

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: March 24, 2015*
Judgment Delivered on: March 27, 2015

+ W.P.(C) 5847/2013

EX. CONST. RAMBIR SINGH Petitioner
Represented by: Mr.Satish Bhatti and
Mr.Prasoon Srivastava,
Advocates

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.Raisuzzaman, Advocate for
Dr.Ashwani Bhardwaj,
Advocate for the respondents

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner was enrolled as a Constable in CISF on July 21, 1986. In the year 1992 the petitioner was posted at CISF Unit, IOC Haldia, Calcutta. On August 20, 1992 during his 'B' shift duty from 1330 hours to 2130 hours for his alleged misconduct as well for his subsequent conduct, the petitioner was charge-sheeted as under:-

'CHARGE-I

That, the said No.864050012 Constable Rambir Singh while functioning as sentry at the LPG area of the CISF Unit, IOC Haldia in "B" Shift from 1330 hrs to 2130 hrs on 20.08.92 was found sleeping on a wooden plank at about 1715 hrs on 20.08.92 inside the LPG watch tower by No.733190373 HC/GD S.K.Khatua

Charge-II

That, No.864050012 Constable Rambir Singh while functioning as duty sentry at the LPG area of the CISF Unit, IOC Haldia in "B" Shift from 1330 hrs to 2130 hrs on 20.08.92 was detected sleeping by No.733190373 HC/GD S.K.Khatua and hence HC Khatua noted in the duty slip that No.864050012 Constable Rambir Singh was found sleeping. But the said obliterated the entry made in the duty slip to distort evidence in regard to the slackness in performance of duties detected by HC/GD S.K.Khatua.

Charge-III

That, No.864050012 Constable Rambir Singh while functioning as Constable in the CISF Unit, IOC Haldia assaulted No.733190373 HC/GD S.K.Khatua on 20.08.92 at about 2145 hrs in the Unit lines area which caused hospitalization of No.733190373 HC/GD S.K.Khatua from 20.08.92 to 22.08.92.

Charge-IV

That, No.864050012 Constable Rambir Singh while functioning as Constable in the CISF Unit IOC Haldia entered inside the office room of Shri R.N.Sarkar, Dy. Commandant, CISF Unit IOC Haldia on 21.08.92 at about 1205 hrs and threatened to kill him and outrage the modesty of his daughter as Shri R.N.Sarkar, Dy.Commandant placed the said No.864050012 Constable Rambir Singh under suspension for assaulting No.733190373 HC/GD S.K.Khatua his superior officer.

Charge-V

The past record of the said No.864050012 Constable Rambir Singh indicates that he is habitual offender of overstaying for leave, sleeping on duty etc.

The above said acts on the part of Const.Rambir Singh amounts to indiscipline, misconduct, dereliction to duty and negligence in discharge of his duties.'

2. Memorandum of chargesheet was served on the petitioner but he did not file any response within the stipulated time. The disciplinary proceedings were initiated against him and Asstt. Commandant Sh.M.S.Kalra was appointed as Inquiry Officer. During the inquiry proceedings, 15 witnesses have been examined by the department. Defence statement was made by the petitioner. The Inquiry Officer submitted his report recording the finding that except charge No.2 remaining charges have been proved.
3. Copy of the inquiry report was furnished to the petitioner on March 07, 1993 requiring him to submit his response within the stipulated time. The petitioner opted not to file any response. The disciplinary authority after considering the statement of the witnesses examined before the Inquiry Officer as well the defence statement made by the petitioner, accepted the inquiry report and ordered the petitioner to be dismissed from service.
4. The petitioner preferred an appeal against the order of the disciplinary authority which was rejected on March 02, 1994.
5. The order of the Appellate Authority was challenged by filing W.P.(C) No. 296/1997 which was permitted to be dismissed as withdrawn with direction to the petitioner to file the revision petition. When the petitioner filed the revision petition on September 18, 1998, it was returned on January 7/8,1999 for the reason that revisional jurisdiction was not vested with the DG, CISF. The petitioner again filed W.P.(C) No.4986/1999 which was disposed of on August 07, 2012 with the permission to the petitioner to file fresh revision petition within 8 weeks of the order required to be disposed of by the DG, CISF within eight weeks from the date of receipt thereof.
6. The revision petition preferred by the petitioner has been disposed of

by DG, CISF by a speaking order dated November 19, 2012. Again the petitioner is before this Court with a prayer for setting aside the order of the dismissal with direction to the respondent to reinstate him in the service.

7. During hearing of this petition the petitioner appeared in person with his counsel and submitted that he was made to sign the inquiry proceedings at gun point. The petitioner also put his thumb on the head of his counsel to demonstrate how he was pressurised. Since learned counsel for the petitioner as well petitioner were not able to take the case forward, we were constrained to ask the respondent to produce the original record of inquiry which has been submitted and perused.

8. In the instant writ petition, the petitioner has assailed the order of the Disciplinary Authority as well as Appellate and Revisional Authority interalia on the following grounds:-

- (i) Memorandum of charge-sheet was vague and not sustainable in the eyes of law.
- (ii) Mere allegation does not constitute misconduct and the Rules under which the alleged act constitute misconduct have not been mentioned.
- (iii) Copies of the document as well the statement of the witnesses listed in the list of witnesses was not supplied and though nine witnesses were cited, fifteen witnesses have been examined.
- (iv) The Inquiry Officer was of the rank of Assistant Commandant was junior to one of the complainants who was of the rank of the Deputy Commandant.
- (v) No Presenting Officer was appointed and the Inquiry Officer himself has acted as prosecutor.
- (vi) Copy of the preliminary report was not supplied to him.
- (vii) His request to supply copy of the report in Hindi was not accepted

which prevented him for making effective representation.

(viii) No defence assistant was provided.

(ix) The Appellate Authority has not given personal hearing to him.

9. The list of witnesses (Annexure-4) annexed with the memorandum of charges has contained the names of following 15 witnesses who have been examined :-

'List of witnesses by whom the Article of charge framed against No.864050012 Constable Rambir Singh of CISF Unit IOC Haldia are proposed to be sustained.'

- (1) 733190373 HC/GD S.K.Khatua, CISF Unit IOC Haldia.
- (2) 704580586 ASI/Exe. M.S.Rajan, CISF Unit IOC Haldia
- (3) 704501588 ASI/Exe. C.R.Nair, CISF Unit IOC Haldia.
- (4) 732330036 HC/GD G.P.Sinha, CISF Unit IOC Haldia
- (5) 803240368 Const.R.N.Pandey, CISF Unit IOC Haldia.
- (6) 874050039 Const. S.Patil, CISF Unit IOC Haldia
- (7) 803060018 Const.R.L.Shah, CISF Unit IOC Haldia.
- (8) 743340117 HC/GD R.A.Choudhury, CISF Unit IOC Haldia
- (9) 884050021 SI/Exe. A.K.Gour, CISF Unit IOC Haldia.
- (10) 703220075 ASI/Exe. C.Venugopal, CISF Unit IOC Haldia
- (11) Shri R.N.Sarkar, Dy.Comdt. CISF Unit IOC Haldia.
- (12) Shri A.K.Dhera, PAO, IOC Haldia
- (13) 823330021 SI/Exe. S.N.Saha, CISF Unit IOC Haldia.
- (14) 804050106 Const. M.S.Munda, CISF Unit IOC Haldia
- (15) 732280013 SI/Min. N.K.Rao, CISF Unit IOC Haldia.'

10. HC/GD S.K.Khatua PW-1 has deposed that he was asked by Sh.R.N.Sarkar, Deputy Commandant about the name of the official who was detailed at LPG Area which as per record was Ct.Rambir Singh i.e. the petitioner. As per directions of the Deputy Commandant when he checked the petitioner at his duty post at about 1715 hrs he found Ct.Rambir Singh sleeping on the wooden plank. He apprised the Deputy Commandant about his report and entry was also made at the control room vide control room G.D. Entry No. 354 dated August 20, 1992. HC/GD S.K.Khatua also stated

that on the same night while the petitioner was returning from his 'B' shift duty he abused him (PW-1) in filthy language and also assaulted him. HC/GD G.P.Sinha PW-4 and Ct.R.N.Pandey PW-5 saved him. Thereafter he was taken to IOC Hospital where he remained admitted upto 22.8.1992.

11. The above statement of HC/GD S.K.Kathua regarding the altercation between him and the petitioner was corroborated by HC/GD G.P.Sinha PW-4 and Ct.R.N.Pandey PW-5 in their examination before the Inquiry Officer.

12. Another material witness is Sh.R.N.Sarkar, Deputy Commandant PW-11 who ordered suspension of the petitioner. He has also deposed about HC/GD S.K.Khatua PW-1 being sent to check the petitioner. The factum of petitioner being found sleeping while on duty by HC/GD S.K.Khatua PW-1 as well the subsequent incident at about 2145 hrs being intimated to him and recorded in GD. Sh.R.N.Sarkar, Deputy Commandant PW-11 has also stated that on the night intervening August 21/22, 1992 at about 1205 hrs when he (PW-11) was present in his office, the petitioner barged into his room, abused him in filthy language and threatened to outrage the modesty of his daughter in the presence of Sh.R.A.Chaudhary PW-8, Sh.A.K.Dhara PW-12, SI/Exe. S.N.Saha PW-13 and Ct.M.S.Munda PW-14.

13. The above statement of Sh.R.N.Sarkar, Deputy Commandant PW-11 was corroborated by PW-8, PW-12, PW-13 and PW-14 in their examination before the Inquiry Officer.

14. SI/Ministerial N.K.Rao PW-15 produced records of punishments awarded to the petitioner several times in the past.

15. We feel it necessary to extract the defence statement of the petitioner for the reason that prior to that stage he failed to submit his response on receiving the memorandum of chargesheet and subsequently thereon when

inquiry report was furnished to him. His version is available with us in the form of defence statement made before the Inquiry Officer, which reads as under:-

‘Defence statement of CISF No.864050012 Constable Rambir Singh (now under suspension) of CISF Unit IOC Haldia

I, CISF No.864050012, Constable Rambir Singh (under suspension) of CISF Unit, IOC Haldia do hereby state to the best of my knowledge and belief in the article of charges framed against me from charge No. I to V vide GP. Comdt., GP HQRS Calcutta Memorandum No.V-15017/DP-65/GHC/IOC(H)/Ad-II/92-6673 dated 19th September, 1992.

Article of Charge No.I

In this connection I would like to state that I was detailed for duty at LPG Watch Tower from 1330 hrs to 2130 hrs on 20.8.92 but was not sleeping when checked by HC/GD S.K.Khatua at 1715 hrs. I was alert on my duty and the allegations levelled against me that I was sleeping on the wooden plank at Tower is false and baseless. The entry of sleeping on duty was made by HC/GD S.K.Khatua intentionally as the relations between the Deputy Comdt. IOC Halida was not so good and they planned to involve me by any of the means in some discipline case.

Article of Charge No.II

Regarding article of charge No.II that HC/GD S.K.Khatua came to me near the LPG Watch Tower and told me to come down from the Watch Tower. Accordingly I came down from the Watch Tower and HC/GD S.K.Khatua told me to show the duty slip, I then handed over my duty slip to HC/GD S.K.Khatua who started make entry in English as I do not know English what he is writing on the duty slip. I told HC/GD S.K.Khatua that what you have written in English, he replied that I have written nothing on the duty slip, return this duty slip I will cut the entry at the same time HC/GD S.K.Khatua started cutting the entry which he himself made in the duty slip. The second charge levelled against me is also false.

Article of Charge No.III

The charge of assault levelled against me is also false. I had not assaulted HC/GD S.K.Khatua on 20.8.92 at 2145 hrs. In this regard I would like to prove that after performing my 'B' shift duty from LPG area I came to the Unit Lines after signing in the controlled room located near Gate No.1. The charge that I assaulted HC/GD S.K.Khatua at the Unit Lines area, I beg to state that my intention was not bad because when HC/GD S.K.Khatua alone came to checking at 1715 hrs on 20.8.1992 at LPG area I had a plenty of time to manhandle HC/GD S.K.Khatua. Head Constable/GD S.K.Khatua and Deputy Comdt. Shri R.N.Sarkar were having good relations and both were involved in harassing in the other State peoples. HC/GD S.K.Khatua was also detailing the CISF personnel for duty at his own wish and under the guidance of D.C. Shri S.K.Sarkar and indulging in the bad activities. They started stateism (state feeling habits), in this case HC/GD S.K.Khatua was forcibly sent to the IOC Hospital to start disciplinary proceedings against me. The statement of PWs are also contradictory.

Article of Charge No.IV

The charge No.IV is also false. I had never threatened Shri R.N.Sarkar, Deputy Comdt., the allegation that on 21.8.1992 at about 1205 hrs I entered inside the room of Shri R.N.Sarkar, D.C. in plain clothes and threatened to kill him and to outrage the modesty of his daughter on the issue of placing me under suspension is totally baseless and not acceptable. The version of the prosecution witnesses are not fully proved and is contradictory. The prosecution witnesses have given their statement under pressure on 21.8.92. I had not received letter of suspension and question does not arise about entering of the room of D.C. Shri R.N.Sarkar on 21.8.92 at 1205 hrs. Hence the charge levelled against me is false.

Article of Charge No.V

Regarding article of Charge No.V I do not like to say anything as those are not connected with the other article of charges framed against me. This charge is only levelled against me to spoil my career and on the direction of the Deputy Comdt. Shri R.N.Sarkar who threatened me that I will dismiss you from service. Not only this there are so many constables who might have awarded so many punishments of their documents are

minutely seen but were not threatened for dismissal only in my it was threatened that you will be dismissed from service. In the end of the defence statement I would like to state in nutshell that there was no telephonic call received by Deputy Comdt. About the absence on duty on 20.8.92 it was only fabricated by him and intentionally HC/GD S.K.Khatua was sent for checking only me to put me under the disciplinary proceedings. Shri R.N.Sarkar Deputy Comdt. during the cross-examination by me was unable to tell me the designation of the person who rang him on telephone. HC/GD S.K.Khatua is the man of Deputy Comdt. who were doing dictatorship and handling the unit at their own wish and will. Everywhere partiality was shown by the Deputy Comdt. being the member of the Force. If I am wrong at some point it was his duty to call me in the orderly room to guide me being a father of the Unit. I do not want to say more it is the only statement. The above statement was recorded by the Inquiry Officer in my presence explained in the language I understand accepted and signed as correct. The said statement is given by me without any pressure and willingly I had given the statement on 28.1.93.'

16. It is a matter of record that before filing the instant petition the petitioner approached this Court twice by filing W.P.(C) Nos. 296/1997 & 4986/1999. The petitioner has not taken this plea in appeal/revision or in the three writ petitions filed at different points of time. The detailed cross examination of Sh.R.N.Sarkar, Deputy Commandant by the petitioner, the fairness with which the defence statement of the petitioner has been recorded is sufficient to negate any such contention. We are also unable to infer from the record of inquiry that petitioner was under any kind of pressure or coercion.

17. A bare perusal of the chargesheet and the charges as well as the version of the petitioner on all charges in his defence statement makes it amply clear that the charges were not vague. The misconduct referred to in the charges necessitated conduct of inquiry under Rule 34 of CISF Rules

1969 which was duly mention in the memorandum of charge.

18. The contention of the petitioner that he has not been given an opportunity to have a fair trial being contrary to record is liable to be rejected. The petitioner was questioned by the Inquiry Officer on November 10, 1992 as under:-

'Departmental inquiry proceedings against CISF No.864050012 Constable Rambir Singh of CISF Unit, IOC Haldia held at the office of the Assistant Comdt. CISF Unit HDC Haldia on 10.11.92.'

Questions by the inquiry officer to the delinquent

Q1. I have been appointed as an Inquiry Officer vide GD Comdt, GD Hqrs. Calcutta order No.V-15017/DP-49/IOC(H)/Ad.II/92/7226 dated 9/12 Oct 1992. Do you accepts me as an Inquiry Officer?

Ans. Yes Sir, I accept as an Inquiry Officer.

Q2. In which language you would like to conduct an inquiry?

Ans. In English may also be translated in Hindi verbally.

Q3. Do you want to inspect any official document or want extract of it for the purpose of defence?

Ans. No.

Q4. Do you want to take assistance of any member of the Force?

Ans. No.

*Dated: 10.11.92 Sd/-
(Rambir Singh)
10/11/92
No.864050012, Ct.*

*Recorded by
Sd/-
(M.S.Kalra)
Asst.Comdt./EO
HDC Haldia*

*Copy received
Sd/-
(Rambir Singh)
10/11/92'*

19. The petitioner has received the copy of the statement of all the

witnesses on the same day under his signatures.

20. In view of the answers recorded above, it is not open to the petitioner to urge before us about denial of fair trial. The proceedings have been conducted in a language which was desired by the petitioner. Since he did not file any response to the inquiry report before the Disciplinary Authority, he cannot claim now that he requested for copy of the inquiry report in Hindi and any prejudice has been caused to him on this count.

21. Under the old CISF Rules 1969 there was no provision for appointment of Presenting Officer and otherwise also Presenting Officer is required to present the case of the department. Absence of Presenting Officer is not prejudicial to the petitioner. Further the Appellate Authority was not required to give personal hearing to the petitioner and appeal has been disposed of after considering all the contentions raised in the appeal.

22. Apart from the statement of the fifteen witnesses, before holding the petitioner guilty the Inquiry Officer as well the Disciplinary Authority have also considered the GD entries recording the sequence of events as under:-

‘Extract of Control Room G.D. dated 20.08.92 of CISF Unit IOC Haldia

<i>Entry No.</i>	<i>Time</i>	<i>Abstract</i>	<i>Details of report</i>	<i>Signature</i>
347	1300	‘B’ Shift duty	The following CISF personnel detailed for ‘B’ shift duty from 1330 hrs to 2130 hrs on 20.08.92 :- 1. xxxxxxx 10. Ct.Rambir Singh 27 xxxxxxxxx	LPG WT-Bullet 5/- sd xxxxx
354	1745	Sleeping on duty	HC S.K.Khatua reported that he was sent by Dy.Comdt. IOC Haldia at LPG area to check Ct.Rambir Singh and he found	

Ct.Rambir Singh was found sleeping on Watch Tower on the wooden planks at 1715 hrs. One telephone message received from Marketing Officer to Dy.Comdt. that CISF person on duty at LPG is not found in his duty place.

*Sd/- xxxxxxxxx
ASI/Exe. C.R.Nair*

361 2215 *HC out* *HC S.K.Khatua left for IOC Hospital with Ambulance alongwith HC S.K.Khatua, Naik J.C.Jana.*

*Sd/- xxxxxxxxx
ASI/E M.S.Rajan*

362 2220 *Report* *It is noticed my knowledge that Ct.Rambir Singh beaten to HC S.K.Khatua infront of Quarter Guard at about 2145 hrs.*

*Sd/- xxxxxxxxx
ASI/Exe. M.S.Rajan*

364 0115 *HC* *Message received from HC S.K.Khatua*
Admit *that HC S.K.Khatua admitted in the IOC Hospital.*

*Sd/- xxxxxxxxx
ASI/E. M.S.Rajan*

Extract of CISF Quarter Guard G.D. Dated 20.08.92 of CISF Unit IOC Haldia

<i>Entry No.</i>	<i>Time</i>	<i>Abstract</i>	<i>Details of report</i>	<i>Signature</i>
282	220	Report	At about 2150 hrs while taking dinner at SO's Mess one civilian from IOC Canteen staff informed us that some clash is going on near Quarter Guard. On hearing this I alongwith SI/Exe. A.K.Gaur, ASI/E C.Venugopal and ASI/Exe. C.R.Nair	

rushed to Quarter Guard area and found HC/GD S.K.Khatua is sitting on the dias in front of Quarter Guard. When asked him he told that Const.Rambir Singh man handled him and also told that Const.Rambir Singh hit his head, nose and face. HC/GD G.P.Sinha Guard Commander of Quarter Guard and Const.R.N.Pandey, Const. S.Patil, Const. R.L.Sha and Const. Sripal Singh present there. Immediately I call First Aid Ambulance and sent HC/GD S.K.Khatua for treatment. This is for your kind information and necessary action please.

*Sd/- xxxxxxxx
SI/Exe. P.S.Rao'*

23. The conclusions have been arrived at by the Inquiry Officer and Disciplinary Authority on the basis of testimony of PWs-1 to 15 as well contemporary record maintained in ordinary course of business. There was sufficient material to hold that the petitioner was found sleeping on August 20, 1992 at about 1715 hrs (during his duty in 'B' shift from 1330 hrs to 2130 hrs) by HC/GD S.K.Khatua, who came to check the Sentry. We are surprised to note the conduct of the petitioner that instead of feeling sorry or explaining the reason for taking a nap while on duty, immediately after the duty hours he assaulted HC/GD S.K.Khatua at about 2145 hrs in the Unit Lines Area and due to the said assault HC/GD S.K.Khatua remained hospitalised from August 20, 1992 to August 22, 1992. The medical record of IOC Hospital was produced to confirm this fact. Thereafter the conduct of the petitioner in entering the room of Sh.R.N.Sarkar, Deputy Commandant in civil at 1205 hrs on the night intervening August 20/21, 1992 as well the nature of threat to a superior officer i.e to such his blood as

well kidnap and outrage the modesty of his daughter, constituted gross misconduct so as to deserve no other punishment except dismissal from service.

24. It is trite that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the Court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the Court cannot arrive on its own independent finding.

25. On the face of the record, the finding of guilt of the petitioner cannot be disturbed. Insofar as the plea of disproportionately of sentence is concerned the offence is serious and it cannot be said that the punishment is so disproportionate or unreasonable as to call for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

26. The writ petition does not have any merit and the same is dismissed.

27. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

March 27, 2015

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