

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

**PRESENT:
THE HON'BLE ANANYA BANDYOBADHYAY**

**WPA 10752 of 2021
Manoj Kumar Bisoyi
-Vs.-
Central Industrial Security Force & Ors.**

For the Petitioner : Mr. Prodyut Banerjee
Mr. Dhruvaraj Bhowmik
Mr. Ankit Misra

For the Respondents : Mr. Rudra Jyoti Bhattacharjee
Ms. Debjani Ghosal

Heard On : 13.11.2024, 19.12.2024, 17.03.2025, 28.03.2025

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. In the instant petition, the petitioner had challenged the memorandum and article of Charge No. V- 15015/CISF/BRBNMPL/RULE-37/2020-7850 dated 15.09.2020 and the ex-parte order No. V-15015/CISF/BRBNMPL/RULE-37/2020-9742 dated 12.11.2020 which had been issued bereft of essential documents, depriving him to reply appropriately. He further prayed for the documents to be furnished in reference to Memorandum and Article of Charge No. V-15015/CISF/BRBNMPL/RULE 37/2020-7850 dated 15.09.2020 and to afford an opportunity to prepare and present his reply. Furthermore, a direction to adjudicate the matter de-novo with cancellation of its Order no upon ex-parte V-15015/CISF/BRBNMPL/RULE 37/2020-9742 12.11.2020.

2. The petitioner had been a constable of Central Industrial Security Force (hereinafter referred to as 'CISF). The petitioner had been deployed on various train consignments (Lucknow, Delhi, Chandigarh and Jaipur) from 19.06.2020 to 25.06.2020 and had returned to his unit on 25.06.2020 and was quarantined in barrack till 08.07.2020 as per the prevalent Government guidelines on Covid-19.
3. The petitioner noticed serious irregularities involving violation of Covid-19 guidelines and had informed the same to his senior officers, which were not accepted in its proper perspective and was condemned on 09.07.2020, by the CISF authority directing the petitioner to report for IS duty at Jammu & Kashmir releasing him from the posting at Salboni, Purba Medinipur, West Bengal on 10.07.2020.
4. The CISF authority had postponed the aforesaid transfer to 28.08.2020 and had communicated the same vide its office letter E37014BRBMNL(S)/ADM-II/ISD/2020/6196 dated 15.07.2020. Subsequently the CISF authority had issued another direction on 18.07.2020 wherein the petitioner had been directed to report for IS duty at Jammu & Kashmir.
5. On receipt of the aforesaid letter, the petitioner had pointed out certain irregularities vide his letter dated 18.07.2020 to the respondent no. 3 which was not replied to, convincing the petitioner with an impression of not being transferred.
6. On 15.09.2020, the petitioner received a Memorandum bearing No. V-15015/CISF/BRBNMPL/RULE - 37/2020-7850 along with an Article of Charge wherein a disciplinary action was initiated by the CISF authority for alleged of violation of employment conduct and disobedience.

7. The petitioner was incapacitated to provide suitable explanation/ reply Memorandum and Article of Charge for non-provision of necessary documents. Since he could not submit his reply/defence within time due, the respondent no. 2 had passed an ex-parte Order against the petitioner bearing number 15015/CISF/BRBNMPL/RULE V-37/2020-9742 dated 12.11.2020, imposing punishment of "censure" against the petitioner.
8. Consequently, the petitioner prayed for a writ in the nature of a mandamus commanding the respondents and each one of them to cancel and forbear from giving effect to the disciplinary proceedings initiated vide Memorandum and Article of Charge No. V-15015/CISF/BRBNMPL/RULE-37/2020-7850 dated 15.09.2020, the ex parte order No. V-15015/CISF/BRBNMPL/RULE-37/2020-9742 dated 12.11.2020; and on an alternate to issue writ in the nature of Mandamus commanding the respondents to furnish the copies of all the documents referred in the Memorandum and Article of Charge No. V-15015/CISF/BRBNMPL/RULE 37/2020-7850 dated 15.09.2020 and to afford an opportunity to the petitioner to furnish his reply within any period permitted by this Hon'ble Court from the date of receipt of the aforesaid documents. Furthermore, a direction to adjudicate the matter de-novo cancellation of its Order no upon ex-parte V-15015/CISF/BRBNMPL/RULE 37/2020-9742 dated 12.11.2020.
9. The Learned Advocate representing the petitioner argued as follows:-
 - a. The petitioner received only the Memorandum and Article of Charge containing various allegations levelled against him with specific reference to various documents but was unable to pursue such documents as the respondents were not willing to

furnish the same by stating that there was no provision for supply of such documents under the CISF Rules.

- b. There is no specific prohibition either in the CISF Act or in the CISF Rules regarding supply of such documents/evidences. On the contrary, as per Rule 37 of the CISF Rules 2001, a reasonable opportunity has to be given to the petitioner. By not furnishing the purported evidences against him, the respondents have not given him a reasonable opportunity for his representation.
- c. The copies of the documents were an integral part of the entire proceeding against him and such documents had not been supplied to him.
- d. Due to not receiving the aforesaid document, the petitioner was not in a position to provide suitable explanation/ reply Memorandum and Article of Charge. Since he could not furnish his reply/defence within time due, the respondent no. 2 has passed an ex-parte Order against the petitioner bearing number 15015/CISF/BRBNMPL/RULE V-37/2020-9742 dated 12.11.2020 and thereby has imposed the punishment of "censure" against the petitioner.
- e. The petitioner submits that the aforesaid non furnishing of reply by the petitioner against the Memorandum and Article of charge within due time cannot in any event be attributed to the petitioner as he received not has the aforesaid documents/evidences from the respondents till the date of filing the instant application.

- f. The entire action of the respondents is arbitrary, against the principles of natural justice and as such is violation of Article 14 of the Constitution of India.
- g. The decision of the respondents as impugned herein suffers from the vices of illegalities, irrationality and/or procedural impropriety for which judicial interdiction under Article 226 of the Constitution of India is warranted for setting things right.
- h. This petition is within the jurisdiction of the Appellate High Court
- i. The petitioner further submits that the Hon'ble Supreme Court in the matter of O.K. Bharadwaj -versus- Union of India [(2001) 9 SCC 180] and also [(1996) 0 Supreme (SC) 1609] has categorically held that "*...even in case of a minor penalty, an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the Charges against him. Moreover, if the Charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the Principle of Natural Justice and the said requirement cannot be dispensed with*".

10. The Learned Advocate representing the respondents argued as follows:-

- a. The petitioner was on posted strength of CISF Unit BRBNMPL Salboni from 27-06-2016 to 16-06-2021. Thereafter, the petitioner has been posted out on regular transfer to CISF Unit, GUA Ore Mines (Jharkhand) on 17-06-2021 and was also posted at CISF Unit, GUA Ore Mines (Jharkhand). The

petitioner was deployed to various train consignments outside the 'state of West Bengal. On returning to his place of posting at CISF unit, Salboni, West Midnapore, he was quarantined from 25/6/2020 to 8/7/2020 in CISF Barrack as per the covid- 19 protocol. During the period of petitioner's quarantine one constable Devashish Yadav of CISF Unit, BRBNMPL, Salboni reported back in the Unit from RTC Bhilai on 27/6/2020 after he was posted at Bhilai. He was also temporarily placed in the same quarantine Barrack, where the petitioner was staying. The petitioner complained against such accommodation. The Unit Commandant on receiving such complaint 27/6/2020 at, about 16:11 hrs directed the Assistant Commandant, Shri P.K. Naik to arrange shifting Constable Devashish Yadav from quarantine room on the same day. Thus the allegation of the petitioner are baseless.

- b. As per order of CISF higher formation, certain strength of different ranks including Commandant and Assistant Commandant/Exe are deployed either for Internal Security (IS) duty in different States including Jammu and Kashmir (J&K) or Delhi Metro Rail Corporation, Delhi (In short DMRC Delhi) or Election duties or for NRC (National Register of Citizens) duty at Assam. The manpower of CISF Unit, BRBNML Salboni for the above duties is detailed on the basis of their seniority in the Unit. Accordingly, the petitioner was assigned IS duty at J & K as a reliever of one personnel who was already on IS duty at J&K for the last six months. An order dated 08-07-2020 was

issued for total 31 personnel for J & K, for DMRC and NRC (National Register of Citizens) Assam. This order was not for the petitioner only. Since his posting in this Unit for almost four years prior to appointment to IS duty at J & K, he was not sent on any IS duty/Election Duty)

- c. An application for exemption from Internal Security duty on the ground of his Limited Departmental Competitive examination (in short LDCE) for ASI/EXE in CISF which was scheduled to be held on 23-8-2020. Accordingly, the date of relief of the petitioner for Internal Security duty at Jammu and Kashmir was postponed to 28-08-2020 and communicated vide letter No.E-37014/ BRBNML(S)/ Adm.II/ I.S.D./2020/6196 dated 15-07-2020.
- d. The said LDCE examination for the post of ASI/Exe in CISF was postponed till further order due to COVID-19 pandemic. Accordingly, he was directed to proceed on IS duty at Jammu and Kashmir on 26-7-2020.
- e. As a welfare measure, it was also directed to purchase Railway ticket and make reservation for his comfortable journey and produce the same before Assistant Commandant/ Headquarter with a view to further change his date of relieving from Unit according to date of confirmed ticket/reservation in Train.
- f. The petitioner had made a false and concocted written complaint dated 18-7-2020 addressed to DIG, CISF SEZ-1 HQ Kolkata, challenging the Unit administration just to avoid his detailment in Internal Security duty/Law and Order duty at

J&K. The petitioner in his above complaint mainly mentioned that the personnel working in Offices and other administrative duties were not detailed. By submitting complaint dated 18-7-2020 he tried to get exemption from CISF higher authorities for his personal gain. He wrote the complaint even after consideration of his request postponing his date of relieving to 28-8-2020 since his LDCE examination of ASI/Exe in CISF was scheduled to be held on 23-8-2020.

- g. The petitioner made written complaint dated 18-7-2020 before the next senior of Unit Commandant that is DIG, CISF SEZ-1 HQrs Kolkata. As such his complaint dated 18-7-2020 was forwarded to DIG, SEZ-1 HQ, Kolkata Vide letter No.(6383) dated 23-7-2020 with para-wise comments. Upon examining complaint of petitioner and para-wise comments, direction was issued to CISF Unit, BRMNMPL Salboni to "TAKE DISCIPLINARY ACTION' vide their letter No.(840) dated 1-09-2020.
- h. It is emphatically stated that the petitioner is trying to mislead the Hon'ble High Court by taking false and baseless plea to escape from the charge as well as from the imposed penalty. The plea put forward by the petitioner are far from the truth. The petitioner was given ample opportunity to submit his written reply, if any, against the charge framed within 10 days from the date of receipt of the Charge memorandum No.(7850) dated 15-09-2020. The petitioner received the charge Memorandum on 16-09-2020. Thereafter, the petitioner had made three

representations vide his letter dated 26.09.2020,03-10-2020 and 10-10-2020 praying for the copies of few documents to submit his representations and also requested for a fair enquiry in the matter. The Disciplinary Authority vide letter No. (8351) dated 01-10-2020 informed the petitioner that there is no provision in rule-37 of CISF Rules, 2001 to supply documents as requested by him and given him another opportunity to submit representation against charge Memo. Moreover, as per provision contained in Rule-37 (b) of CISF Rules, 2001, discretion for holding an enquiry before imposing a penalty under rule 37 of CISF Rules, 2001 is vested with Disciplinary Authority that is, after receiving of reply to Charge Memo from charged Official. The petitioner was again informed vide letter No.(8469) dated 05-10-2020 to submit his reply within 05 days otherwise action will be taken as per rule.

- i. The petitioner did not submit his representation against the Charge Memo even after lapse of 50 days, the Assistant Commandant/plant, CISF Unit BRBNML, Salboni, being the disciplinary authority considered all relevant documents available in case files including his all applications mentioned above and found the petitioner guilty of the charge and awarded the punishment of "CENSURE" to meet the end of justice vide Final Order No.V-15015/CISF/BRBNML/Rule-37/2020-9742 dated 12.11.2020. Petitioner acknowledged the Final Order on 13.11.2020.

j. The action taken by the Disciplinary Authority is under the provision of Rule 37 of CISF Rules 2001. The petitioner was given ample opportunities to submit his representation against charge memorandum by the Disciplinary Authority, but he did not avail the opportunities, the reason best known to him. Hence, there is no violation of principles of natural justice on the part of the Disciplinary Authority.

k. It is submitted that points raised in the grounds para 26(1 to XI) are mere repetition of points as mentioned above. However, it is submitted that the Disciplinary Authority given him more than 50 days time to submit representation against charge Memo, but the petitioner ignored to comply, which is an indiscipline act on the part of a member of disciplined force.

l. There is no violation of the principles of natural justice. The petitioner was given ample opportunities to defend his case, but even after lapse of 50 days he did not submit representation against the Charge Memorandum.

11. The petitioner had assailed the Memorandum and Article of Charge No. V-15015/CISF/BRBNMPL/RULE-37/2020-7850 dated 15.09.2020 as well as the ex parte order bearing No. V-15015/CISF/BRBNMPL/RULE-37/2020-9742 dated 12.11.2020, primarily on the ground that the impugned proceedings were conducted without furnishing the requisite documents necessary to enable a proper defence. The petitioner contended that the failure to supply the said documents impaired his ability to respond to the charge, thereby vitiating the disciplinary

proceedings. He prays for a direction upon the respondent authorities to furnish the relevant documents, permit him to file his reply, and adjudicate the matter de novo.

12. The petitioner had not reported for Internal Security duty at Jammu & Kashmir pursuant to a posting order dated 09.07.2020. Although the said transfer was initially deferred, the petitioner was subsequently directed to report vide another communication dated 18.07.2020. In response, the petitioner brought to the notice of the authorities certain alleged irregularities through his letter dated 18.07.2020, to which he received no response.
13. Thereafter, a Memorandum along with an Article of Charge was issued on 15.09.2020 initiating disciplinary proceedings against the petitioner for misconduct and insubordination. The petitioner submitted as he was not furnished with the relevant documents, he was unable to tender an adequate explanation. Consequently, by order dated 12.11.2020, the disciplinary authority proceeded ex parte and imposed the penalty of "Censure".
14. The Learned Advocate for the petitioner submitted that Rule 37 of the CISF Rules, 2001 mandated the grant of a reasonable opportunity to the charged officer, and the denial of access to necessary documents constituted denial of natural justice.
15. Per contra, the Learned Advocate appearing on behalf of the respondents contended the petitioner was validly detailed for duty in Jammu & Kashmir as per established procedure. Although the petitioner was initially excused on account of an impending LDCE examination, which was later postponed due to the COVID-19 pandemic, and he was again

directed to report. His subsequent representations were found to be meritless and aimed at evading official duties. It was further submitted that the petitioner was afforded over 50 days and multiple opportunities to respond, and having failed to avail of the same, the proceedings culminated in the imposition of a minor penalty in accordance with Rule 37 of the CISF Rules, 2001. The respondents assert that there had been no breach of natural justice, and the impugned proceedings stand on firm legal substratum.

16. The respondent CISF, apart from ascribing misconduct to a maiden incident against the petitioner did not cite any proposition of habitual negligence, impropriety, financial irregularities in rendering his services.
17. The stray incident of misconduct during the pandemic period can be attributable to anxiety and trauma on the part of the petitioner prompting him to such unreasonable and un-instigated act to dishonour the order of transfer which was unbiased and impartial.
18. The Disciplinary Authority provided ample opportunities to the petitioner to partake in the proceedings which the petitioner did not avail adamantly and/or negligently on the plea of non-receipt of relevant documents precluding him to file a reply. The Disciplinary Authority had been considerate enough only to "Censure" the petitioner for such indiscipline, insubordination and non-compliance of the order of transfer which reflected similar directions to have been issued against other 30 personnel.
19. Nonetheless, the petitioner is directed to seek unconditional apology from the concerned authorities through a representation for his otherwise impulsive act. The respondent authorities may pardonably for ends of

justice consider such representation filed by the petitioner leniently without further retribution to the order of censure impeding his promotion and/or future prospect in the service.

20. In view of the above discussions, the instant writ petition being WPA 10752 of 2021 is disposed of.

21. There is no order as to costs.

22. 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.)