in April 2019, and the revision was rejected on 27 April 2020. So, the proceedings were going on for almost a year. There is no reason stated whatsoever as to why the Petitioner could not take up this ground of violation of Rule 36(16) earlier. Even in the writ petition, wherein the grounds of challenge have been taken, they do not contain this specific ground that there was a violation of Rule 36(16) of the CISF Rules. The challenge is on the grounds of findings in the enquiry on merits, such as the impugned order is based on uncorroborated evidence and the Petitioner did not commit any misconduct. Therefore, the argument advanced by the Petitioner that there is a violation of Rule 36(16) is orally across the bar.

12. The Respondents, therefore, have rightly objected that such a contention never raised in the proceedings should not be permitted to be advanced in the oral arguments without giving them

1 2020 AIR (SC) 429

2 2015 LawSuit (Gau) 1258

any opportunity. In the case of *Naba Kanta Kalita* of the learned Single Judge of Guwahati High Court, the delinquent employee therein, in his written representation to the enquiry report, had specifically taken the ground that the eye witness was examined during the preliminary enquiry, but his evidence was not taken during the final enquiry. This ground was taken into account in the appeal and the revision. In light of this position, the learned Single Judge referred to Rule 36(16) of the CISF Rules and the methodology to be followed. Therefore, this ground was consistently raised by the delinquent employee in that case, which is not the situation at hand. As stated above, for the first time in the entire proceedings the argument is sought to be advanced during the hearing of the petition. In the case of *K. Lubna & Ors.*, the Hon'ble Supreme Court has observed that a pure question of law can be raised at any time; however, the procedural infraction which is sought to be orally argued by the Petitioner was of a provision meant to benefit the delinquent. If the Petitioner did not avail of the opportunity and did not raise the ground throughout the proceedings, the Petitioner is deemed to have relinquished the same. Had the Petitioner raised this objection at the time of reply to the enquiry report, corrective steps could have been taken. The Petitioner has kept silent throughout the proceedings, only to argue during the hearing of the writ petition in the year 2024. Therefore, the decision of the Supreme Court in the case of *K.Lubna & Ors.* does not assist the Petitioner. Merely arguing that the Petitioner has

generally stated that the enquiry is vitiated is not sufficient. A specific infraction must be pointed out to the Respondent well in time so that the Respondent, if so inclined, can take corrective measures.

13. We find that the enquiry has been properly conducted. Principles of natural justice were followed. The Petitioner was given adequate opportunity during the enquiry in appeal and revision. The Appellate and Revisional Authorities, based on evidence, have taken a possible view, and in writ jurisdiction, it is not possible for us to re-appreciate the evidence. The charges of conspiracy in permitting the theft of the very establishment, where the Petitioner was appointed to guard, justify the penalty of dismissal from service. No case is made out for interference in writ jurisdiction.

14. The writ petition is dismissed.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)