

M.A.T. 963 of 2023

Piyali Sarkar
Vs.
The Union of India & Ors.

Mr. Vivekananda Bose,
Mr. Sumitava Chakraborty,
Ms. Bratati Pramanick,
Ms. Ipsita Ghosh

...for the Appellant

Mr. Uttam Basak

...for the CISF

1. Heard the learned advocate for the appellant. The learned advocate for the respondents is also present.
2. The petitioner, a Constable in a paramilitary force, namely, the Central Industrial Security Force (CISF) was given an order on 04.01.2020 asking her to join Internal Security Duty (IS Duty) at Delhi. She did not proceed for joining the said duty. It is for such allegation that she was proceeded against by a charge-memo dated 19.03.2020. The enquiry resulted in submission of an enquiry report. The petitioner was given an opportunity of giving her response to the enquiry report. Considering the enquiry report and petitioner's response, the disciplinary authority passed an order dated 23.06.2020, whereby and whereunder she was visited with the punishment

in exercise of powers by the disciplinary authority under Rule 32(1) read with Annexure-I and Rule 34(v) of the CISF Rules, 2001. She has been awarded the punishment of reduction of pay by one stage in the time scale of pay Rs. 25500/- to Rs.81100/- in level 1, from Rs.33300/- to Rs.32300/- for a period of one year. The punishment further contemplated that she would not earn increment of pay during the period of reduction and that after expiry of the period of reduction the same will have the effect of postponing her future increment of pay. The period of suspension (168 days) was directed to be treated as 'not on duty'.

3. The petitioner put to challenge the order of the disciplinary authority in appeal. The appeal was rejected, thereafter; she pursued the matter in revision. The revision was also considered by the Inspector General, CISF who has rejected the revision by an order dated 29.01.2021. In the writ petition, the petitioner has assailed all the orders right from the suspension order dated 07.01.2020 till the order of the revisional authority.
4. The writ court has not entertained the petitioner's challenge and the writ petition was dismissed by a judgement dated 02.12.2022, which is the subject matter of the present intra-court appeal.

5. The learned advocate for the appellant submits that the order passed by the enquiry officer and disciplinary authority are not sustainable. He submits that the article of charge alleged that the petitioner did not proceed to IS Duty at DMRC Delhi without any information or permission of the competent authority and that she stayed in her Government quarter on her own. He has laid emphasis on that portion of the article of charge which reads:

“Lady Constable/GD Piyali Sarkar was also received a copy of movement order No. (185) dated 04.01.2020 from unit office but she did not proceed to DMRC Delhi for Internal Security duty without any information or permission of competent authority and stayed in her Govt. quarter on her own.”

6. This charge could not be established in the proceeding as the fact that the petitioner had intimated regarding not complying with the order of movement dated 04.01.2020, is apparent from the records of the enquiry. This aspect is not denied or disputed and therefore, there was no occasion for the authorities to hold the charges proved.
7. In order to consider the submission of the learned advocate for the appellant, we have gone through

the records and find that the facts which are not in dispute are that a week prior to issuance of the transfer order dated 04.01.2020, the petitioner requested her superior authority, not to assign IS Duty. Despite such request, she was assigned IS Duty on 04.01.2020, which she responded to on the same date in the afternoon by a communication, substantially stating that it is not convenient for her to comply with the order because her husband is working in the army and posted at the place where she is presently posted; and because she has a small child. The petitioner thereafter took no step to comply with the direction contained in the movement order dated 04.01.2020.

8. The non-compliance with the movement order is required to be viewed considering the fact that the petitioner is a Constable in a paramilitary force, wherein there is a requirement of maintaining a higher level of integrity, devotion and dedication towards duty and a high standard of discipline is required. This aspect of the matter has been reiterated time and again by several pronouncements.
9. Apart from that, we find that in the present case, there is a statutory mandate to this effect contained in Section 10 of the CISF Act, 1968.

Section 10 lays down the duties of every member of the force, the first 10(a), being to obey and execute all orders lawfully issued to the member by a superior authority.

10. In the present case, non-compliance with the order is not in dispute.
11. It is also not the case of the writ petitioner/appellant that the order was not lawfully issued by the writ petitioner's competent superior authority.
12. The fact that the Commandant while articulating the charge has employed the expression "*without any information or permission of competent authority*" cannot lead to an inference that the movement order dated 04.01.2020 was capable of being disobeyed if an intimation was given to this effect by the writ petitioner, who was otherwise duty bound to comply with the order. Such reading, of the expression employed in the charge memo would have a disastrous consequence on the force, paving the way for violating orders lawfully issued by a superior authority, under intimation to them, which the force members are otherwise under a statutory duty to obey. As per submission of the learned Advocate for the writ petitioner, if "*information or permission*" is read keeping the expression "*information*", and

“*permission*” disjunctive, the same would have a disastrous consequence on discipline in the force and would be in violation of law, being the mandate of discipline in Section 10 of the CISF Act. The expression “*information or permission of competent authority*” can only be read keeping the words “*information*” and “*permission*” conjunctive, meaning thereby that without permission of the competent authority, merely by giving an intimation the movement order dated 04.01.2020 could not be disobeyed by the writ petitioner. Any other reading of the charge would be contrary to the provisions contained in Section 8 and Section 10 of the CISF Act, which reads:

“8. Dismissal, removal, etc., of members of the Force.—*Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may—*

(i) dismiss, [remove] [, order for compulsory retirement of] or reduce in rank any [enrolled member] of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any [enrolled member] of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument;

*[(d) withholding of increment of pay with or without cumulative effect;
(e) withholding of promotion;
(f) censure.]”*

“10. Duties of members of the Force.—*It shall be the duty of every[* * *] member of the Force—*

(a) promptly to obey and execute all orders lawfully issued to him by his superior authority;

(b) to protect and safeguard the industrial undertakings owned by the Central Government together with such other installations as are specified by that Government to be vital for the carrying on of work in those undertakings, situate within the local limits of his jurisdiction:

Provided that before any installation not owned or controlled by the Central Government is so specified, the Central Government shall obtain the consent of the Government of the State in which such installation is situate;

(c) to protect and safeguard [any joint venture, private industrial undertaking and] such other industrial undertakings and installations for the protection and security of which he is deputed under Section 14;

[(d) to protect and safeguard the employees of the industrial undertakings and installations referred to in clauses (b) and (c);

(e) to do any other act conducive to the better protection and security of the industrial undertakings and installations referred to in clauses (b) and (c) and the employees referred to in clause (d)];

[(f) to provide technical consultancy services relating to security of any private sector industrial establishments under Section 14-A;

(g) to protect and safeguard the organisations owned or funded by the Government and the employees of such organisations as may be entrusted to him by the Central Government;

(h) any other duty 40[within and outside India] which may be

entrusted to him by the Central Government from time to time.]”

13. A reading of the above noted two provisions leaves no scope for ambiguity that the petitioner was duty bound under Section 10 of the Act to obey the movement order dated 04.01.2020, and disobedience of the same invited action under Section 8 of the Act.
14. We find that there is no allegation whatsoever in the writ petition or in the present proceeding that the procedural prescription for conduct of an enquiry contemplated in the CISF Act and Rules was in any way violated. The procedure having been complied with, there being no denial of the fact that the petitioner did not comply with an order lawfully issued by a competent authority, the plea raised by the learned advocate that intimation has been sent regarding non-compliance with the order and therefore, no charge is made out, cannot be countenanced.
15. The Hon’ble Single Judge has considered all other issues. The only point urged by the learned advocate in the present proceedings, which we have considered above, does not in any manner improve the case of the writ petitioner.
16. The fact remains that the petitioner being a Constable of a disciplined force admittedly

disobeyed a movement order merely by giving an intimation that it is not convenient for her to comply with the order.

17. The order of punishment, therefore, in our opinion does not require any interference. The Judgement dated 02.12.2022 of the writ court in W.P.A. No.10733 of 2021 also does not require any interference.
18. The appeal is dismissed.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)