

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 16077 of 2012

**Atul Saurabh Bharti @ A. S. Bharti
Vs
Union of India & Ors.**

For the petitioner : Mr. Haradhan Banerjee,
Mr. Amitava Pyne,
Ms. Manideepa (Paul) Roy

For the Union of India : Mr. Anirban Mitra,

Heard on : 3rd October, 2023.

Judgment on : **3rd October, 2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the charge memorandum dated 17th February, 2011, the enquiry report dated 6th June, 2011, the final order passed by the disciplinary authority dated 30th June, 2011, the order of the appellate authority dated 29th September, 2011 and the order of the revisioning authority dated 12th April, 2012.

2. It is the petitioner's case that he had joined the service of the Central Industrial Security Force as a constable on 16th June, 2007. After undergoing training at RTC-I, Deoli, Rajasthan, he was posted at the CISF Unit at the Mining and Allied Machinery Corporation, Durgapur, West Bengal on 2.2.2008.
3. While working at CISF Unit at Durgapur, West Bengal, the petitioner was served with a Memorandum of Charge dated 17th February, 2011. The particulars of charge levelled against the petitioner vide the aforesaid Memorandum is extracted hereunder:

“Article of Charge No. I

That No.077240220 Constable A S Bharti (U/S) of CISF Unit, MAMC Durgapur during his Rotational Training (3rd batch) at CISF Unit DSP (STC) Durgapur wef. 31.01.2011 to 12.02.2011 was permitted night out pass from 1830 hrs on 05.02.2011 to 1700 hrs on 06.02.2011 from CISF (STC) DSP Durgapur to meet his family since Sunday was a holiday. He was supposed to report to CISF Unit DSP (STC) Durgapur on 06.02.2011 evening. But he failed to do so and remained absent from evening roll call as well as training barrack on 06.02.2011 and also remained absent in PT on 07.02.2011 morning without any permission or intimation from the competent authority. This act on the part of No.077240220 Constable A S Bharti tantamounts to gross

misconduct, indiscipline, violation of instructions and unbecoming of a member of a disciplined force like CISF.

Article of Charge No.II

That No.077240220 Constable A S Bharti (U/S) of CISF Unit, MAMC Durgapur is a bachelor and stays at CISF Unit MAMC Barrack. He misled the CISF Officials by giving false information and false address in that he said that he would go to meet his family at Qtr No.A/19 of CISF Unit MAMC, Durgapur. This act on the part of No.077240220 Constable A S Bharti tantamounts to gross misconduct, indiscipline, violation of instructions and unbecoming of a member of a disciplined force like CISF.

Article of Charge No.III

That No.077240220 Constable A S Bharti (U/S) of CISF Unit, MAMC Durgapur during unauthorized visit at Bolpur (Shantiniketan) on 06.02.2011, resorted to indisciplined behaviour with ladies in public place as a result of which he was arrested and put inside lockup of Police Station, Bolpur, Dist: Birbhum (WB) and there was adversely wide publicity in Electronic and Print Media which tarnished the image of CISF.”

4. Consequent upon receipt of the aforesaid Memorandum, the petitioner had submitted written representation on 6th March, 2011 denying the charges levelled against him. Following the aforesaid,

an enquiry was conducted against the petitioner. The petitioner participated in the enquiry. Ultimately the Enquiry Officer by cover of letter dated 6th June, 2011 forwarded the petitioner the report of the enquiry and had called upon him to make representation or submission against the enquiry report. By a communication in writing dated 22nd June, 2011, the petitioner had duly responded to the enquiry report.

5. By a final order dated 30th June, 2011, the disciplinary authority of the petitioner by taking into consideration the enquiry report, the representation made by the petitioner, while agreeing with the conclusion of the Enquiry Officer, found the petitioner to be guilty of the charges so framed against him vide charge sheet dated 17th February, 2011. Taking into consideration the gross misconduct and indiscipline of a member of the force in exercise of powers conferred on him, under Rule 32(1) Annexure-I and Rule 34(II) of the CISF Rule (hereinafter referred to as the “said Rules”) imposed a penalty on the petitioner of “removal from service” with immediate effect. By the said order, the period spent by the petitioner under suspension was treated to be the period as “non duty period”.
6. Challenging the aforesaid order, the petitioner had filed a departmental appeal in terms of Rule 46 of the said Rules. By a detailed order dated 29th September, 2011, the appellate authority, having not found any mitigating circumstances to interfere with the

final order dated 30th June, 2011, rejected the appeal as being devoid of merit. The petitioner had thereafter filed a revisional application in terms of Rule 54 of the said Rules before the revisioning authority. By an order dated 12th April, 2012, the said revisional application stood dismissed.

7. Challenging the aforesaid orders, including the disciplinary proceeding, the present writ petition has been filed.
8. Mr. Banerjee, learned Advocate representing the petitioner, submits that the entire proceeding initiated against the petitioner revolves around charge no.3. By referring to the charge sheet, he submits that the petitioner was charged of an unauthorized visit to Bolpur and his subsequent alleged indisciplined behaviour with the ladies in public, as a result of which he was arrested and put inside police station lockup. The same had led to framing of the above charge.
9. By drawing attention of this Court to the judgment and order dated 19th May, 2012, passed by the Judicial Magistrate, First Class, Bolpur in G. R. Case No.64/11, T.R. No.602/11, he submits that the learned Magistrate, upon going through the evidence of the prosecution witnesses, having not found any iota of evidence to prove the alleged incident under Sections 341/354/323/506/34 of the IPC, against the accused persons beyond all reasonable doubt, had recorded that the prosecution case fails and the accused

persons are entitled to be released from the case. Having thus, arrived at the aforesaid finding, the learned First Class Judicial Magistrate, by his aforesaid judgment had declared the petitioner to be “not guilty” of the offence and consequently acquitted him of the case under Section 255 of the Code of Criminal Procedure.

10. Mr. Banerjee submits that once, the petitioner was acquitted and the respondents having not independently enquired against the petitioner and having relied on the arrest memo to hold the petitioner guilty of indisciplined behaviour with the ladies, on the acquittal of the petitioner, the said charge fails.

11. It is submitted that the ladies were not independently examined by the respondents in the departmental proceedings and as such, the aforesaid charge cannot be established against the petitioner. In support of his contention that in absence of the defacto complainant being examined to establish the charge, no charge can be proved on the basis of a mere suspicion, he relied on a Division Bench judgment of this Court in the case of ***State of WB and Ors. Vs Vidyasagar Pandey & Anr.***, reported in ***(2011) 1 CLJ 57***. It is the contention of the petitioner that a guilt must be proved on the basis of some material which is legally admissible in evidence and not on the basis of suspicion.

12. Insofar as charge no.1 is concerned, Mr. Banerjee submits that admittedly on 6th February, 2011, the petitioner was in custody and

as such, he could not have reported for duty. The charge, that he had remained absent on 7th February, 2011 without any permission in the given facts, cannot be sustained as he was prevented by reasons beyond his control to report for duty on 7th February, 2011. He submits that in absence of charge nos.1 and 3 being proved against the petitioner, the punishment inflicted on the petitioner appears to be harsh and excessive and disproportionate to charge no.2. The said charge, even if proved, cannot call for removal of the petitioner from service.

13. *Per contra*, Mr. Mitra, learned Advocate representing the respondents by placing reliance on the enquiry report, submits that the petitioner was given all opportunity to participate in the enquiry. The principles of natural justice has admittedly been complied with. The petitioner was favoured with enquiry report to which he had responded. The disciplinary authority on the basis of the representation made by the petitioner had come to the conclusion and having concurred that the report of the Enquiry Officer in the given facts, as were then available before him had ordered for removal of the petitioner from service. There is no irregularity on the part of the Disciplinary Authority in awarding a punishment of removal of the petitioner from service.

14. Both the appellate authority as well as the revisional authority did not commit any mistake or irregularity in procedure in deciding

either the appeal or the revisional application. When the decision was rendered by the disciplinary authority, the appellate authority and the revisional authority, the judgment of the learned First Class Judicial Magistrate in G. R. Case No.64 of 2011 was not delivered. Admittedly the petitioner was granted leave to go to his native village. The petitioner instead of going to his native village was involved in the circumstances, as set out in charge no.3 which led to his detention and arrest by the Law Enforcement Authority. There is no irregularity on the part of the respondents in removing the petitioner from service.

15. Responding to the query of the Court, he submits that no independent enquiry was conducted against the petitioner insofar as the charge no.3 is concerned, by taking the statement of the defacto complainant and the ladies, who were allegedly misbehaved with. He submits that the matter may be referred back to the authorities for a fresh decision in the light of the development as indicated hereinabove.
16. Heard learned advocates appearing for the respective parties and considered the materials on record.
17. It is noted that in course of employment the petitioner was served with a charge sheet dated 17th February, 2011. The petitioner participated in the enquiry and subsequently, was served with the enquiry report. On the basis of the representation made by the

petitioner to the enquiry report, the disciplinary authority by an order dated 30th June, 2011, by taking into consideration all the aspects of the matter and while agreeing with the conclusion of the report of the Enquiry Officer held the petitioner to be guilty of the charge.

18. It would further appear from the aforesaid order that the disciplinary authority had proceeded to award a punishment of removal from service of the petitioner on the basis of his observations, which are noted herein below:

“From the gravity of proven offence so committed by the charged member, it appears that he has taken life lightly without caring for the good values of the Force being a trained member of the disciplined Force with gender sensitization like CISF. I am of the considered opinion that the facts and circumstances of the case is very serious gross misconduct and indiscipline act on the part of any member of the Force is untenable rendering himself unbecoming of a member of Force and from the proven offence, he deserve for a severe penalty.”

19. As such, it is apparent and clear that the disciplinary authority, while proceeding with the serious nature of charge as reflected in charge no.3 and on the basis of proof thereof, had inflicted the punishment of removal from service on the petitioner. I must note here that the respondents did not independently enquire into the

charge no.3. From the enquiry report, it appears that the Enquiry Officer after discussing the charge had concluded the same to have been proved on the basis of newspaper reporting as also on the basis of admission of the petitioner as regard his arrest. The allegation of misbehaviour with women at the public place was based on electronic media reports.

20. Admittedly, the petitioner had been acquitted of the criminal proceeding. The defacto complainant had never been called by the Enquiry Officer. The statement of the defacto complainant was also not obtained. It is well settled that there should be necessary materials pointing out at the guilt, which must be proved and brought on record. Guilt cannot be established on the basis of a mere suspicion. As rightly pointed out by Mr. Banerjee, the Division Bench of this Hon'ble Court in the case of **Vidyasagar Pandey and Ors., (supra)** has been pleased to conclude that the defacto complainant ought to have been examined to establish the guilt. It is true that in this case the order of acquittal was passed subsequent to the proceeding being concluded but at the same time, the factum of acquittal cannot be lost sight of, especially when there had been no independent enquiry as regards charge no.3 by the respondents.

21. Having regard to the aforesaid, the punishment awarded in the given facts appears to be grossly disproportionate and excessive, as

such the same cannot be sustained. The same is accordingly set aside. However, at the same time, the fact that the charge no.2 stands proved, cannot be overlooked and as such the petitioner cannot be left scot free. Thus, the respondents are directed to revisit the petitioner's punishment upon reinstatement of the petitioner in service, within a period of two weeks from the date of communication of this order. The aforesaid direction is being passed taking into consideration in the fact that the petitioner has not reached the age of superannuation.

22. In view thereof, I direct the disciplinary authority of the petitioner to award appropriate punishment, as he may think fit which would be commensurate with the guilt of the petitioner, insofar as charge no.2 is concerned after giving an opportunity of hearing to the petitioner. Insofar as payment of back wages is concerned, since the petitioner did not discharge his duty on and from 30th June, 2011, I am of the view, justice would be served if the petitioner is deemed to be in continuous service for the purpose of computation of benefits notionally. The disciplinary authority shall, however, consider the grant of financial benefits, in favour of the petitioner in the form of back wages for the period between the date of removal from service and the date of reinstatement. It is made clear that continuity in service of the petitioner, as directed hereinabove cannot be interfered with by the disciplinary authority while

deciding the punishment to be awarded to the petitioner. In so far as the period spent on suspension, the petitioner shall be entitled to the balance amount of the back wages less the subsistence allowance already disbursed in his favour, if any.

23. The decision as regards the proposed punishment and the consideration for grant of back wages should be made within a period of two months from the reinstatement of the petitioner.

24. With the aforesaid observations and directions, WPA 16077 of 2012 is disposed of.

25. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Raja Basu Chowdhury, J.)

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