

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

**BEFORE:
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA**

**W.P.A. 13762 OF 2004
ANIRUDDHA GOSWAMI
VS.
UNION OF INDIA & ORS.**

For the Petitioner : Mr. K.B.S. Mahapatra
Mr. Kashinath Bhattacharyya
Ms. Arifa Sultana
..... advocates

For the Union of India : Mr. Bhudeb Chatterjee
Mr. Bipul Kumar Mondal
Mr. Uttam Basak
.... advocates

Reserved on : 26.11.2024

Judgment on : 22.01.2025

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for setting aside the final order of punishment dated 22.09.2001 passed by the disciplinary authority, the order dated 07.12.2002 passed by the appellate authority and the order passed by the revisional authority on 17.07.2003 in this writ petition.
2. While the petitioner, being a constable of CISF unit, was deployed at Durgapur Steel Plant (for short "DSP"), Durgapur, he was served with a charge sheet under Rule 34 of the CISF Rules 1969 vide Office Memorandum dated 21.03.2001.

3. The first charge against the petitioner was that while on duty at PWS gate in Durgapur Steel Plant on 09.02.2001 from 1300 hrs. to 2100 hrs., he allowed the sentry of watch Tower No. 13 namely, constable Anil Das to go out through PWS gate leaving rifle and ammunition issued to him at PWS gate unsafe. The second charge against the petitioner was that the petitioner exhibited gross misconduct, indiscipline and sheer negligence towards his duties in that while he was detailed for the security duty at PWS gate in DSP from 1300 hrs. to 2100 hrs. on 09.02.2001, and he did not extend any help to the personnel of crime wing when they shouted for help at about 2020 hrs. on 09.02.2001 for apprehending the criminals who entered inside the plant and were stealing property of DSP.
4. Petitioner submitted his reply denying both the charges. An Inquiry Officer was appointed to enquire into the charges. After completion of inquiry, Inquiry Officer submitted his report on 20.08.2001 holding both articles of charges as proved. Petitioner submitted his written representation against the inquiry report.
5. The disciplinary authority passed the final order dated 22.09.2001 holding that both the charges framed against the petitioner are proved. The disciplinary authority imposed the penalty of reduction of pay by two stages from Rs. 3350/- to Rs. 3200/- in time scale of pay for a period of one year with effect from 01.10.2001. It was further ordered that the petitioner will not earn increments during the period of reduction and that the punishment will have the effect of postponing his future increments of pay.
6. The petitioner preferred an appeal against the final order passed by the disciplinary authority and the appellate authority, by an order dated 07.12.2002, dismissed the said appeal petition. Petitioner thereafter filed the revision petition which was dismissed by the revisional authority by an order dated 17.07.2003.

7. Being aggrieved by the final order of punishment passed by the disciplinary authority, the appellate order and the revisional order, the petitioner has approached this Court.
8. Mr. Mahapatra, learned advocate for the petitioner contended that the disciplinary proceedings were conducted in gross violation of the principles of natural justice as the documents sought for by the petitioner were not supplied to him. He further contended that no Presenting Officer was appointed by the disciplinary authority and in the absence of the Presenting Officer, the Inquiry Officer acted as Prosecutor. He, thus, submitted that for such reason the inquiry proceedings got vitiated. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Union of India and Ors. vs. Ram Laxhan Sharma** reported at **AIR (2018) SC 4860**; **Moni Shankar vs. Union of India and Another** reported at **(2008) 3 SCC 484** and a decision of the Hon'ble Division Bench of this Court in **Krishna Choudhury vs. State of West Bengal** reported at **(2011) 2 CHN (Cal) 498**. Mr. Mahapatra further contended that the order of penalty passed by the disciplinary authority is of a nature not falling under Rule 31 of CISF Rules 1969 (for short "1969 Rules"). He further contended that the 1969 Rules did not empower the authority to award punishment having cumulative effect. In support of his contention he placed reliance upon an order of the co-ordinate bench dated 26.11.2014 passed in **WP No. 17354 (W) of 2001** in the case of **Deonath Mishra vs. Union of India and ors.** He further contended that the inquiry proceedings cannot be conducted with a closed mind and the Inquiry Officer has to be wholly unbiased and the rules of natural justice are required to be observed. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and ors. vs. Saroj Kumar Sinha** reported at **(2010) 2 SCC 772**.
9. Mr. Mahapatra contended that the charges levelled against the petitioner cannot be said to be misconduct under the relevant rules and in support of

such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Union of India and ors. vs. J. Ahmed*** reported at ***AIR (1979) SC 1022***.

10. Per contra, Mr. Chatterjee, learned advocate for the respondents submitted that Rule 40 of the CISF Rules 1969 empowers the authority to withhold increment having cumulative effect. In support of such contention he placed reliance upon a decision of the Co-ordinate Bench passed on 06.04.2023 in ***WPA 12159 of 2003*** in the case of ***Nandi Lal Sikari vs. Union of India & Ors.***
11. Heard the learned advocates for the parties and perused the materials placed.
12. A chargesheet vide memo dated 21.03.2001 was served upon the petitioner containing two articles of charges. The first charge against the petitioner was that he allowed the Sentry of watch Tower No. 13 to go through PWS gate leaving the rifle and ammunitions, issued to him at PWS Gate unsafe. The second charge against the petitioner was that while he was detailed for security duty at PWS Gate on 09.02.2001 he did not extend any help to the Personnel of crime wing when they shouted for help about 2020 Hours on 09.02.2001 for apprehending the criminals who entered inside the plant and were stealing the property of DSP.
13. Mr. Mahapatra would contend that the charges framed against the petitioner do not amount to misconduct.
14. As to what constitutes misconduct especially in the context of disciplinary proceedings entailing penalty fell for consideration in ***J. Ahmed*** (supra). It was held that Code of Conduct as set out in the Conduct Rules indicates the conduct expected of the member of the service and the conduct which is blameworthy in the context of the Conduct Rules is misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service it is misconduct. A disregard of an essential condition of the contract of service may constitute misconduct. It was further held that a single

act or omission or error of judgment would not ordinarily constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct. It was, however, clarified that failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct.

15. The first charge against the petitioner is that he allowed another constable to go out through the PWS Gate leaving the rifle and ammunities unsafe. The second charge is that he did not extend any help to the personnel of Crime Wing for apprehending the criminals who entered inside the plant for stealing the property of DSP.
16. The aforesaid conduct of the petitioner as alleged in the Charge Sheet is inconsistent with due and faithful discharge of his duty. To the mind of this Court, the charges levelled against the petitioner amounts to misconduct.
17. The decision in the case of **J. Ahmed** (supra), cannot come to the aid of the petitioner as it was found on the facts of the said reported case that the charges would convey an impression that the delinquent lacked the qualities expected of a superior officer which cannot be said to be some act or omission of the holder of the post which may be styled as a misconduct.
18. Mr. Mahapatra, would further contend that there has been gross violation of the principles of natural justice as the copies of the documents sought for by the petitioner were not supplied to him.
19. After going through the materials placed, this Court finds that the relevant documents have been supplied to the petitioner along with the charge memorandum. The Inquiry Officer has recorded the statements of the prosecution witnesses in the presence of the petitioner and the petitioner was given the opportunity of cross-examining the prosecution witnesses. Record reveals that the petitioner cross-examined the prosecution witnesses and also examined documents which have been produced as exhibits in the inquiry. Before the appellate authority the petitioner also raised the issue as to the

violation of the principles of natural justice. The appellate authority after considering the materials on record also found that all reasonable opportunities have been given to the petitioner.

20. To the mind of this Court, the petitioner has failed to demonstrate that the principles of natural justice have been violated while conducting the inquiry proceedings.
21. In inquiry proceedings, the position of an Inquiry Officer is that of an Adjudicator and the Presenting Officer is in the position of a Prosecutor.
22. Mr. Mahapatra would contend that no Presenting Officer was engaged during the inquiry proceedings. Such submission could not be disputed by Mr. Chatterjee, learned Advocate for the respondents in course of hearing of this writ petition.
23. The question that falls for consideration is whether the inquiry got vitiated for non-engagement of a Presenting Officer.
24. In **Ram Lakhan Sharma** (supra), the Hon'ble Supreme Court held that there is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent.
25. The object behind appointment of Presenting Officer is to avoid any allegation of bias. The Inquiry Officer should be impartial and have an open mind till the inquiry is completed. It is well settled that in order to arrive at the truth or to obtain clarifications, the Inquiry Officer can put questions to the prosecution witnesses as also the defence witnesses. However, in the absence of the Presenting Officer if the Inquiry Officer acts as a Prosecutor, a presumption of bias arises.
26. In **Ram Lakhan Sharma** (supra), the Hon'ble Supreme Court endorsed the principles laid down by the Hon'ble Division Bench of the Madhya Pradesh High Court in **Union of India & ors. vs. Mohd. Naseem Siddiqui** reported at **ILR 2004(M.P.)** wherein it was held that if Inquiry Officer conducts a regular

examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with the answers, or cross examines the defence witnesses or puts suggestive questions to establish the prosecution case, the Inquiry Officer acts as a prosecutor thereby vitiating the inquiry. While recognising the power of the Inquiry Officer to put questions to any or all witnesses to elicit the truth, it was held that in the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the truth, the delinquent should be given an opportunity to cross-examine such witness on those clarifications.

27. As to whether the Inquiry Officer also acted as Presenting Officer has to be decided after examination of the materials on record. For such limited purpose this Court has examined the materials on record including the inquiry report. The learned advocate appearing for the petitioner, in course of his arguments could not point out from the records that the Inquiry Officer has put leading questions to the prosecution witnesses or cross-examined the defence witnesses or that suggestive questions were put to establish the prosecution case.
28. After going through the materials on record it does not appear to this Court that the tests laid down in **Ram Laxhan Sharma** (supra) to establish that the Inquiry Officer acted as a prosecutor have been satisfied in the case on hand. In view thereof, this Court holds that mere non-engagement of the Presenting Officer did not vitiate the inquiry proceedings.
29. In **Moni Shankar** (supra) the Hon'ble Supreme Court noted that the Examination-in-Chief was conducted by the Inquiry Officer and leading questions were posed and even the minimum safeguard while conducting the Examination-in-Chief has not been preserved. It was further found that the Inquiry Officer started re-examining the delinquent. On such factual

background the Hon'ble Supreme Court held that the Inquiry Officer acted as a prosecutor and not as an independent quasi judicial authority.

30. In **Krishna Chowdhury** (supra) the Hon'ble Division Bench held on the facts of that case that in the absence of the Presenting Officer, inquiry proceeding could not be conducted effectively as the witnesses produced by the prosecution could not be examined properly. It was further found that the witnesses of their own deposed without keeping an eye on the charges actually leveled against the delinquent and nobody on behalf of the prosecution was also present during the inquiry to remind the witnesses to confine themselves only in relation to the charges levelled against the delinquent. On such facts it was held that the entire inquiry proceedings stood vitiated for the absence of the Presenting Officer.
31. The decision in **Ram Lakhan Sharma** (supra) cannot come to the aid of the petitioner as in the said reported case it was found that the Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The decision in the case **Krishna Choudhury** (supra) and **Moni Shankar** (supra) being distinguishable on facts also cannot be applied to the case on hand.
32. In **Saroj Kumar Sinha** (supra), the delinquent had been denied access to documents sought to be relied against him. The Inquiry Officer failed to fix any date for conduct of inquiry. The delinquent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet and the respondent therein was condemned unheard. The said decision being distinguishable on facts cannot be applicable to the case on hand.
33. The primary defense of the petitioner as against the charge under Article 1 is that he was detailed for duty on two different posts namely PWS Gate and 49 Stores and that PWS Gate is not visible from 49 Stores and as such the allegation against the petitioner that he has allowed Constable Anil Das to go

out the plant of PWS Gate is without any basis. It has been established in course of the inquiry that the petitioner was on duty at PWS Gate and the keys of the said gate were in his possession. The authorities have arrived at a finding factual that PWS Gate and 49 Stores are within the close vicinity and PWS Gate is visible from 49 Stores. The authorities have arrived at a factual finding that Constable Anil Das was allowed by the petitioner to go out through PWS Gate. As against the charge under Article II, the petitioner alleged that the crime wing personnel did not take any action till the criminals went out of the plants. However, it has been established in the inquiry proceedings that after seeing the criminals the crime wing personnel immediately sent a message through the walkie-talkie to the crime petrol room and when they realised that the crime petrol room personnel will take time to come there they raised voice for help.

34. It is well settled that in exercise of powers of judicial review against the orders passed by the disciplinary authorities, the High Court shall not interfere with the conclusions in the inquiry in case the same has been conducted in accordance with law. The High Court cannot reappreciate the evidence nor can it go into the adequacy or reliability of the evidence. The High Court also should not interfere if there is some legal evidence which links the charged Officer with the misconduct alleged against him.
35. After going through the materials on record this Court finds that the evidence adduced on behalf of the management have nexus with the charges leveled against the petitioner. There is some legal evidence on which the disciplinary authorities have based its findings. The inquiry has also been conducted in accordance with law. The points raised by the petitioner in the written representation against the inquiry report were duly considered by the disciplinary authority and cogent reasons have been assigned by such authority in support of the conclusion that both the charges framed against the petitioner have been proved.

36. The appellate authority dealt with the grounds raised in the appeal petition specifically after considering the materials on record. The appellate authority has returned the finding that the inquiry has been conducted as per the procedure laid down under the relevant statute and Rules. The appellate authority also found that the charges framed against the petitioner have been conclusively proved.
37. The revisional authority after considering the materials on record and examining the revision petition held that the disciplinary authority and the appellate authority has passed a reasoned order and it is evident from the records that there is no procedural error at any stage.
38. This Court is, therefore, not inclined to interfere with the findings of the disciplinary authority, the appellate authority and the revisional authority insofar as the said authorities have concurrently found that the charges framed against the petitioner have been conclusively proved.
39. This Court shall now decide whether the disciplinary authority was justified in passing the impugned penalty order.
40. It is well settled that imposition of penalty falls within the exclusive domain of the disciplinary authority. Such punishment is to be imposed considering the gravity of the charges proved against the delinquent. The High Court shall not go into the proportionality of punishment unless it shocks its conscience. However, in exercise of the power of judicial review the High Court can interfere if the punishment imposed falls outside the scope of the relevant statute or the Rules framed thereunder.
41. In order to decide as to the propriety of the order of punishment it would be beneficial to take note of the penalty imposed upon the petitioner by disciplinary authority, which is extracted hereinafter.

"Reduction of pay by two stages from Rs. 3350/- to Rs.3200/- in time scale of pay for a period of one year with effect from 01.10.2001. It is further ordered that he will not earn increments during the period of reduction and

that the punishment will have the effect of postponing his future increments of pay."

42. Rule 31 of the 1969 Rules lays down the nature of penalties which may be imposed on a member of the force. Rule 31 of the 1969 Rules is reproduced hereunder.

"31. Nature of penalties :- *The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely-*

- (a) dismissal;*
- (b) removal;*
- (c) compulsory retirement;*
- d) reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time-scale of pay;*
- (e) withholding of increment or promotion;*
- (f) removal from any office of distinction or deprivation of special emolument;*
- (g) fine to any amount not exceeding 7 days pay;*
- (h) censure."*

43. A bare reading of Rule 31 implies that only the penalties which have been provided under Rule 31 can be imposed on a member of the force for good and sufficient reasons. The disciplinary authority, imposed the penalty of reduction of pay by two stages from Rs. 3350/- to Rs. 3200/- in the time scale of pay for a period of one year with effect from 01.10.2001 against the petitioner. It was further ordered that the petitioner will not earn increments during the period of reduction and that the punishment will have the effect of postponing his future increments of pay.
44. The question that arises for consideration in this writ petition is whether the disciplinary authorities could have ordered such punishment having cumulative effect.
45. The Co-ordinate Bench in ***Deonath Mishra*** (supra) held that unless an authority is specifically vested with the power to impose certain punishment it cannot impose such a punishment.

46. The decision in **Deonath Mishra** (supra) was considered by another Co-ordinate Bench in **Nandi Lal Sikari** (supra) and after taking note of the provisions laid down in Rule 40 of the 1969 Rules, it was held that withholding of increment is prescribed as penalties under the said Rules.
47. Rule 40 of the 1969 Rules starts with the expression "in the case of withholding of increment as a punishment". Thus Rule 40 of the 1969 Rules would apply only in case penalty under Rule 31(e) has been imposed. The said Rule cannot have any applicability in case of penalty imposed under Rule 31(d) of the 1969 Rules. The penalty imposed upon the petitioner does not fall within Clause (e) of Rule 31 of the 1969 Rules and, therefore, Rule 40 cannot come to the aid of the respondent authority in the case on hand.
48. Rule 31(d) provides for reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time scale of pay.
49. At this stage it would be relevant to take note of the Central Industrial Security Force Rules, 2001 (for short "the 2001" Rules). The 2001 Rules came into force on and from 05.11.2001. Rule 34 of the 2001 Rules speaks of the nature of penalties that may be imposed on an enrolled member of the force. The relevant portion of Rule 34 is reproduced hereunder.

"34. Nature of Penalties - *The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force, namely:-*

Major Penalties -

i) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

(ii) removal from service which shall not be a disqualification for future employment under the Government;

(iii) compulsory retirement;

(iv) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of

the Government servant to the time scale of pay, grade, post or service from which he was reduced with or without further directions regarding conditions of restoration to the grade or post or service from which enrolled member of the Force was reduced and his seniority and pay on such restoration to that grade, post or service;

(v) save as provided for in clause (viii) below - reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the enrolled member will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay."

50. After going through Rule 34(v) of 2001 Rules, this Court finds that the penalty of reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the enrolled member will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay has been provided. Thus, Rule 34(v) of 2001 Rules provides for award of punishment having a cumulative effect. But Rule 31 of the 1969 Rules is silent in that regard. After going through the penalty imposed upon the petitioner, this Court finds that the disciplinary authority imposed a penalty which is contemplated under Rule 34(v) of the 2001 Rules.
51. The disciplinary proceedings against the petitioner was initiated with the issuance with the charge Memorandum dated 21.03.2001. The final order of punishment was passed by the disciplinary authority on 22.09.2001 and subsequent thereto the 2001 Rules came into force on and from 05.11.2001. This Court, therefore, holds that the 1969 Rules and not the 2001 Rules shall govern the case of the petitioner.
52. The issue as to whether an award of punishment with cumulative effect can be passed under Rule 31 of 1969 Rules fell for consideration before the Hon'ble

Division Bench in the case of **Union of India & Ors. vs. Sanjit Kumar Deb** reported at **2019 SCC OnLine Cal 1881**.

53. The order of penalty which fell for consideration in **Sanjit Kumar Deb** (supra) is extracted hereinafter-

"Pay of No. 834070842, Constable S.K.Deb be reduced to the lowest stage i.e. from Rs. 900/- to Rs. 855/- in the time scale of pay of Rs. 825-15-900-EB-20-1200/- for a period of 2(two) years with effect from the date of re-joining on re-instatement. It is further directed that Constable S.K.Deb will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."

54. The nature of penalty which was the subject matter of consideration before the Hon'ble Division Bench in **Sanjit Kumar Deb** (supra) is more or less identical to the penalty imposed upon the petitioner. The Hon'ble Division Bench after noting the provisions laid down in Rule 31 of 1969 Rules and Rule 34 of the 2001 Rules observed that a comparative reading of the Rule 31 of 1969 Rules and Rule 34 of 2001 Rules would show that what was provided for in Rule 34(v) was absent in Rule 31. The Hon'ble Division Bench upheld the decision of the learned Single Judge whereby the order of punishment was modified to the extent that the punishment awarded to the writ petitioner would not have any cumulative effect.
55. In view of the aforesaid discussion this Court holds that the penalty order passed against the petitioner does not fall strictly within the four corners of the nature of penalties specified in Rule 31 of the 1969 Rules.
56. The issue as to whether the penalty imposed upon the petitioner falls within the scope of Rule 31 was not decided either by the appellate authority or the revisional authority. Since the said issue goes to the root of the jurisdiction of the disciplinary authority to pass such an order of punishment and a decision

on such issue does not require any adjudication on facts, this Court deemed fit to decide the same in this writ petition.

57. This Court is, therefore, of the considered view that the order of punishment should be modified to the extent that the punishment awarded would not have any cumulative effect.
58. The order of penalty passed in the final order of the disciplinary authority dated 22.09.2001 to the extent it directed reduction of pay by two stages in time scale of pay is in tune with Rule 31(d) of 1969 Rules and for such reason to such extent the imposition of penalty is not interfered with by this Court. The other portion of the penalty order by which such punishment was directed to have cumulative effect is set aside and quashed by this Court. The final order dated 22.09.2001 accordingly stands modified only to the extent indicated herein before.
59. The respondent authorities are directed to fix the pay of the petitioner in the light of the observations and directions contained herein before and release the amounts due on account of salary and other benefits to which the petitioner may be entitled to as a consequence of this order as expeditiously as possible but positively within a period of eight weeks from the date of receipt of a server copy of this order. Accordingly, the writ petition stands allowed in part. There shall be, however, no order as to costs.
60. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Rinki, Sanchita)