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THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2025

PRONOUNCED ON : 28.03.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.2397 of 2024
and
C.M.P.No.16986 of 2024**

1. The Union of India,
Rep. By its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110001.

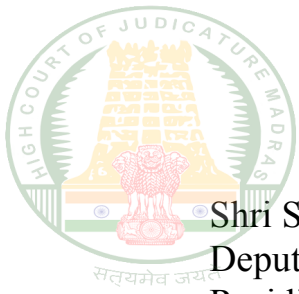
2.The Director General,
Central Industrial Security Force,
Ministry of Home Affairs,
13, CGO Complex,
Lodhi Road, New Delhi-110003.

3.The Deputy Inspector General (Legal)
Central Industrial Security Force,
Ministry of Home Affairs,
13, CGO Complex,
Lodhi Road, New Delhi-110003.

4. The Inspector General,
CISF South Sector Hqrs.,
Chennai Port Trust Office Premises,
New War Memorial,
George Town, Chennai.

...

Appellants



versus

Shri Swetank,
Deputy Commandant- CISF
Residing at
C-3 First Floor, ChPT Officer's Quarters,
Chennai.

...

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order of this Court dated 23.08.2023 passed in W.P.No. 9102 of 2022.

For Appellants : Mr.Rajesh Vivekananthan, Dy.SG of India

For Respondent : Mr.Ranjish Pathiyil

J U D G M E N T

(Judgment of the Court was made by **G.ARUL MURUGAN, J.**)

This intra Court appeal is directed against the order dated 23.08.2023 made in W.P.No. 9102 of 2022, whereby the writ Court had set aside the punishment imposed on the respondent in the disciplinary proceedings.

2. The respondent worked as Deputy Commandant, CISF Unit, ONGC Plant, Hazaria, Surat. On 29.03.2019, a charge memorandum was issued with the following charges:

“Shri Swetank, while posted and functioning as Deputy Commandant, CISF Unit, ONGC Hazira committed a gross misconduct in that despite advance information given by the Incharge Security, addressed to the DCP Zone-4, Surat and Deputy



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Commandant, CISF Unit, ONGC Hazira, vide letter dated 07.05.2018 requesting to ensure that no demonstration/agitation should be held at the Plant Gate by the Project Affected People (PAP) of Village Bhatpor, Shri Swetank did not take requisite precautionary measures to deal with the situation.

On 09.05.2018 at about 1710-1716 hours Shri Rajiv Tiwari, Production Manager, ONGC Hazira went outside from the Plant through the Main Gate in his car. When, he had exited from the Gate, a group of agitators of Bhatpor village blocked his car and manhandled and pulled him out of the car. This incident happened just 50 Mtrs away from the main gate and was in the vicinity of the ONGC Plant where in CISF personnel deployed at the gate remained mute spectators. Shri Rajiv Tiwari was gheraced by the mob and it was reported by SI(Exe) Karampal Singh to Shri Swetank, Dy. Commandant who was present in the pass section at the Main Gate. For nearly 2-3 minutes the CISF personnel remained complete mute spectators. As per CCTV footage, the DGM was being pulled by his collar by Lady civilians when he was trying to escape from their clutches. It is only at a later stage CISF personnel under the command of Shri Swetank, Deputy Commandant intervened.

Shri Swetank despite being present did not react immediately and remained a mute spectator for few minutes which were very crucial for rescuing the ONGC Officer. He not only failed to control the situation, but also failed to take prompt/proactive action to rescue Shri Rajiv Tiwari from being roughed up by the unruly mob. He failed to ensure to assess real time situation despite having resources at his disposal in the form of Crime & Intelligence Wing, duty



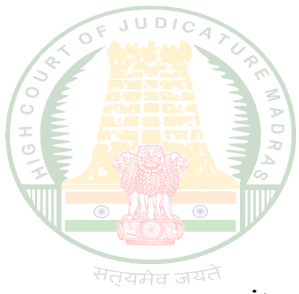
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personnel at the Gates and QRT.

Thus, by his act Shri Swetank, Deputy Commandant not only tarnished the image of the Force but also acted in a manner unbecoming of an Officer of his status in an Armed Force of the Union and thereby violated the instructions contained in Rule 3 (1) (iii) of CCS(Conduct) Rules, 1964 and Section 10 (d) of CISF Act 1968. Hence, the charge.”

3. The respondent was given an opportunity to submit a representation against the proposal to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'Rules') for the alleged misconduct. The petitioner had submitted a detailed reply on 15.04.2019. On receipt of the reply, the matter was referred to UPSC. The Commission had submitted its report on 22.03.2021 by observing that the charge against the respondent for misconduct is proved, and a penalty of reduction to a lower stage by one stage for a period of one year without cumulative effect not affecting his pension, be imposed on the delinquent. The report of the commission was forwarded to the respondent, and he had submitted his reply on 19.07.2021. The disciplinary authority, considering the same, by an order dated 08.02.2022, had imposed the penalty as observed by the Commission.



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4. Assailing the punishment imposed, the respondent preferred the writ petition. The writ court, had observed that though only a minor punishment has been imposed, still the charge is not related to any incident that had happened within the premises or near the main gate but took place at some distance from the main gate. The writ Court further observed that though as per Rule 16 of Rules, oral inquiry is not contemplated for imposing a minor punishment, still as confirmed by the appellant during the hearing that the punishment will affect the further promotional avenues of the respondent, necessarily an opportunity ought to have been afforded to the respondent to defend himself on the charges framed.

5. The Learned Judge, by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***O.K.Bharadwaj vs. Union of India and others*** reported in ***(2001) 9 SCC 180***, concluded that the punishment imposed is in clear violation of the principles of natural justice and set aside the punishment imposed on the delinquent. Aggrieved, the Union is on appeal.

6. Mr. R. Rajesh Vivekananthan, the learned Deputy Solicitor General



of India appearing for the appellant, contended that the respondent, being a senior-level officer in CISF, was bound to discharge the duties with great devotion, and due to his negligence and lapses, the officer of the ONGC was manhandled by the mob. But for the timely intervention of other unit members, there could have been serious effects. He further contended that the respondent, though was on duty on 09.05.2018, only sought to take protection by claiming that he was on leave, which is factually incorrect even as per the letter submitted by the delinquent himself. The entire incident, as captured by the CCTV, reveals the presence of the respondent at the gate, and therefore the respondent/delinquent committed a serious misconduct.

7. The learned Deputy Solicitor General of India further contended that when the penalty imposed was only a minor penalty as per 11(3)(a) of the Rules, then as per Rule 16, no oral inquiry is necessary, and it is sufficient to impose the punishment by following the procedure as set out in Rule 16. When the learned Judge also had given a finding that only a minor punishment has been imposed, still holding that it will affect the future prospects of the petitioner/respondent, oral inquiry ought to have been conducted, and therefore interfered with the punishment, which is not in

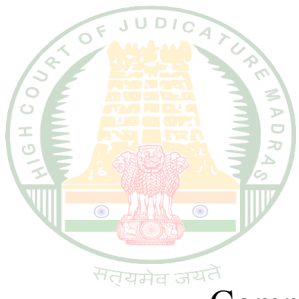


consonance with the rules and sought the indulgence of this Court.

8. Mr.Rajnish Pathiyil, learned counsel for the respondent/delinquent, contended that his leave for the period from 29.04.2018 to 09.05.2018 had been sanctioned, and in fact, on 09.05.2018, it is a Restricted Holiday. The delinquent submitted a detailed explanation stating that on 09.05.2018, he traveled by flight along with his family members from Surat. Therefore, the very charge against the respondent is baseless. He further contended that, as explained by the delinquent, only on the specific call after returning, he had gone to the premises on 09.05.2018 just to verify the passes, and now the entire issue is sought to be shouldered on the respondent.

9. He further submitted that as rightly observed by the learned Judge, already in view of the punishment imposed, the career prospects of the respondent regarding promotion have been affected, and the order setting aside the punishment on the ground of violation of principles of natural justice is perfectly justified and in order and needs no interference and as such sought for dismissal of the writ appeal.

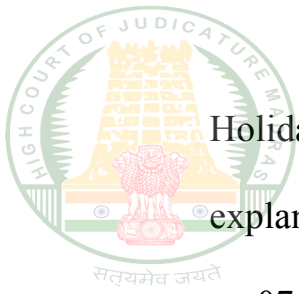
10. Heard the rival submissions and gave our anxious consideration to the materials placed on record.



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11. The respondent/delinquent, while working as Deputy Commandant in CISF Unit, ONGC at Surat, was issued with a charge memorandum dated 29.03.2019 framing charges as indicated above. The main charge is that though there was specific input by way of advance information addressed to DCP and Deputy Commandant CISF Unit through a letter dated 07.05.2018 to ensure that there is no demonstration/agitation at the Plant gate by the Project Affected People of Village Bhatpor, the delinquent had not taken proper measures to deal with the situation, which resulted in the manhandling of Shri Rajiv Tiwari, Production Manager on 09.05.2018 at about 17.10 hrs to 17.16 hrs, when he exited from the gate. A group of persons intervened the car at about 50 meters from the main gate and manhandled the production manager. The delinquent, who is seen present at the gate, did not react for 2 to 3 minutes, and only thereafter, with the help of the CISF personnel, he was saved, and thereby the delinquent committed misconduct.

12. The delinquent, in his detailed reply submitted on 29.05.2019, had explained that he was on sanctioned leave for seven days from 01.05.2018 to 08.05.2018, including 06.05.2018 (Sunday) and 09.05.2018 (Restricted



Holiday), and he was to join duty only on 10.05.2018. It is his specific explanation that he did not have any information regarding the input given on 07.05.2018, to ensure that there is no agitation/demonstration at the gate.

13. He had explained that he was on leave due to his sister's marriage and he was not even present in the city. He, along with his family members, had traveled in an Air India Flight from Patna to Surat via New Delhi to resume his duties on 10.05.2018. But, however, on reaching Surat on 09.05.2018, since he received a call from GGM/Plant/ONGC to come over to the office as there has been a problem that had erupted between the officers relating to entry of 4 labourers into the plant on the strength of expired passes, the delinquent went to the gate in the evening and was verifying the passes in the pass section at the main gate. He further explained that there was no group or any agitation at the gate, and all of a sudden, an officer who exited was blocked around 50 meters away. The delinquent/respondent though, he was in civil dress, had immediately intervened and secured the officer by risking his life as he was without uniform or any protection.

14. The disciplinary authority, not satisfied with the explanation, had referred the matter to the UPSC. The commission had, after considering the



issues, submitted a report on 22.03.2021 observing that the charge against the delinquent is proved and further also observing that appropriate penalty as referred above to be imposed.

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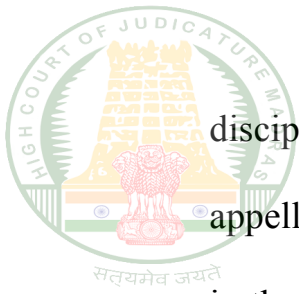
15. It is relevant to note from the report of the Commission that Shri Rajesh Tiwari, the officer who was manhandled by the mob, himself has stated that the CISF officials had intervened and rescued him, and he had also categorically stated that he had not alerted anybody as he himself did not expect any such incident. Furthermore, the Commission had also observed that the delinquent swung into action within 30 to 32 seconds of his arrival at the gate and instructed his team to bring the lathis and had swung into action and rescued the trapped official.

16. It is also appropriate to note from the report of the Commission that the stand of the delinquent that he did not see or notice any gathering at the exit gate on 09.05.2018 is also supported by the deposition of the intelligence incharge officer that there was no crowd at the main gate before the incident, i.e., from 15.45 hrs to 16.30 hrs, and everything looked normal and usual. The delinquent was busy with the task of verifying the passes. The Commission had only observed that if the delinquent had been on leave



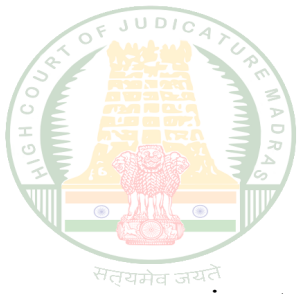
on 09.05.2018, he could not have been present at the gate at that time and could not have verified the passes by doing the official work. Only after noticing the incident at the gate, he had swung into action and therefore, he had not shown alertness and failed to assess the impending situation. Therefore, the charge was held as proved, and a penalty was recommended.

17. On the report being forwarded, the delinquent had further submitted his detailed explanation on 19.07.2021. The disciplinary authority, after considering the report of the Commission and the reply, by order dated 08.02.2022, had imposed the punishment of reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect not affecting his pension. The disciplinary authority, with respect to the defense taken by the delinquent that he was on leave on 09.05.2018, only by relying on a letter of the delinquent dated 09.05.2018, where he had informed the DIG/WZ Headquarters Mumbai that he has joined office on 09.05.2018 without availing Restricted Holiday and also requested to credit the said unavailed one day Restricted Holiday into his leave account, and the further fact that the incident had occurred between 17.10 hrs and 17.16hrs shows that he was not on leave on the date of the incident, had rejected the explanation and imposed the punishment. The



disciplinary authority had observed that the main charge against the appellant and the reason for the disciplinary authority imposing punishment is that though there was specific intelligence input through a letter dated 07.05.2018, requesting to ensure that there is no demonstration/agitation at the gate, the delinquent had not taken any precautionary measures.

18. In this regard, it is to be noted that even though the fact in respect to whether the delinquent was on leave on 09.05.2018 or not is disputed between the parties, admittedly, the delinquent/respondent was on leave from 01.05.2018 to 08.05.2018 and when the letter had been issued on 07.05.2018 to the Deputy Commandant by the Intelligence unit, certainly this letter had not reached the respondent on 07.05.2018 or 08.05.2018. Neither the Commission nor the disciplinary authority had recorded a finding from any material to show that the respondent had joined duty on 09.05.2018 and this intelligence input, received through the letter dated 07.05.2018, was handed over and brought to the knowledge of the respondent. There is nothing on record placed in this regard that the delinquent was apprised of the situation. From the explanations submitted, which are not contraverted, it is seen that the respondent was on leave due to his sister's marriage and not available in the City.



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19. When the specific charge rests on the fact that as to whether this input was furnished to the respondent or not, since there is no finding in this regard or material placed for having brought to the notice of the respondent, then the other findings recorded by the Commission to the effect that the ONGC officer himself had given a statement that he had not alerted anybody as he himself had not expected any such incident and further that the delinquent, who was present in the pass counter, swung into action within 30 to 32 seconds and had rescued the officer, would support the stand of the respondent that he was not aware of any such input. Further, there was no such gathering or crowd at the gate before the time of the incident. Therefore, the respondent/delinquent, who had no previous input, was attending at the pass counter for verification of the passes. Due to the sudden agitation, that too at 50 meters after the gate, he still swung into action within 30 seconds and rescued the official.

20. Insofar as the stand of the respondent that he had traveled along with his family only on 09.05.2018, and he had gone to the main gate only after receiving a call from the officer regarding the entry of 4 labourers with expired passes, and that the incident occurred in the evening, after 5 pm, all



of these support the stand of the respondent. Particularly, when no contrary materials were produced and neither the Commission nor the disciplinary authority considered these details provided by the delinquent, it only strengthens his stand. Furthermore, the report of the Commission itself states that the charge against the delinquent, seems to prove that he did not adopt any precautionary measures in anticipation of unrest. Even after the delinquent furnished his detailed explanation first to the charge and then to the report, the disciplinary authority had not adverted to this and neither had referred to any adverse materials nor had provided an opportunity to the petitioner to establish the stand taken by him by submitting necessary materials.

21. It is not in dispute that the punishment of reduction in the pay scale by one stage for one year is a minor punishment under Rule 11(iii)(a), and no oral enquiry is required. The punishment could be imposed by following the procedure as set out under Rule 16. However, when several details regarding the non-receipt of any prior information (as received in the letter dated 07.05.2018), when the respondent/delinquent was admittedly on leave, and further details provided by the delinquent stating that he travelled only on 09.05.2018 and went to the main gate in the evening after receiving



a call to verify passes, the disciplinary authority did not consider these aspects in detail. In the absence of such materials, the disciplinary authority ought to have afforded an opportunity to the respondent to establish his case.

22. The writ Court also had given a finding that the disciplinary authority had failed to afford an opportunity to the petitioner by conducting an oral inquiry, which is a clear violation of the principles of natural justice. Even though a full-fledged inquiry is contemplated only for imposing major punishment under Rule 11(v) to (ix) of CCS (CCA) Rules 1965, still inquiry giving the delinquent an opportunity to prove the materials produced by him in respect to the charges would have enabled the delinquent to exonerate himself from the charges, which is permissible as per Rule 16(1)(b). To this extent, we find that the denial of an opportunity to the delinquent/respondent in the enquiry is a clear violation of principles of natural justice.

23. Though the High Court, in judicial review, cannot re-appraise the evidence and arrive at a different conclusion than what was reached in the disciplinary proceedings, still it can intervene if the evidence produced has not been considered, irrelevant materials have been considered, or if the



findings rendered in the inquiry proceedings are perverse.

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24. As referred to above, the vital materials regarding the communication from the intelligence department whether it was served or brought to the knowledge of the respondent, who was admittedly on leave on the said date were not considered, and the materials submitted by the delinquent to disprove the charges were overlooked by the disciplinary authority. Since the findings and conclusions arrived at are perverse and sufficient opportunity is not afforded, the decision of the writ Court in interfering with the punishment order cannot be faulted.

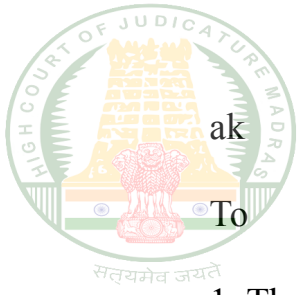
25. In view of the above deliberations, we do not find any error or infirmity in the conclusion arrived at by the writ Court in interfering with the punishment imposed. As such, the order of the writ Court is sustained. Accordingly, the writ appeal is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (G.A.M., J.)
28.03.2025

Speaking order

Index : Yes

Neutral Citation : Yes



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Pre-Delivery Judgment made in
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