



2024-0102-1111-20



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 07.02.2024
Judgment Pronounced on: 14.02.2024

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W.P.(C) 8173/2020

SUMIT KUMAR

..... Petitioner

Through: Mr. Raj Singh Phogat, Adv

Versus

**UNION OF INDIA THROUGH ITS SECRETARY
& ORS.**

..... Respondents

Through: Mr. Nirvikar Verma, SPC with SI
Prahlad, CISF and SI Kumar, CISF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. Facts disclose that the petitioner herein, now an ex-Constable (General Duty) in the respondent no.2, Central Industrial Security Force¹, after appointment as a Constable in the year 2012 was first posted in CISF Unit UCIL Jaduguda in December, 2017 and then posted at the CISF Unit HWP, Manuguru in January, 2018 where, on 18.01.2018, he received a Memorandum of Charge, stating that an enquiry under *Rule 36* of the CISF Rules, 2001 is proposed to be initiated against the petitioner on the following charges, namely:-

¹ Hereinafter referred to as 'CISF'



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“(i) Charge I-; Force No. 120717743 Constable/GO Sumit Kumar, H.W.P Manuguru, called the commandant UCIL Jaduguda to his mobile in connection with the leave while being posted in the previous unit UCIL Jaduguda on 05.12.2017 upon which the commandant ordered him to come to the office on 06.12.2017 with all the documents. On 06.12.2017, the force member did not appear in the grievance room before the Commandant and refused to come and the force member tried to pressure the unit administration by submitting a conditional resignation from the service. The above act of force no. 120717743 Constable/ GO Sumit Kumar, CISF being a member of an armed force signifies gross misconduct, indiscipline and negligence towards orders. Hence, it is the charge.

(ii) Charge II- Force No. 120717743 Constable/GO Sumit Kumar, H. W.P Manuguru, tried to threaten and intimidate while being posted in the previous unit UCIL Jaduguda on 05.12.2017, through his relatives acting in the office of the ministry of home affairs by calling senior officials of the unit on phone by taking judicial action against them and viral the video clip of own Wife in which his wife accused the administration of torturing by not giving leave to her husband and also said that if anything happens to her or her husband, the Senior Officers of the unit will be responsible. The force member gross indiscipline and refused to identify his relatives by adopting adamant attitude and expressed ignorance. The above act of force no. 120717743 Constable/GO Sumit Kumar, CISF being a member of an armed force signifies gross misconduct, indiscipline and negligence towards orders. Hence, it is the charge.; and

(iii) Charge III- Force No. 120717743 Constable/GO Sumit Kumar of H.W.P. Manuguru had already been awarded with 05 (five) minor penalties during his earlier service tenure for the different kind of indiscipline activities such as submitting wrong facts, misconduct, and negligence of duty and disregard of lawful orders and had been given opportunity for improvement again and again but still he had not mended his ways. The above act of No.



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120717743 Constable/GO Sumit Kumar, being a member of an armed force signifies gross misconduct, indiscipline and negligence towards orders. Hence it is the charge.”

2. After receipt of the said Memorandum of Charge under protest, the petitioner made applications for being provided Hindi Translations of the documents, however the same was rejected and since he failed to submit his reply against the chargesheet within the stipulated time, the Disciplinary Authority proceeded with the Departmental Enquiry and vide Final Order dated 01.05.2018 passed by the Senior Commandant (Disciplinary Officer), CISF Unit HWP, Manuguru, held that the charges against the petitioner stood proved and accordingly he was awarded the punishment of ***‘Removal from Service with immediate effect’***.
3. Aggrieved therefrom, the petitioner first preferred an appeal dated 22.05.2018 against the Final Order dated 01.05.2018, which was dismissed by the Deputy Inspector General/DAB Zone CISF, DAB Zonal Headquarter Hyderabad vide order dated 13.06.2018. The petitioner then preferred a revision petition dated 24.07.2018, which was also dismissed by the Inspector General, DAE & DOS Sector Hors, New Delhi vide order dated 04.01.2019, holding that there were no procedural lacuna in the Departmental Enquiry and that no further intervention was required as regards the quantum of punishment.
4. Hence the present petition under Article 226 of The Constitution of India seeking quashing of the impugned orders dated 01.05.2018, 13.06.2018 and 04.01.2019 of his dismissal from service; of dismissal of the departmental appeal preferred thereagainst; and of dismissal of the revision petition preferred thereagainst, respectively.



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5. Learned counsel for the petitioner submitted that the impugned orders are liable to be quashed and set aside as they have been illegally and arbitrarily passed, without conducting a Departmental Enquiry following the procedure as prescribed in the CISF Rules, 2001. He submitted that the Enquiry was conducted ex-parte without giving an opportunity to the petitioner to present his defense. He also submitted that the petitioner was only provided the Hindi translation of documents after the conclusion of enquiry when it was immaterial, and that too after several requests. He further submitted that the petitioner was also not supplied with the copy of the statements of the prosecution evidence and the defense assistants named by him were not accepted by the Enquiry Officer which shows that the enquiry was not conducted in accordance with the prescribed procedure, thus warranting interference by this Court. Learned counsel in this regard relied upon *State of Punjab v. Bhagat Ram* (1975) 1 SCC 155, *Union of India and Ors. v. J. Ahmed* (1979) 2 SCC 286 and *Mukesh Kumar v. Union of India & Ors.* 2015 SCC OnLine Del 11971 to submit that it is unjust to deny the petitioner an opportunity to defend himself.

6. Learned counsel for the petitioner further submitted that the requests of the petitioner for change of the Enquiry Officer were also rejected arbitrarily, so much so, during the pendency of the review application for change of Enquiry Officer on biasness, the enquiry was conducted on daily basis, being in complete contravention of the Cabinet Sectt. Department of Personnel, OM No. 39/40/70- Ests.(A) dated 09.11.1972. He also submitted that instead of asking the prescribed questions, the Enquiry Officer deliberately asked 19 questions which



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were leading in nature to the petitioner and which violated the basic principles governing departmental enquiries.

7. Learned counsel for the petitioner further submitted that it was because there was no written information given to the petitioner and also because he did not have the medical documents of his wife in print that he did not appear before the Commandant on 06.12.2017, however, the same has been mala fide used against him and he was charged with misconduct and gross indiscipline.

8. Learned counsel for the petitioner also submitted that the petitioner never asked any of his relatives to call the Department and that he had no knowledge of the video of his wife. He further submitted that he did not pressurize or threaten the Department to grant him leaves in any way as the resignation tendered was unconditional and that the 5 punishments awarded prior to the present situation were completely different in nature and in any event, since the petitioner had already been awarded punishments for the same, he cannot be punished again for the same misconduct.

9. Lastly, relying upon *Bhagat Ram v. State of Himachal Pradesh* (1983) 2 SCC 442, *Ranjit Singh v. Union of India* (1987) 4 SCC 611 and *Laxman Singh v. Union of India* 2015 SCC OnLine Del 8245, learned counsel for the petitioner submitted that considering the charges leveled against the petitioner, the punishment awarded to him is harsh and disproportionate, which is violative of the fundamental rights of the petitioner.

10. *Per contra*, learned counsel for the respondents opposed the present petition and submitted that the same is liable to be dismissed as



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the Disciplinary Enquiry held against the petitioner was in complete consonance with the provisions of the CISF Rules, 2001 and that the petitioner was granted sufficient and reasonable opportunities to present his defense, however, he failed to do so within the stipulated time and instead tried to derail and delay the proceedings by filing multiple applications for supply of Hindi translations and change of the Enquiry Officer, despite the same being rejected by the Competent Authority.

11. Learned counsel for the respondents further submitted that the petitioner not only misbehaved with the prosecution witnesses as was recorded in the enquiry reports, but was also non-cooperative in the proceedings as he failed to answer the questions put by the Enquiry Officer and also did not identify his wife in the video or disclose the identity of the relatives who had called the Department. He, thus, submitted that the petitioner has been rightly awarded the punishment of removal of service as his conduct has been unbecoming of an officer of a disciplined force such as the CISF and that the previous punishments have been rightly considered by the Department as it shows that despite several opportunities awarded to the petitioner, he has failed to mend his ways.

12. Learned counsel for the respondents then submitted that the claims of the petitioner that he was proceeded ex-parte and was not granted opportunity to present his case was unsubstantiated as he failed to comply with the provisions of the CISF Rules, 2001 and failed to present his defense within the stipulated time. He further submitted that despite knowledge, the petitioner submitted the name of defense assistants which



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were not from the place of Enquiry and hence they were rightly rejected by the Enquiry Officer on 22.02.2018.

13. Learned counsel for the respondents lastly submitted that the charges leveled against the petitioner clearly indicate that he acted jointly and severally with his relatives to pressurize the Department into granting him leaves, despite the fact that he had already been granted over 100 days of leaves in the year 2017 and that he had just returned from 45 days of leave which were also for the reason of his wife's hospitalization. He further submitted that the video made viral by the petitioner tarnished the image of CISF and thus the charges were rightly leveled against him.

14. This Court has heard the learned counsels for both the parties and perused the documents on record as also gone through the judgments relied on by them.

15. At the outset, this Court is constrained to note that the records reveal that there are more than one instance pointing fingers at the petitioner. Despite being well aware of the responsibilities attached with the post, the conduct of the petitioner was certainly not behooving of a man in uniform serving in a disciplined force such as the CISF as he was too casual in his approach with no proper response coming forth. Though it has been contended by the learned counsel for the petitioner that the previous punishments awarded to the petitioner were minor as the offences were of small magnitude for which he has already been punished, however, this Court is afraid that it can hardly be a reason to exonerate the petitioner. A blot is a blot, be it of the slightest degree and the magnitude thereof is of little relevance. Further, taking an overall



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view of the conduct of the petitioner while serving in the CISF, the same ought not to be overlooked.

16. The petitioner has had a chequered history involving turmoil while he was serving in the CISF, as he was, admittedly, facing upheavals at almost regular intervals for which as many as five previous charges had already been leveled against him. The fact that the petitioner herein has not disputed the prior incidents where punishment was imposed on him on each of the five occasions itself is sufficient for this Court to conclude that the petitioner is a habitual offender who has been guilty of committing offences at almost regular intervals in the past as well.

17. In fact, the petitioner has also been guilty of making baseless, unsubstantiated and unsupported allegations all throughout the Disciplinary Enquiry proceedings involving the present charges. Records also reveal that throughout the pendency of the proceedings, there was no remorse on the part of the petitioner. So much so, the petitioner went to the extent of even not identifying his own wife and giving fair disclosures as he always attempting to take shelter of his actions on one or the other pretext despite being unsuccessful before. All throughout the proceedings, the petitioner has been evasive and neglecting to act in a fair manner.

18. Such careless incidents, coupled with his misbehavior, casual approach and carefree attitude stretched over a prolonged time by any literate person like the petitioner and his brazenly making a video 'viral' in the public domain to bring disrepute to the respondents while he was serving in the CISF, cannot be easily forgiven or simply erased from the slate and is indeed unbecoming of any man like the petitioner in uniform.



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19. In any event, there is no occasion for the petitioner to allege anything against the respondents, more so, when the Disciplinary Enquiry proceedings conducted against the petitioner were in terms of the provisions of the CISF Rules, 2001 and since the averments made and the grounds raised in the present petition, being repetitive in nature, have already been taken care of and have been duly responded too after much deliberation by the authorities below, no interference of any sort is required by this Court under the present circumstances.

20. In view of the above, the judgments relied upon by the petitioner are not applicable in the present case as this Court is of the view that the punishment awarded to the petitioner is very much commensurate to the conduct and charges leveled against the petitioner.

21. Thus, under the existing facts and circumstances involved, in the opinion of this Court, the petitioner has been unable to make out any case in his favour for allowing the present petition. In view of the discussion hereinabove, there is no reason for this Court to allow the present petition.

22. Accordingly, the present writ petition is dismissed as meritless with no order as to costs.

SAURABH BANERJEE
JUDGE

V. KAMESWAR RAO
JUDGE

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