



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

% Judgment delivered on: 28th February 2024
+ W.P.(C) 19142/2006

EX.NAVIK.CK. SANTOSH KUMAR Petitioner

versus

UOI & ORS. Respondents

Advocates who appeared in this case:

For the petitioner: Mr. Akshit Sachdeva, Advocate

For the Respondents: Ms. Pratima N Lakra, CGSC with Ms. Vanya Bajaj, Advocate for
UOI with Deputy Commandant Rattan Negi

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner seeks setting aside of his dismissal order dated 20.12.2005 as well as order dated 15.06.2006 whereby the Appellate Authority has rejected his request for reinstatement.

2. Petitioner joined as Navik (Domestic Branch) in Coast Guard on 17.09.2004. During October, 2005, he was posted at Indian Navy Ship – Hamla. One Sh. Keloth J Joseph, a Keralite was his instructor who was inimical to him. However, the petitioner had brotherly relationship with another Keralite i.e. trainee S. Sujith, Navik (Cook).



3. According to petitioner, his instructor cooked up a plan to teach him a lesson.
4. News was spread that ATM Card of Sh. S. Sujith had been stolen by the Petitioner and he had misused the same and withdrawn money using said ATM card. His instructor took him to the Commanding Officer of the Ship and was forced to make admission.
5. According to petitioner, Sh. S. Sujith had himself handed over his ATM Card to him for withdrawing a sum of Rs. 3,000/- and also shared its ATM PIN with him. Petitioner, accordingly, withdrew the money for him who even got back his ATM Card as well as the amount withdrawn thereunder.
6. Petitioner claims that there was never any disciplinary proceeding or any kind of court-martial proceedings against him. He was neither informed of any charge against him nor provided with any document. Coast Guard Authorities did not subject to him any disciplinary proceedings except that he was forced to sign on some blank papers. He does not even know as to what was the material against him and he was never given any opportunity to cross-examine anyone at any stage. He was, eventually, served with order dated 20.12.2005 of dismissal from Coast Guard.
7. According to petitioner, his friend Sh. S. Sujith informed him that he had rather given a statement that it was their personal matter which



they had settled mutually and that he had no complaint against the petitioner, as he had pardoned him.

8. Thus, according to petitioner, he was dismissed from service despite the fact that he had not committed any misconduct or offence. It is also supplemented by him that the alleged victim had, even otherwise, exonerated and pardoned him. Petitioner has also placed reliance upon *Ravinder Singh Vs. Union of India & Ors.*: 2002 SCC OnLine Del 205, *Ex. Head Constable Moti Singh Vs. UOI & Ors.*: 2017 SCC OnLine Del 7523, *Roop Singh Negi Vs. Punjab National Bank & Others*: (2009) 2 SCC 570, *Mahavir Singh Vs. Union of India & Others*: (2002) 62 DRJ 875, *Union of India Vs. R. Anand*: 2011 SCC OnLine Mad 945, *Shri R.S. Singh Vs. Union of India & Ors.*: 2001 SCC OnLine Cal 728

9. It is in the aforesaid premise that he has prayed that his dismissal order may be set aside.

10. According to respondents, petitioner had stolen ATM Card of Sh. S. Sujith on 03.09.2005 and withdrew a sum of Rs. 3,000/- from ATM and thereby committed offence of theft in terms of Section 34 (a) of the Coast Guard Act, 1978. Such theft came to light on 09.09.2005 when S. Sujith learnt about debit of amount from his bank. He then announced in the mess/canteen that guilty would be caught as there was a camera installed in the ATM. On hearing the same, petitioner became frightened



and returned the amount to him same day i.e. on 09.09.2005 which clearly indicates his complicity in the matter.

11. According to respondents, petitioner was produced before the Executive Officer in terms of procedure laid down under Coast Guard (Discipline) Rules 1983, who, after hearing the charge, initiated the procedure as prescribed in Rule 19(2)(C) of Coast Guard (Discipline) Rules 1983 and referred the matter to the Commanding Officer. When petitioner was produced before the Commanding Officer, he again pleaded guilty to the charge. However, the Commanding Officer remanded the petitioner for preparation of *Abstract of Evidence*. The Commanding Officer considered the Abstract of Evidence and after going through the same and hearing the petitioner, who admitted his complicity, held him guilty for the charge of theft and recommended his dismissal from the service.

12. It is submitted by the respondents that as per procedure prescribed under Coast Guard (Discipline) Rules 1983, the Punishment Approval Form (PAF) was sent to Director General of Coast Guard, being the competent authority to approve the punishment. The Director General approved the punishment on 25.11.2005 and the same was communicated to the petitioner on 20.12.2005 by his Commanding Officer.

13. According to respondents, petitioner had been dismissed from service as he had committed theft and that such dismissal was as per the



laid down procedure and there was no question of forcing the petitioner to sign any blank document. It is reiterated that petitioner had rather pleaded guilty and, therefore, the Commanding Officer, after careful perusal of Abstract of Evidence and after considering the plea of guilt of the petitioner, recommended his dismissal from service.

14. We have given our anxious consideration to the rival contentions and perused the material placed before us.

15. Though this Court cannot act as appellate court and reassess and reappraise the evidence, fact remains that if any instance suggesting violation of principles of Natural Justice or gross violation of the laid down procedure or denial of fair trial is found to be present, the intervention can be certainly made by exercising power under Article 226 of the Constitution of India. The aspect of fair trial enshrined under Article 21 of the Constitution of India also implies adherence to relevant statutory provisions. A Co-ordinate Bench of this Court in *Balwinder Singh Vs. Union of India & Ors.* (2010) 172 DLT 200 (DB), while making reference to the judgment given by Division Bench of Guwahati High Court, observed as under:-

“34. So far as the rights of members of security forces as the Border Security Force and the permissibility and scope of challenge to the proceedings of the security force courts by way of proceedings under Article 226 are concerned, the Division Bench of the Guwahati High Court had occasion to consider the same in the pronouncement reported at MANU/GH/0170/2007 : (2007) 1 GLT 903 Director



General, Border Security Force vs. Iboton Singh (KL). In para 14 & 15, it was held as follows:-

"14. While considering the scope of judicial review by the High Court in matters of the proceedings of a SFC, what is also pertinent to note is that Article 33 of the Constitution has conferred, on Parliament, the power to abridge the fundamental rights of not only armed forces, but also of the forces entrusted with the maintenance of public order. This, however, does not mean that merely because of the fact that a person belongs to an armed force or a force entrusted with the maintenance of public order, he is denuded of the constitutional guarantees given to him by Article 21 of the Constitution, which ensures to every person a fair trial in accordance with law. Viewed from this angle, it is clear that when the procedures prescribed are followed as a mere formality by a SFC and not in substance or in its true spirit, the accused may, in an appropriate case, be held to have been denied a fair trial and such a proceeding may warrant interference by the High Court in exercise of its extraordinary jurisdiction under Article 226. The procedure prescribed adopted for trial by a SFC has to be tested on the touchstone of Article 21 and if the procedural safeguards given to a person from the Border Security Force, under the BSF Act and/or the BSF Rules, are violated, violation thereof would, in substance, be denial of the right to a fair trial. A person, even when he comes from the BSF, is as much a citizen as any other citizen of India and he is entitled to all such protections as have been given to him by making various laws in conformity with the provisions of Article 21. The Constitution-makers were conscious of the fact that no more restriction should be placed than what are necessary and indispensable for ensuring maintenance of discipline and proper discharge" of duties by the armed forces and the forces entrusted-with the maintenance of public order. Hence, when an Indian citizen, being a member of any such forces, is tried under its own established mechanism, such as, SFC, on a charge of having committed the civil offence of 'murder' punishable under Section 320 IPC, it is the duty of the High Court to examine, when such a person approaches the High Court with an application under Article 226, to determine if, while holding the trial, the provisions of the



BSF Act and the Rules made thereunder, which provide protection to the accused, have been adhered to or not and whether, for the purpose of reaching its findings, the SFC has kept itself informed of all the relevant provisions of the Evidence Act and the Indian Penal Code, 1860.

15. It is for the reasons indicated above that in Union of India v. LT Ballam Singh reported in MANU/SC/0360/2002 : 2002(81)ECC236 , the Apex Court has pointed out that even an army personnel is entitled to the protection, which the Narcotic Drugs and Psychotropic Substances Act (in short, 'the NDPS Act') gives to any other person. In other words, the protection available, in the form of Sections 42 and 50 of the NDPS Act, shall be applicable to the case of even an army personnel, for, there is nothing, in the law, that the protection, given in the NDPS Act, are not applicable to the members of the armed forces. Logically, therefore, when the Evidence Act is applicable to the proceedings of a trial by a SFC, it is but natural to interfere, and, in fact, we have no hesitation in holding, that if the provisions of the Evidence Act are ignored or are not taken into account by a SGFC and/or when the provisions of the Indian Penal Code are not properly applied, such noncompliance may, in an appropriate case, compel the writ Court to interfere, in exercise of its powers under Article 226, with the findings, which may have been reached by either ignoring, or in ignorance of, the relevant provisions of law, particularly, when such non-compliance results in gross miscarriage of justice. This apart, and as already indicated above, the procedural safeguards, which the BSF Act and the Rules themselves provide, cannot be ignored, for, ignoring them may amount to, in a given case, denial of a fair procedure to a person accused of having committed offence under the Indian Penal Code, 1860."

16. Thus, though this Court cannot act as appellate authority, it can certainly examine the matter from the aforesaid limited angle and whether the petitioner has been dealt in accordance with the Rules



applicable to him. There is also no prohibition in assessing whether there is any grave violation of any principle of Natural Justice, rendering, the entire process illusory and ineffectual.

17. Petitioner was serving in Indian Coast Guard. All such personnel of Indian Coast Guard are governed by Coast Guard Act 1978 which is further supplemented by Rules made thereunder as well as The Coast Guard (Discipline) Rules, 1983.

18. As per the petitioner, the procedure adopted by the respondents is in defiance of the various provisions contained in analogous Acts viz. Army Act, 1950 & Navy Act, 1957. We may, however, emphasize that we need not look into the provision contained under any other Act as the petitioner is specifically governed by Coast Guard Act 1978 and, therefore, even if it is assumed that the procedure and the manner provided under Coast Guard Act is different than what is provided under Army Act or for that matter under Navy Act, that would not mean anything substantial in the present context.

19. Petitioner has vehemently agitated about the manner in which trial was conducted against him. It is argued on behalf of the Petitioner that the Commanding Officer was personally interested in the present matter and, therefore, he should not have held the trial. It is argued that he acted in dual capacity as he was prosecutor as well as Judge and, therefore, there is violation of principle of Natural Justice.



20. Such contention is without any substance. There is nothing to indicate that the Commanding Officer had any personal interest in the matter. He is not the one who had unearthed the offence of theft. He was not even cited as witness and, therefore, there is no basis to label him either as prosecutor or an interested witness. Admittedly, he was the Commanding Officer at the relevant time but merely due to above, he cannot be assumed to be an interested witness.

21. We may refer to Rule 21 of The Coast Guard (Discipline) Rules, 1983 which reads as under:-

21. Attachment to another unit. - The Commanding Officer shall not deal with any case : -

(a) where the offence with which the accused is charged is against the Commanding Officer himself; or

(b) where the Commanding Officer is himself a witness in the case against the accused; or

(c) where the Commanding Officer is otherwise {personally interested in the case} & the accused shall be attached to another ship or station for the disposal of the case under the orders of the District Commander or the Regional Commander:

Provided that a Commanding Officer shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Coast Guard Mess or band or institution of which the Commanding Officer is a member or trustee or because the offence is one of disobedience of such Commanding Officer's orders.

22. Thus, as per above Rule, the Commanding Officer is precluded to deal with the matter where offence of which accused charged is against



such Commanding Officer himself or where the Commanding Officer is witness or where the Commanding Officer is otherwise personally interested in the case. Here, none of the aforesaid situation exists and, therefore, Commanding Officer cannot be said to be disqualified from hearing the charge.

23. Since petitioner is governed by Coast Guard Act, the prime consideration is to now assess whether there is any violation or infraction of prescribed procedure or not. The relevant provisions contained under Rule 18, 19, 20, 23, 24 & 26 of The Coast Guard (Discipline) Rules, 1983 read as under:-

18. Offence Report. - Where it is alleged that a person subject to the Act, has committed an offence punishable thereunder the allegation shall be reduced to writing in the form set out in Appendix IIIA.

19. Hearing by officer of the Day/Officer of the Watch and the Executive Officer. - (1) (a) In the case of a person subject to the Act, other than an officer, the case may, in the first instance, be heard by the officer of the Day/Officer of the Watch and then by the Executive Officer.

b) The witnesses shall give evidence in the presence of the accused who shall have the right to cross-examine them.

(c) The accused shall have the right to call witnesses in defence and to make a statement.

(2) After hearing the charge under sub-rule (1), the Officer of the Day/Officer of the Watch or the Executive Officer may : —

*(a) award any punishment which he is empowered to award,
or*



(b) dismiss the charge when the charge is not proved, or

(c) refer the case to the Commanding Officer:

Provided that he shall not dismiss the charge empowered a punishment:

(a) if the case has been reserved by the Commanding Officer for disposal by himself; or

(b) if the accused is under close arrest.

{20. Hearing of charge. – (1) Every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused, who shall have full liberty to cross examine any witness against him, and to call such Witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Board of Inquiry convened under rule 36 of the Coast Guard (General) Rules, 1986 and where the provisions of sub-rule (4) of rule 39 of the principal rules have been complied with, the Commanding Officer may dispense with the above procedure.

(2) The Commanding Officer shall dismiss a charge brought before him, if, in his opinion, the evidence does not show that an offence under the Act has been committed, or if he is satisfied that the charge ought not to be proceeded with: Provided that the Commanding Officer shall not dismiss a charge under any of the circumstances under rule 21 or for any offence under rule 22.

(3) after compliance of sub-rule (1), if the Commanding Officer is of opinion that the charge ought to be proceeded with, he shall, within a reasonable time,-

(a) award any of the punishment which he is empowered to award; or

(b) remand the accused for preparing a record of evidence or an abstract of evidence against him:

Provided that where the Commanding Officer proposes to award any of the punishments under section 57 of the Act, which requires approval, he shall prepare a Record of Evidence or an Abstract of



Evidence and forward it alongwith the Punishment Approval Form set out in Appendix III B.)

23. Record of Evidence. - (1) The Commanding Officer may either prepare the record of evidence himself or detail another officer to do so.

(2) The witnesses shall be summoned in accordance with Section 79.

(3) The witness give their evidence in the presence of the accused and the accused shall have the right to cross-examine all witness who give evidence against him.

(4) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms:— "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence".

(5) The accused may call witnesses in his defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.

(6) All witnesses shall give evidence on oath or affirmation: Provided that, no oath or affirmation shall be given to the accused nor shall he be cross-examined.

(7) (a) The statement given by witness shall ordinarily be recorded in narrative form and the officer recording the evidence may, at the request of the accused, permit any portion of the evidence to be recorded in the form of question and answer.

(b) The witnesses shall sign their statements after the same have been read over and explained to them.

(8) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without an undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf, a written statement signed by such witness may be read to the accused and included in the record of evidence.

(9) After the recording of evidence is completed, the officer recording the evidence shall give a certificate in the following form : —



"Certified that the record of evidence ordered by _____ was made in the presence and hearing of the accused and the provisions of rule 23 have been complied with".

24. Abstract of evidence. - (1) An abstract of evidence shall be prepared either by the Commanding Officer or an officer detailed by him.

(2) The abstract of evidence shall include : —

(i) signed statement of witnesses wherever available or a precise thereof; (ii) copies of all documents intended to be produced at the trial; (iii) a precis of the evidence where signed statements of any witnesses are not available.

(3) A copy of the abstract of evidence shall be given, by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires after he has been cautioned in the manner laid down in {sub- rule (4)} 9 of rule 23.

Provided that the accused shall be given such time as may be reasonable in the circumstances but in no case less than twenty four hours after receiving the abstract of evidence to make his statement.

26. Disposal of case by Commanding Officer after Record or Abstract of evidence. - (1) Where an officer has been detailed to prepare the record of evidence or to make an abstract thereof he shall forward the same to the Commanding Officer. (2) The Commanding Officer may, after going through the record or abstract of evidence: (a) dismiss the charge, or (b) rehear the charge and award one of the summary punishments, or (c) apply to the Convening Authority to convene a Coast Guard Court for the trial of the accused.

24. As already noticed above, petitioner/accused had allegedly committed theft of Rs. 3,000/- by dishonestly using the ATM Card of his one colleague. He was charged for offence under Section 34(a) of the



Coast Guard Act, 1978. Offence report under Rule 18 of The Coast Guard (Discipline) Rules, 1983 was prepared and he was produced before the Executive Officer on 27.09.2005. Petitioner pleaded guilty before him. After hearing the charge and taking note of his plea, the matter was referred to the Commanding Officer. When the matter was taken up by the Commanding Officer, as per respondents, the accused again pleaded guilty. The Commanding Officer also had multiple options. He could have dismissed the charge if the material produced or evidence led did not show commission of any offence. He could have awarded the punishment which he was empowered to award. He could have also remanded such accused for preparing 'Record of Evidence' or 'Abstract of Evidence'. The Commanding Officer, in the case in hand, directed 'Abstract of Evidence' to be prepared.

25. After such recording of Abstract of Evidence, the Commanding Officer heard the matter again and chose to recommend dismissal of the petitioner from service. Approval of the Director General was also sought before the dismissal order was served upon the petitioner.

26. We have gone through the proceedings conducted by Executive Officer and Commanding Officer.

27. It is quite obvious that the Commanding Officer never showed any haste and rather gave direction for preparation of 'Abstract of Evidence' and after such Abstract of Evidence was recorded, copy thereof was also



served upon the petitioner in consonance with Rule 24 (3) as extracted above. He had also given opportunity to petitioner to make statement, if any, and was also duly cautioned. 'Punishment Approval Form' in respect of petitioner was duly forwarded to the Director General for requisite approval who approved the same. As noted already, the Executive Officer had also cautioned the petitioner in accordance with Rule 23 (4) and thereafter on the plea of guilt, he put up the case to the Commanding Officer and as the case was beyond his power of punishment. The Commanding Officer then directed preparation of 'Abstract of Evidence' and the statements of concerned witnesses, including that of S. Sujith, were recorded.

28. Abstract of Evidence was prepared on 28.09.2005 and the most clinching and crucial incrimination comes from Sh. S. Sujith.

29. Sh. S. Sujith is the one whose ATM Card had been dishonestly used by petitioner. In his statement recorded during such preparation of Abstract of Evidence, he claimed that when he had gone to ATM Counter to withdraw some money on 07.09.2005, he found that balance in his account was Rs. 400/- only. Next day, he went to Pay Office to enquire regarding monthly payment and the Pay Office staff referred him to the concerned Bank Manager to seek clarification. When he contacted Bank Manager, Hamla Centurian Bank, he learnt that Rs. 3,000/- had been withdrawn from his account at about 1048 hours on 03.09.2005. Bank Manager had also advised him to ask his classmates about the



above by announcing that ATM Counter was equipped with camera and whosoever had withdrawn the money would be caught. S. Sujith checked up with all his classmates but no one owned up anything. However, when he went for lunch in the dining hall, accused i.e. petitioner herein came to him and confessed that he had mistakenly taken out said amount from his such account by using ATM Card which he had stolen from his locker on 03.09.2005. *He also sought pardon for such act undertaking that he would return the money. Same evening i.e. on 09.09.2005 at about 2130 hours, petitioner returned Rs. 2,950/- and the balance was returned the following day.*

30. Statements of Sh. K. Joseph and Sh. P. Das also corroborate his version.

31. The charge was again read out to the petitioner by the Commanding Officer and he was also provided with copy of 'Abstract of Evidence' and was also duly cautioned under Rule 24 (3) of Coast Guard (Discipline) Rules 1983 which he understood and in token thereof, he signed on the prescribed format of certificate.

32. Thus, evidently, there is no infraction or violation of laid down procedure. Evidence of Sh. S Sujith clearly suggests the complicity of the petitioner and moreover, he cannot escape from his own confession.

33. It will be worthwhile to take note as to what was the plea of petitioner before the Commanding Officer after he was explained about



the charge and was provided with copy of Abstract of Evidence. He was asked whether he wanted to make statement in answer to such charge or not. He made statement on 30.09.2005 which reads as under: -

“Do you wish to make a statement in answer to the charge, as you have been provided with Abstract of Evidence related to your case on 28 Sep 2005?”

Ans. Yes Sir. I Santosh Kumar, NVK/CK (O), NO. 05198-R have to state that at about 1100 h on 03 Sep 05 while I was in my Block I saw the locker of S Sujith, NVK/CK (O), NO. 05196-P was open. I took out his ATM Card and went to INS Hamla ATM Counter through South Gate. At about 1048 h I withdrawn a sum of Rs. 3000/- (Rupees Three Thousand only) from the account of of S Sujith, NVK/CK (O), NO. 05196-P by using the stolen ATM Card. I knew the PIN Number of S Sujith, NVK/CK (O), NO. 05196-P as once on an earlier occasion I had visited ATM Counter where S Sujith, NVK/CK (O), NO. 05196-P withdrawn some amount form his account using his ATM Card in my presence and I noted his PIN number. After withdrawing the money I kept it in my locker and replace the stolen ATM Card in the locker of S Sujith, NVK/CK (O), NO. 05196-P. On 09 Sep 05, at about 1130 h . Sujith, NVK/CK (O), NO. 05196-P came to know regarding the theft of money from his account. At about 1200 h he came to Catering school with his statement of account and enquired from all messmates regarding the above theft of money from his account. He also mentioned that anyone who had withdrawn money from his account would certainly be caught since he had been photographed by the camera, which was fitted in ATM Counter of Hamla Centurion Bank. S Sujith, NVK/CK (O), NO. 05196-P also suggested that the individual should voluntarily accept the said theft and return the money to him. At about 1345 h I went for lunch to Junior Sailors' Dinning Hall where I confessed to S Sujith, NVK/CK (O), NO. 05196-P that “I have mistakenly taken out the said amount from your account by using your ATM Card which I stolen from your locker at about 1030 h on 03 Sep 05”. Please forgive me for the act I have committed and I will return your money. I also told him not to disclose the matter to anyone else. At about 1800 h the Course Instructor P. Das, POCK (S), No. 150009-F came to the block and asked us regarding the said theft. I kept quiet and did not disclose the



incident to the Course Instructor. In the evening, after the night muster of the class at about 2130 h, on 09 Sep 05, I returned Rs. 2950/- (Rupees Two Thousand Nine Hundred and Fifty only) to S Sujith, NVK/CK (O), NO. 05196-P in the block verandah and balance of Rs. 50 (Rupees Fifty only) on the following day at about 0800 h. I assure you sir that I will not commit such mistake in future. Please pardon me.

*(George Xavier)
Lieutenant (05353-R)
Divisional Officer
30 Sep. 05*

*(Santosh Kumar)
NVK/CK (O)
No. 05198-R
30 Sep 05*

The above statement was recorded by me which was read over to the accused who accepted it as correct and signed in my presence.

*Place: Mumbai
Date 30 Sep 05*

*(Shankar Swaroop Mathur)
Commodore (02213-B)
Commanding Officer*

34. There is now no escape route for the petitioner in view of his own admission. He admitted that he had withdrawn an amount of Rs. 3,000/- on 03.09.2005 as he got the opportunity to steal the ATM Card from the locker of S. Sujith when he noticed that such locker was lying opened. He also knew the PIN number and after withdrawing the amount, he acted in a very smart and clever manner and put back the ATM card in the locker of S. Sujith.

35. According to petitioner, there was a conspiracy against him. He wants the Court to believe that Sh. S. Sujith voluntarily handed him over his ATM Card and also shared PIN number and that in terms of conspiracy, he was framed. However, his admission before the Commanding Officer tells a different tale altogether. Moreover,



withdrawal was on 03.09.2005 and there is no explanation as to why he had returned the money after six days i.e. on 09.09.2005. It is quite obvious that the moment, it was announced that culprit would be caught as the ATM Counter was having a camera, he panicked and immediately contacted S. Sujith and tendered apology and returned the money.

36. We may also note right here that when petitioner had filed rejoinder before us, he submitted one statement alleged to have been given by Sh. S. Sujith. In such statement, Sh. S. Sujith claims that he and petitioner were good friends and that there used to be monetary transactions between them and that instructor had made mountain out of a mole hill, supplementing that he had no grievance against petitioner and that he may be pardoned.

37. Nobody knows as to when and under what circumstances, such statement was made by Sh. S. Sujith and to whom. As already noticed above, Sh. S. Sujith has raised specific and pinpointed accusing finger towards the petitioner and, therefore, such alleged subsequent statement does not mean anything significant. Moreover, even if such statement is to be believed, it becomes very much obvious that Sh. S. Sujith wanted that the petitioner may be pardoned which clearly tantamount to indicate that it was petitioner only who had committed the theft in question.

38. Petitioner has also miserably failed to demonstrate any violation of principles of Natural Justice. As already noticed above, he admitted



his guilt before the Commanding Officer and in such situation, he cannot be permitted to agitate that he was not given any opportunity to defend his case. Admittedly, it is not a case where Commanding Officer had recommended for convening of any Court Martial. He was duly empowered to deal with the matter summarily and in the instant case, petitioner was summarily tried which was within the purview of the powers of the Commanding Officer and, therefore, there is no deviation from the prescribed procedure and relevant Rules.

39. The material against him, particularly in light of statement of Sh. S. Sujith, is obviously sufficient to substantiate the charge of theft and the punishment meted out to the petitioner cannot be labeled as shockingly disproportionate as utmost discipline, truthfulness, sincerity is expected from any such official of Armed Forces. Moreover, only the Disciplinary Authority and Appellate Authority are vested with the exclusive power to examine the adequacy of evidence and discretion to impose appropriate punishment keeping in mind the gravity of the misconduct. While exercising powers of judicial review, the High Court or the Tribunal cannot, ordinarily, re-appreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate that it would shock its conscience. Reference be made to *Union of India and Others Vs. Subrata Nath* 2022 SCC Online SC 1617.



40. We have also gone through the judgments relied upon by petitioner and have no hesitation in holding that these are not attracted keeping in mind the peculiar facts of the present case.

41. In *Ravinder Singh (supra)*, petitioner therein had merely overstayed leave for which he was dismissed from service and keeping in mind his young age and the fact that the misconduct was only regarding overstayal of leave, the matter was remanded back for decision afresh with respect to the quantum of punishment. In *Ex. Head Constable Moti Singh (supra)*, petitioner was dismissed from service for being found in possession of money disproportionate to his known sources of income. In said case, petitioner therein had pleaded guilty but the Co-ordinate Bench of this Court had come to the conclusion that it was a case of no evidence and, therefore, even the plea of guilt could not have led to conviction, while relying on *Ram Paul Vs. Union of India and Anr. 2005 (83) DRJ 718 (DB)* and it was in that backdrop that the dismissal order was set aside. Here, as already noticed, there is clear cut evidence of theft against the petitioner. Moreover, the petitioner himself admits that he had withdrawn the money. In *Roop Singh Negi (supra)*, petitioner had made confession but it was held that such so called confession itself was not sufficient and some evidence ought to have been brought to show that petitioner therein was involved in stealing. Here, as already noticed, the complicity of petitioner stands exposed in view of statement of Sh. S. Sujith.



42. In *Mahavir Singh Vs. Union of India & Others* (2002) 62 DRJ 875, the situation was different as in that case the Court got the impression that the fairness and impartiality in the conduct of trial was missing and petitioner was denied a fair trial. In *Union of India Vs. R. Anand* (supra), the material placed before the Court indicated that the Commanding Officer was acting as the complainant, prosecutor as well as the Judge and as such the fair inquiry was denied to the concerned official. It was also observed that the Commanding Officer appeared to have entertained a clear bias against such official and fact in that particular background that the order of learned Single Judge with respect to setting aside the order of dismissal from service was upheld. In the case in hand, there is nothing to indicate that the Commanding Officer was harbouring any bias. The complaint had rather come from his one colleague whom he considered a good friend and, therefore, no advantage can be dug out from the aforesaid judgment either. Facts in *Shri R.S. Singh Vs. Union of India* (supra) are also entirely different as in that case, the misconduct was of gross indiscipline as the concerned official of CISF had overstayed leave without any permission and his stand was that the marriage of his daughter was already pre-arranged and that he got busy in arranging funds for such marriage.

43. In view of our foregoing discussion, it becomes quite evident that the respondents were fully justified in dismissing the petitioner from service for the misconduct in question.



44. Resultantly, we do not find any merit in the writ petition. Same is accordingly dismissed.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

FEBRUARY 28, 2024

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