

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 18137 of 2013

**Dineshwar Singh
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. K.B.S. Mahapatra
Mr. Arifa Sultana
Mr. Aditya Shit

For the Respondent/Union of India : Mr. Anirban Mitra

Heard on : 13.06.2024, 19.07.2024, 25.09.2024,
26.11.2024, 19.12.2024

Judgment on : 19.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, formerly employed with the Central Industrial Security Force (CISF) and posted at Kolkata Port Trust, has filed a writ petition seeking quashing of departmental proceedings, including the final and appellate orders, show cause notice, and enhanced penalty order, praying also for reinstatement with all consequential benefits.
2. A Memorandum of Charges dated 09.09.2008 alleged the petitioner had been involved in a physical altercation while off-duty in Assam. Denying the charges in his reply, the petitioner objected to the biased conduct of the

enquiry by the appointed Enquiry Officer, who allegedly acted in violation of principles of natural justice and denied the petitioner a fair opportunity to defend himself.

3. Despite repeated requests to replace the Enquiry Officer, the Disciplinary Authority proceeded with the enquiry and imposed a penalty of reduction of pay by two stages with cumulative effect. Aggrieved, the petitioner preferred an appeal. However, instead of deciding the appeal, the Appellate Authority issued a show cause notice proposing an enhanced penalty.
4. Subsequently, by order dated 17.10.2009, the Deputy Inspector General enhanced the penalty to Compulsory Retirement. Alleging arbitrariness, bias, and procedural irregularities, the petitioner has now approached the High Court under Article 226 for relief.
5. The petitioner contended that the charges were unrelated to official duties and not defined as misconduct under the CISF Act or Rules. Disciplinary action for off-duty conduct amounted to an ex post facto classification, violating Article 14. The enquiry was arbitrary, biased, and conducted in violation of natural justice and Rule 36(18)(b), with the petitioner being denied a fair opportunity to defend himself.
6. The show cause notice for enhanced penalty was issued in undue haste, suggesting mala fides and prejudgment. No material evidence, including witnesses or medical proof, was produced to support the charges. The petitioner, reportedly suffering from mental illness, was further protected under the Disabilities Act, 1995, which was ignored by the respondents. The

entire process, including the final and appellate orders, was termed a colourable exercise of power and liable to be quashed.

7. The respondent submitted that the petitioner was charged under Rule 36 of the CISF Rules for misconduct involving a scuffle while off-duty, alcohol consumption, and a poor disciplinary record with 15 prior punishments over 23 years. An enquiry was conducted per CISF Rules, where the petitioner was given full opportunity to defend himself. The charges were found proved, and initially, a penalty of pay reduction was imposed. However, on appeal, the penalty was enhanced to compulsory retirement due to the seriousness and recurrence of misconduct.
8. The respondent cited Section 15 of the CISF Act, 1968, to argue that CISF personnel are always on duty, making off-duty misconduct actionable. Rule 77 of the CISF Rules and CCS Conduct Rules also cover unbecoming behavior at all times. The respondent distinguished case law cited by the petitioner and instead relied on Supreme Court precedents upholding stricter standards for armed forces personnel. Judicial review was argued to be limited under Article 226, especially where proper procedure had been followed and departmental remedies not fully exhausted.
9. The petitioner has prayed for a writ in the nature of mandamus commanding the respondent authorities to forthwith quash and set aside the purported proceedings including the purported Final Order, Show Cause Notice, Order of Enhance Penalty and Appellate Order to reinstate the petitioner with all consequential benefits. Furthermore, the petitioner has prayed for a writ in the nature of Certiorari commanding the respondent to

produce or cause to be produced all relevant records, papers and documents in connection with the departmental proceedings, including the final order, appellate order and the order of enhancement of penalty might be rendered by quashing the same.

10. The petitioner stated that he was employed in the Central Industrial Security Force (here-in-after called the CISF) and at the relevant point of time he was posted at CISF Unit, Kolkata Port Trust. A purported Memorandum of Charges dated 9th September 2008 was issued to him by the Commandant CISF KOPT, Kolkata, and in the said memorandum of charges it was alleged that, when the petitioner was deputed in Assam and was not on duty he has gone outside and involved himself in scuffling and fighting with an unknown person.
11. The petitioner further stated that in his written reply dated 19th September 2008 he denied the allegations levelled against him. Thereafter by Order dated 23.09.2008 Shri D. K. Saha, Inspector/Exec., was appointed as enquiry officer to conduct departmental enquiry. Said enquiry officer conducted the enquiry whimsically and arbitrarily.
12. By his application dated 22.10.2008, petitioner prayed before the Disciplinary Authority to change enquiry officer due to his bias. The Disciplinary Authority denied to change the enquiry officer and the petitioner was constrained to participate in the departmental enquiry under the biased enquiry officer. Thereafter, the petitioner submitted further application dated 27.10.2008 for change of Enquiry Officer.

13. The said enquiry officer conducted the departmental enquiry arbitrarily and whimsically. He violated the statutory provision and principles of natural justice. He also denied the reasonable opportunity to defend and prepared enquiry report and findings and forwarded the same to the Disciplinary Authority. Thereafter, the Disciplinary Authority by memorandum dated 07.05.2009 communicated a copy of the enquiry report and findings asking the petitioner to submit his representation within 15 days. Thereafter, the petitioner submitted his representation dated 29.05.2009 on the grounds as raised therein. Thereafter, the Disciplinary Authority by his final order dated 06.06.2009 passed an order of penalty of reduction of pay by two stages for a period of two years with cumulative effect.
14. The petitioner being aggrieved by the said purported penalty of reduction of pay by two stages for a period of two years and with cumulative effect, he preferred an appeal dated 30.06.2009 on the grounds as raised therein. The appellate authority instead of passing an appellate order issued a show cause notice dated 22.07.2009 to enhance the penalty. Though the petitioner submitted the appeal in the company officer through proper channel, and generally such communication takes at least a week to reach the office of the appellate authority, but hastily show cause notice dated 22.07.2009 proposing to enhance the penalty.
15. Thereafter, the petitioner submitted his representation dated 08.10.2009 on the grounds as raised therein. The Deputy inspector General, who had already prejudged the issued by his Order dated 17.10.2009, enhanced the penalty of reduction of pay by two stages to the penalty of Compulsory

Retirement from service. Being aggrieved by the said enhancement of penalty, the petitioner filed this writ petition.

17. The petitioner seeks issuance of a writ in the nature manding production of all relevant records pertaining to the impugned proceedings for the purpose of setting aside the same. The petitioner was employed in the Central Industrial Security Force (CISF) and, at the material point of time, was posted at CISF Unit, Kolkata Port Trust. A Memorandum of Charges dated 09.09.2008 was issued to the petitioner alleging involvement in a scuffle with an unknown person while he was off duty during deputation in Assam. In response to the said memorandum, the petitioner submitted a written representation dated 19.09.2008 denying the allegations. Subsequently, one Shri D.K. Saha, Inspector/Executive, was appointed as Enquiry Officer by order dated 23.09.2008. Alleging bias and partiality, the petitioner submitted an application dated 22.10.2008 before the Disciplinary Authority for change of the Enquiry Officer, which was declined. A second representation dated 27.10.2008 reiterating the said request was also unheeded. The petitioner alleges that the enquiry proceedings were conducted in a whimsical, arbitrary, and prejudiced manner, with gross violations of statutory rules and principles of natural justice. It is stated that adequate opportunity to defend was not granted. The enquiry report and findings were thereafter forwarded to the Disciplinary Authority, who, by memorandum dated 07.05.2009, supplied the same to the petitioner for his representation, which was submitted on 29.05.2009. The Disciplinary Authority, by order dated 06.06.2009, imposed the penalty of reduction of

pay by two stages for a period of two years with cumulative effect. Aggrieved thereby, the petitioner preferred an appeal dated 30.06.2009. Instead of adjudicating the appeal, the Appellate Authority issued a Show Cause Notice dated 22.07.2009 proposing enhancement of penalty. It is the petitioner's grievance that the appeal was forwarded through proper channel and, notwithstanding the usual time taken in transmission, the show cause notice was issued precipitously. The petitioner submitted his representation dated 08.10.2009 to the said notice. However, the Deputy Inspector General, having allegedly pre-judged the issue, enhanced the penalty by order dated 17.10.2009 to compulsory retirement from service. Aggrieved thereby, the petitioner has approached this Court in the present writ proceedings.

18. The petitioner contends that the allegations contained in the memorandum of charges are neither enumerated as misconduct under the relevant rules nor linked to the discharge of official duties. It is argued that the authorities acted on the premise that the charges were grave, yet failed to demonstrate how the alleged conduct fell within the scope of misconduct envisaged by the CISF Act or Rules. The retrospective classification of the acts as misconduct is asserted to be violative of Article 14 of the Constitution.
19. It is submitted that under Section 22 of the CISF Act, 1968, the Central Government's rule-making authority is limited to the objects outlined in Section 3, namely, the security of industrial undertakings and other duties assigned by the Central Government. Consequently, any disciplinary action must conform to this statutory framework. The petitioner further argues

that Section 8 of the CISF Act restricts disciplinary authority to cases of negligence or unfitness in duty, which the present allegations do not satisfy.

20. The petitioner submits that he was, at the relevant time, suffering from mental illness, a fact acknowledged by the respondents, thereby invoking the protections under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The disciplinary enquiry, it is alleged, was marred by procedural irregularities and arbitrariness, particularly the refusal to replace a biased enquiry officer, the failure to produce material witnesses, non-compliance with Rule 36(18)(b), and the absence of breath analysis evidence to support allegations of intoxication.
21. It is further submitted that the haste in issuing the show cause notice reveals a predetermined mind and mala fide intent. The findings arrived at by the disciplinary authority are characterised as perverse, lacking evidentiary foundation, and based on conjecture. Charge III is asserted to be barred by the proviso to Section 18 of the Act and otherwise unsustainable in law.
22. Lastly, it is argued that unless the memorandum of charges, the orders of punishment, and the appellate and enhancement orders are quashed, the petitioner will suffer irreparable harm. The entire proceeding is alleged to be a colourable exercise of power, vitiated by illegality, procedural impropriety, and breach of natural justice.
23. The Learned Advocate representing the respondent submitted that the petitioner was charged under Rule 36 of the CISF Rules for three distinct

allegations. Under Article I, it was alleged that on 19.05.2008, at around 11:00 hours, while posted at CISF Unit NHPC Subansiri (Assam), the petitioner, No. 852160079 HC/GD Dineshwar Singh of CISF Unit KoPT Kolkata ("D" Coy), went near the river bank outside the unit lines on the pretext of visiting the bank. There, he allegedly got involved in a scuffle with an unknown person, resulting in injuries on his forehead and below his left eye. This, it was claimed, amounted to gross indiscipline and conduct unbecoming of a member of a disciplined force. Article II alleged that on the same day, around 15:00 hours, the petitioner was found in an injured condition and was taken to a hospital, where the Medical Officer at Subansiri Lower H.E. Project, Gerukamukh, Dhemaji, Assam, examined him at around 15:10 hours. The Medical Officer noted that the petitioner smelled of alcohol, indicating that he had consumed an alcoholic beverage. This was considered gross misconduct in violation of service/conduct rules applicable to Central Government employees. Article III noted that during his 23 years of service, the petitioner had been involved in multiple delinquencies and had been awarded 15 punishments, portraying him as having developed an incorrigible character.

24. The petitioner acknowledged receipt of the memorandum on 12.09.2008 and filed a written statement of defence on 19.09.2008, denying all charges. Subsequently, Inspector/Executive D.K. Saha was appointed as the Enquiry Officer by order dated 23.09.2008. The Enquiry Officer conducted proceedings per the CISF Rules, 2001, giving the petitioner ample opportunity to defend himself. Seven prosecution witnesses and one court

witness were examined. After the prosecution's case was closed, the petitioner was given a chance to submit anything in writing in his defence, which he declined. Upon completing all formalities, the Enquiry Officer submitted his report on 07.05.2009, finding all charges proved. A copy of the enquiry report was served to the petitioner along with a memorandum dated 07.05.2009, offering him 15 days to respond. The petitioner acknowledged this on 20.05.2009 and filed a representation on 29.05.2009. The Disciplinary Authority considered the entire record and, finding the petitioner guilty, imposed the penalty of a reduction in pay by two stages, from Rs. 8120/- to Rs. 7510/- for two years, effectively postponing future increments, by order dated 06.06.2009.

25. Aggrieved by this penalty, the petitioner filed an appeal dated 30.06.2009. While disposing of the appeal, the Deputy Inspector General, CISF NEZ Headquarters, Kolkata, opined that the punishment was not proportionate to the gravity of the misconduct. A show cause notice dated 22.07.2009 was issued, proposing enhancement of penalty to compulsory retirement with pensionary benefits. The petitioner responded with a representation dated 08.08.2009. The DIG carefully considered this representation along with the disciplinary enquiry record and upheld the proposed penalty of compulsory retirement by order dated 17.08.2009. Challenging this, the petitioner filed W.P. No. 15485(W) of 2009 in the Calcutta High Court. The Court disposed of the petition by permitting the petitioner to file an appeal under Rule 46(3) of the CISF Rules and directed the appellate authority to decide the condonation of delay application expeditiously, by order dated 03.01.2013.

26. In compliance with this order, the petitioner filed an appeal on 12.02.2013 before the Inspector General, CISF NES Headquarters, Kolkata. The appeal was rejected on merits by a reasoned speaking order dated 23.05.2013. The respondent pointed out that the petitioner had the opportunity to file a revision petition under Section 9(2A) of the CISF Act, 1968 within six months but failed to do so. Therefore, the current writ petition was premature and not maintainable. The respondent further noted that the petitioner had previously received 15 punishments for various acts of misconduct during his 23 years of service.
27. As for the petitioner's argument that Charges I and II were not related to duty performance and not enumerated as misconduct, the respondent cited Section 15 of the CISF Act, 1968, which stipulates that every member of the force shall be deemed to be always on duty and may be posted anywhere in India. Moreover, Rule 77 of the CISF Rules provides that in cases of insufficient provision, service conditions are governed by the Central Civil Services (Conduct) Rules, 1964. Rule 3(1)(iii) of these rules mandates that government servants must refrain from acts unbecoming of a government servant. Misconduct, it was argued, implies wrongful intention and not mere errors in judgment.
28. The respondent relied on several judicial precedents, including *Union of India v. R.K. Sharma*, (2001) 9 SCC 592, where it was held that judicial review of punishment is permissible only in extreme cases of perversity or irrationality. Similarly, in *State of Punjab & Ors. v. Ram Singh, Ex-Constable*, (1992) 4 SCC 54, the Court upheld strict disciplinary action. The petitioner's

reliance on *Prahallad Padhi v. Secretary, Department of Water Resource*, 2009 SCC Online Ori 179, was deemed misplaced, especially when contrasted with *Union of India v. Constable Sushil Kumar*, Civil Appeal No. 219 of 2023. The respondent addressed the petitioner's reference to *M/s. Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut & Ors.*, (1984) 1 SCC 1, where it was held that misconduct should have a causal connection with the place and time of work. However, this was countered with reference to Section 15 of the CISF Act, under which every force member is considered always on duty. Hence, the misconduct in this case had a real and substantial causal connection with the petitioner's employment and tarnished the public image of the force.

29. The respondent further submitted that already it had been indicated in Paragraph No. 5(g) of the affidavit-in-opposition that the respondent did not avail the opportunity to making revisional petition under Section 9(2A) of CISF Act, 1968.
30. Most government service conduct rules including Rule 3 of the Central Civil Services (Conduct) Rules 1964 mandate every government servant to maintain integrity, devotion to duty, good behaviour and moral conduct at all times whether on duty or off duty. A scuffle in a public or semi-public place being inebriated can be construed as misconduct which is unbecoming of a member of the place, which impairs the basic discipline and affects the reputation and the image of the force to injure public confidence undermining the honour and dignity of the force.

31. In a disciplined force like the Central Industrial Security Force, the boundaries of acceptable conduct do not cease with the duty or shift hours. The mantle of responsibility worn by a uniformed constable demands dignity in and beyond the call of duty. A scuffle or a quarrel under intoxication, even after official hours, is not a private lapse but a public blemish, eroding and diminishing institutional integrity of the force. Such conduct, though off duty cannot be in isolation but must be judged through the purview of regimental discipline, public trust and the code of conduct intrinsic to military or paramilitary ethos.
32. In the instant case, the petitioner was granted opportunity to defend himself and the principles of natural justice had not been violated. The bias and partial nature of the Enquiry Officer cannot be challenged at this stage as the entrenched behavioural incongruence over a period which had been proved did not effectively retrieve or reform him through punishment. The petitioner despite having been punished for 15 times on the earlier occasions did not amend to improve his conduct. Contrarily resorted to his offensive and unacceptable conduct, discrediting and defaming the institution in public glare. This Court is aligned with proven charges against the petitioner and declines to interfere with the same.
33. The Hon'ble Supreme Court held the following in ***Anil Kumar Upadhyay v. SSB***¹:-

¹ (2022) 20 SCC 608

14. *On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to.*

15. *In Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as “Wednesbury principles”. In Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] , it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.*

16. *In B.C. Chaturvedi [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , in para 18, this Court observed and held as under : (SCC p. 762)*

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal,

while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

34. However, this Court is of the opinion that the appellate authority has hastily decided the facts and circumstances of the case disregarding the order dated 06.06.2009 passed by the Disciplinary Authority imposing the penalty of reduction of pay by two stages for a period of two years with cumulative effect. The enhancement of the penalty by order dated 17.10.2009 to compulsory retirement passed by the Deputy Inspector General had been disproportionate in the observation of this Court, which should be redressed by imposition of the earlier order of punishment dated 06.06.2009.
35. In view of the above discussions, the instant writ petition being WPA 18137 of 2013 is allowed in part. The petitioner has already attained the age of superannuation, reverting his case to the revisional authority at this juncture after a lapse of 12 years will consume further time, therefore, the order dated 06th of June, 2009 and the order dated 17th of August, 2009 and 23rd day of May, 2013 are set aside.
36. There is no order as to costs.
37. Dues and other statutory reliefs are to be disbursed on the basis of the order dated 06th June, 2009 within 6 months of communication of this order.

38. 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.)