

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 1140 of 2016
+
IA No. CAN 3 of 2019 [Old No. CAN 5535 of 2019]

Pradip Kumar Modak
Versus
Union of India & Ors.

For the Appellant : *Mr. K.B.S. Mahapatra,*
Mr. Kashinath Bhattacharjee,
Mr. Aditya Shit,
Mr. Arif Sultana.

For the Respondents : *Ms. Chandreyi Alam,*
Mr. Sourav Mondal.

Hearing is concluded on : *3rd March, 2025.*

Judgment On : **18th March, 2025.**

Tapabrata Chakraborty, J.

1. The disciplinary proceeding was initiated against the appellant by a charge sheet dated 10.10.2013. The sole charge was that during posting at the New Delhi Metro Station on 01.10.2013 at about 09.59 hours he had fought with the HC/GD-AC Coy which caused breach of peace and tarnished

the image of the Force and showed a grave negligence towards duty, indiscipline and misconduct. The appellant replied to the chargesheet and an enquiry was conducted under Rule 36 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the CISF Rules). In the midst thereof, he was suspended *vide* memo dated 01.10.2013. He duly participated in the enquiry and upon considering the deposition of four prosecution witnesses and CCTV footage, the enquiry officer (hereinafter referred to as EO) submitted a report arriving at a finding that the charge against the appellant stands proved. Thereafter he filed a reply to the said enquiry report and after considering the same, the disciplinary authority (hereinafter referred to as DA) by an order dated 28.03.2014 imposed the punishment of removable from service. Aggrieved thereby, the appellant preferred a statutory appeal but the Appellate Authority (hereinafter referred to as AA) dismissed the same and as such the appellant was constrained to approach this Court challenging *inter alia* the orders passed by the DA and the AA.

2. Mr. K.B.S. Mahapatra, learned advocate appearing for the appellant submits that the impugned charge was allegedly proved against the appellant on the rudiments of contradictory depositions of the prosecution witnesses. From the order impugned it would be explicit that only upon viewing the CCTV footage, the learned Single Judge arrived at finding that the appellant in uniform had manhandled another person in plain clothes and had acted in an aggressive manner. Such CCTV footage does not portray the entire episode and does not tally with the depositions of the prosecution

witnesses. Upon arriving at a, *prima facie*, finding that appellant entered into an altercation with two apparent civilians, who provoked the appellant, the learned Single Judge passed an interim order on 02.03.2015 staying the order of punishment and thereafter the appellant was allowed to resume his duties but was placed under suspension.

3. He argues that neither the EO nor the DA granted any weightage to the fact that the commuter, who was not in uniform, first raised this hand and then there was a scuffle between the commuter and the appellant. It ought to have been appreciated that the incident occurred on the spur of the moment and that there was a provocation. The finding that the appellant had fought with the commuter and had thus tarnished the image of the force, is not corroborated by the evidence of record and there is no concrete evidence to link the appellant with any act that he had on his own assaulted the HC/GD-AC Coy even after knowing that the said person was an officer of CISF.

4. Mr. Mahapatra argues that the absence of formation of any opinion on the part of the DA that there are grounds for inquiring into the truth of the imputation of misconduct before appointing an EO falls foul of the provisions of Rule 36 of the CISF Rules. A perusal of the charge sheet would reveal that the DA had arrived at a finding of guilt and had prejudged the appellant at the stage of charge sheet prior to grant of an opportunity to him to respond to the same. The respondents have proceeded with a preconceived notion that the appellant is guilty of the charge and such conclusion as regards the guilt of the appellant at the stage of issuance of

the charge sheet, reflects the biased mind of the DA. Reliance has been placed upon the judgment delivered in the case of *Oryx Fisheries Private Limited versus Union of India and Others*, reported in (2010) 13 SCC 427.

5. He argues that the punishment imposed upon the appellant is thoroughly disproportionate. There is no serious allegation of any misappropriation of fund or of any serious enumerated misconduct. The entire episode is based upon a purported incident of scuffling. In such a scuffle, involvement of at least two persons cannot be ruled out but in the given case only the appellant has been penalized. Such act stands out to be an instance of arbitrariness.

6. Ms. Alam, learned advocate appearing for the respondents submits that the appellant was granted ample opportunity to contest the disciplinary proceeding and there has been no violation of the principle of the natural justice warranting interference of this Court. The allegation that the respondents had a mindset to penalize the appellant is absolutely unfounded. The principle of natural justice needs to be examined in the basic principle of '*prejudice caused*'. The orders of the DA and AA are well reasoned and there has been no error in the decision-making process. The appellant was allowed to engage his defence counsel and to cross-examine the management witnesses and that the provisions of the CISF Rules have been strictly followed.

7. She argues that a perusal of the records would reveal that indisputably there was a scuffle between the appellant and others. The appellant being the person on duty ought not to have acted in an erratic

manner which characterises lack of discipline. Preponderance of probability towards commission of the offence and the involvement of the appellant in the incident cannot be ruled out. In a discipline force stricter norms need to be applied. The appellant must be having an impeccable character, integrity and rectitude. The charge against the appellant cannot be construed to be trivial in nature.

8. She contends that in a proceeding under article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the DA. In exercise of the power of judicial review, Court cannot reappreciate the evidence and come to any different or independent finding on the evidence already on record. It is also not a case that the respondents have acted *mala fide* or in an arbitrary or unreasonable manner and that as such question of any interference in the present appeal does not arise.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. The term serious offence connotes an offence beyond the ordinary. An act which could be viewed as a serious offence may take within its comprehension acts of corruption or misappropriation. The appellant's integrity has never been doubted and the misconduct alleged does not entail pecuniary loss, fraud, gross negligence or other conduct of like nature. The learned single Judge without weighing the gravity of the offence and without ascertaining as to whether the appellant had rendered continuous irreproachable service for his employer, has abruptly dismissed the writ petition upon viewing the CCTV footage which does not record the preceding

and succeeding circumstances. The appellant's action does not demonstrate the requisite intent or knowledge that would reasonably lead to the conclusion that he had tarnished the image of the Force. The term scuffle ought to have appreciated in the contextual framework and not in isolation.

11. In a case of a misconduct of being involved in a scuffle, imposition of punishment without discussing the aggravating and mitigating factors involved, would be grossly disproportionate. In instant case such factors have not been dealt with prior to imposition of such punishment and unless interfered with in exercise of the powers of judicial review, such disproportionate punishment would earn immunity causing irreparable loss to the appellant. The appellant is presently aged about 43 years and the order of punishment adversely affects his livelihood. Regard being had to the facts involved, the nature of post held by the appellant and the conduct expected of him, we are of the opinion that the doctrine of proportionality is invokable in the instant case and we are of the opinion that the order of the removable from service needs to be interfered with.

12. Accordingly, the order of removable from service dated 28.03.2014 passed by the DA, the order of the AA dated 13.05.2014 and the order impugned in the present appeal are set aside and the respondents are directed are to reinstate the appellant with all continuity of service and other consequential benefits within a period of four weeks from the date of communication of this order.

13. It is further directed that the DA shall impose a suitable minor penalty upon the appellant in terms of Rule 34 of the CISF Rules. In our

opinion the aforesaid punishment will be sufficient corrective measure for the appellant and will also meet the ends of justice, in the facts and circumstances of the present case.

14. With the above observation and directions, the appeal and the connected application are disposed of.

15. There shall, however, be no order as to costs.

16. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)