



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 15.01.2024*
Judgment Pronounced on: 31.01.2024

+ W.P.(C) 12610/2022

SHASHANK JAIN

..... Petitioner

Through: Mr. Nikhil Bhardwaj, Advocate

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Bakshi Vinita, SPC and
Ms. Anita GP for UOI with SI
Prahlaad Devenda, SI Semi Kumar,
CT Vikash (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. The petitioner, by way of the present petition under Article 226 of The Constitution of India, seeks quashing of the impugned Penalty order dated 09.12.2020 vide which respondents imposed the penalty of '*Removal from service which shall not be a disqualification for the future employment under the Government*' upon him, as well as quashing of the orders dated 30.03.2021 and 20.12.2021 vide which his Appeal Petition and the Review Petition (respectively) against the impugned penalty order dated 09.12.2020 were rejected, by taking a compassionate view and in interest of justice; and quashing of the charge sheet dated



05.08.2020 as well as the proceedings arising therefrom; and directions to the Respondents to reinstate him with immediate effect with all consequential benefits; and lastly to direct the Respondents to treat the period spent by petitioner under suspension w.e.f. 14.05.2020 till 09.12.2020 as spent on duty.

2. The petitioner herein was appointed on the post of Sub-Inspector [SI] in the Central Industrial Security Force [CISF] on 13.09.2014 and was lastly posted at Ukai, Gujarat. On 12.05.2020, the petitioner was posted as the 'Shift In-Charge' at the main gate of the CISF Unit UTPS, Ukai, Gujarat [CISF Unit] from 08:00 hours to 20:00 hours and was issued a service pistol (Butt No.7 and Registration No. 15176665) and ammunition (30 rounds 9 mm). On the same day, one late SI Mr. Ashwani Kumar [*deceased personnel*] was also posted at CISF Unit as in-charge of the CCTV control room *without weapons* from 07:45 hours to 18:00 hours. At around 15:30 hours, the petitioner left his post and went to the CCTV control room wherein he removed his belt holding his service pistol in its Holster along with the pouch of ammunition to keep it on the table in front of him. At around 16:00 hours, late SI Mr. Ashwani Kumar was found covered in a pool of blood in a bathroom on the ground floor under the CCTV control room, and the service pistol issued to the petitioner and two empty cases were found beside his left leg. It was found that late SI Mr. Ashwani Kumar had committed suicide by shooting himself from the service pistol issued to the petitioner.

3. Consequently, pursuant to a disciplinary action initiated against the petitioner vide memorandum No.V-15014/GHA/Disc/Rule-36/SJ/UTPS(U)/04/2020/3609 dated 05.08.2020, the article of charge



was framed against him stating that the act of the petitioner leaving his post and going to the CCTV control room; and then removing his service pistol alongwith the ammunition from his person and keeping it on the table in the control room without any cogent reason and without the permission of a Competent Authority, amounted to gross violation of the principles of protection of arms and ammunitions and since the service pistol and ammunition issued to the petitioner ultimately became the cause of death of the deceased personnel, the petitioner failed to act as a trained member of the force.

4. Since the petitioner denied the charge framed against him, Inquiry Officer and Presenting Officers were appointed and after holding a Departmental Inquiry as per the prescribed procedure, the charge framed against the petitioner was proved. Vide the impugned Final Order No. V-15014/CISF/WZ/Disc/36/SJ/2020/12930 dated 09.12.2020, the DIG/West Zone, CISF West Zone, HQrs Navi Mumbai, who being the Disciplinary Authority, held that the petitioner was guilty of the charge framed against him and imposed the penalty of '*Removal of Service which shall not be a disqualification for future employment under the Government*'.

5. Aggrieved thereby, the petitioner preferred an appeal before the IG CISF West Zone, HQrs Mumbai, who being the Appellate Authority, dismissed the same vide impugned appellate order No. V-15016/CISF/WZ/L&R/Appeal/SJ/2021/552 dated 30.03.2021, and upheld the order dated 09.12.2020.

6. Once again aggrieved, the petitioner filed a revision petition before the Additional Director General (South), HQrs Navi Mumbai, who being the Revisioning Authority, also dismissed the same vide the impugned



revision order No. v-11014/ADG(S)/L&R/R.P-7/SJ(UTPS(U)/2021/2461 dated 20.12.2021.

7. Hence the present writ petition before us wherein learned counsel for the petitioner prays for setting aside of all of the aforesaid impugned orders on the ground that they have been arbitrarily passed without considering the case of the petitioner, and as the punishment imposed by the Disciplinary Authority, upheld by both the Appellate Authority and the Revisional Authority, is extremely harsh and disproportionate to the conduct of the petitioner, more so, when he has served only six years in the CISF and removal of service at this stage will amount to an end of the petitioner's otherwise unblemished career.

8. The learned counsel submits that the authorities failed to consider the medical documents of the petitioner which clearly showed that the petitioner was suffering from 'Ankylosing Spondylitis', which is a rare type of arthritis causing pain and stiffness in the spine and that the petitioner was undergoing treatment for the same. Based thereon, he also submits that the petitioner was experiencing excruciating pain in his abdomen because of his prevalent medical condition which compelled him to leave his assigned post and sit in the CCTV control room, where he removed his belt and took some pain killers which caused him to be sleepy/ drowsy for some time. He also submits that taking advantage of the petitioner's condition, the deceased personnel took his service pistol and committed suicide.

9. The learned counsel further submits that the authorities erred in holding the conduct of the petitioner as the cause of death of the deceased personnel because the petitioner could have not foreseen that the



deceased personnel would steal his service pistol and commit such an act and that the unfortunate demise was actually due to his own mental instability. He thus submits that the petitioner was made a scapegoat for the demise of the deceased personnel whereas actually the department was responsible for the personnel's death. He further submits that there was no negligence on the part of the petitioner in performing his duties as he had only gone to the CCTV control room, wherefrom the main gate was easily visible and if required, he could immediately reach there in no time. He further submits that the petitioner removed the service pistol and ammunition from his person and put in on the table in good faith as the CCTV control room was locked from all sides and no stranger could access the same and since two other persons of the CISF were already present in the CCTV control room.

10. The learned counsel lastly submits that there was no *malafide* intention on the part of the petitioner and that the incident of 12.05.2020 was an unfortunate one which could not have been foreseen, pre-empted or prevented by the petitioner and that he had no role whatsoever to play in the commission of the act. Relying upon ***Ram Krishan v. Union of India*** (1995) 6 SCC 157, ***B.C. Chaturvedi v. Union of India*** (1995) 6 SCC 749 and ***Coal India Ltd. V. Mukul Kumar Choudhari*** (2009) 15 SCC 620, learned counsel submits that the punishment imposed upon the petitioner is so shockingly disproportionate that the petition ought to be allowed and the petitioner be for reinstated in the CISF.

11. *Per contra*, learned SPC for the respondents opposes the present petition and submits that considering the negligent and careless conduct of the petitioner, the punishment imposed upon him is not



disproportionate, particularly, when despite being a member of a disciplined force as the CISF, the petitioner failed to act as such which resulted in the unnatural death of a fellow personnel. It is her submission that this conduct is unbecoming of the member of the CSIF and hence the petitioner has been rightly removed from service.

12. Thereafter, relying upon *SBI v. Ajai Kumar Srivastava*, (2021) 2 SCC 612 and *Pravin Kumar v. Union of India*, (2020) 9 SCC 471, learned SPC submits that the contentions raised by the learned counsel for the petitioner cannot be considered by this Court under judicial review as this Court cannot act as an appellate court and re-appreciate the evidence. Learned SPC submits that once the departmental authorities have appreciated the evidence and arrived at a decision, having followed the prescribed procedure, this Court can only interfere with the same in case of patent illegality or perversity in the orders, which has not been pointed out in the present case. As such, dismissal of the present petition is sought.

13. At the outset, this Court finds that the petitioner was posted as the 'Shift In-Charge' at the main gate of the CISF Unit UTPS, Ukai, Gujarat at the time of the unfortunate incident. As such, at the time of the unfortunate incident, the petitioner was in the Armed Forces-CISF, serving since the past *six years*. Moreover, the petitioner was not only holding an extremely responsible post but was also stationed at a sensitive and crucial place. Being so, it would not be wrong to conclude that the petitioner was well aware of his duties and responsibilities as also the fact that he was always expected to maintain discipline and tread with utmost care and caution, especially, as regards the service pistol and



ammunition issued to him as they were always in his power and possession. Thus, there was no occasion or reason for the petitioner to have wrongly left his sensitive post of duty (which he admittedly did) at the main gate, a 'crucial' position of high importance completely, 'unmanned/ unarmed' for the duration when he was mandatorily required to be there, without apprising or seeking permission from anyone. Furthermore, having left his service pistol and ammunition on the table inside the CCTV control room, where he was *admittedly* not posted and should not have been there, is an act of gross negligence and extreme recklessness on his part. The same was an extremely serious lapse on the part of the petitioner which actually resulted in the loss of life of the deceased personnel. Interestingly, the unfortunate incident happened at 15:30 hours, during the hours of duty i.e. at the time when the petitioner was supposed to be manning the main gate. The above cannot be expected from a personnel belonging to a discipline force such as the CISF, particularly when vigilance and adherence to the principles of protection of arms and ammunitions were of much significance and of high relevance under the given set of facts and circumstances. The petitioner, thus, cannot be pardoned for such conduct.

14. Furthermore, the petitioner cannot be allowed to question the line of action and/ or the duties assigned to any personnel like the petitioner or the deceased personnel by the respondents and the reasons thereof. The petitioner cannot be allowed to question or challenge the respondents and/ or their authority, especially when there are no allegations of malafide or bias of any kind on the departmental authorities.



15. Therefore, if the CCTV control room was a place wherein neither any unknown personnel like the petitioner were allowed nor wherein any arms and ammunitions were allowed to be taken in, then the petitioner was guilty of having not only entered the CCTV control without permission but also having entered therein with arms and ammunitions and also keeping them ‘unguarded’ on a table and then most importantly, *admittedly*, dozing off. That the petitioner was, *admittedly*, drowsy/sleepy after taking medicines while on active duty without apprising anyone, speaks volumes of his conduct and reflects that he was indeed medically ‘Unfit’ for discharging his normal duties and that he had hidden the same all throughout. In fact, as it is his own admission that he was neither manning the main gate nor his own service pistol and ammunition alongwith it, it is proven beyond doubt that he was lacking in alertness and also not vigilant during the course of discharging his duties.

16. Also, the medical condition/ ailments and the medical documents relied upon by the petitioner are of no significance and cannot come to his aid as the petitioner himself is surely not contending that he was per se medically ‘Unfit’ for serving in the CISF. Even otherwise, they are not connected with the aforesaid two acts of the petitioner of initially leaving his post and then leaving his service pistol and ammunition unattended at the table at a place where he was not supposed to be present. The petitioner cannot escape his liability and cannot be allowed to agitate them at a stage after the day of the unfortunate incident when he had not raised and/ or agitated anything qua it at any point of time prior thereto.



17. Similarly, a perusal of the records reveal that the proceedings at all the three stages, i.e. before the Departmental Authority, the Appellate Authority and the Revisional Authority have been held as per the laid down procedure wherein the petitioner has been given ample opportunities to present his case and all his contentions as raised herein have been considered, and which have, *rightly*, not been challenged by the petitioner.

18. Most relevantly, the petitioner has been unable to show if any of the impugned orders are either against the well settled propositions of law or if they are factually incorrect or if there is a defect therein or if there are any illegality or perversity therein calling for this Court to interfere with the same.

19. In fact, upon a careful consideration, this Court finds that the petitioner has merely raked the very same grounds which have already been duly considered and negated by the three Forums below after pondering over them. As such, this Court finds that when the impugned orders passed by the three Forums below are well-reasoned with no illegality or perversity wherein the charges against the petitioner have been duly established by evidences, it is not permissible for this Court to entertain the present petition. Also, the petitioner has been unable to show anything new which is substantive enough for this Court to return any finding contrary to the impugned orders rendered by the three Forums below.

20. It is settled law that in the garb of the present petition, the petitioner can neither be allowed to re-agitate nor re-argue the very same points argued before the Departmental Authorities once again before this



Court as this is not an appeal and this Court is exercising limited jurisdiction under Article 226 of The Constitution of India. Reliance is placed upon *SBI (supra)* and *Pravin Kumar (supra)* wherein the Hon'ble Supreme Court has held that this Court is neither there to act as an appellate court nor to re-appreciate the evidence under judicial review while dealing with any writ petition of the present nature.

21. Considering that the aforesaid combined/ repeated acts of negligence by the petitioner are unpardonable and cannot be taken lightly or condoned at any cost, the present petition deserves dismissal. Also, the petitioner cannot be allowed to defend his continuous multiple wrongs for which necessary consequences are to follow. Finding that the petitioner failed to act as a trained, responsible and alert member of the Force and as his actions were evidence of gross carelessness, lack of caution and indifference, being inappropriate and unbecoming of a member of any of the Armed Force including the CISF, the punishment imposed upon the petitioner is by no stretch of imagination harsh and instead, under the prevalent circumstances, very much commensurate to the carelessness and negligence demonstrated by the petitioner.

22. Accordingly, finding no merit in the present petition, the same is dismissed, leaving the parties to bear their own respective costs.

(SAURABH BANERJEE)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 31, 2024/rr