

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 4161 of 2010

**H. K. Sikdar @ Himangshu Kumar Simdar
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. Indranath Mitra
Mr. Sankha Biswas

For the Respondents/U.O.I. : Mr. Niladri Saha

Heard on : 19.06.2025, 12.08.2025

Judgment on : 24.10.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, a Constable of the Central Industrial Security Force (CISF), bearing Force No.893440622, presently assailed in writ jurisdiction under Article 226 of the Constitution of India, three impugned orders – namely, (i) the Memorandum of Charge dated 07.05.2008, (ii) the Final Order of Punishment dated 08.11.2008, and (iii) the Appellate Authority's order dated 12.03.2009 – whereby he was visited with the penalty of reduction in pay to the minimum of the time scale for a period of five years, entailing consequential deprivation of increments and future pay progression.

2. The fact of this case revealed while the petitioner was deployed on additional duty between 19:00 and 23:00 hrs. on 20th April 2008, between watch towers Nos.2 and 3 of Alloy Steel Plant, Durgapur, certain miscreants allegedly attempted to remove approximately one metric tonne of scrap material from the slag dump yard adjoining boundary wall pillars 299 to 301. It was the case of the Disciplinary Authority that the petitioner, though stationed about 20 metres from the said spot, failed to apprehend or even challenge the miscreants, thereby exhibiting gross negligence and dereliction of duty.
3. A Memorandum of Charge under Rule 36 of the CISF Rules, 2001, was accordingly issued and after a departmental enquiry, the petitioner was found guilty of misconduct. The punishment of reduction of pay was imposed and the subsequent appeal preferred by the Appellate Authority.
4. The petitioner, being aggrieved, invoked the writ jurisdiction of this Court, contending that the enquiry was vitiated by serious procedural lapses, non-application of mind and a complete disregard of principles of natural justice.
5. The Learned Advocate representing the petitioner submitted as follows:-
 - i. The petitioner, a Constable serving under the Central Industrial Security Force (CISF), at the material time in April 2008, was attached to the CISF Unit, Durgapur Steel Plant. He was deputed for additional duty between 19:00 hrs. on 20.04.2008, covering the stretch between Watch Tower Nos.02 and 03 of the Alloy Steel Plant (ASP).

- ii. Admittedly, on the said date, Constable J.P. Acharjee, bearing No.944521079 was simultaneously performing regular 'B' Shift duty in the same zone. At around 20:40 hrs., the Assistant Commandant, Shri S.K. Jha, during a surprise inspection, purportedly found Constable Acharjee conversing with an unidentified individual upon which the said individual fled into the plant premises. Simultaneously, a group of 12-13 miscreants sitting on the boundary wall reportedly jumped down and escaped on the outer side.
- iii. A General Diary Entry (GDE) was instituted to record the occurrence, and on the following day, the petitioner was placed under suspension. Subsequently, a Memorandum of Charge dated 07.05.2008 was issued, alleging failure to maintain absolute integrity, gross negligence, and dereliction of duty. The articles of charge, statement of imputation, and supporting documents were enclosed.
- iv. The petitioner participated in the departmental enquiry, submitted his defence, and also filed representation on the findings of the Enquiry Officer. His suspension was later revoked on 26.08.2008. However, upon conclusion of the proceedings, the Senior Commandant, CISF, by order dated 08.11.2008, imposed on the petitioner the punishment of reduction of pay to the minimum of Rs. 7510/- in the revised scale under the 6th Pay Commission for five years, with deprivation of increments during the said period, further directing that such reduction would have a cascading effect on future

increments. The appeal preferred was dismissed on 12.03.2009 by a non-speaking order affirming the disciplinary authority's decision.

6. The petitioner, a Constable (No.893440622) of the Central Industrial Security Force (CISF) posted at Durgapur Steel Plant, was charged under Rule 36 of the CISF Rules, 2001 for gross dereliction of duty, negligence, lack of integrity and unbecoming conduct. The charge arose from an incident on 20th of April, 2008 where miscreants allegedly attempted to remove approximately 1 MT of scrap material from the plant while the petitioner was deployed on additional duty at a Watch Tower. The departmental enquiry resulted in the imposition of a penalty, i.e., reduction of pay to the minimum of the revised pay scale to remain in force for 5 years with the resultant effect of barring increments during that period and postponing future increments. The Appellate Authority upheld the aforesaid order on 12.03.2009 leading the petitioner to approach this Court through the instant writ petition.
7. The Learned Advocate representing the petitioner submitted the disciplinary proceedings culminated in the orders dated 07.05.2008, 08.11.2008 and 12.03.2009 had been vitiated by material irregularities and procedural infirmities. It was further agitated of non-production of General Diary Entry. Since no GD Entry was produced officially, verified and recorded the alleged additional duty of deployment, the petitioner could not have been inculpated.
8. The primary witnesses being PW-1 and PW-2 adduced contradictory statements regarding the time of entry of PW-1 into the plant premises (17.50 hrs. Vs. 20.30 hrs.) which cast a doubt on the veracity of the complaint. Crucial GD Entries for the period before and after the inspection

were not produced hindering the ability to establish the contemporaneity and consequence of events. Moreover, the petitioner was denied the right to cross-examine the alleged witness from the 'B' Shift, a serious infraction of the principles of natural justice and the disciplinary framework under Rule 36 of the CISF Rules, 2001.

9. The Learned Advocate representing the petitioner further urged that the nature and type of the alleged stolen scrap material were not identified or proven nor was its potential sensitivity or classification established. None of the prosecution witnesses specifically attributed any act of negligence or dereliction of duty of the petitioner. The Supervisory Officer (PW-1) admitted that the petitioner was alert on duty and was, in fact, supervising the duties of a fellow constable which directly frustrated the foundation of disciplinary action. There was no investigation as to what action PW-1 resorted to pursue the miscreants. No theft report was secured from the ASP management to sanctify corroborative value.
10. The Learned Advocate representing the respondent-authorities refuted the contentions of the Learned Advocate representing the petitioner asserting that the disciplinary action instituted against the petitioner as aforesaid had been legally initiated having been effected through due process under Rule 36 of the CISE Rules, 2001. It was further controverted that there existed a fatal variance between the article of charge and the statement of imputation which had been misconceived and untenable on the part of the petitioner.
11. The Learned Advocate representing the respondents further submitted that the article of charge reflected a formal, concise accusation which need not be

a verbatim recital of each and every fact. The statement of imputation provided a supplement to the charge detailing the particulars, the sequence of events and the material facts being the foundation of the charge.

12. The petitioner, in accordance with the provisions enumerated in Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, was ensured with a fair opportunity to understand and respond to the substance of the charge. According to the Learned Advocate representing the respondent-authorities, the charge framed against the petitioner was unequivocally clear since the imputations provided ample, specific details regarding his posting on additional duty between 19 hrs. and 23 hrs. on 24.04.2008 at Watch Tower 02 and 03 of the Alloy Steel Plant (ASP) Sector and his subsequent failure to act during the intrusion.
13. Pertinently the record indicated that the petitioner did not raise the issue of vagueness or procedural defect at any stage of the disciplinary proceedings or before the Appellate Authority. The plea of variance was, therefore, a belated afterthought raised solely to obfuscate the gravity of proven misconduct.
14. This Court while exercising its jurisdiction under Article 226 is aware that the same is not a Court of appeal in disciplinary matters to re-evaluate or appreciate any evidence on record unless there had been gross procedural impropriety, illegality and irrationality.
15. In the instant case, the plea of fatal variance is found to be unsustainable. The essential requirement of natural justice is that the charged employee must be appropriately informed of the imputation cited against him. The

materials on record including the particulars and detailed description of the charges left no doubt that the petitioner perceived the core allegations concerning his failure to act on the specific date, time and location if there had been any technical imperfection in drafting the charge the same if rectified by exhaustive narration in the imputations without any prejudice expressed against the petitioner. The same could otherwise vitiate a sound inquiry. The pivotal issue concerned the nature of the petitioner's duty as a constable of the CISF. The petitioner's engagement had been fundamentally one of the strict disciplines and protection of assets. The attempt to deflect his own liability onto another constable or by relying on a distance of mere 22 to 30 meters had been a self-satisfying argument which could not be countenanced through objectivity. The opinion of the petitioner to have been a witness to the intrusion yet remaining a spectator failing to discharge the cardinal and rudimentary duty of his service indubitably catered to willful omission and gross negligence which transpired during the process of inquiry corroborated by certain evidence could not have been perverse.

16. The contention of the petitioner that the penalty was shockingly disproportionate must be evaluated on the rigorous settled principles. Considering the petitioner's inaction leading to significant breach of security and an attempt of theft, the quantum of punishment must be viewed through the lense of disciplined force. The penalty imposed, i.e., reduction in pay for 5 years with its consequent ramification as aforesaid while undoubtedly severe had been an alternative to the ultimate punishment of dismissal. It had been a measure imposed at rectifying the petitioner's

conduct and upholding the disciplinary ethos of the CISF. Applying the doctrine of proportionality, this Court finds that the penalty though heavy had not been outrageous, perverse, illegal or irrational so as to shock the judicial conscience especially considering the nature of duty breached.

17. Interference with the core of the disciplinary proceedings continued by the disciplinary authority is, therefore, unwarranted. However, the petitioner may address a representation within 30 days of passing of this order to the Disciplinary Authority for consideration of reduction in penalty solely on the basis of exercising its discretion assessing the future conduct of the petitioner till date if the same had not been superannuated on the date of passing of this order. It is being abundantly clarified that the lenient view of the respondent authority to exercise its discretionary power will be final. The respondent authority is to exercise its absolute discretion if at all the same considers it prudent exclusively.

18. In view of the above discussions, the instant writ petition being WPA 4161 of 2010 is disposed of.

19. There is no order as to costs.

20. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)