



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 26.11.2024
Pronounced on: 10.12.2024

+ W.P.(C) 13734/2019
VIKESH KUMAR SINGHPetitioner
Through: Mr. P. Sureshan, Adv.
Versus
DIRECTOR GENERAL CENTRAL INDUSTRIAL
SECURITY FORCE AND ORS.Respondents
Through: Mr. Sanjay Kumar Pathak, SPC
with Mr. Sunil Jha, Mrs. K.K.
Kiran Pathak and Mr. M.S.
Akhtar, Advs. for R-1 to R-5.
Mr. G.S. Rathore, A.C., CISF.

+ W.P.(C) 13907/2019
ARUNCHALAM. PPetitioner
Through: Mr. P. Sureshan, Adv.
Versus
DIRECTOR GENERAL CENTRAL INDUSTRIAL
SECURITY FORCE AND ORS.Respondents
Through: Mr. Sanjeev Uniyal, Mr.
Dhawal Uniyal, Advs. for UOI
with Mr. G. S. Rathore, A.C.
and Mr. Prahlad, SI, CISF.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The petitioners have moved the present petitions under Article 226 of the Constitution of India, raising a common issue, that is whether the punishment of removal from service awarded to them by the Disciplinary Authorities *vide* separate Orders dated 15.10.2018,



which have been upheld by the Appellate and Revisional Authorities on 11.02.2019 and July/August, 2019 respectively, pursuant to the disciplinary proceedings held against them, is violative of the principles of equality, proportionality and natural justice, when the other member of the Central Armed Police Force having a similar/bigger role in the same incident, was let off with a minor penalty. As the issue in both the petitions is common, mainly, the facts of petition bearing no. W.P.(C) 13734/2019 titled ***“Vikesh Kumar Singh vs. Director General Central Industrial Security Force and Ors.”*** are being taken up for the sake of brevity.

2. We may begin by noting the common factual position in both the petitions, which is that the petitioners were enrolled as Constables (General Duty) in the Central Industrial Security Force (“CISF”). They were posted on deputation, under the Ministry of External Affairs, in its High Commission of India (HCI) at Dhaka. They, along with two other Indo-Tibetan Border Police (“ITBP”) Force members, namely, Head Constable (HC) (GD) Mahesh Makhwana and HC (GD) Shyam Sunder were deployed at the HCI. However, due to the incident in question, they were prematurely repatriated to India, pursuant to an inquiry held against them on 06.08.2018 and 13.08.2018, in relation to an incident dated 26.01.2018.

3. The allegation against the petitioners is that on 26.01.2018, they did not report the entry of an unauthorised lady at the Chancery, when the officials of High Commission were away hosting the Republic Day parade. The said lady, along with ITBP Force member HC (GD) Mahesh Makhwana had entered the Chancery after the petitioner,



Vikesh Kumar Singh had already entered the cabin gate, yet the petitioner failed to report the unauthorised entry of the said lady to the higher officers.

4. Thereupon, the HCI issued a Show Cause Notice dated 13.02.2018 to the petitioners, individually. Dissatisfied with the reply sent by the petitioners to the said notice, the petitioners were prematurely repatriated from the High Commission duty. However, the office of the High Commission, in this regard made no recommendation to the CISF, being the lending department, to take any action in respect of the alleged incident that took place on 26.01.2018. Further, no inquiry report was sent to the CISF, recommending that any further action in respect of the alleged incident be taken against the petitioners.

5. However, the respondents decided to initiate a disciplinary inquiry against both the petitioners and issued a Memorandum of Charge on 31.03.2018 and also an imputation of Charge under Rule 36 of the CISF Rules, 2001 by proposing a major penalty. The following Article of Charge was framed against the petitioner Vikesh Kumar Singh:-

“ARTICLE OF CHARGE-1

That CISF No.093150103 CT/GD Vikesh Kumar Singh of CISF 11th RB Gr. Noida was deployed from CISF armed contingents at HCI, Dhaka on duty at Morcha No. 01, near Main Gate, that two of the on duty security personnel brought an unauthorized lady inside the Chancery in the late evening of 26 January' 2018, when all the officials of the High Commission were away for hosting the Republic Day Reception. He has failed to conduct professionally by not informing the Competent Authority about the incident. He was deployed in a highly sensitive and critical mission where alertness and sense of responsibility is paramount.



This act of CISF No.093150103 CT/GD Vikesh Kumar Singh projected lack of professionalism, major security breach and is a highly unbecoming of a disciplined Armed force of Union of India like CISF". Hence the charge."

6. A similar Memorandum of Charge was issued against the petitioner Arunchalam. P on 31.03.2018, thereby initiating a separate departmental inquiry against him.
7. The petitioners have claimed that the lady in question came on the request of the ITBP security personnel HC Mahesh Makhwana, for the purpose of cleaning his room. The petitioners were deployed in the Morcha with a weapon and ammunition and thus, it was not their duty to check the visitor's entry at all.
8. Mr. Ravi Bhushan Sharma, Assistant Commandant, CISF, 11th Reserve Battalion, Greater Noida was appointed as the Inquiry Officer on 16.04.2018, to conduct an inquiry against the petitioners, Vikesh Kumar Singh and Arunchalam P. Four prosecution witnesses and two Court witnesses were examined in the course of the disciplinary inquiry.
9. In the meanwhile, disciplinary action was also taken against the ITBP security personnel HC (GD) Mahesh Makhwana by his concerned department, and *vide* the order dated 25.05.2018, he was punished with a "severe reprimand".
10. Notably, the petitioners had submitted their defence statements and their replies dated 20.08.2018 and 01.08.2018 to the brief note prepared by the Presenting Officer. On conclusion of the inquiries, *vide* the Order dated 15.10.2018, the Disciplinary Authorities held the petitioners guilty and awarded the punishment of "removal from



service with immediate effect”.

11. Being aggrieved, the petitioners submitted an appeal petition against the Impugned Order. *Vide* the Orders dated 11.02.2019, the Appellate Authorities dismissed their appeals on merits, upon which, the petitioners preferred revision petitions. The revision petition of the petitioner Arunchalam P. was dismissed *vide* the Order dated 23.07.2019, and that of the petitioner Vikesh Kumar Singh was dismissed on 23/24.08.2019, thereby compelling them to approach this Court.

Submissions on behalf of the petitioners

12. The learned counsel for the petitioners submitted that the alleged incident occurred when the petitioners were posted on deputation under Ministry of External Affairs at Dhaka. The HCI, after issuing a Show Cause Notice to the petitioners and holding inquiries against them, had repatriated them from their deputation duty.

13. He submitted that no complaint or allegation was raised by the HCI, neither did they make any recommendation to their lending department to take any disciplinary action against the petitioners for the alleged misconduct committed by them during their Foreign Service. Therefore, the respondents could not have *suo moto* conducted disciplinary inquiries against the petitioners, which are illegal and liable to be quashed. More so, on 08.03.2018, when the punishment of pre-mature repatriation was awarded to the petitioners, thereafter they could not have been issued a fresh Show Cause Notice for the same incident, or by holding departmental inquiries be awarded



a further punishment of “removal from the service”, as the same would lead to double jeopardy.

14. He further submitted that the Inquiry Officers failed to appreciate the nature of the duty of the petitioners, which is that they were on Morcha duty, that is to respond against any kind of attack. The security staff was deployed to check the entry and exit of any unauthorised person inside the Chancery and HC (GD) Mahesh Makhwana was the In-Charge of the security cabin and therefore, the petitioners had no role in the alleged incident.

15. The learned counsel pointed out that in fact, HC (GD) Mahesh Makhwana had a more serious role in the incident, as the unauthorised entrant had visited his room and that the petitioners had a minor role in the same incident, therefore, the punishment awarded to the petitioners is disproportionate and non-suitable. He, thus, submitted that the Impugned Orders dated 15.10.2018, 11.02.2019, 23.07.2019 and 23/24.08.2019 are liable to be set aside and the respondents be directed to reinstate the petitioners.

16. The learned counsel urged that the main grievance of the petitioners is that they are a part of Central Armed Police Forces (“CAPF”), which include the Border Security Force (“BSF”), CISF, ITBP and Central Reserve Police Force (“CRPF”). The selection process, the educational qualification and other service condition for all these aforementioned Forces are the same, as they fall under the umbrella of CAPFs. Furthermore, all these Forces come under the Ministry of Home Affairs (“MHA”), and all such Force personnel are paid similar salary and allowances. Therefore, the respondents have



grossly erred by awarding the punishment of “removal from service” to the petitioners whereas on same allegations, the ITBP had punished its employee, HC (GD) Mahesh Makhwana with “severe reprimand” only. He placed reliance on the judgment of this Court in *Narender Singh vs. Union of India*, 2024 SCC OnLine Del 4979 and also the decision of the Apex Court in *Rajendra Yadav vs. State of Madhya Pradesh & Ors: (2013) 3 SCC 73* to contend that award of harsher punishment on the petitioners is not only arbitrary but also discriminatory.

17. He submits that the punishment levied on the petitioners is also disproportionate. He submits that the petitioners have been without service for more than five years. This would be a sufficient punishment on them, and if they are reinstated in service, they will not claim any back wages.

Submissions of the respondents

18. *Per contra*, the learned counsel for the respondents sought dismissal of the petitions by urging that the petitioners were deployed at HCI, Dhaka and were on a sensitive and critical duty, where alertness and a sense of responsibility was required. They indulged in a security breach by allowing an unauthorised entrant inside the Chancery, while the Senior Officers were away hosting the Republic Day parade.

19. He submitted that the Disciplinary Authorities, after considering the circumstances and evidence produced on record, in accordance with CISF Act, and keeping in view the gravity of misconduct, awarded the punishment of “removal from service”. The orders of the



granted time to obtain instructions as to whether in the peculiar facts of the present case, the respondent would be willing to reconsider the penalty imposed on the petitioners so that they may retain their jobs.”

22. In response to the above direction, the respondents, *vide* the official communication dated 30.09.2024, submitted that the case of both the petitioners was dealt with under Rule 36 of the CISF Rules, 2001 and they were awarded the penalty of “removal from service” based on the departmental inquiries. The charges proved against the petitioners were serious in nature that too on a highly sensitive, critical mission and therefore, the penalty awarded is proportionate.

23. Further, the respondents have submitted that the character of Force personnel, such as those in the CISF, ought to be of the highest standards and the act of the petitioners tarnished the image of the Force on an International platform. In addition, it is also submitted that the ITBP employee, which the petitioners are referring to are governed by a different set of rules, which would not be applicable to the petitioners in the present case.

24. In the cases at hand, the petitioners have demonstrated a clear dereliction of their duties. Their actions, or lack thereof, have shown their non-serious approach towards their duty. Undoubtedly, they have facilitated and aided a breach of security at a critical and sensitive post, which could have resulted in a serious lapse and breach of security. Therefore, we do not find any merit in the argument of the petitioners that since an inquiry was conducted at HCI, Dhaka, the purpose of which was merely to find out if petitioners should be repatriated or not, no further inquiry could be conducted in India by



same set of Rules and any variation in punishment among the CAPFs would lead to injustice to the other CAPFs. In the present case, while HC (GD) Mahesh Makhwana, member of the ITBP, who was involved in the same incident, having a similar role, was ‘severely reprimanded’, the petitioners before us have been “removed from service”. This is, however, against the spirit of the rules of parity governing the CAPFs.

28. We may note that the Apex Court, in the case of **Rajendra Yadav (supra)** held as under:-

“12. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.”

29. From a reading of the aforesaid decision, what emerges is that when several individuals are involved in the same incident, parity regarding punishment is to be maintained, which should not be disproportionate while comparing the role of each individual, who are parties to the same transaction or incident. The Disciplinary Authorities cannot impose a punishment, which is disproportionate in as much as lesser punishment is imposed for serious offences and stringent punishment for lesser offences. This Court in the case of **Narender Singh (supra)**, while making reference to the



aforementioned decision of the Apex Court in *Rajendra Yadav* (supra) and decision of this Court in the case of *Virender Singh Chankot vs. Union of India & Ors.*, 2019 SCC OnLine Del 11498 held that ‘discriminatory treatment could not be meted out at the time of awarding penalty’.

30. Having considered the above, we are of the view that the punishment of “removal from service with immediate effect” awarded to the petitioners is liable to be set aside. We, therefore, set aside the Orders of the Disciplinary Authorities dated 15.10.2018, along with the Appellate Orders dated 11.02.2019 as also the Revisional Orders dated 23.07.2019 and 23/24.08.2019. The learned counsel for the petitioners submitted that the petitioners were removed from service in the year 2019 and have been without a job for the past five years and they would be satisfied with their reinstatement in the Service.

31. In light of the above submission, we are of the view that being out of service for more than five years will act as a sufficient deterrent to the petitioners. Accordingly, the respondents are directed to reinstate the petitioners in service immediately, albeit without any consequential benefits and back wages.

32. The writ petitions stand disposed of in aforesaid terms.

SHALINDER KAUR, J

NAVIN CHAWLA, J

DECEMBER 12, 2024/ss/f

Click here to check corrigendum, if any