



2024:DHC:8068-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 18th October, 2024***+ W.P.(C) 7370/2022
NUPINDER SINGH

.....Petitioner

Through: Mr. P. Sureshan, Adv.

versus

DIRECTOR GENERAL CISF & ORS.Respondents

Through: Ms. Garima Sachdeva, SPC
with Mr. S. Adithya, AC and
ASI Jaypal Singh.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner challenging the Order dated 31.10.2019 passed by the Senior Commandant, Central Industrial Security Force (in short, 'CISF') Unit 7th Reserve Battalion Kishtwar, imposing a penalty of "*withholding of one increment for a period of three years with the cumulative effect which will have the effect on postponing his future increments of pay*", finding him guilty of charges contained in the Memorandum of Charges dated 13.07.2019.

2. The petitioner also challenges the Order dated 11.02.2020 passed by the DIG, CISF, North Zone-II, HQs, Jammu, whereby the aforesaid penalty was modified to withholding of one increment for a



period of one year with cumulative effect.

3. The petitioner further assails the Order dated 15.03.2021 passed by Inspector General, Northern Sector, CISF Camp, Mahipalpur, New Delhi, dismissing his revision petition against the Order dated 11.02.2020.

4. Briefly stated, it is the case of the petitioner that the petitioner joined the CISF as a Constable/GD in the year 2000. While performing his duty as a Quarter Guard on 10.05.2019, the petitioner was approached by Constable/GD Satish Kumar enquiring about his mobile phone. The petitioner stated that he did not know anything about the mobile phone, however, Constable/GD Satish Kumar was not satisfied with his answer and persisted in questioning the petitioner. A report of the scuffle was thereafter prepared and a Memorandum of Charge dated 13.07.2019 was issued against the petitioner on the following two charges:-

“ARTICLE OF CHARGE NO.1.

Force No. 014501083, Constable/GD Nupinder Singh CISF Unit 7TH Reserve Battalion, Kishtwar, was posted with weapon, for the duty of Guard/Santri, in his earlier CISF Unit, SHEP Salal, as Quarter Guard on 10/05/2019 at night from 22:00 hours till 00:01(24:01). During the said duty at about 23:30 hours Constable/GD Nupinder Singh had a heated talk on account of mobile phone, abused and quarreled with another Constable/GD –Satish Kumar who was posted/ along with him in the Quarter Guard and therefore peace and discipline of the Quarter Guard was violated. Hence heated talk, abusing and quarrelling in the highly sensitive place of Quarter Guard, by Force No. 014501083, Constable/GD Nupinder Singh CISF with another Force Member, posted



along with him in the Quarter Guard, shows gross negligence, indiscipline and violation of the order of the higher officials.

ARTICLE of CHARGE NO-2

Force No. 014501083, Constable/GD Nupinder Singh, earlier also during his service, has been punished four time with minor punishment for his indiscipline under Rule-37 of CISF Rules-2001. But still said Force Member did not amended/improved his conduct/behaviour and is habitual of indiscipline."

5. The petitioner denied the aforesaid charges, however, by the Inquiry Report dated 10.10.2019, the Inquiry Officer held the charges to be proved against the petitioner, and *vide* an Order dated 31.10.2019, the Disciplinary Authority imposed a major penalty of "*withholding of one increment for a period of three years with cumulative effect which will have the effect on postponing his future increments of pay*" on the petitioner.

6. The petitioner, being aggrieved by the above order, challenged the same in the form of an appeal. The Appellate Authority *vide* Order dated 11.02.2020, found that Charge no. 1 had not been proved against the petitioner, however, found that Charge no. 2 had been proved against the petitioner, and thus, reduced the penalty to as one of "*withholding of one increment for a period of one year with cumulative effect*".

7. The petitioner, still being aggrieved of the same, challenged the same by way of a revision petition, which was dismissed *vide* the Order dated 15.03.2021.

8. The learned counsel for the petitioner submits that Charge no. 1



having been found as not proved, the penalty could not have been imposed on the petitioner only on Charge no. 2. He submits that this amounts to double jeopardy which is impermissible and is violative of Article 20(2) of the Constitution of India.

9. On the other hand, the learned counsel for the respondents submits that the petitioner has been a habitual offender. She submits that in the incident in question even if it is not proved that the petitioner and Constable/GD Satish Kumar abused and quarrelled with each other, the fact that they had an argument has been found to be true by the Appellate Authority. She submits that the petitioner, at the relevant time, was posted with weapons and was performing the duty of Guard/Santri and, therefore, such conduct from the petitioner could not go unpunished. She further submits that Charge no. 2 has been found to be proved and it is a matter of record that the petitioner has been punished four times with minor punishments for his indiscipline and has still not mended his ways. She submits that therefore, the penalty awarded to the petitioner is proportionate and imposed for valid reasons and should not be interfered with by this Court.

10. We have considered the submissions made by the learned counsels for the parties.

11. The Appellate Authority in its Order dated 11.02.2020, on Charge no. 1, has observed as under:-

“05. AND WHEREAS, I, the undersigned, have meticulously gone through the entire case file vis-a-vis the averments made by the Appellant in his Appeal Petition. I have found that first charge leveled against the appellant was that he had entered into arguments with



Constable/GD. Satish Kumar on 10.05.2019 at about 23.30 hrs over an issue of Mobile Phone which later turned out in exchange of invectives and scuffle between both of these constables. In order to substantiate this charge, evidence of as many as 06 (Six) witnesses was recorded by the Enquiry Officer i.e. PW-1. PW-2. PW-3. PW-4, PW-5 & PW-7. Out of these 06 witnesses, while PW-7 (Constable Satish Kumar) turned out hostile and did not substantiate the charge leveled against the appellant whereas none of the other prosecution witnesses tendered conclusive witness about the said charge in entirety although from their statement it is established that there had been an argument between Constable Satish Kumar and the appellant. All of those witnesses including PW-1 and PW-5 deposed hearsay details of the incident as brought out in the charge memorandum in that not even a single witness deposed in the departmental enquiry that he had himself seen the entire sequence of heated arguments and the scuffle between Constable Satish Kumar and the appellant. Under such circumstances, the ARTICLE OF CHARGE NO.1 cannot be treated as proved by virtue of evidences tendered by the prosecution witnesses, thus, it will be against the principles of natural justice to hold the said charge as proved.”

12. Having held that Charge no. 1 was not proved, the Appellate Authority, however, imposed the penalty on the petitioner on Charge no. 2, which was only a consideration of the previous disciplinary proceedings which had been held against the petitioner. While these proceedings could have been relevant in determining the nature of the penalty that can or should be imposed on the petitioner, it cannot be the sole basis for imposing a fresh penalty on the petitioner. Imposing



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punishment on the petitioner on Charge no. 2, when he has already suffered punishment for individual charges mentioned therein, would clearly violate the principle of double jeopardy.

13. Accordingly, we find merit in the submission made by the learned counsel for the petitioner and allow the present petition and set aside the Impugned Orders dated 31.10.2019, 11.02.2020, and 15.03.2021 imposing the penalty on the petitioner. The petitioner shall be entitled to all the consequential benefits flowing from setting aside of the Impugned Orders.

14. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 18, 2024/ss/km/DG

Click here to check corrigendum, if any