IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 27909 of 2017

Sri Ravi Kumar
-Vs.-
Union of India & Others

For the Petitioner : *Mr. Zahid Mahmood*
Mr. Masud Karim
Md. Nauroz Rahber
Md. Jawwad

For the UOI :*Mr. Arijit Majumdar*

Heard on *: 27.07.2023*

Judgment on *: 28.08.2023*

Partha Sarathi Chatterjee, J.:-

1. In invocation of the jurisdiction of this Court under Article 226 of the Constitution of India, the writ petitioner has called in question tenability

and/or sustainability of the memorandum of charge *vide* dated 15th October, 2013 issued against the petitioner in contemplation of a disciplinary proceeding, theenquiry report dated 5th February, 2014, the order of punishment dated 28th February, 2014 order of the appellate authority dated 7th May, 2014 and the order dated 21st January, 2014 passed in revision.

2. Sans unnecessary details, the facts required to be adumbrated for the purpose of effective adjudication of the writ petition are that the petitioner joined as a Constable in Central Industrial Security Post (in short, the CISF) on 20th August, 2010.On 4th October, 2013, he was posted as Constable in 'B' timings- 13.00 hrs. to 21.00 hrs. under 'A' Company at Tunnel gate of ISSCO, ISP, Burnpur, West Bengal. One R.N. Upadhyay, Head Constable and one Md. Alam, Asst. Sub- Inspector were also posted in the Tunnel Gate from 13.00 hrs. to 21.00 hrs. One Dharambir Kardam, SI/Exe was in charge of monitoring security checking at the gate through CCTV camera.

3. The visual checking and checking of gate pass were the procedures followed as security checking and no equipment like themetal detector or any mirror fitted stick was provided to a security team and gate passes were checked but no register was maintained to record entry of the vehicles through the Tunnel gate.

4. On 4th October, 2013 at about 21.00 hrs. the petitioner was called at the vehicle gate and was apprised of the fact that a Tata Sumo vehicle in red colour had been allowed to entire into ISSCO premises without proper

checking and the vehicle was found parked suspiciously in front of storage yard of M/s. Anupam Industries inside the plant area and six persons were standing behind the vehicle.

5. When the said persons were chased, 03 of them fled away and the rest03 were nabbed with two '*Hexa Blades*' who during interrogation confessed that they had entered into the premises to commit theft of copper wireand to take away the stolen articles by that vehicle. One General Diary*vide.* no. 104 dated 04.10.2013 was lodged with CISF, ISSCO plant, Burnpur, W.B at about 21.05 hours. Subsequent thereto, an FIR was lodged with the Hirapur P.S.

6. The petitioner was placed under suspension by an order dated 07/10/2013 issued by Assistant Commandant, ISP, Burnpur West Bengal with effect from 07/10/2013 under Rule 33(2) of CISF Rules, 2001 and a charge sheet *vide.* dated 15/10/2013 were issued by the Commandant CISF Unite, ISP Burnpur, giving an intimation to the petitioner that a domestic enquiry would be held against the petitioner under Rule 36 of CISF Rule, 2001.

7. The petitioner submitted a reply to the charge sheet on 25th October, 2013 refuting the charges levelled against him. The Enquiry Officer and the Presenting Officer were appointed. In course of the enquiry proceeding, oral testimonies of four witnesses was adduced andthe documents tendered by the Presenting Officer wereadmitted in evidence. The petitioner was provided the report of the enquiry officer *vide.*letter dated 5.2.2014. The petitioner submitted his reply to the report of the enquiry officer on 19.02.2014. Under a memo. *vide.*dated 28.02.2014, the order of

punishment was passed against the petitioner.The petitioner was removed from service with immediate effect.

8. The petitioner carried the order of punishment in appeal on 22/03/2014. The appeal was dismissed by an order dated 07/05/2014 and the petitioner assailed the order of the appellate authority by filling a revision which was decided against him by an order dated 21/01/2015.

9. In such chronological events, by taking out this writ petition, the petitioner has prayed for annulment of the charge-sheet, the enquiry report, the order of punishment, the order of appellate authority and also the order passed in revision.The respondent filed an exception to the writ petition and the petitioner has also filed his response to such exception, as directed.

10. Mr. Masud Karim, learned advocate argues on behalf of the petitioner. The argument advanced by Mr. Karim, as crystalized, are that before contemplation of domestic enquiry, a preliminary enquiry was conducted but report of that preliminary enquiry has not been provided to the petitioner. Drawing my attention to enquiry report (page 133 to the writ petition), he contends that the enquiry officer relied upon the preliminary enquiry report. According to Mr. Karim, omission to supply preliminary enquiry report is clear violation of rules of natural justice.

11. He argues that the findings returned by the enquiry officer is perverse and based on no evidence. He arduously argues that there was total lack of evidence and there were no corroborative evidence. Even the witnesses had given contradictory statements regarding the number and

descriptionof the vehicle. One witness had deposed that vehicle bearing registration no. WB-30H -9084 was intercepted whereas another witness stated that a vehicle having registration no. WB-40H-9084 was seized. One witness had deposed a Tata Sumo car in red colour was intercepted whereas another witness has deposed that one Bolero car had been seized. The Court Witness, Dharambir Kardam could not produce the CCTV footage wherefrom it could have been evident that the vehicle entered into the premises through the Tunnel gate and it was the petitioner who allowed the vehicle to enter into the premises without checking gate pass. According to Mr. Karimthere was no independent finding of the enquiry officer and in a preconceived mind the proceedings has been contemplated and concluded andthe order of punishment has been passed.

12. His further submits that the petitioner was in charge of duty of mere opening and closing the gate and he was a junior-most member of the security team and it was his first day of his duty in the Tunnel gate. He submits thatone head Constable and one Assistant Sub-Inspector were in over-all charge of security checking of Tunnel gate and the enter security checking of this gate was being monitored through CCTV camera. Although it has not been proved, yet if it is assumed that the vehicle entered into the premises through the tunnel gate the same occurred due to lapse and negligence of the entire security team but the petitioner has been made a scape-goat.

13. He submits that the petitioner has categorically stated that he had not allowed any vehicle to enter into the plant premises without proper

checking the gate pass and no such vehicle had at all entered in the premises through such gate. He submits that no incident of theft had been taken place and even the persons who wereimplicated in the criminal case have been acquitted. He argues that the punishment awarded to the petitioner is shockingly disproportionate. He submits that the other members of the security team, who were the superiors in rank, have been awarded lesser punishments.

14. He strenuously contends that the disciplinary proceedings stands vitiated and all the actions taken on the basis of the charge sheet are null and void. To bolster his submissionshe places reliance upon the judgments delivered by the Hon'ble Supreme Court of India in cases of *Dev Sing vs. Punjab Tourism Development* [Appeal(Civil) no. 6918 of 2003], *A.K. Kraipak and Ors. etc. vs. Union of India & Ors, (decided on 29.04.1969)* , *Union of India vs. K.A. Kittu and Ors.*(*decided on 10.11.2000*), *Anil Kumar vs. Presiding Officer and Ors.,* reported in AIR 1985 SC 1121 and he also place reliance upon a judgment passed by the High Court at Delhi in WP (c) no. 1275 of 2011 (*G. Seenivasagam vs. Inspector General and Ors.*), a judgment of Madras High Court passed in WP (MD) No. 9367 of 2010 (*S. Subramanian vs. State of Tamil Nadu*) and also a judgment passed by the Jharkhand High Court in LPA No. 219 of 2007 (*The Union of India and Ors. vs. Zileh Sing Sagar*).

15. Mr. Majumder, learned advocate for the respondents vociferously argues that stick discipline is expected from a member of a disciplined force and the petitioner joined in service in 2010 where the misconduct was

committed in 2013. Hence, it cannot be stated that the petitioner being a newly appointed employee had committed the misconduct due to lack of experience. He submits that from the record it would be explicit that only 10 secondswere taken to check the vehicle and no gate pass had been checked and the vehicle had been allowed to enter into the premises. He contends that had the petitioner properly checked the vehicle and the persons lying inside the vehicle, the vehicle and its passengers could not have gained access to the plant premises. He further contends that there were no procedural irregularities warranting interference of this Court. He submits that the court cannot re-appreciate the evidence and sit in appeal over the decision of the disciplinary authority. To buttress his argument Mr. Majumder place reliance the judgments delivered in cases of *Union of India vs. P. Gunasekaran,* reported in AIR 2015 SC 545,*B.C. Chaturvedi vs. Union of India and Ors.,* reported in AIR 1996 SC 484 and *Union of India and Ors. vs. Subrata Nath* , reported in MANU/SC/1546/2022.

16. There are a catena of judgments on the proposition that the preliminary enquiry is held by the employer to satisfy itself whether or not a disciplinary enquiry should be initiated against the delinquent and after full-fledged enquiry has been held, the preliminary enquiry losses its significance. If the preliminary enquiry report does not form part of the evidence before the enquiry officer and if the same is not relied upon for arriving at a conclusion, it is not obligatory on the employer to supply such

report to the delinquent and in such circumstances, non-supply of such report cannot be treated as non-observation of the rules of natural justice.

17. In the given case, admittedly, the preliminary enquiry report did not form part of the evidence. In the enquiry report, the enquiry officer stated that the *'preliminary hearing was conducted on 9.11.2013'*(see, page 133 of the writ petition).Suffice it to observe that the charge-sheet was issued on 15.10.2013. Hence, such preliminary hearing, which the enquiry officer referred in his report, was conducted on 9.11.2013 i.e. after commencement of full-fledged enquiry.

18. Mr. Karim has laid emphasis on the point that there was no evidence and he contends that there was total lack of evidence and there were no corroborative evidence.

19. Admittedly, in disciplinary proceedings, the Court shall not venture into re-appreciation of the evidence and it shall not go into the adequacy and the reliability of the evidence like an appellate Court. Generally, in disciplinary proceedings, the scope of judicial review shall be restricted to decision making process and the Court shall not sit in appeal over the decision and unless the decision is based on no evidence or there is total lack of evidence, the Court shall not interfere with the decision. [See, the case of *Union of India –vs-P. Gunasekaran* (*supra*) and the case of *B.C. Chaturvedi-vs- Union of India & Ors.(supra)*].

20. Suffice it to observe that the disciplinary proceedings are quasi-criminal in nature and hence, there must be some evidence to prove the charge but

the standard of proof required is that of preponderance of probability and not the proof beyond reasonable doubt.

21. I may profitably refer the judgment of Moni Shankar –vs- Union of India reported in (2008)3 SCC 484 wherein the Hon'ble Supreme Court was pleased to hold as follows :

"The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

22. Now, without keeping an eagle's eyes on the evidence for its re-appreciation and/or without making any venture to scan the evidence like first appellant court, only for the limited purposes say, to find out whether or not the enquiry report and the order of punishment are based on no evidence or whether or not there was total lack of evidence or whether or not the relevant piece of evidence has been taken into consideration and

irrelevant facts have been excluded or whether or not the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability, let me look into the evidence placed on record by the management.

23. The sum and substance of the article of the charge was that on 04th October, 2013 the petitioner (Force no. 104387153 Constable/GD) while performing duty at the Tunnel gate in 'B' shift from 13.00 hrs. to 21.00 hrs., allowed oneLight Motor Vehicle bearing Registration No. WB-30H-9084 and the persons sitting inside the vehicle to enter into the Plant premises at around 18.58 hrs.without checking the entry pass/permission of the vehiclefollowing which the vehicle and some miscreants managed to gain access into the ISSCO premises. The miscreants were apprehended by CIW personnel while they were making an attempt to commit theft of plant property and the miscreants were handed over to Hirapur Police Station. It was claimed that had proper security checks been done at the tunnel gate by the petitioner, the miscreants would not have had entry inside the plant and such act on the part of the petitioner were claimed to have been a gross misconduct, dereliction of duty and violation of lawful instructions.

24. In the FIR, it was alleged that at about 19.40 hrs., two CIW personnel, namely, Ram Nath and Sunil Roy (who deposed as PW-1 and PW-2 respectively before the enquiry officer) while carrying out patrolling duty noticed that a Tata Sumo vehicle bearing registration no. WB-30H-9084

had been parked in the storage yard of M/s. Anupam Industriesand six persons were standing behind the vehicle. When those persons were asked them to show gate pass, then three of them fled away and the rest three were nabbed with two numbers of big size *'hexa blades'* . On interrogation, those three persons confessed that they were trying to commit theft of copper cable.

25. However, aforesaid three persons along with seized vehicle and hexa blades were handed over to the O.C., Hirapur P.S. Seizure list speaks that one vehicle bearing registration no. WB-30H-9084 and two numbers of big size hexa blades were seized.

26. Now, Ram Nath deposed that on 4.10.2013 at 19.40 hrs. , he along with Sunil Roy intercepted a tata sumo vehicle in red colour bearing no. WB-40H-9084 and nabbed three persons and they seized the vehicle and two hexa blades whereas Sunil Rai deposed that on receipt of phone call from B.P. Sarang, he rushed to spot and found Ram Nath was standing there with three persons and one Bolero car and Ram Nath narrated the incident to him. The Bolero Car, hexa blades and three persons were handed over to the police. The number of seized vehicle was WB-40H-9084.

27. Dharamveer Kardam (CW),who monitored security checking in the tunnel gate, deposed that at 18.58 hours one car entered into plant premises and one sentry opened and closed the gate and the evidence of B.P. Chhetri (another CW) (who heard the incident from Sunil Rai) is hearsay evidence. From the CCTV footage, number and colour of the vehicle could not be

ascertained and even the petitioner could not be seen in the CCTV footage. Settled law is that hearsay evidence is not admissible.

28. The presenting officer claimed that it had been proved that the petitioner allowed vehicle no. WB-40H-9084 to enter into the plaint premises but the presenting officer in his written argument stated that the Charged Officer was not seen in the camera. However, he claimed that the number of the vehicle matched with FIR, Seizure list and statements of PW-1 and PW-2 and he claimed that allegation stood proved.

29. The enquiry officer had categorized the facts admitted and facts disputed and he included the fact that *'the petitioner had permitted the vehicle to gain entry inside the plant premises'* in the category of facts admitted but fact remains that the petitioner had nowhere admitted such fact. He opined the charged officer did not cross-examine regarding the number of the vehicle and hence, he tried to misled the enquiry proceeding. Needless to observe that burden lies upon the management to prove the allegation of misconduct and in like case, reverse onus cannot be imposed upon the delinquent.

30. However, the enquiry officer returned his findings holding that the petitioner allowed a vehicle *'WB-30H-9084 alias WB-40H-9084'* to enter into the plant premise and in his findings, he claimed that allegations levelled against the petitioner stood proved.

31. In the final order, the disciplinary authority mentioned the statement of the petitioner that the owner of the vehicle namely, Jitendra Kumar got his vehicle no. WB-30H-9084 released from the court. The disciplinary

authority held that from the FIR and evidence of PW-1, it was established that vehicle in question was a Tata sumo bearing no. WB-40H-9084 and by reason of a clerical error, '30H' was recorded instead of '40H'.

32. So, it is appearing that the enquiry officer held that the petitioner allowed the vehicle bearing no. *'WB-30H-9084 alias WB-40H-9084'* to enter into the plaint premises without proper checking. The disciplinary authority had desperately tried to fill up the lacuna revealed in the enquiry report. In the final order, the disciplinary concluded that the vehicle bearing no. WB-40H-9084 was the vehicle which was allowed by the petitioner to enter into the plant premises and although seizure list clearly speaks that vehicle no. WB-30H-9084 was seized and from the uncontroverted statement of the petitioner it transpires that the competent court of law released the vehicle bearing no. WB-30H-9084 in favour of its owner. The disciplinary authority tried to reason out that from no other gate, it was reported that any vehicle entered into the plaint premises without valid gate pass and hence, the disciplinary authority arrived at a conclusion that the vehicle bearing no. WB-40H-9084 entered through the tunnel gate which was opened and closed by the petitioner. It is luminescent that such finding is based on assumption of the disciplinary authority.

33. Now, at the cost of repetition, it can be stated that the evidence of B.P. Chhetri is hear-say evidence. CCTV footage could not indicate that it is the petitioner who allowed the vehicle, which was seized by the police, to enter into the plant premises and the evidence of rest two witnesses, on the face of it, are contradictory to each other.

34. The inquiring authority has arrived at a conclusion as follows:-

> *"Had the vehicle and its occupants were checked properly, the miscreants would have not had able to enter inside plant. Thus the above act of the charged member is under shade and shows his casual and negligence in performing duties. Therefore Article of Charge-I levelled against No. 104387153 Const/GD Ravi Kumar Stand PROVED without any iota of doubt."*

35. In the order of punishment, the disciplinary authority came to a finding which reads thus:-

> *"Thus, the above act on the part of the Charged Officer clearly speaks not only of gross misconduct, dereliction of duty and violation of lawful instructions but also of his doubtful intentions and shady integrity which makes him a party to the incident as a conniver."*

36. It goes without saying that no criminal case has been filed against the petitioner and from the investigation conducted in connection with criminal case which started basing upon same incident and from the domestic enquiry, no materials have come up to lead any prudent man to construe that the petitioner was '*a party to the incident as a conniver'* and the petitioner was somehow associated with the miscreants.

37. A disciplinary authority acts a quasi-judicial authority and hence, observation and findings of such authority must be based on plausible evidence and such authority should not make any observation or comment which is not based on any evidence. Such an observation casts a stigma and leaves a permanent scar on the character of one person or employee

and hence, it is expected that such authority must be circumspect in making such observation and/or comment.

38. In case of disciplinary proceeding and in case of proceeding of like nature, when one official of a department is the complainant and another official of that department acts as quasi-judicial authority to test the veracity of such complaint and to punish, then it is essential that such authority while discharging its quasi-judicial functions must act impartially and without any bias or pre-determined mind. Admittedly, scope of judicial review must be confined to decision making process but if it is found that decision is perverse, irrational or grossly disproportionate, that decision will come under the purview of judicial review.

39. There is a feeling in some quarters that if the charge-sheet is submitted to the delinquent and he is given opportunity to reply thereto and if he is afforded opportunity to cross-examine the witness and to submit his response to the enquiry report, the rules of natural justice would be followed and then, the punishment can be awarded according to choice of the disciplinary authority since there is self-imposed restriction on the Court in re-appreciation of evidence admitted in domestic enquiry but it is well-settled proposition of law that the principles of natural justice can be said to have been violated in a disciplinary proceeding if the delinquent employee is found guilty of the misconduct for which he was never charged and if it is found that the disciplinary authority had made up its mind to punish the employee and if it is proved that findings of the enquiry officer and the order of disciplinary authority are based on no evidence. It is well

settled proposition of law that punishment cannot be imposed until the charge is established and till the charge is proved, the disciplinary must keep its mind open.

40. In the case at hand, the petitioner has never admitted the fact that he permitted the vehicle to enter into the plaint premises through tunnel gate but the enquiry officer categorized this fact as an admitted fact and to fill up the lacuna, he has recorded his findings that the petitioner permitted vehicle no. *WB-30H-9084 alias WB-40H-9084* to enter into the plant premises without proper checking. At the cost of reiteration , it can be stated that disciplinary authority had earnestly tried to patch the weak points crept in the enquiry report and the evidence and the disciplinary authority held that by reason of clerical error, the number of vehicle was recorded as WB-30H-9084 but actually, the petitioner permitted vehicle no. WB-40H-9084 to enter which is totally contrary to the FIR and seizure list and the disciplinary authority has held that the petitioner was a party to the incident as a conniver though there was no charge to the effect that the petitioner was a party to the incident as a conniver was levelled against him and the disciplinary authority disagreed with the findings of the enquiry officer and held that the petitioner was a party to the incident as a conniver and in that circumstances, the disciplinary authority was obligated to afford an opportunity of hearing to the delinquent but no such opportunity of hearing was afforded to the petitioner.

41. Basically, it has not been proved by any convincing evidence that the petitioner allowed the vehicle (the number of which is confusing) through the tunnel gate without proper checking.

42. So, on cursory glance at the evidence, the enquiry report and the order of punishment, there cannot be any scintilla of doubt that the enquiry report and the order of punishment are based on no evidence and the enquiry officer and the disciplinary authority had made up their mind to somehow hold the petitioner guilty of alleged misconduct and the disciplinary authority held the petitioner guilty of a new charge say , *'the petitioner was a party to the incident as conniver'* although the petitioner was not charged for the same.

43. It is condign to note that an illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation (see, case of Union of India-vs- R. Reddappa reported in (1993) 4 SCC 269). Here, without applying the mind, the order of punishment had been affirmed in appeal and in revision also.

44. In the view of the foregoing analysis, I have no qualm to hold that findings of the enquiry officer and the order of punishment are perverse and there

was lack of evidence and in a pre-conceived mind, the enquiry officer returned his findings and the disciplinary passed the order of the punishment in violation of the rules of natural justice and settled proposition of law. Hence, the charge-sheet, the enquiry report, the order of punishment and subsequent orders passed basing upon the order of punishment are annihilated. The respondents are directed to reinstate the petitioner with full back wages within four weeks from the date.

45. With these observation and order, the writ petitioner is being **WPA 27909 of 2017**stands thus **disposed of**, however, without any order as to the costs.

46. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

47. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

Later:-

After delivery of Judgement, Mr. Majumdar Prayed for stay of operation of the Judgement.

Such prayer of Mr. Majumdar considered and rejected.

(Partha Sarathi Chatterjee, J.)