2024:BHC-AS:11712-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5151 OF 2023

Arvind Kumar)
Constable/GD,)
CISF No. 130802411)
Age 33 years, Having address)
CISF Camp DPT Kandla,)
Near Marine Police Station,)
Kandla, Gujarat- 370 210)
Also at : Village Sohani)
Kaptanganj, Dist. Kushinagar,)
Uttar Pradesh- 274 301) …Petitioner

Versus

1. Smt. Laxmi Sanjay Nikam)
CISF Unit Complainant)
CISF Unit JNPA Sheva,)
JNPT Township PO-JNPT)
Township, Police Station-)
Uran Dist.- Raigad,)
Maharashtra- 400 707)
2. Senior Commandant, CISF)
Unit, HPCL-BPCL,)
Mumbai)
3. The Deputy Inspector)
General, CISF West Zone)
HQrs, Setor- 35 Kharghar,)
Navi Mumbai – 410 210)
4. The Inspector General)
CISF West Zone HQrs,)
Sector – 35, Kharghar,)
Navi Mumbai – 410 210)
5. Union of India)
Through Assistant Solicitor)
General, Bombay High)
Court, Mumbai – 400001) …Respondents

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Mr. Pankaj Vijayan a/w. Mr. Shyamdhar Upadhyay i/b. Intra Legal , for Petitioner.
Mr. R.R. Shetty, for Respondents.

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CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.

DATE : 11 MARCH 2024

JUDGMENT (Per M. M. SATHAYE J)

. Heard learned counsel for the parties. Perused the record. Taken up for disposal.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is impugning the order dated 1 July 2021 passed by the Senior Commandant CISF Unit, BPCL, Mumbai (Disciplinary Officer), the Appellate order dated 26 November 2021 passed by the Deputy Inspector General, Western Zone, CISF and Revisional order dated 22 June 2022 passed by the Inspector General (WS) CISF, under which the minor penalty is imposed upon the Petitioner, who is working as Constable/GD with Central Industrial Security Force (for short as "CISF") and the same is confirmed. By the impugned orders, the pay of the Petitioner is reduced by three stages from Rs.27,600/- (Level-3/Cell-9) to Rs.25,200/- (Level-3/Cell-6) for the period of 3 years w.e.f. 1 July 2021 with further direction that the Petitioner will not earn increment of pay during the period of reduction and on the expiry of said period, the deduction will have

effect of postponing his future increments of pay.

3. Few facts necessary for disposal of this petition are as under. The Petitioner is Constable/GD working with CISF who joined service in February 2013. On 23 April 2021, the Petitioner was served with Memorandum of Charge. The charge is that on the night between 19 & 20 April 2021, in the official residential quarters, the Petitioner knocked on the door of his neighbor's house in which Respondent No.1/Complainant was residing with her six year old daughter and when her husband, another Constable/GD working with CISF was posted in West Bengal for election duty. According to the charge, Respondent No. 1 got frightened and upset and when she opened the door, at the odd hours around midnight, she found the Petitioner standing in front of the door. The charge is further that after Respondent No. 1 warned and threatened the Petitioner, he left for his residence which was on the same floor. It is the charge that this behavior of the Petitioner in the peculiar facts and circumstances, amounted to harassment and it is a sign of gross indiscipline and misconduct and tarnishes the image of force.

4. The Petitioner filed written statement and Respondent No. 2 who is immediate superior officer of the Petitioner initiated the Departmental Enquiry. As many as 8 witnesses were examined including the Complainant and her neighbors/ acquaintances. The Petitioner was given opportunity to cross-examine all the witnesses. After considering the evidence on record, enquiry report was

submitted to Respondent No. 2 who passed order dated 1 July 2021 and imposed minor penalty as stated above. The Petitioner filed the appeal before Respondent No. 3 – Deputy Inspector General, who rejected the appeal vide order dated 26 November 2021, thereby upholding the punishment. Being still aggrieved, the Petitioner filed revision petition before Respondent No. 4 – Inspector General who has also dismissed the revision vide impugned order dated 22 June 2022, confirming the orders passed below. It is in these facts and circumstances that the Petitioner has filed the present petition.

5. Heard learned counsel for the Petitioner. The main argument advanced is that the act committed by the Petitioner is not in the course of his duty and does not amount to misconduct under the governing rules. It is further argued that the Petitioner was wrongly implicated and punishment awarded is disproportionate to the nature of allegation made against him. It is submitted that no case of misconduct or misbehavior is made out against the Petitioner. It is submitted that knocking on door of a person living in the neighborhood belonging to the same fraternity cannot be considered as misconduct. It is submitted that there is no sufficient material to indicate any *mala-fide* intention of the Petitioner. It is submitted that due to stomach upset at night, he knocked on the door of Respondent No. 1 to ask for a lemon for making sugar and salt syrup. He submitted that the Petitioner has no history of any indecent and improper behavior and therefore, the Petitioner ought to have been considered leniently.

6. *Per contra*, learned counsel for the Respondent – CISF submitted that three authorities below have found as a fact that the Petitioner is guilty of misconduct as alleged and the minor penalty has been imposed. He submitted that in the writ jurisdiction invoked by the Petitioner, he cannot be permitted to re-argue the whole case on merits. He submitted that the rules governing all CISF personnel are subject to the Central Civil Service (Conduct) Rules, 1964 (hereinafter referred as "the said Rules"). Drawing our attention to Rule 1.3 of the said Rules, learned counsel for Respondent – CISF pointed out that it is required that 'every government servant shall at all times' maintain absolute integrity; maintain devotion to duty; and do nothing which is unbecoming of a government servant. He further submitted that the said Rules required the Petitioner to maintain high ethical standards and honesty and maintain discipline in discharge on his duty. He submitted that in view of the said Rules, there is no merit in the argument of the Petitioner that the act committed by the Petitioner was 'not in course of duty' and does not amount to misconduct.

7. We have carefully considered the submissions and the said Rules shown to us. We have also perused the impugned orders. The impugned orders record that the Petitioner had in fact admitted during his defence statement that he had knocked on the door of Respondent No.1 around midnight between 19 & 20 April 2021. Perusal of this defence statement also shows that Petitioner has admitted that he had consumed alcohol before the incident. The case

of the Petitioner is that before knocking on the door of Respondent No.1, he had knocked on the door of one Mr. Hanumanta Rao on the same floor. This has been found unbelievable since witness Hanumanta Rao has clearly stated that his door was not knocked at all by the Petitioner that night. It is further seen that it has come on record that on the night of the incident, indeed the husband of Respondent No. 1 / another constable of CISF was not present and was indeed away at West Bengal to attend his duty. In these facts of the case, the action of Petitioner of knocking on neighbor's door knowing that the man in the house is absent, the same being occupied by a lady with her six year old daughter and that too for a frivolous reason of getting a lemon for so called medical emergency of stomach upset, is preposterous to say the least. The conduct of the Petitioner is certainly unbecoming of the officer of the force such as CISF. In our considered view, the intention of the Petitioner is certainly not found to be as genuine and clear as alleged. We stop at that and say nothing more. Already a departmental enquiry has taken place and the Petitioner has been punished with a minor penalty, which is confirmed not only before the appellate authority but also in the revisional jurisdiction.

8. The submission that the Petitioner was not in the course of duty and therefore, the incident does not amount to misconduct under governing Rules is devoid of merits. We say so because perusal of the said Rules clearly shows otherwise. Rule 1.3(1) of the said Rules requires the Petitioner to maintain integrity and do nothing

which is unbecoming of a Government servant 'at all times'. In that view of the matter, there is no merit in the said submission.

9. Before parting, we must deal with two judgments relied upon by the learned counsel for the Petitioner in support of his case. In the case of *Tapash Chandra Roy Vs. Union of India and Ors.*[1] before the Gauhati High Court, the facts were that the delinquent constable was charged with deserting the place of duty under the influence of liquor along with his Riffle-AK-47 and 120 rounds ammunition without any intimation or permission, thus creating panic on his colleagues and amounting to gross misconduct. In the said case, it was found on facts that the mother of the delinquent was being hospitalized in serious state and his request for leave to visit his ailing mother was refused and this had resulted in frustration leading to consumption of alcohol. This was considered as a mitigating circumstance and the major penalty of dismissal from service, was directed to be reconsidered by remitting the matter back to disciplinary authority. Also, in this case, the incident of misconduct had not taken place in the official quarters as in the present case. These facts being completely different from the facts of the present case, this judgment is clearly distinguishable and does not advance the case of the Petitioner.

10. In the case of *C. Kunhikutty Vs. Workmen of the Malabar Roadways Service.*[2], before the Kerala High Court, the facts were that

1 2017 (5) GLR 3
2 1970 (2) LLJ 478

while the delinquent drove the bus from one place to another, and since the return bus service was to be resumed only on the next morning, the delinquent stayed over and when came to his room of stay, found one person sleeping in the veranda with whom he picked up quarrel. This shows that the incident in this case also had taken at some place outside and not at the official quarters for residence. In this case, the delinquent was charged that he picked up quarrel with a stranger while he was on duty after getting himself drunk. The facts and nature of incident is obviously completely different from the facts in hand and therefore, this judgment is also clearly distinguishable and therefore does not advance the case of the Petitioner.

11. In the net result, there is neither perversity in the impugned orders, nor they suffer from any error apparent on the face of the record, nor there is any jurisdictional transgression. No interference is called for in the facts of this case, under our extra-ordinary writ jurisdiction.

12. The writ petition is accordingly dismissed. No order as to costs.

(M.M. SATHAYE, J.) (NITIN JAMDAR, J.)