IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3156 OF 2017

Pralhad Bhaurao Thale,
Age: 56 years, Occ: Retired HC/CISF,
R/o: N-2, L-1, 16/5, Ramnagar,
Cidco, Aurangabad – 431 003. **..PETITIONER**

V E R S U S

1. Union of India,
Through its Principal Secretary,
(Ministry of Home Affairs),
Central Industrial Security Force,
New-Delhi 01.

2. The Director General,
Central Industrial Security Force,
13, C.G.O. Complex,
New Delhi – 3.

3. The Inspector General (Training)
National Industrial Security Academy,
Central Industrial Security Force,
Hakimpath, Hyderabad – 78.

4. The Dy. Inspector General,
Central Industrial Secutiry Force,
(Ministry of Home Affairs),
CISF, KRTC, Mundali, PO, Mundali,
District Cuttack, Orissa 754 006.

5. The Sr. Commandant,
Central Industrial Security Force
(Ministry of Home Affairs)
CISF, KRTC, Mundali, PO, Mundali,
District Cuttack, Orissa 754 006.

6. The Commandant

Central Industrial Security Force,
(Ministry of Home Affairs)
CISF, KRTC, Mundali, PO, Mundali,
District Cuttack, Orissa 754 006. **...RESPONDENTS**

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Advocate for the petitioner : Mr. Yashodeep P. Deshmukh h/f Mr. Yogesh P. Deshmukh
AGP for the Respondent Nos. 1 to 6 : Mr Bhushan B. Kulkarni

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CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

RESERVED DATE : 17.08.2022
PRONOUNCEMENT DATE : 20.08.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With consent of the learned Advocates for the respective parties, heard finally at the state of admission.

3. By the present petition, the petitioner challenges penalty of compulsory retirement imposed upon him vide order dated 26.11.2013, after being found guilty in the disciplinary proceeding. He also challenges the order passed by the appellate authority dated 28.02.2014 and by the revisional authority dated 05.08.2014, by which his appeal and revision have been rejected.

4. Facts of the case are briefly stated as under :

The petitioner joined services in Central Industrial Security Force (CISF), in the year 1993. While working as Head Constable, he was placed under suspension in contemplation of initiation of disciplinary proceedings. By Memorandum dated 03.05.2013, disciplinary proceedings were initiated against him alleging three charges. In the first charge, it was alleged that while being posted in Training Centre in 'C' shift duty on the Main Gate with a weapon, he was found sleeping during the course of checking by the Night Checking Officer at 04.10 hrs. and upon being questioned, he misbehaved with the officer. In the Second charge, it was alleged that upon being questioned by his superior officer on 01-03-2013 about the quantity of ration issued in the Mess on 28.02.2013, he was unable to disclose the correct quantity of ration. Thereby, he not only disobeyed the order of the superior officer, but also misbehaved with him. In the third charge it is alleged that while being posted as Mess Commander on 13.03.2013, he misbehaved with his superior officer upon being questioned about excess quantity of Tomatoes.

5. Disciplinary inquiry was conducted in pursuance of the Memorandum of charge-sheet dated 03.05.2013 and the petitioner participated in the same. The inquiry officer submitted his report holding all three charges to be proved. After giving an opportunity to the petitioner for making representation against the inquiry officer's

report, the disciplinary authority passed an order dated 26.11.2013 imposing penalty of compulsory retirement from service with full pension and pensionary benefits on him.

6. Aggrieved by the order of the disciplinary authority, the petitioner preferred appeal dated 18.12.2013 before the Deputy Inspector General, CISF, who was pleased to reject his appeal vide order dated 28.02.2014. He preferred revision petition dated 03.04.2014 before the Inspector General, CISF, Hyderabad, which was rejected by order dated 05.08.2014. Thus, the penalty of compulsory retirement imposed on him by the disciplinary authority came to be confirmed by the appellate authority and the revisional authorities. The petitioner is challenging the orders dated 26.11.2013, 28.02.2014 and 05.08.2014 in the present petition.

7. Appearing for the petitioner Mr. Y. P. Deshmukh submitted that the article of charge No. I, ought not to have been levelled against the petitioner, as he was already subjected to penalty of warning by conducting a proceedings in the Orderly Room under Rule 38 of the Central Industrial Security Force Rules, 2001 (Rules of 2001) . He further submits that the action taken against the petitioner is discriminatory as two other members of the Force were also found sleeping in the night checking on the relevant date and that no disciplinary proceedings were initiated against them. He further submits that except the depositions of the concerned officers, there

was no supporting evidence in respect of any of the three charges. He further submitted that the charge of sleeping on duty was in fact not levelled against the petitioner and it is only on account of allegation of misbehaviour that the charge No. I came to be added in the charge-sheet. He taken us through the depositions of various witnesses to make out a case that the findings recorded by the disciplinary authority are not supported by the evidence on record. He also submitted that the past conduct of petitioner was considered while imposing penalty on him even though, the same was not included as separate article of charge in the charge-sheet. Lastly, he submitted that the penalty imposed on the petitioner was grossly disproportionate to the misconduct alleged and proved.

8. Per contra, Mr. Kulkarni, appearing for respondent Nos. 1 to 6 supported the orders passed by the disciplinary, appellate and revisional authorities. He submits that the maintenance of discipline is paramount in the respondent organization, which is a paramilitary force. He submits that sleeping on duty is serious misbehaviour on the part of the member of the force. He further submitted that the conduct of the other two members of the force, who were found sleeping on duty, cannot be compared with that of the petitioner, who not only slept on duty but also misbehaved with superior officers. Additionally, Petitioner also misbehaved with the officers in two separate incidents forming part of Charge Nos. 2 and 3. He therefore, prays for dismissal of the petition.

9. After hearing both the counsels for the parties at length, we find that the disciplinary proceedings have been conducted strictly in accordance with the Rules by following principles of natural justice. Mr. Deshmukh, has not raised any objection before us with regard to the procedure followed while conducting the disciplinary proceedings. Admittedly there is no infraction of Rules or principle of natural justice during the course of conduct of the disciplinary proceedings.

10. The attempt made by Mr. Deshmukh in taking us through the depositions of the some of the witnesses recorded during the course of inquiry, is of no avail as we cannot sit in appeal over the findings recorded in the inquiry nor can we re-appreciated the evidence. The limitations put on the this Court while exercising powers of judicial review require that the evidence recorded during the inquiry cannot be re-appreciated and the finding recorded cannot be disturbed unless the Court comes to the conclusion that the findings are perverse or are based on absolutely no evidence.

11. The restrictive scope of the judicial review has been repeatedly highlighted by the Apex Court in catena of judgments. We need not refer to them all, however, it useful to make reference to couple of them. In **State of Andhra Pradesh and Ors. Vs. Chitra Venkata Rao, (1975) 2 SCC 557**, the Constitution Bench has held in paragraph Nos. 21 and 23 as under :

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh v. S. Sree Rama Rao(1). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him,. the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal o Inquiry the High Court in a petition under Article-226 of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court

exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the. appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorary. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K. S. Radhakrishnan & ors(1).”

12. In **Union of India and Others Vs. Dalbir Singh, (2021) 11 SCC 321**, the Apex Court dealt with the case of Constable in Central Reserve Police Force and has once again summarized the scope of the judicial review in paragraph Nos. 21 to 24, which are as under :

“21. This Court in Union of India & Ors. v. P. Gunasekaran had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can

only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may

appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

13. No case of perversity in the findings recorded by the authorities is set up before us by the petitioner. It is not even his case that there is total absence of evidence in support of the findings recorded in the disciplinary proceedings. We cannot go into the merits of the findings recorded by the authorities nor can be weigh sufficiency of evidence in support of such findings. After going through the depositions through which Mr. Deshmukh took us, we are satisfied that there is evidence on record to support the findings recorded by the authorities and that this is not a case of no evidence or perversity.

14. Now, we deal with the contention raised by Mr. Deshmukh that the petitioner was already subjected to the punishment of warning under Rule 38 and that therefore inclusion of charge of sleeping on duty under Article-I of the charge memorandum was unwarranted. His submission is premised on the Night Checking Report dated 21/22.01.2013 produced at page No. 59 of the paper book. Perusal of the said report shows that three members of the force at Sr. No. 20, 21 and 22 in the report were found to be sleeping at 04.10 hrs, while being posted at the Main Gate. There is an endorsement made in the report on 22.01.2013 to the effect that the concerned members were taken to the Orderly Room on 23.01.2013 and were verbally warned for

their negligence. It is this endorsement on the Night Checking Report, which Mr. Deshmukh vehemently relies upon in support of his contention that Petitioner was already subjected to punishment within the meaning of Rule 38 of the Rules of 2001. In Rule 38, the procedure for imposing the petty punishment is prescribed which reads as under :

> "38. P*rocedure for imposing petty punishment – Petty breaches of discipline and trifling cases of misconduct by the enrolled members of the Force not above the rank of the Head Constable shall be inquired into and disposed of in the Orderly Room. The punishment enumerated in rule 35 may be awarded, making a record of the summary proceedings in the Orderly Room register which shall be maintained for keeping record of such punishments. There shall be no appeal against the punishment awarded I the Orderly Room."*

15. On perusal of Rule 38, we are unable to agree with the submissions of Mr. Deshmukh. Firstly, we fail to understand as to how the misconduct of sleeping on duty by a member of the armed force of the Union carrying a weapon, who is deputed on watch and watch duty, can be treated as petty breach of discipline. Secondly, we cannot draw an inference on the basis of endorsement made on the night checking report that the verbal warning given to the petitioner amounts to punishment within the meaning of Rule 38. In fact, Rule 38 provides that for petty breaches of discipline and trifling case of misconduct, the punishment enumerated in Rule 35 can be awarded. The Rule 35 reads as under :

> *"35. Petty punishments – Head Constable, Constable and Follower may also be awarded, as punishment, extra drill, guard, fatigue or other duty for a term not exceeding fourteen days."*

16. Thus, “verbal warning” is not a punishment within the meaning of Rule 38. We, therefore, reject the contention of Mr. Deshmukh that the petitioner was awarded punishment under Rule 38 and that therefore, the charge of sleeping on duty could not have been included in the memorandum of the charge-sheet issued him.

17. Now we come to next ground of challenge that the penalty imposed on the petitioner is discriminatory. This objection is raised only on the ground that the two other members of the force, who were also found sleeping in the Night Checking Report, were let off with verbal warning. We do not find any merit in this contention of Mr. Deshmukh, since in addition to the charge of sleeping on duty, the petitioner was indulged in the act of misbehaviour with the officer. The imputations of misconduct in support of Article-I of the charge included in the Annexure -2 of the charge-sheet describes the exact reaction of the petitioner after he was questioned by the Night Checking Officer. He was woken up by the officer and was called to the Control Room where he reached in a casual manner without any remorse. After the officer questioned him as to how he can sleep with his weapon when the Main Gate was under construction and was fully open, he flatly denied that he was sleeping and challenged the officer to write in the report whatever he desired. Even though, further allegation of petitioner referring to the stars on the uniform of the officer is to be ignored on account of submission of Mr. Deshmukh that the same is not supported

by the deposition of the concerned officer, the rest of the allegations found to be proved against him are serious enough. CISF is an armed force of the Union and being the member of the armed force, maintenance of discipline amongst its members is paramount. A member of force in possession of a weapon sleeping during the course of duty who is deputed to guard the Main Gate under construction is the highest degree of indiscipline. Far from expressing any remorse for his misconduct, the petitioner is found to have indulged in the act of subordination misbehaviour with the officer. To make things worse, he indulged in misbehaving with the officers and challenged their authority on two subsequent occasions. We, therefore, do not find that any discriminatory treatment is meted out to him while subjecting him to disciplinary proceedings or punishing him in respect of charge of sleeping on duty.

18. The next contention of Mr. Deshmukh is that there is no supporting evidence on record except the depositions of officers with whom the petitioner misbehaved. As we have held earlier, we cannot go in the issue of sufficiency of evidence. Here we may make useful reference to the Judgment of the Supreme Court in **Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10**, in which it is held as under:

> "10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on re-

> cord which is acceptable and which could be relied upon, howso-ever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."
>
> *(emphasis supplied)*

In disciplinary proceedings, the charge is to be proved on the touchstone of the preponderance of probabilities. The petitioner has not made any allegation of malice against the officers concerned. Therefore it cannot be stated that any corroborative evidence was needed in addition to the depositions of officers. There is thus no perversity in the findings recorded in the disciplinary proceedings. We therefore, reject this submission.

19. The contention that the charge of sleeping on duty was not levelled against the petitioner is stated only to be rejected. The charge is specifically included under Article-I of the charge-sheet. Article-I of the charge included two elements, sleeping on duty and misbehaviour with officer. Mere inclusion of latter element of charge does wipe off the former one. We need not labour more on this aspect and we summarily reject this submission.

20. The next submission of Mr. Deshmukh is that the past conduct of the petitioner has to be taken into consideration while penalizing him without including the past conduct as a separate article of charge in the charge-sheet. After going through the orders of disciplinary, appellate and revisional authorities, we do not find that

the penalty of compulsory retirement has been imposed by taking into consideration his past conduct. Such penalty as inflected upon the petitioner only on the basis of misconduct that has been found to be proved in the disciplinary proceedings. We, therefore, reject this submission as well.

21. Now we deal with last submission of Mr. Deshmukh, which he strenuously pressed before us, that the penalty imposed is grossly disproportionate to the misconduct alleged and proved. He submitted that the petitioner had rendered 30 years of service and he was left with 6 years of service before his superannuation. This submission, accordingly to us, far from assisting the Petitioner, actually militates against him. It is not that the Petitioner is compulsorily retired at the beaning or middle of his career. He has put in substantial period of service and would earn substantial pension therefor. Also, it is trite that that the Courts cannot, in exercise of power of judicial review, modify the penalty imposed in the disciplinary proceedings unless the same is found to be shocking disproportionate to the misconduct proved. In the present case, the penalty imposed on the petitioner does not shock our conscience. In addition to the grave misconduct of sleeping on duty with weapon, the petitioner consistently misbehaved with superior officers on three different occasions. Being a member of disciplined force, it is completely unacceptable that the petitioner repeatedly misbehaved with different officers on different occasions. One can easily draw an inference that the petitioner was showing traits of being

an incalcitrant employee. Firstly, we find that misconduct proved against the petitioner is grave. Secondly, we do not find any fault with the authorities maintaining discipline amongst the force by punishing a member found to be repeatedly indulging in misbehaviour with superior officers. Thirdly, the petitioner has been imposed with penalty of compulsory retirement and will be able to enjoy full pension and pensionary benefits. Fourthly, the punishment of compulsory retirement was imposed on the petitioner after rendering 30 years long service. Therefore it cannot be stated by any stretch of imagination that the punishment is such as would shock our conscience.

22. In recent judgment of the Apex Court delivered on 24.02.2022 in **Union of India and Ors. Vs. Managobinda Samantaray - 2022 SCC online SC 284**, a case of Constable in CISF, facing somewhat similar charge has been dealt with. In that case, the respondent therein being posted on patrolling duty, was found to be sleeping and upon being caught, he abused, misbehaved and assaulted the officer. He was initially imposed penalty of reduction of pay by two stages by the disciplinary authority, which came to be enhanced to that of dismissal from service by the appellate authority. The Single Judge of the High Court set aside the order of dismissal by holding the same as shockingly disproportionate and reinstatement was ordered with 50% of back wages. The Division Bench dismissed the appeal of Union of India and restored the penalty of reduction of pay imposed by the disciplinary authority. The Apex Court found the judgment of the

Division Bench unsustainable and beyond the scope of the power of judicial review. In respect to the gravity of misconduct of the respondent therein, the Apex Court held in paragraph No. 10 as under :

> *"10. In the instant case, the respondent was a constable in CISF, a specialized police force responsible for providing security to strategic establishments like the Department of Space, the Department of Atomic Energy, and premises of establishments fundamental to Indian economy. Given the nature of the appellant's force, sense of integrity, commitment, discipline, and camaraderie is paramount. Discipline is the essence of the organization and structure of police force. 7 No indulgence or latitude can be granted when the case is of violence and assault on the officer who had checked and reprimanded the respondent. To condone the misconduct will have ramifications. Discipline in the police force cannot be compromised. In the background of facts, and as the respondent had not even expressed any remorse or pleaded a good ground for having acted in the manner he did, we do not accept that the punishment of dismissal imposed by the Appellate Authority by order dated 8 th February 2012 was grossly disproportionate to the quantum of the offence"*.

23. The facts in **Managobinda** (supra) are somewhat similar, except that the allegation of assault is absent in the present case. However, excepting the allegation of assault, all other circumstances viz. sleeping on duty, misbehaviour with the Officers, showing no remorse upon being caught, etc are identical. However as opposed to

the penalty of dismissal in **Managobinda** (supra), Petitioner has been visited with much lenient penalty of compulsory retirement. Therefore, we reject the contention of penalty being disproportionate.

24. In the result, we do not find any merit in the petition and the same is dismissed without any orders as to costs.

25. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

mahajansb/