



2024:DHC:861-DB



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

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Date of decision: February 06, 2024

+ W.P.(C) 4879/2016

(9) VISHAL N.A.

..... Petitioner

Through: Mr. Ankur Chhibber and
Mr. Nikunj Arora, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajesh Kumar and Ms. Mishika
Pandita, Advs. with Insp. Sanjay
Kumar, CISF, Law Officer

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

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

"In view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(i) issue a writ of certiorari for quashing the penalty order dated 26.04.2014, the order dated 30.12.2014 passed by the Appellate Authority as well as the order dated 30.09.2015 passed by the Reviewing Authority; and

(ii) Issue a writ of mandamus directing the respondent to expunge the penalty of "Reduction of pay by one stage from Rs.10560/- to Rs.10130/- in Pay Band 11(9300-34800) with immediate effect for a period of one year" and grant all consequential benefits to the petitioner as admissible in law.

(iii) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.



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2. The challenge in this writ petition is to the order of the Disciplinary Authority dated April 26, 2024, Appellate Authority order dated December 30, 2014 and the Reviewing Authority order dated September 30, 2015 whereby the petitioner has been imposed the penalty of reduction of pay by one stage from ₹10560/- to ₹10130/- in Pay Band II (9300-34800) with immediate effect for a period of one year.

3. At the outset, it may be stated that the charge against the petitioner is the following:

*“Directorate General
Central Industrial Security Force
(Ministry of Home Affairs)*

*Block No. 13, CGO Complex
Lodhi Road, New Delhi-3*

No.V-11014/48/2015/L&R 1225 Dated 30 September 2015

ORDER

WHEREAS, No. 061737798 Ex SI (Exe) Vishal N.A. of CISF ASG Delhi (hereinafter referred to as the petitioner was dealt under rule 36 of CISF Rules 2001, vide Charge Memorandum No.V-15014/38/13)/Disc-36/13-21774 dated 06.11.2013 for the following charge:-

Force No. 061737798 SI/Exe Vishal N. A. was deployed in CISF Unit AIG Airport, New Delhi on 15.10.2013 at day shift from 0700 hours to 2000 hours at T-3 Departure Domestic for X-BIS No 13 for domestic SHA screening. The Force member at about 1100 hours was unable to detect the dummy IED which was kept in the bag of BWFS employee at X-BIS No. 13 during screening, which shows grave negligence and dereliction his duty.”



4. It is conceded position that the charge against the petitioner has been proved.

5. Mr. Ankur Chhibber, learned counsel for the petitioner, has drawn our attention to grounds (D), (E), (F) and (H) of the petition to contend that, in similar circumstances where a person could not identify the dummy object which was put in the x-ray machine, has either been imposed the penalty of warning or has been let off. The relevant grounds in that regard are reproduced as under :-

“D. Because respondents to failed to appreciate that the petitioner has been treated unequally vis-à-vis other Force Personnel who were dealt with for similar misconduct. The petitioner was alleged for failing to detect a dummy IED and was proceeded against for the said misconduct for major penalty under Rule 36 of CISF Rules 2001 and was given the aforesaid penalty. However, in the following cases, either no statutory punishment was awarded or they were simply let off with a warning in accordance with the instructions issued by various circulars by the CISF authorities:

(a)SI/Exe Arun Athri of Mumbai Airport for his failure to detect dummy on 22.05.2012 was given simply a 'warning' which is not a statutory punishment, vide letter dated 05.06.2012.

(b)SI/Exe Vinay Kumar of I.G.I. Airport, New Delhi, for similar lapse, on 28.09.2013 was punished with 'one-day's pay fine'-a very minor punishment. His appeal was rejected by the Commandant. However, the DIG/IGI Airport, the Reviewing Authority finding force in his contentions vide order dated 06.12.2014 acceded to his plea and exonerated him of the charge. It is apposite to point out that SI/Exe Vinay Kumar is senior to the petitioner in service and has served for more than four years at Airport Security whereas the petitioner had just put in 17 days of service at Airport when the alleged incident happened.



(c) SI/Exe UK Jha, senior to the petitioner was awarded only 'warning' although a small knife passed undetected when he was the screener, vide order dated 13.06.2014.

(d) SI/Exe Sanjay Kumar, senior to the petitioner was awarded only 'warning' vide order dated 28.07.2014, although a small knife passed undetected through the scanner when he was on duty as Screener.

(e) ASI/Exe RK Roy was awarded only 'warning' vide order dated 18.05.2014 for his failure to detect two litres of juice passed through the scanning machine undetected, when he was on duty as Screener when the permissible limit is only 100ml. Therefore, it suffices to say that the case of the petitioner has been isolated and treated to his disadvantage. It is also submitted that the punishment imposed upon the petitioner is very severe and is highly discriminatory and also violative of the 'principle of equality' before law and equal protection of law' enshrined in Article 14 of the Indian Constitution. For an alleged misconduct of such trivial nature, the impugned penalty is grave enough to shock the conscience of a prudent person. Such a penalty is not maintainable as per law laid down by Supreme Court in the matter of B.C. Chaturvedi vs. UOI, AIR 1996-SC 484.

Copies of relevant orders are annexed herein as Annexure P-32.

E. Because respondents have failed to appreciate that a similarly situated force personnel namely SI (Exe) Sunil Prakash Panna like the petitioner herein was also given a penalty of reduction of pay vide order dated 15.04.2014 for failure to detect dummy scissor being a certified screener pursuant to which the revision petition was preferred by the aforementioned force personnel and the same was allowed and further the punishment was reduced from the penalty of reduction of pay by one stage to that of 'Censure' vide order dated 16.02.2016. Therefore, having given relief to similarly situated personnel, the respondents are duty bound to set



aside the harsh penalty imposed upon the petitioner herein also.

F. Because respondents have failed to appreciate that in another similar case, SI (Exe) Bimal Vishwas was given the punishment of Censure for failure in detecting dummy pistol and lighter while performing his duty at VIP X-S Duty Post at Terminal-1, IGI Airport vide order dated 04.07.2015. Pursuant to which, the aforesaid force personnel moved an appeal which was allowed vide order dated 27.01.2016 wherein the personnel was exonerated from the punishment of 'censure'. Therefore, having; given relief to similarly situated personnel, the petitioner is also entitled to the same relief.

H. Because respondents have failed to appreciate that yet another similarly situated force personnel namely, Rajesh Kumari, was also given the punishment of censure vide order dated 21.04.2015 in a case similar to that of the petitioner herein. On preferring an appeal, the aforementioned personnel was exonerated from the punishment of censure vide office order dated 31.12.2015. Therefore, on having taken a lenient view in case of other similarly situated personnel, the respondents cannot deny the same to the petitioner herein.”

6. He submits that, in terms of the Circular No. AS-17/2006 dated October 16, 2006 and ADG/APS Circular No. O-42013/CISF/APC/OPS(2)/Circular(AS)-08-3525 dated April 24, 2009 issued by the respondents, the authorities could not have imposed the penalty of reduction of pay by one stage as imposed by them against the petitioner.

7. It is his submission that, if it is the first failure on the part of the employee, he can only be warned to be more careful and not to repeat such lapses in future. He also submits that, in one case, the officer has been exonerated. Therefore, the nature of charge/gravity of charge being same,



the petitioner should be exonerated. He submits the respondents have not disputed the grounds taken in the petition.

8. Mr. Chhibber has relied upon the judgment of the Supreme Court in the case of ***State of Uttar Pradesh and Others v. Raj Pal Singh, (2010) 5 SCC 783***, wherein, the Supreme Court has in paragraphs 5 and 6, held as under:-

“5. Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges levelled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.”

9. On the other hand, Mr. Rajesh Kumar, learned counsel for the respondents has relied upon the circular dated April 24, 2009, stating that, when misdemeanor in the manner committed by the petitioner is held to be proved, a disciplinary action is required to be initiated with appropriate punishment.



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10. Noting the stand taken by the petitioner that on identical charge (s), the officers were either warned or exonerated, we are of the view, in view of the law laid down by the Supreme Court as noted above, the plea urged by Mr. Chhibber is required to be considered by the Reviewing Authority being the final Authority. Accordingly, keeping in view the punishment imposed on the other officers, the Reviewing Authority is directed to take a final decision on the aspect of parity in punishment imposed against the petitioner within a period of 12 weeks as an outer limit. Needless to say, the respondents shall communicate the outcome thereof to the petitioner within a week thereafter.

11. With the aforesaid, we dispose of the writ petition.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 06, 2024/aky