

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 11115 of 2010

**Jana Priya Acharjee
-Vs-
Union of India & Ors.**

For the Petitioner	: Mr. K.B.S. Mahapatra Mr. Aditya Shit
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.944521079, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of mandamus to quash and set aside the final order of punishment dated 03.10.2008, bearing No.V-15014/DSP/Disc/Maj/JPA/08-10464 as well as the purported revision order dated 27.07.2009, bearing No.V-11014/NES/LC/Rev-24/2009-5739, together with all consequential benefits attendant thereto.
2. The petitioner was, at the relevant point of time, posted at the CISF Unit, Durgapur Steel Plant (DSP), and was assigned duty on 20.04.2008 from

13:00 hrs. to 21:00 hrs. between Watch Towers Nos.02 and 03 of the Alloy Steel Plant (ASP). The said stretch of deployment was proximate to boundary wall pillars 299 to 301, adjoining the slag dump yard, a location identified as sensitive due to storage of scrap metal of considerable quantity and value.

3. During his duty hours at or about 20:40 hrs., an incident occurred wherein a group of approximately 12 to 13 miscreants allegedly entered the slag dump area and attempted to remove about one metric tonne of scrap material. The petitioner was reportedly stationed within visible range approximately 20 metres from the point of intrusion. However, he did not restrain or challenge the miscreants, who, upon being detected during a surprise inspection conducted by the Assistant Commandant, Shri S. K. Jha, fled from the scene leaving the scrap material behind.
4. Following the incident, a Memorandum of Charge was issued to the petitioner under Rule 36 of the CISF Rules, 2001. The petitioner duly acknowledged receipt of the charge memorandum on 08.05.2008 and submitted his written statement of defence on 15.05.2008, categorically denying the allegations.
5. Pursuant thereto, Shri A. K. Mishra, Assistant Commandant, was appointed as the Enquiry Officer and Inspector (Executive) Aswani Kumar was designated as the Presenting Officer, vide Orders No.430 and 431 dated 17.05.2008 respectively. The departmental enquiry proceeded in accordance with the prescribed procedure. Upon completion of the evidentiary phase, the Presenting Officer submitted his written brief on 21.07.2008.

6. The petitioner was given opportunity to respond to the said brief and he submitted his written representation on 28.07.2008, asserting that he had at all times remained alert and had no opportunity to prevent the fleeting occurrence. After consideration of the evidence adduced, the Enquiry Officer submitted his report on 10.08.2008, holding the charge as proved.
7. The Disciplinary Authority, thereafter, afforded the petitioner a further opportunity to submit representation against the findings of the Enquiry Officer in adherence to the principles of natural justice.
8. The Learned Advocate representing the petitioner submitted as follows:-
 - i. The petitioner had been discriminated with the two personnel of crime branch and two personnel of the Q.R.T. party who were also present in the area at the relevant point of time.
 - ii. In spite of several request the prayer for change of enquiry officer was refused, which was in violation of natural justice and also denial of Reasonable Opportunity.
 - iii. The petitioner had not been given the complaint of criminal activities, he would not have been victimized.
 - iv. After the petitioner had passed information about the criminal activities, two personnel from the crime branch and two personnel of the Q.R.T. party reached the area and they were present in the area at the time of arrival of Shri S.K. Jha, Assistant Commandant, therefore the complaint of the said Assistant Commandant against the petitioner was unreasonable and unfair.

- v. The chronology of events and the time schedule as had been mentioned in the revision petition and explained in reply of the charge-sheet had not been examined.
- vi. Without any examination of the reply of the charge-sheet the enquiry officer and presenting officer was appointed, for which the petitioner was highly prejudiced.
- vii. The enquiry officer had failed and neglected to examine the defence statement and therefore the findings arrived at by him were perverse.
- viii. The Enquiry Officer had violated the provision contained in Section 36 (18)(B) of CISF Rules 2001, therefore the purported penalty could not survive.
- ix. The evidence advanced by the petitioner had not been properly appreciated.
- x. The alleged recovery had not been supported by a theft report by the custodian of the property and in the absence of any theft report, the purported recovery was an abuse of the power.
- xi. All the prosecution witnesses had admitted that the petitioner had reported the matter of criminal activities to the control room and due to such report Shri S.K. Jha had to come to the plant and he manufactured the complaint against the petitioner.
- xii. The revisional authority had rejected the revision petition by employing the same wordings as of the Disciplinary Authority.
- xiii. The respondents had proceeded in colourable exercise of power.

- xiv. The purported multiple penalties and forfeiture of increment for the whole life was shockingly disproportionate.
- xv. The petitioner had been discriminated with the similarly situated personnel.
- xvi. In the absence of any valid theft report, the allegation of recovery could not survive.

9. The Learned Advocate representing the respondent submitted as follows:-

- i. The present writ petition filed by the petitioner, Constable/GD J.P. Acharjee, was devoid of merits and was liable to be dismissed. The petitioner, who was charged with dereliction of duty while being on security patrol, sought to obfuscate his evident negligence by attributing *mala fide* to a valid and lawful disciplinary process undertaken strictly in accordance with the Central Industrial Security Force (CISF) Rules, 2001 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965.
- ii. The petitioner attempted to cloak his dereliction of statutory responsibility under the garb of procedural irregularities which had no legal foundation in fact or law.
- iii. The petitioner was detailed for 'B' shift patrolling duty between 1300 hrs. to 2100 hrs. on 24.04.2008 between Watch Tower No. 2 and Watch Tower No. 3 of the Alloy Steel Plant (ASP), Durgapur. Additional security was also deployed including members from QRT and CIW. At around 2000 hrs, miscreants were spotted near the perimeter wall attempting ingress.

- iv. Despite the petitioner's alleged communication to fellow personnel, the fact remained that unauthorized miscreants managed to enter the protected premises and made an attempt to unlawfully remove scrap material weighing approximately one metric tonne from the slag dump area of the ASP. This occurred while the Petitioner and others were present within the close vicinity of the breach.
- v. At about 20.40 hrs, the Assistant Commandant, Shri S.K. Jha, arrived for a routine inspection and discovered that scrap material had been moved but abandoned by miscreants due to fear of apprehension. The dereliction in vigil and absence of deterrent action by the petitioner was recorded contemporaneously.
- vi. It was trite law that the scope of judicial review in matters of departmental inquiry was circumscribed. The Hon'ble Supreme Court in *Umesh v. State of Kerala* [(2022) 6 SCC 563] delineated six clear parameters for judicial interference in disciplinary action:
 - Non-compliance with principles of natural justice;
 - Absence of evidence to support the finding of misconduct;
 - Violation of statutory rules governing the inquiry;
 - Findings that were perverse or irrational;
 - Penalty disproportionate to the proved misconduct.
- vii. The petitioner, in the present case, failed to demonstrate violation of even one of the aforesaid parameters. The records revealed

compliance with Rule 14 of CCS (CCA) Rules, 1965; a reasoned enquiry; ample opportunity to defend; and findings based on documentary and oral evidence.

- viii. The petitioner contended that the language used in the Article of Charge indicated pre-judgment. However, such contention was entirely misconceived. The Article of Charge was a formal accusation — not a final determination. The structure and language employed was standard practice to reflect the gravity of the allegation. The Hon'ble Supreme Court in *Oryx Fisheries (P) Ltd v. Union of India* [(2010) 13 SCC 427] held that while framing of charge should not reflect a closed mind, it must still outline the basis for inquiry. In the instant case, no prejudgment could be discerned beyond the statutory format required for Article of Charge.
- ix. The petitioner attempted to assert selective victimization, alleging that other constables posted in the area were spared disciplinary action. This line of argument is unsustainable in law. Disciplinary proceedings were not to be tested on the basis of comparative treatment unless gross arbitrariness or mala fide could be established. No such ground had been pleaded or proven. As was held in *State of Orissa v. Satish Kumar Gajbhiye* [(2021) 17 SCC 90], differential treatment was not per se illegal unless it fell the test of intelligible differentia and nexus. The petitioner was directly assigned

to guard the area breached and was specifically found to be negligent at the time of inspection.

- x. The petitioner's request for change of Enquiry Officer (EO) was duly considered and rejected by the Disciplinary Authority with reasons recorded in writing. The plea of bias remains bald and unsubstantiated. The Hon'ble Supreme Court in *Ravindra Kumar v. U.P. Power Corp* [(2012) 7 SCC 693] reiterated that mere apprehension of bias was insufficient — it must be established through compelling evidence. The Enquiry Officer acted within his mandate and recorded findings on the basis of evidence on record.
- xi. The disciplinary proceedings followed all procedural safeguards:
 - Show Cause Notice and Memorandum of Charge issued;
 - Petitioner's representation and objections duly considered;
 - EO and PO appointed with neutrality;
 - Witnesses examined and cross-examined;
 - Petitioner provided opportunity to lead evidence;
 - Findings recorded with reasons.
- xii. The petitioner's allegation of denial of natural justice was wholly without merit. In *Roop Singh Negi v. Punjab National Bank* [(2009) 2 SCC 570], the Hon'ble Court cautioned against findings based on surmises and conjectures. In the present case, however, the findings

were based on direct observation by a superior officer and corroborated by physical evidence of scrap movement — all within the zone of the Petitioner's responsibility.

- xiii. The petitioner's reliance on Rule 36(21) was misplaced. The disciplinary authority, not being the EO, considered the report and issued final orders. There was no requirement of remitting the matter back as the report was found cogent and adequate. As such, the statutory provision under Rule 36(21) had been adhered to.
- xiv. The penalty imposed — withholding of increments for five years — was not only within the permissible range under Rule 11 of CCS (CCA) Rules, but also proportionate to the gravity of the charge. The Hon'ble Supreme Court in *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749] held that judicial review did not extend to substitution of penalty unless it shocked the conscience of the Court.
- xv. In the present case, miscreants entered the sensitive premises of a steel plant and attempted theft of heavy industrial scrap — under the direct watch of the petitioner. Such failure in vigilance was a serious threat to national industrial security and justifies the disciplinary action taken.
- xvi. It was pertinent to note that the punishment did not involve removal, dismissal, or demotion. The petitioner's increments were withheld for a time-bound period and had since been restored. There was no

continuing stigma. Thus, the writ petition was not maintainable on the ground of loss of service benefits.

10. The core charge against the petitioner/constable, Jana Priya Acharjee is one of dereliction of duty while on armed security patrol on a sensitive premise. The established facts that 12/13 miscreants attempted to remove one metric tonne of heavy scrap under the petitioner's direct watch and supervision and to flee only upon the arrival of a superior officer constitute a fundamental failure of his statutory responsibility.
11. The finding of the Enquiry Officer was based on direct observation and physical evidence of attempted scrap movement by unauthorized miscreants entering the protected premises breaching the security arrangement.
12. The instant finding is immuned from judicial scrutiny unless demonstrable perverse or irrational. The petitioner has failed to demonstrate the findings recorded by the Enquiry Officer are in any manner unsupportable by the evidence adduced during the inquiry. The argument that the alleged recovery was not supported by a theft report, while raised, does not negate or diminish or relinquish misconduct which is the dereliction in vigilance and absence of deterrent action against the miscreants in the protected premises.
13. The contention regarding the violation of natural justice predicated on the refusal to change the Enquiry Officer is wholly unsustainable. The petitioner's plea of bias after due consideration was rejected by the competent authority reasonably in writing. Plea of apprehension of bias cannot establish the petitioner's claim in the absence of compelling and

cogent evidence. The records confirmed the Enquiry Officer to have acted within his jurisdiction and recorded findings based on evidence, adhering to the procedure under Rule 36 of the CISF Rule, 2001 and Rule 14 of the CCS (CCA) Rules, 1965.

14. Further the allegation that the disciplinary action was instituted with mala fide intention for the sake of victimization consequent to his prior communications to fellow personnel had been a selective, unilateral perception. The petitioner was specifically assigned to guard the area and was found to be negligent for the occurrence of breach of security thereat.
15. The petitioner's attempt to assert discrimination by citing the presence of other personnel (QRT) and (CIW) in the area is misconceived and unsustainable in law. It is the prerogative of the Disciplinary Authority to assign delinquency to the errant employee rather than to institute disciplinary action against all personnel in the vicinity.
16. The primary failure had been on the part of the petitioner who had been specifically entrusted with the responsibility of guarding the area. The petitioner cannot claim comparative treatment in the absence of intelligible differentia and nexus.
17. The petitioner was directly assigned to the breached security zone having conducted particularly negligent and cannot claim comparison with others from exonerating himself for lapses in discharging his own duty.
18. The final aspect to be addressed is the proportionality of the penalty. The penalty imposed i.e. withholding of increments for five years was commensurate with the gravity of charge. The charge of dereliction of

vigilance in steel plant, constitute serious threat to security. Critically, the punishment did not involve removal, dismissal or demotion and the increments were withheld for a time for a time bound period for the purpose of rectification of the conduct of the petitioner, to shock the conscience of this Court.

19. The disciplinary process was conducted with adherence to the statutory provisions and the guilt to have been established was foundational on concrete evidence. The petitioner cannot raise procedural infirmities under the facts and circumstances of the instant case.
20. This Court is not inclined or to comment on the process of the disciplinary proceedings culminating in awarding punishment as aforesaid.
21. 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.
22. In view of the above discussions, the instant writ petition being WPA 11115 of 2010 is disposed of.
23. There is no order as to costs.

24. 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.)