

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 24636 of 2016

**Ashish
-Vs-
Union of India & Ors.**

For the Petitioner	: Mr. K.B.S. Mahapatra Mr. Aditya Shit
For the Union of India	: Ms. Chandreyi Alam
Heard on	: 30.04.2025, 28.08.2025
Judgment on	: 03.02.2026

Ananya Bandyopadhyay, J.:-

1. The petitioner assailed with the disciplinary proceedings culminating in the orders dated 12.08.2015, 22.11.2015 and 30.06.2016 seeking its quashing along with all consequential benefits. He entered into service in the Central Industrial Security Force on 24.07.2010. After successful completion of training was deployed to protect plant property at the designated duty.
2. The petitioner asserted the allegation of theft of plant property was wholly misconceived for the alleged incident occurred, 2 hours and 40 minutes after he had lawfully handed over charge to his reliever at 05:00 hrs. No theft or irregularity was ever reported during his duty hours. His duty shift ended at

5:00 hrs., whereas the suspicious activities were first noticed only around 7:40 hours well beyond his period of responsibility.

3. It was further his case that no complaint from the property owner was ever lodged under Section 378 of the Indian Penal Code. Therefore, the allegation of theft was unsupported by any law reporting. Only a GD was entered and no FIR was registered despite the mandatory obligation of a public servant to report a cognizable offence.
4. The petitioner alleged the disciplinary proceedings violated foundational principles of natural justice and statutory procedure. Statements recorded during the preliminary enquiry were used against him. Although such documents were not listed nor was he given notice that the same would be relied upon. He asserted Rule 36(18)(b) of the Central Industrial Security Force Rules, 2001 was violated because he was not questioned on the circumstances appearing against him, despite not examining himself as a defence witness.
5. The petitioner emphasized the findings were perverse resting on inconsistent and contradictory statements of businesses recorded in his absence. Several checking officers had recorded during the relevant period that he was alert, performing his duties, satisfactory, and that no miscreants had entered the area under his charge. This contemporaneous record, he submitted fully negated the allegation of the dereliction of duty.
6. The petitioner accordingly sought the setting aside of the disciplinary action as illegal, arbitrary unsupported by evidence and contrary to statutory protection.

7. The Learned Advocate representing the petitioner submitted the entire disciplinary procedure stood vitiated by gross violation of natural justice, procedural irregularity and statutory non-compliance.
8. It was urged the incident occurred well after the petitioner's duty hours and therefore no culpability could be attached to him for acts occurring after he had already handed over. No theft was reported by the custodian of the property and without a complaint from the owner, the allegation of theft was signified.
9. The stolen scrap materials were not linked to the date of the proposed incident as evident from the recovery of photographs. Moreover, statements of witnesses recorded during the preliminary enquiry were improperly relied upon. Those statements were not in the listed documents and no notice was given that the same would be used in the regular enquiry. Independent witnesses were not examined. The prosecution witnesses were inconsistent and in many places, contradictory and shackled with unreliability. The enquiry officer violated rule 36(18)(b) of the CISF Rules, 2001 by failing to question the petitioner on incriminating circumstances, thereby causing grave prejudice. The Appellate and Revisional Authorities simply endorsed the Disciplinary Authority's findings without independent reason, revealing mechanical exercise of jurisdiction.
10. It was therefore submitted the disciplinary proceedings were, unsupported by the evidence and liable to be quashed.
11. The Learned Advocate representing the petitioner relied on the following judgments:-

- i. In ***Sher Bahadur v. Union of India***¹, the Hon'ble Apex Court held the following:-

“1. Leave is granted.

2. The unsuccessful appellant before the High Court of Judicature at Allahabad assails the order of a Division Bench dismissing Civil Misc. Writ Petition No. 53498 of 2000 on 16-5-2001.

3. The appellant claims that he had worked as a casual labourer during the period 25-5-1978 to 23-11-1979 under IOW/ALD. However, by order dated 19-5-1989 he was re-engaged along with three others by Mr Ajit Singh, APO (Const.), Northern Railway, Kashmere Gate, Delhi. It is further claimed that on 20-12-1990 he was medically examined and, having been found fit, he was granted temporary status on the post of khalasi in regular pay scale. While so, the Senior Civil Engineer (Const.), Northern Railway, Kanpur, U.P. (Respondent 4) issued a charge-sheet memo alleging that he has fraudulently secured the said appointment letter duly signed by the said APO (Const.) without having worked prior to 1981 and/or without the specific and personal approval of the General Manager or both and in that he had contravened Rules 3.1(i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966. He denied the charge. A regular enquiry was conducted and the appellant was found guilty of the charge. On 13-12-1994 the disciplinary authority imposed on the appellant punishment of dismissal from service with immediate effect under Rules 6(vii) to (ix) of the Railway Servants (Discipline and Appeal) Rules, 1968. The appellant challenged the validity of the said order of dismissal in Original Application No. 1911 of 1994 before the Central Administrative Tribunal, Allahabad Bench, Allahabad. The Tribunal dismissed the said application by order passed on 22-8-2000 which was impugned in the aforementioned writ petition before the High Court of Judicature at

¹ (2002) SCC OnLine SC 760

Allahabad. It is against the order of the dismissal of the said writ petition by the High Court dated 16-5-2001, that the appellant is in appeal in this Court.

4. Mr Jagat Singh, learned counsel appearing for the appellant has contended that the High Court erred in not appreciating the contention that the enquiry report was based on no evidence and as such there was no valid basis for dismissal of the appellant.

5. Mr V.C. Mahajan, learned Senior Counsel appearing for the respondents argued that after conducting enquiry and after complying with all the formalities, the appellant was dismissed from service. Both the Central Administrative Tribunal as well as the High Court found that the dismissal was proper.

6. A perusal of the judgment and order under challenge shows that the High Court having referred to the enquiry report found that there was oral and documentary evidence (Ext. P-1) to hold him guilty and that sufficiency of the evidence would not be a ground to challenge the order of the disciplinary authority by invoking the writ jurisdiction.

7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry

officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.

8. The next question is what relief can be granted to the appellant. Inasmuch as the appellant, a casual worker (khalasi), was in service for two years and it is more than a decade that he has been out of service, in the circumstances, we do not consider it to be a fit case to direct his reinstatement. In our view, interests of justice would be met by directing Respondent 1 to pay the appellant compensation equal to average salary for a period of two years within two months from today.

9. The appeal is accordingly allowed with costs.”

- ii. In **Union of India v. Gyan Chand Chattar**², the Hon’ble Supreme Court held in Paragraph-35 replicated below:-

“35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which

² (2009) 12 SCC 78

formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.”

12. The Learned Advocate representing the respondent defended the impugned action to be constitutionally just and fair.
13. The petitioner was not charged with theft but with failure to protect the plant property, amounting to gross misconduct, serious negligence, and grave dereliction of duty, inconsistent with the discipline expected of CISF Personnel.
14. A full-fledged departmental enquiry was conducted in accordance with Rule 36 of the CISF Rules. The petitioner was afforded full opportunity to defend himself, cross-examine witnesses and make representations. He chose not to appoint a defence assistant.
15. Upon appreciation of the evidence, the Enquiry Officer held the charge to be proved. The Disciplinary Authority after independent consideration of the record imposed the punishment of reduction of pay by one stage for one year with denial of increments during that period.
16. The petitioner's appeal and revision were both dismissed by the Authorities concurring with the findings of the Disciplinary Authority.
17. Evidence revealed that unusual footprints were discovered at 05:00 hrs. by the reliever and subsequent tracking led to the detection of scrap loading in

the plant property into a small truck. The presence of large quantities of scrap outside the perimeter wall and suspicious activity near the petitioner's duty post suggested that the wrongdoing had begun during the petitioners shift.

18. The respondent asserted the preponderance of probability demonstrated that the property was removed earlier than was during the petitioner's duty hours, which justify the punishment. The respondents denied any breach of natural justice stating the Presenting Officer was duly appointed and enquiry was conducted strictly in accordance with Rule 36 of the CISF Rules 2001.
19. The respondent relied on Supreme Court precedent cautioning High Court against appreciating evidence in disciplinary matters, unless there is perversity or. Law.
20. It was further contended no procedural lacuna existed in the evidence or on record as demonstrated. The petitioner's failure to protect plant property amounting to misconduct was proved.
21. The gravamen of the allegation was the plant property was removed by miscreants and the petitioner failed to protect the same.
22. Steel/Iron scraps were often kept by the owner/ customer of the property in the scrap yard. Without any report from the owner of the property about theft of scrap material was not maintainable. It was the duty of the public servant to report the matter of theft to the police and a case ought to have been registered for investigation to detect the wrong doer.

23. Petitioner was detailed for duties at “ABB circle Patrolling in ‘C’ shift from 21:00 hrs., on 30.03.2015 to 05:00 hrs., on 31.03.2015. No theft was reported during the duty hours of the petitioner (07:40) hrs., was not the duty hours of the petitioner, he was also not detailed in the scrap yard. The allegation that the petitioner squarely failed to discharge his duty to protect and secured the property was vague and unsubstantiated.
24. Various checking officers at different points of time checked the petitioner and remarked the petitioner to be alert throughout. The area in which he was deployed was composed.
25. No miscreants were seen to enter into the area/place of duty of the petitioner. The petitioner handed over his charge at 05:00 hrs., to his reliever namely Constable/GD Rajib Kumar.
26. Statement of Lady /Inspector (Exe) Bimala Rajak revealed - On 31.03.2015 Constable/GD Prakash Kumar from QRT received message of certain movements on outside perimeter wall at ABB duty post area. GD entry was recorded at 09:15 hrs. i.e. after 04:15 hrs., of handing over the charge by the petitioner.
27. The statements of the personnel recorded during preliminary enquiry placed as prosecution witnesses revealed to be inconsistent and contradictory. PW-2 Constable/GD Prakrit Kumar deposed at about 06:45 hrs., he saw one small auto van followed by two persons in motorcycle going outside the perimeter wall- ABB inside.
28. A lady stand over and saw certain people were loading materials inside the auto van. Seeing the sentry those persons hd in the surrounding.

Constable/GD Prakant Kumar informed the sentry of ABB inside post to inform the Control Room, but no response was received from Control Room. PW-2 passed the message to QRT. QRT reached the spot. While seeing the QRT the driver escaped with the auto van. After some time the CIW staff and DC came to the spot and scrap material was recovered. The Coy Commander, CIW staff and DC checked the area inside the ABB post. To the query PW-2 stated that material was lying outside the perimeter wall tower. He had produced statement of himself given during preliminary enquiry as PW-2/Exhbt-1.

29. Further, HC/GD P.G. Pandi (PW-5), in his statement stated that at about 07:40 hrs., the sentry of refectory post informed about some suspicious activity going on outside the perimeter boundary wall and Chhota Hathi vehicle along with certain people present there and fled from the spot along with the vehicle. Constable/GD Raj kumar informed that message to CIW Constable/GD Sonu Yadav searched the area and recovered iron scraps from the bushes. The CIW staff and constable/GD Raj Kumar of QRT loaded the iron scraps on a vehicle provided by the MTO section. At the same time CIW-1/C and Deputy Commandant reached there. He had produced statement of himself given during preliminary enquiry as PW-5/ Exhbt-1.
30. The admitted record revealed the petitioner handed over charge at 05:00 hrs. to his reliever. The suspicious activities and movement of miscreants were first noticed at about 7:40 hrs., i.e., 2 hours and 40 minutes after the petitioner had seized to be on duty.

31. This temporal gap was not a minor inconsistency but strike at the root of culpability. No disciplinary liability can be imported for events occurring after the lawful cessation of duty for responsibility cannot extend beyond the period of operational control. Moreover, the theft of scrap materials stacked at a place which was beyond the wall of the periphery, which the petitioner was not supposed to keep vigil upon.
32. The disciplinary Authority, the Appellate Authority and the Revisional Authority failed to address this fundamental jurisdictional fact rendering their findings vulnerable to judicial review
33. No complaint from the owner or custodian of the plant property was ever lodged. Only a GD entry was noted. No FIR was registered. The alleged stolen scrap materials were never linked to the alleged date of occurrence.
34. In the absence of a complaint under Section 378 of the Indian Penal Code, any documentation from the property owner indicating loss, any contemporaneous report during the petitioners shift, the disciplinary proceeding rest on prism of inference rather than evidently foundation. Such conjectural attribution was impermissible in law.
35. The record demonstrated statements recorded during the preliminary enquiry in absence of the petitioner were exhibited in the departmental enquiry relied upon by the enquiry officer, never disclosed as listed documents and were never notified to the petitioner for rebuttal. Such action and practice exhibit, a direct violation of the principle of natural justice, for once a regular enquiry to have commenced, the preliminary

enquiry statements deplete legal sanctity unless duly proved and subjected to cross-examination.

36. The failure to examine the independent witnesses under the reliance upon contradictory and inconsistent testimonies, further tainted the enquiry with procedural impropriety.
37. Rule 36(18)(b) of the CISF Rules mentioned if the delinquent did not examine himself as a defence witness, the enquiry officer must question him regarding circumstances appearing against him. This safeguard ensures fairness and prevents conviction by ambush. The petitioner was never questioned on the incriminating materials relied upon which constituted a substantial statutory violation. A disciplinary proceeding conducted in breach of mandatory procedure was vitiated in entirety.
38. The Enquiry Officer based his conclusions on conjecture, preponderance of probability, suspicious footprints allegedly seen at five hours, assumptions that theft must have begun earlier and statements of witnesses whose versions were inconsistent, contradictory and identical, indirectly suggesting tutoring. None of these elements constitute evidence adequate to sustain a finding of misconduct. The absence of any miscreant entry during the petitioners shift, recorded by checking officers during the night, further demolished the prosecution case. The inference that misconduct occurred during the petitioner's duty was speculative, unsupported by material and therefore perverse in law.
39. The Appellate and Revisional orders merely recited the findings were approved without any independent reasoning, consideration of procedural

violations, analysis of the time gap or evidentiary defects. Such mechanical affirmation devoid of objective appraisal, reflected non-application of mind, vitiating the disciplinary actions.

40. The Writ Courts do not ordinarily appreciate evidence in disciplinary matters. Interference becomes imperative when the proceedings are powered by inference unsupported by evidence, vitiated by statutory violations contrary to natural justice or founded on no legal material. The present case satisfies each of these grounds.
41. Where the disciplinary charge is dedicated to events occurring after the employees duty hours beyond the precincts of his duty premises and the findings are based on preliminary enquiry statements used without notice, contradictory evidence and in breach of mandatory Rule, 36(18)(b) of the CISF Rules, 2001, the resultant disciplinary orders stand vitiated as arbitrary, violative of natural justice and contrary to statutory mandate. Such orders cannot stand judicial scrutiny but must be quashed.
42. Under such facts and circumstances, the impugned orders dated 12.08.2015, 22.11.2015 and 03.06.2016 are set aside. The punishment of reduction of pay and all consequential entries stand quashed. The petitioner shall be restored to his rightful and all consequential service and financial benefits, which shall be released within eight weeks from communication of this order.
43. In view of the above discussions, the instant writ petition being WPA 24636 of 2016 is allowed.

44. Accordingly, the instant writ petition is disposed of. Connected application, if any, also stand disposed of.
45. There is no order as to costs.
46. 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.)