



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: January 29, 2024

+ W.P.(C) 1220/2024

(47) DASHRATH LAL YADAV Petitioner
Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Sahaj Garg, G.P.,
Mr. Kushagra Kumar, Adv. along
with Inspector Sanjay Kumar and SI
Prahlaad Devenda, CISF

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“In the facts and circumstances of the case, it is most respectfully that this Hon’ble Court be pleased to:-

- (i) *Issue a writ of certiorari quashing orders dated 08.07.2022, 09.12.2022 and 16.11.2023 issued by the departmental authorities imposing major penalty of reduction of pay by one stage upon the petitioner and consequently make arrears of pay to the petitioner with all consequential benefits;*
- (ii) *Pass any such other orders as it may deem fit to this Hon’ble Court in the facts and circumstances of the case.”*



2. The primary challenge in the petition is to the orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority whereby the penalty of reduction of pay by one stage from ₹42,300 to ₹41,100/- in the time scale of pay level 6 (₹35,400 to ₹1,09,100) for a period of one year with immediate effect with a further direction that petitioner will not earn increments of pay during the period of reduction and on expiry of the period of reduction will have the effect of postponing his future increments of pay imposed by the Disciplinary Authority has been upheld by the Appellate and Revisional Authorities. The proceedings were held after the issuance of chargesheet dated November 26, 2021. The charges framed against the petitioner are the following:

“ARTICLE OF CHARGE-I

That CISF No.120404803 SI/Exe Dashrath Lal Yadav of CISF Unit, ASG Kannur was deployed in Coy No. 531-A for Bye-Election related duties in the state of Telangana from 15.10.2021 to 30.10.2021. On 29.10.2021 at about 0130 Hrs., Local Police of Jammikunta Police Station requested the Coy Commander of Coy No. 531-A to detail 07 CISF personnel on emergency basis for election related duties. Accordingly, CISF No. 120404803 SI / Exe Dashrath Lal Yadav was detailed as In-charge along with 06 other CISF personnel and the said SI / Exe was informed to proceed for the said duty. But, the said SI/Exe denied to proceed for the said duty. Thus, SI/Exe Dashrath Lal Yadav failed to promptly obey and execute the duty detailment of his senior. When the said SI/Exe was again directed by the Coy Commander of Coy No. 531-A to proceed for the said duty, the said SI/Exe again refused to obey the order and insisted for issuing written orders to proceed for the said duty, which was later issued to him. Thereafter, SI/Exe Dashrath Lal Yadav along with 6 subordinates proceeded for the said duty at about 0310 hrs after a delay of around one and



half hour. The said act of SI/Ex Dashrath Lal Yadav amounts to gross misconduct, dereliction to duty, insubordination, indiscipline, violation of Section 10 (a) of CISF Act, 1968 and unbecoming conduct of a member of armed force of the Union. Hence punishable under rule 34 of CISF Rules, 2001". Hence the charge.

ARTICLE OF CHARGE-II

That CISF No. 1204040803 SI/Exe Dashrath Lal Yadav of CISF Unit, ASG Kannur was deployed in Coy No. 531-A for Bye-Election related duties in the State of Telangana from 15.10.2021 to 30.10.2021. As requested by Local Police Jammikunta Police Station on 29.10.2021 to detail 07 CISF personnel on emergency basis for duty, CISF No. 120404803 SI/ Exe Dashrath Lal Yadav as In-charge along with CISF No. 924652592 HC/ GD Sukhwant Singh and other 05 CISF personnel were detailed for the said duty. SI/ Exe Dashrath Lal Yadav directed the HC/GD Sukhwant Singh not to proceed for the said duty. Thus, with a view to cater to emergent detailment, CISF NO. 894650332 HC/GD C. Narayana Swamy, was detailed in place of HC/GD Sukhwant Singh. Thus, SI/Exe Dashrath Lal Yadav prevented his subordinate HC/GD Sukhwant Singh from discharging his lawful bonafide duties assigned by his senior in accordance with section 10 (a) of CISF Act, 1968. Thus, the act on part of SI / Exe Dashrat Lal Yadav tantamount to gross misconduct and indiscipline. Hence punishable under rule 34 of CISF Rules 2001". Hence the charge."

3. The Enquiry Officer after concluding the proceedings has held (1) that the petitioner refused to proceed on duty as directed by the Company Commander. (2) that it is established that the petitioner proceeded for duty after receiving the written order. (3) that the duty party headed by the petitioner left the line after a delay of 1.30 Hrs. (4) that the petitioner had told HC/GD Sukhwant Singh not to proceed



for duty and take rest and as such prevented him from performing his duty.

4. The submission of Ms. Lamba learned counsel for the petitioner is, though Charge-I has been proved against the petitioner, but the finding on Charge-II is perverse, which makes the penalty imposed on the petitioner, disproportionate.

5. We are not in agreement with the said submission made by Ms. Lamba for the reason Charge-II *inter alia* state that the petitioner has directed his subordinate HC/GD Sukhwant Singh not to proceed for the duty assigned to the party. It needs to be seen whether, the finding of the Enquiry Officer that the petitioner had actually prevented HC/GD Sukhwant Singh from proceeding to duty is a correct finding. In this regard, the statement of HC/GD C. Narayan Swamy needs to be noted. He in his deposition has stated as under:

"I further state that on dated 29.10.2021 at about 0130 hrs, Coy Commander Insp/Exe Gummala Ravi Kumar telephonically informed me that local police Sub-Inspector had requested for 10 CISF personnel for the area patrolling duty. The Coy commander Insp/Exe Gummala Ravi Kumar further directed me to detail required CISF personnel for the said duty and also directed me to inform SI/Exe Dashrath Lal Yadav as a party I/C. As per the direction of Coy Commander, I informed SI/Exe Dashrath Lal Yadav over telephone that Coy Commander had detailed him for the area patrolling duty. On this, SI/Exe Dashrath Lal Yadav told me that whole day he was engaged in Mess related duties so that he could not go for the said duty and asked me to inform the same to the Coy Commander. Accordingly, I informed the matter to the Coy Commander over telephone. Further, as per direction of the Coy Commander I detailed HC/GD Sukhwant Singh and 05 others personnel for



the said duty. I personally informed all the personnel to be ready for the duty. All the detailed personnel including SI/Exe Dashrath Lal Yadav reported at Kote within half an hour except HC/GD Sukhwant Singh. As such, I again went to him and asked the reason or not reporting for the said duty at Kote. HC/GD Sukhwant Singh informed me that SI/Exe Dashrath Lal Yadav had told him not to go for the said duty. As the duty party was getting late for duty, I myself went for the said duty in place of HC/GD Sukhwant Singh at around 0300 hrs. Later in the morning of 30/10/2021, I informed the matter of HC/GD Sukhwant Singh not reporting for duty.

(emphasis supplied)

6. In the cross-examination of HC/GD Narayan Swamy by the petitioner, question No. 7 being relevant is reproduced as under:

“Q. No. 7 Whether all the duty personnel were present when I reported for the duty?

Ans. No. HC/GD Sukhwant Singh did not report for duty. Rest all the duty personnel were present.”

7. We find even HC/GD Sukhwant Singh in his deposition has stated as under:

“I further stated that, on 28.10.2021 afternoon, I was detailed for rotational line duty from 1400hrs to 1600hrs on 29.10.2021. On dated 29.10.21, at about 0200hrs, HC/GD C Narayana Swamy, Coy CHM came to my room and wake up me. He informed me that I had to proceed for duty. I informed HC/GD C Narayana Swamay, CHM that I have already been detailed for the line duty from 1400hrs to 1600hrs on 29.10.2021. HC/GD C. Narayana Swamay went away and came back again and informed that you have to proceed for the duty. As such, I woke up and went to washroom. When I was returning back from the washroom, SI/Exe Dashrath Lal Yadav met me near kote and told me that you are not detailed and you have not to go for duty, take rest. Then, I came back in my room and again went to sleep. On dated 29.10.21 in the morning, Coy



Commander called me and asked me the reason for not proceeding for duty in night and he informed me that HC/GD C. Narayana Swamy, CHM had performed the said duty in his place. I told him that, SI/Exe Dashrath Lal Yadav had informed me that you are not detailed and told me not to go for duty. Later as per direction of Coy Commander I had given a written statement to Coy Commander in this connection.”

(emphasis supplied)

8. He was cross-examined by the petitioner. Question No. 3 and answer to the same are of relevance.

“Q. No. 3 When I met you near Kote, whether I had directly told you not to proceed for duty?

Ans. Yes, he told that you are not detailed. You take rest.”

9. Having noted the deposition, the finding of the Enquiry Officer in the report has proved both the Articles of Charge against the petitioner. Hence, it cannot be said that the finding against Article of Charge (II) is perverse. In fact, HC/GT Sukhwant Singh has deposed it was only on the asking of the petitioner that he stayed back and did not proceed for duty, which has proved Charge-II against the petitioner. So, the penalty which has been imposed is proportionate to the charges framed and proved in the proceedings. The law with regard to scope of judicial review is quite well-settled. The Supreme Court in the case of **CRPF v. Surinder Kumar, (2011) 10 SCC 244** held as under:

14. The Division Bench of the High Court, in our considered opinion, should have looked into the acts of indiscipline proved against the respondent for which he has been sentenced to imprisonment and then decided whether the dismissal of the respondent from service was disproportionate to the gravity of acts of indiscipline. As we have already held, the acts of indiscipline for which the respondent had been sentenced to



imprisonment were serious and grave for a disciplined force. Therefore, the competent authority was right in imposing the punishment of dismissal from service.

15. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In Union of India v. R.K. Sharma, this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service.”

(emphasis supplied)

10. The law that judicial review entails evaluation of decision making process and not the merits of the decision itself is well settled, in the case of **Deputy General Manager (Appellate Authority) & Ors. v. Ajai Kumar Srivastava, (2021) 2 SCC 612**, wherein the Supreme Court has in paragraphs 24 & 28 held as under:

“24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable



person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

11. We are of the view the petition is without merit. The same is liable to be dismissed. We do so accordingly.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 29, 2024/jg