

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 19518 of 2003

Reserved on : 24.07.2023

Pronounced on: 29.09.2023

Sri Shiv Nandan Mondal

...Petitioner

-Vs-

The Union of India & Ors.

...Respondents

Present:-

Mr. K.B.S. Mahapatra

... for the Petitioner

Mr. Pulakesh Bajpayee

...for the Respondents

Rajarshi Bharadwaj, J:

1. The instant writ application has been preferred challenging, inter alia , final order dated January 21,2002 imposing punishment of reduction of pay by two stages from Rs.4,700/- to Rs.4,500/- for a period of three years and postponing future increments of pay against one Shiv Nandan Mandal herein the writ petitioner, subsequent final order dated May 25/27, 2002 enhancing earlier punishment to that of reduction of pay to the lowest pay for three years and postponing future increments of pay and ensuing all such orders being passed by Commandant CISF Unit Oil, Duliajan herein respondent No. 5.

2. The facts of the case are that the petitioner joined the Central Industrial Security Force (CISF) Department on April 25, 1983 and on June 12, 2001, he

was posted to carry out duties in the capacity of Post Commander at H.N.W location drilling point Duliajan. His duty consisted of controlling and supervising the constables posted at the main gate and to check the entry of any person or vehicles.

3. On 12.06.2001, a truck No. AS-25-6827 loaded with picket bricks with valid challan No.27 arrived at HNW gate for unloading the same inside HNW location. The writ petitioner detained the truck for more than one hour on the pretext that bricks were less in number as per challan and not stacked properly. He demanded Rs 1500/- from the contractors for the release of the truck. When they expressed their inability to pay such amount, he reduced the amount to Rs 1000/- and directed them to pay the amount the next day.

4. A memorandum of charges dated July 10, 2001 was prepared by respondent No.5 proposing to hold an enquiry against the petitioner on the charges of *"Gross misconduct, indiscipline, wilful breach of Rules & Regulations and unbecoming of a member of an Armed Force in that ASI/Exe S. N. Mondal of field Sector, CISF Unit OIL. Duliajan while deployed as Post Commander for duties at HNW location (Outpost of Field Sector) demanded Rs.1500/- as illegal gratification from Contractor's Supervisors namely Dinesh Gogoi and Munna Boral on 12.06.2001 by means of not allowing and unnecessarily detaining truck No.AS-25-6827 loaded with picket bricks with valid challan"*

5. The petitioner denied the allegations of the charges against him and thereafter a Departmental Enquiry was conducted. During the course of enquiry, depositions of 07 (seven) prosecution witnesses and 03 (three) defense witnesses were recorded. The enquiry led to a Final Order No. V-15014/Maj-10/OIL(D)/SNM/Disc/2002-533 passed by respondent No.5 dated January 21,2002 imposing punishment of *"Reduction of pay by two stages from Rs. 4700/- to Rs. 4500/- in the time of pay for a period of 3 years with immediate effect. It is further directed that he will not earn the increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay."*

6. The petitioner was assessed as an officer with “BELOW AVERAGE” performance in the annual confidentiality report for the year of 2001 covering aspects of his work and conduct including performance, potentiality and basic qualities during pendency of proceedings vide order dated January 21, 2002.

7. The petitioner was issued a notice on April 27/29, 2002 under exercise of Rule 54(b) of CISF Rules 2001 to show cause as to why the said penalty should not be enhanced. By representation dated May 07, 2002, the petitioner provided sufficient cause that the penalty should not be enhanced.

8. In an appellate order dated 25/27 May 2002 issued by Deputy Inspector General CISF, Duliajan herein respondent No. 4, the penalty against the petitioner was enhanced as proposed in the purported show cause notice. The penalty was enhanced to that of “*reduction of pay in respect of no. 834341713 ASI/Exe S.N Mandal to the lowest stage (i.e., from Rs. 4700/- to Rs. 4000/-) in the time scale of pay Rs.4000/-- 100-6000/- for a period of 03(three) years with immediate effect. It is further directed that he will not earn the increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay.*”

9. The petitioner aggrieved by the appellate order enhancing penalty, preferred further appeal dated September 19, 2002 before Inspector General CISF, Kolkata, herein respondent No. 3 and later submitted a Mercy Petition before Director General CISF herein respondent No.2 to set aside the punishment awarded and take a judicious overall consideration into the matter afresh. The said petition was rejected. Thus, aggrieved by the preceding orders of the respondent authority, the present writ application lies.

10. It has been submitted by the Learned Counsel for the writ petitioner that there is no report from the OIL Management or entry in the G.D with the CISF or with the police relating to the alleged illegal gratification of money by the petitioner. The Enquiry Officer solely relied on the written statements of the complainants namely one Dinesh Boral and Birbar Boral for alleged demand of bribe made during the preliminary enquiry and the evidence

advanced by such defense witnesses were wrongfully not taken into consideration.

11. The adverse entry in favour of the petitioner in the annual confidential report before finalization of case is biased and unreasonable on part of the respondent authority. By the successive rejection of appeals, review petition and mercy petition whimsically, arbitrarily without appropriately considering representation of the petitioner on multiple occasions, the respondent authority has confused the matter so as to deny relief to the petitioner.

12. The Learned Counsel for respondent authority submits that the final order awarding enhanced punishment to the petitioner is the result of domestic enquiry in due compliance of the CISF Rules and Regulations. During the course of enquiry, the petitioner denied to have any defense assistant rather he defended his case himself. As per his request, three witnesses were called by enquiry officer for giving evidence as defense witness. However, the defense witnesses expressed that they had no knowledge about the levelled charges as neither was present at the time of occurrence. The fact of demanding illegal gratification by the petitioner is well established from the corroborative statements of the prosecution witnesses which were recorded in his presence and he availed the opportunity to cross-examine each of the witnesses.

13. It is further submitted that the petitioner did not submit any new facts which would warrant interference with the impugned orders of punishment and in order to save himself proceeded to pressurize one Munna Boral, prosecution witness to give deposition in his favour. The respondent has the authority and discretion conferred by the state to reduce and/or enhance the minor/major punishment inflicted upon and in the instant case, such enhancement of punishment is backed by reason.

14. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the disciplinary proceedings instituted against the writ petitioner is maintainable in law. The petitioner has failed to prove his

innocence as well as rebut the charges levelled against him and is correctly found to be guilty of illegal gratification of money by the respondent authority. There has been no conclusive confirmation on part of the defense witnesses produced during the enquiry proceedings that the petitioner did not demand the alleged bribe and the evidence adduced by the petitioner fails to prove that the charges levelled against him are incorrect. The entry made in the material register as to the timings of entry and exit of such truck further substantiates the statements of the prosecution witnesses that the petitioner had detained such truck for more than one hour with malafide intention. Further, the action of the petitioner to invite a prosecution witness to lunch who had earlier deposed against him with a view to obtain favorable admittance and suppress the fact of demanding illegal gratification proves the guilty mind of the petitioner.

15. The order of enhanced punishment in the present case is after consideration of prosecution case, defense case, case files, inquiry report and other related documents held on record. The misdemeanor of the petitioner has been proved beyond reasonable doubt. In such view, the writ application being WPA 19518 of 2003 fails as the application lacks merit and the same is dismissed accordingly.

16. There shall, however, be no order as to costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

29.09.2023

PA (BS)