

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 19110 of 2007****With****SPECIAL CIVIL APPLICATION NO. 20663 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**AKSHAYKUMAR HARERAM SINGH....Petitioner(s)****Versus****UNION OF INDIA & 4....Respondent(s)**

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**Appearance:****GIRISH K PATEL, ADVOCATE for the Petitioner(s) No. 1****MR IH SYED, ADVOCATE for the Respondent(s) No. 1 - 5****MS ARCHANA U AMIN, ADVOCATE for the Respondent(s) No. 1 - 5**

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**CORAM: HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA****Date : 28/08/2014****COMMON ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE R.P.DHOLARIA)**

1. As the common question of law and facts arise in both these petitions, they are being disposed of by this common judgment and order.

2. By way of preferring present petitions, both the petitioners herein have challenged the order dated 30.11.2005 passed by the Disciplinary Authority whereby the punishment of removal from service has been imposed on both the petitioners. The petitioners have also challenged the orders passed by the Appellate Authority as well as the Revisional Authority whereby the orders passed by the Disciplinary Authority have been confirmed.

3. The short facts leading to filing of the present petitions are that:

3.1. The petitioners herein joined the Central Industrial Security Force as constables on 14.08.2000 and on 08.08.2002 they were posted to CISF Unit, Kandla Port initially on sentry duty. Thereafter, they were deployed in Crime & Intelligence Wing (CIW) on 03.07.2004. The petitioners have to keep watch and gather information on illegal activities in the entire port. On 23.12.2004, an FIR being I - C. R. No.49 of 2004 of theft of 13 tons copper scraps from a container No. CRXU-2220580 any time between 17.11.2004 to 04.12.2004 by unknown persons has been lodged before the Kandla Police Station by the owners of the goods. The police investigated and arrested thieves and also recovered muddamal on 27.12.2014. That both the petitioners had been suspended on 31.01.2005 and 04.01.2005 respectively. On 05.02.2005, the co-accused Gani Harun Memon identified the petitioners in the identification parade held before the Executive Magistrate. That, a memorandum of charge came to be issued to the petitioners by respondent No.5 herein on 23.03.2005 and 24.03.2005 respectively inter alia imposing two charges i.e. (1) that the petitioners failed to keep watch on criminal activities when they were deployed on CIW duty at

north gate and surrounding area from 17.11.2004 to 03.12.2004 and they failed to collect the information about the incident of theft of 13 tons of copper scraps from the container which shows their gross negligence and indiscipline and (2) that the petitioners came to be arrested pursuant to an FIR being I - C. R. No.49 of 2004 lodged before the Kandla Police Station also released on bail and during the investigation it has come to the notice that some CISF personnels were also involved in the theft and the petitioners were identified by one of the thieves in an identification parade conducted before the Executive Magistrate on 05.02.2005 whereby the CISF image has been tarnished by such act. The aforesaid charges have been denied by the petitioners.

3.2. Thereafter, the enquiry officers came to be appointed on 26.04.2005 and departmental inquiry has been carried out against both the petitioners. In the meanwhile, on 29.06.2005, the police personnels recovered the muddamal and charge-sheet came to be filed against 29 persons for the offence punishable under Sections 461, 380, 409 and 120B of the Indian Penal Code whereby it has come to the notice that the theft has been committed by hatching a conspiracy in preplanned manner with the collusions of CISF personnels by taking money for permitting the criminals to take out the alleged goods from the gate. On completion of the departmental inquiry, the enquiry officer submitted the enquiry report to the Disciplinary Authority holding both the charges proved. The Disciplinary Authority, after affording reasonable opportunity to the petitioners herein and after going through the case records and evidence on record, passed the order dated 30.11.2005 imposing the punishment of removal from the service on the petitioners.

3.3. Being aggrieved and dissatisfied with the order of the Disciplinary Authority, both the petitioners preferred appeals before the Appellate Authority and the Appellate Authority vide order dated 03.03.2006 and

20.03.2006 respectively, rejected both the appeals preferred by the petitioners herein being devoid of any merits.

3.4. Against the orders of the Appellate Authority passed in the respective appeals, both the petitioners preferred revision applications before the Revisional Authority and the Revisional Authority rejected the said revision applications confirming the orders passed by the Disciplinary Authority as well as the Appellate Authority.

3.5. Being aggrieved by and dissatisfied with the aforesaid orders of Disciplinary Authority, Appellate Authority as well as the Revisional Authority, the petitioners herein have preferred the aforesaid both the petitions.

4. We have heard Mr. Girish K. Patel, learned advocate for the petitioners and Ms. Archana Amin, learned advocate for the respondents. We have also perused the orders impugned in these petitions as well as the records made available to us.

5. Learned advocate Mr.G.K.Patel for the petitioners has argued that criminal cases are filed against the present petitioners which are yet pending and there is no involvement or connivance for theft committed while they were on duty. He has further argued that vast area was under the duty of vigilance assigned to the petitioners and, therefore, on happening of event of theft, the finding recorded by the Inquiry Officer and resultant punishment inflicted by the disciplinary authority as well as appellate authority is required to be quashed and set aside as no negligence on the part of the present petitioners could have been recorded. Mr. Patel, learned advocate for the petitioners has submitted that the punishment of removal from service being disproportionate and too harsh to the charges levelled against the present petitioners and

hence, the orders of the Disciplinary Authority, Appellate Authority as well as the Revisional Authority are required to be quashed and set aside and in the alternative, some minor punishment may be imposed.

6. On the other-hand, learned advocate Ms.Archna Amin appearing for the respondents has argued that the inquiry was conducted in accordance with the Rules and Regulations and while inflicting punishment, reasonable opportunity of hearing was afforded and thereafter, in the appeal proceedings also, sufficient opportunity was given and consequently, all the proceedings are carried out against the present petitioner are in accordance with the rules and the respondent authority has sufficiently observed the principles of natural justice and punishment inflicted upon the petitioner is in accordance with law considering the charges levelled and proved against the petitioner and, therefore, she has urged to dismiss both the petitions.

7. Having heard the learned advocates for the respective parties and having gone through the records of present petitions and the orders impugned in present petitions, it is not disputed that the petitioners were serving as constables at the site where the theft has been taken place. So far as the case of petitioner in Special Civil Application NO.19110 of 2007 is concerned, the Appellate Authority has clearly and categorically observed in para 4 of its judgment as under:

*“4.With reference to the above pleas of the appellant, the case records have been perused and it is seen that the appellant was performing duties in the Crime and Intelligence Wing of CISF Unit, KPT, Kandla. During the period from 17.11.2004 to 03.12.2004 he was detailed for duties in and around the North Gate and at nearby areas to watch the activities of the criminals as well as the CISF personnel deployed for duties at the North Gate. During this*

period copper scraps weighing about 13 tons were stolen from container No.CRXU – 2220580 from time to time by the criminals breaking the seal of the said container. When the theft of copper scrap was came to the notice of the Transporter, i.e. M/S. Goodrich Maritime Pvt. Ltd, the same, informed to the Traffic Manager, KPT Kandla as well as to the CISF authority vide his letter dated 04.12.2004, wherein he had informed about theft of substantial amount of the cargo. At the same time, the owner of the material had also lodged an FIR with the local police. On the basis of the said FIR, the police had arrested eight notorious criminals along with certain amount of stolen property. On interrogation by the police, the criminals confessed that they had committed the theft and with the help of CISF personnel deployed for duties at North Gate out checking, they had succeeded for taking out the material from the Port area for which they had paid money amounting 2-5 thousand to the CISF personnel. They had also confessed that they had committed the theft from time to time during the period from 17.11.2004 to 03.12.2004. It is also seen that the vehicle which was used by the criminals for committing the theft was also seized by the Police. Since the involvement of the CISF personnel came to the knowledge of police authority, an identification parade was conducted at the Police Station on 3.1.2005 and during the said identification parade, the criminals identified const C M Mishra, Const. D. P. Bhai, Const. S. K. Tiwari and Const. B M Bahi. The criminals had also told the name of Const A. K. Singh (the appellant), because he was not available in the identification parade due to leave. However, when the identification parade was conducted on 05.1.2005 before the Judicial Magistrate, Gandhidham, one of the criminal namely Gani Harun Mernon identified the appellant who had helped them for committing the theft.”

8. Insofar as the case of petitioner of Special Civil Application No.20663 of 2007, the Appellate Authority has observed in para 4 of its judgment as under:

*“4. With reference to the above pleas of the appellant, the case records have been perused and it is seen that the appellant was performing duties in the Crime and Intelligence Wing of CISF Unit, KPT, Kandla. During the period from 17.11.2004 to 03.12.2004 he was detailed for duties in and around of North Gate and its nearby areas inside the Kandla port to watch the activities of the criminals as well as on suspicious activities of CISF personnel deployed for duties at the North Gate. During the aforesaid period copper scraps weighing about 13 tons were stolen from container No. CRXU – 2220580 from time to time by the criminals breaking the seal of the said container. When the theft of copper scrap was came to the notice of the Transporter, i.e. M/S. Goodrich Maritime Pvt. Ltd, he had informed to the Traffic Manager as well as to the CISF authority vide his letter dated 04.12.2004, wherein he had informed about the theft of substantial amount of his cargo. At the same time, the owner of the material i.e., Shri Sushil Kumar Premasagar Goyal lodged an FIR with the local police. On the basis of the said FIR, the police had arrested eight notorious criminals and recovered certain amount of stolen property. The vehicle which was used by the criminals for committing the theft was also seized by the police. On interrogation by the police, the criminals confessed that they had committed the theft with the help of CISF personnel. They had also confessed that the theft was committed after id festival, from time to time during the period from 17.11.2004 to 3.12.2004. Since the involvement of the CISF personnel came to the knowledge of CISF authority, an*

*identification parade was conducted on 05.1.2005 before the Judicial Magistrate, Gandhidham and during the said identification period, one of the criminal namely Gani Harun Mernon identified the appellant amongst others who had helped for committing the theft. Subsequently, the appellant was arrested by the police and sent to Bhuj jail. Later on he was got released on bail by one civilian for a surety amount of Rs.10,000/-”*

9. From the above observations, it clearly transpires that the petitioners have been identified by one of the co-accused in the identification parade and he has also specifically stated that in collusion with the petitioners and other personnel of CISF, the theft has been committed. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. In view of the identification of the petitioners by the co-accused, we are of the considered opinion that the punishment of removal from service is in consonance with the charges levelled and proved against the present petitioners.

10. There is nothing on record to even remotely suggest that the evaluation made by the Disciplinary Authority was arbitrary, capricious or irrational so as to interfere with its decision. Even the scope of interference by this Court in a writ petition challenging the decision of the Disciplinary Authority is very limited and unless any error apparent on the face of the record and any illegality is brought on record, the Court cannot interfere with the order passed by the Disciplinary Authority which is confirmed by the Appellate Authority and even by the Revisional Authority. The petitions, therefore, deserve dismissal being devoid of any merits and they are accordingly dismissed. Rule discharged. No costs.



**(V.M.SAHAI, J.)**

**(R.P.DHOLARIA,J.)**

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