

Aarti Mathur vs Union Of India Through Director General ... on 3 April, 2025

Author: Navin Chawla

Bench: Navin Chawla

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17.01
Pronounced on: 03.04.

+ W.P.(C) 10601/2022
AARTI MATHUR

.....Petitioner
Through: Mr. P. Sureshan, Adv.

versus

UNION OF INDIA THROUGH DIRECTOR GENERAL CISF
& ORS.Respondents

Through: Mr. Bhagwan Swurup Shukla,
CGSC with Mr. Sarvan Kumar,
Adv. with Mr. G.S. Rathore-
AC/CISF, Mr. Prahlad
Devendra, SI/CISF & Mr. A.N.
Choubey, CISF.

CORAM:

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

JUDGMENT

SHALINDER KAUR, J.

1. The present petition has been filed under Article 226 of the Constitution of India, seeking the following reliefs: -

"a) To quash and set aside the final order No. 9069 dated 20/11/2019 passed by the Dy.

Inspector General CISF Wz- AP HQRS Navi Mumbai, appellate order No.1121 dated 23.12.2020 passed by the IG, APS-II CISF APS-II HQRS Bangalore and Revisional Order No. 9515 dated 29.9.2021 passed by the ADG, CISF APS HQRS, New Delhi whereby the petitioner had been punished with a major penalty of "REDUCTION OF PAY BY ONE STATE i.e FROM RS. 36,500 TO RS 35 400 (AS PER 7TH CPC MATRIX, LEVEL-6) FOR A PERIOD OF ONE YEAR WITH IMMEDIATE EFFECT WITH FURTHER DIRECTION THAT SHE WILL NOT EARN INCREMENTS OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON EXPIRY OF THIS

PERIOD, THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING HER FUTURE INCREMENTS OF PAY"

b) Pass an order granting all consequential benefit to the petitioner including full wages during the period of suspension, treating the period of suspension as period spend on duty and also paying the entire back wages.

c) Pass an order by exonerating the petitioner from all charges issued to her vide memorandum of charge dated 17.06.2019.

d) Quash and set aside the order dated 20.4.2020 with sub: EXTENSION OF PROBATION PERIOD IN CISF REG: issued by the respondent No.6

e) Direct the respondents to pay cost of this litigation to the petitioner.

f) Any other further order/relief which is Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner and as against the respondent."

2. To appreciate the nature of the challenge, it would be necessary to record the factual position, that is, the petitioner was appointed as a Lady Sub-Inspector (SI)(Executive) in the Central Industrial Security Force (CISF) on 12.01.2018. Upon completion of her initial training at the National Industrial Security Academy (NISA), Hyderabad, she was posted at the CISF Unit ASG, Goa Airport, where she reported for duty on 21.01.2019.

3. The incident in question occurred on 12.06.2019, when the petitioner was deployed for the „A shift from 05:30 to 13:00 hours at the Domestic Security Holding Area (SHA) of ASG Goa, Airport.

4. At approximately 06:46 hours, a passenger, namely Mr. Rajesh Kumar Mishra, who was travelling from Goa to Delhi, forgot his "Silver-Colored Cross Pen" in a tray at the time of his frisking and proceeded to the boarding gate. The petitioner found the said pen in the tray and took it to the ladies' Frisking booth No. 2.

5. Later, the said passenger returned and informed the SHA Inspector-in-Charge, Lady Inspector Swapnali Patil, about his missing pen, which he had forgotten in the tray during the security check. As the said pen could not be found at the time, he requested the Lady Inspector Swapnali Patil that if his pen was found, it be handed over to his colleague, Mr. Vishwanath S, who was travelling from the said airport later on the same day.

6. Subsequent thereto, the petitioner, while returning after finishing breakfast, met with the Lady Inspector Swapnali Patil, who informed her about the missing pen, to which the petitioner, at that time, did not respond. After their conversation, the petitioner rushed towards the booth, took the pen and handed it over to the Lady Inspector Swapnali Patil. Thereafter, on the same day, the Reserve Inspector informed the petitioner that she would be punished for the said incident, that is,

taking the pen from the tray.

7. The petitioner was placed under suspension with effect from 14.06.2019, and the departmental proceedings were initiated against her based on the charges levelled under Rule 36 of the Central Industrial Security Forces Rules, 2001(the CISF Rules), vide the Charge Memorandum No. (4886) dated 17.06.2019.

8. This Charge Memorandum was acknowledged by the petitioner, and she submitted her written reply on 23.06.2019, denying the Charges levelled against her.

9. To ascertain the true sequence of events, it was decided that an inquiry be conducted as per the procedure laid down under Rule 36 of the CISF Rules. Accordingly, Shri Vinay Kumar Singh, Assistant Commandant/Exe, and Inspector/Exe Dileep M.A. of ASG Goa, were appointed as the Inquiry Officer and Presenting Officer, vide ASG Goa Orders No. (5154) and No. (5155) dated 29.06.2019, respectively.

10. Meanwhile, the petitioner's suspension was revoked vide the Order dated 05.08.2019 passed by the Competent Authority.

11. The Inquiry Officer, after completing the Disciplinary Inquiry, submitted the final Inquiry Report on 24.09.2019 to the Deputy Inspector General (DIG), APWZ Headquarters in Mumbai, concluding that both the Charges against the petitioner were „Proved“.

12. A copy of the said Inquiry report was served to the petitioner.

13. The petitioner filed objections to the inquiry findings on 13.10.2019, however, the Disciplinary Authority, that is, the DIG, APWZ, vide final Order no. (9069) dated 20.11.2019, awarded a penalty of "Reduction of Pay" to the petitioner. Consequently, her probation period was extended by six months vide Order dated 20.04.2020.

14. On 23.09.2020, the petitioner preferred an appeal before the Inspector General, Airport Sector-II, CISF, South-West Headquarters, Bengaluru, which was dismissed by the Appellate Authority vide Order no. (1121) dated 23.12.2020, on the ground that the appeal was filed after a delay of nine and a half months.

15. Being aggrieved, the petitioner submitted a Revision Petition on 03.02.2021, which also came to be dismissed by the Additional Directorate General, Airport Sector, Headquarters, New Delhi, vide Order no. (9515) dated 24.09.2021, as being devoid of merits.

16. Dissatisfied with the above-said decisions, the petitioner has preferred the present petition, invoking the Writ Jurisdiction of this Court.

SUBMISSIONS OF THE PETITIONER

17. The learned counsel for the petitioner submitted that the petitioner acted without any ill motive, specifically because, as per the Standard Operating Procedures (SOPs), no specific directions were given to the security staff regarding the handling of valuable items left behind by the passenger.

18. Further, he submitted that the items such as laptops or cameras left in the security area were usually kept on a table. Since the petitioner was unaware of the pen's value, she kept it with her and took it to Frisking Booth No. 1 and later to Frisking Booth No. 2 during her work routine, without any dishonest intent.

19. The learned counsel submitted that neither the Enquiry Officer (EO) nor the Presenting Officer (PO) questioned the petitioner as to why she did not inform her colleagues or senior officers about the pen upon finding it. Even the Inspector/Executive Swapnali Patil did not initially enquire about the pen. The said officer only informed her about the missing pen when she returned after having breakfast. Thus, the learned counsel submitted that it was an innocent act on the part of the petitioner, which did not constitute theft, as she had no dishonest intention to take the pen.

20. The petitioner highlighted a similar incident at the same Airport, involving another officer, SI Priyanka, who took a pen worth Rs. 83,000/- home and returned it after a few days, resulting only in a warning letter from the same Superior Officers. In contrast, the petitioner faced severe and hostile action.

21. The learned counsel submitted that the passenger neither filed a written nor a verbal complaint but merely reported the missing pen. Therefore, the claim of the respondents that the incident damaged the Force's reputation is completely baseless. Consequently, the Impugned Order is unsustainable and should be set aside.

22. He further submitted that a mere error of judgment or act of negligence does not constitute misconduct. In support of this, he relied upon the following judgments of the Supreme Court: -

- i. Inspector Prem Chand v. Govt. of NCT of Delhi &Ors., (2007) 4 SCC 566, ii. Union of India &Ors. v. J. Ahmed, (1979) 2 SCC 286, iii. Zunjarrao Bhikaji Nagarkar v. Union of India &Ors., (1999) 7 SCC 409.

SUBMISSIONS OF THE RESPONDENTS

23. The learned counsel for the respondents submitted that the petitioner's actions amounted to serious misconduct and indiscipline, thereby tarnishing the image of the Force. Consequently, she was rightfully dealt with departmentally under Rule 36 of the CISF Rules, 2001. The charges were proved during a duly conducted Departmental Inquiry, based on the oral and documentary evidence, including the CCTV footage.

24. He submitted that the petitioner took the pen with mala fide intent and concealed it in the Frisking Booth No. 2, a location not covered by the CCTV. She failed to inform the SHA In-charge or any other personnel about finding the pen. Rather, when Inspector Swapnali Patil questioned the

petitioner about the pen, she did not respond. It was only when the petitioner was informed that Inspector Swapnali Patil would review the CCTV footage, that the petitioner retrieved the pen from Frisking Booth No. 2 and handed it over to her.

25. The learned counsel contended that, as per standard practice for unattended items in the SHA, immediate reporting to the SHA In- Charge or the next senior officer in his/her absence, is required. The petitioner, however, bypassed this procedure by keeping the pen in her custody and concealing it in Booth No. 2. Further, he submitted that this act of the petitioner caused unnecessary inconvenience to the concerned passenger, which brought a bad name to the Force and lowered its image.

26. He further contended that the petitioner was afforded all reasonable opportunities to rebut the charges during the inquiry, which adhered to the principles of Natural Justice. The Inquiry Officer, based on the statements of the witnesses, documentary evidence, and the CCTV footage, found the charges as proved against her. The DIG, CISF, HQrs, Navi Mumbai, meticulously examined the case and imposed the penalty after appropriately considering the gravity of the misconduct. He submitted that the petitioner's appeal was rejected by the Appellate Authority due to a delay in filing, and the Revisional Authority dismissed her Revision Petition on merit after thoroughly examining the case.

27. The learned counsel submitted that the averment made by the petitioner regarding the incident involving SI Priyanka is not correct as in that incident, SI Priyanka found a black Mont Blanc pen left behind by a passenger which she placed inside the table drawer at the said booth but forgot to inform the SHA In Charge. The pen remained in the drawer of the booth from 25.01.2019 to 30.01.2019, until it was discovered by duty personnel during a checking of the table drawer. Therefore, the Competent Authority did not find malafide intent on her part. Resultantly, he prayed that the present petition be dismissed as being devoid of merit.

ANALYSIS AND CONCLUSION

28. We have considered the submissions advanced by both the learned counsels for the parties and have perused the record.

29. To begin with, we may note that an administrative decision, relating to a punishment in the disciplinary proceedings, falls within the discretionary domain of the decision-making authority, which has the sole power vested with it to make such a decision. However, the exercise of such discretionary power is subject to judicial interference under Article 226 of the Constitution of India, when such authority's decision is unreasonable or suffers from procedural impropriety, or is grossly disproportionate to the misconduct or the charges levelled against a personnel. The High Court, while exercising power under Article 226 of the Constitution of India, does not assume the role of an Appellate Authority, nor should it extend to re-evaluating findings of fact. The Disciplinary Authority, and on appeal, the Appellate Authority, being fact-finding authorities, have the exclusive power to consider the evidence so as to maintain discipline. The scope of judicial review is limited to identifying the deficiencies in the decision-making process rather than reassessing the decision

itself.

30. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, the Supreme Court, while laying down the broad parameters within which the High Court ought to exercise its powers under Article 226 of the Constitution of India in matters relating to disciplinary proceedings, held as below:-

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide *B. C. Chaturvedi vs. Union of India*, *Union of India vs. G. Gunayuthan*, *Bank of India vs. Degala Suryanarayana* and *High Court of Judicature at Bombay vs. Shahsi Kant S Patil*)."

31. Keeping in view the above, we may now note that the following Charges were framed against the petitioner, vide Order dated 17.06.2019: -

" CHARGE- 1 Force No.180202713 Lady Sub Insp/Exe.

Aarti Mathur, was deployed on 12.06.2019 for duty in 'A' shift (timing 0530 hrs to 1300 hrs) in Domestic SHA. Time around 0643 hrs A passenger (name - Rajesh Kumar Mishra) forgot the Silver Color "CROSS" pen (Price approx 8000/-) in the tray after security check. Lady Sub Insp/Exe. Aarti Mathur picked up the said pen while collecting the tray and hid in Domestic SHA's Lady frisking booth no.02. At around 0727 time, the said passenger told SHA I/C Lady Insp/Exe.

Swapanali Swapnil Patil about forgetting the said pen. Then in this context SHA I/C questioned the force members posted in SHA and you. But you did not give any information regarding the pen. When Lady Insp/Exe.

Swapanali Swapnil Patil told you that she was going to see the CCTV footage, then in a short while you took that Silver Color "CROSS" pen (Price approx. 8000/-) from the Women Frisking Booth No. 02 of Domestic SHA and handed it over to her at the time around 0919. Thus being a member of a disciplined armed force, the above act done by you is an indication of gross misconduct, theft, indecent and indiscipline. Hence the allegation."

CHARGE 2 Force No.180202713 Lady Sub Insp/Exe.

Aarti Mathur, was deployed on 12.06.2019 for duty in 'A' shift (timing 0530 hrs to 1300 hrs) in Domestic SHA. Time around 0643 hrs A passenger (name - Rajesh Kumar Mishra) forgot the Silver Color "CROSS" pen (Price approx 8000/-) in the tray after security check. Lady Sub Insp/Exe. Aarti Mathur picked up the said pen while collecting the tray and hid in Domestic SHA's Lady phishing booth no.02. At around 0727 time, the said passenger told SHA I/C Lady Insp/Exe. Swapnali Swapnil Patil about forgetting the said pen. Then in this context SHA I/C questioned the force members posted in SHA and you. But you did not give any information regarding the pen. When Lady Insp/Exe. Swapnali Swapnil Patil told you that she was going to see the CCTV footage, then in a short while you took that Silver Color "CROSS" pen (Price approx. 8000/-) from the Women Frisking Booth No. 02 of Domestic SHA and handed it over to her at the time around 0919 and. Thus, being a member of a disciplined armed force, the above act done by you is highly condemnable, violation of orders of superior officers, gross misconduct and indiscipline of duty. This act has tarnished the image of force among the public mind and the society. Hence the allegation."

32. We have noted from the findings of the Disciplinary Authority, which were approved by the Revisional Authority, that the petitioner was on duty on 12.06.2019 from 05:30 to 13:00 hours in the Domestic SHA at ASG, Goa. At about 06:46 hours, a passenger, namely Mr. Rajesh Kumar Mishra, after completing his security check, forgot to take his „silver colour cross pen' (worth Rs. 8,000/-) from the tray. At about 07:27 hours, he returned to the frisking area from the boarding hall and Inquired about his pen. Inspector Swapnali Patil started searching for the pen but could not trace it. Later upon viewing the CCTV footage, a doubt was raised on the petitioner, who had picked up empty trays from where the said passenger left his pen. However, even after being informed about the missing pen of a passenger, the petitioner remained silent. It was only, when Inspector Swapnali Patil confronted the petitioner and mentioned that she would check the CCTV footage, that the petitioner rushed and brought back the pen from Frisking Booth No. 2, where she had concealed it.

33. The prosecution, during the disciplinary proceedings, had examined four witnesses to prove the charges against the petitioner. These witnesses were cross-examined at length on behalf of the petitioner. Additionally, the statement of the petitioner was also recorded, who appeared as a defence witness. Therefore, there was compliance with principles of natural justice as also the rules of inquiry.

34. In the Disciplinary Inquiry, Inspector Swapnali Patil was examined as PW1. She deposed that when she inquired from the petitioner about the missing pen, the petitioner remained silent. While PW1 was moving towards the CCTV room, the petitioner rushed towards her and handed over the pen. PW1 has categorically deposed that, as per the CCTV footage, the petitioner took the pen and went towards the lady Frisking Booth No. 1 and then to Booth No. 2. It has further come up in the testimony of PW1 that, from the CCTV footage, she saw that the petitioner taking away the pen from the tray and was holding it in her hand, and without informing anyone, she took it to the ladies Frisking Booth.

35. From the consistent evidence adduced during the inquiry, the findings returned by the Disciplinary Authority, and as upheld by the Revisional Authority, in respect of both the Articles of Charge levelled against the petitioner, and the punishment imposed on her, in our opinion, do not warrant any interference by this Court. The petitioner being a member of a disciplined Force was expected to discharge her duties diligently and with honesty. Being a member of the disciplined Force, she is a protector, not only of person but also of property. When she found the pen in the tray as not claimed by any passenger, she should have immediately reported it to her superior, that is, PW1, and should have handed over the same to her. Instead, she took the pen to the ladies Frisking Booth area to conceal it and brought the same only when PW1 was about to check the CCTV footage in order to ascertain as to who had removed the pen from the tray at the frisking area. It cannot be said that the conduct of the petitioner was innocent or that she had forgotten about the pen and, therefore, failed to inform the concerned authority after finding it.

36. Needless to say, at no stage, did the petitioner take a plea that the Departmental Inquiry was vitiated on account of a violation of the principles of Natural Justice or that the inquiry had been conducted in gross violation of the statutory Rules.

37. The judgments relied upon by the learned counsel for the petitioner are totally distinguishable in terms of their facts and circumstances and, therefore, do not support her case. The conduct of the petitioner cannot be categorized as a mere error of judgment or negligence. Rather, it is a failure to fulfil the duties that are expected from a member of a disciplined Force.

38. The distinction of the case of SI Priyanka with that of the petitioner, has also been adequately explained by the learned counsel for the respondent. There cannot be any parity claimed by the petitioner with SI Priyanka.

39. As a result, we do not find any merit in the present petition, the same is hereby dismissed.

SHALINDER KAUR, J NAVIN CHAWLA, J APRIL 03, 2025/sk/DG