



2025:DHC:2866-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.01.2025
Pronounced on: 24.04.2025

+ W.P.(C) 2926/2011

SS SEHRAWAT

.....Petitioner

Through: Mr. Shanker Raju and Mr.
Nilansh Gaur, Advs.

versus

UOI AND ORS

.....Respondents

Through: Ms. Anjana Gosain and Ms.
Nippun Sharma, Advs.

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. By way of the present Writ Petition under Article 226 of the Constitution of India, the petitioner, who was serving as Unit Commander at the Central Industrial Security Force ('CISF') Unit, LPSC, Valiamala, Trivandrum, Kerala in the rank of Assistant Commandant, has approached this Court seeking the following reliefs:-

“a. To quash/set aside the Impugned Orders dated 14/01/2010 by which a penalty of Removal from service has been imposed and order dated 24/06/2010 by which the petition of the petitioner has been rejected by passing a



non-speaking order declaring as illegal, unjust, arbitrary, and violative of principles of natural justice, also declaring the punishment of Removal from service is excessive, sever and disproportionate and consequently the petitioner may be entitled for re-instatement in service with all consequential benefits accruing there from.

b. To issue a writ of Mandamus or any other writ/directions/orders as may be deemed just and proper in the facts and circumstances of the case.

c. Award costs.”

Brief Facts

2. At the outset, the brief factual matrix, as emerging from the record, may be noted.
3. The petitioner joined the CISF as an Assistant Sub-Inspector (Executive) ('ASI') on 24.04.1976, and was thereafter promoted to the rank of Sub-Inspector ('SI'). He was further promoted to the rank of Assistant Commandant on 13.03.2006.
4. In the year 2008, while serving as the Unit Commander at CISF Unit, LPSC, Valiamala, Trivandrum, Kerala, an anonymous complaint, filed by someone in the name of Ms. A (name not being disclosed herein), was received against the petitioner, alleging sexual harassment at the workplace.
5. It is the case of the petitioner that the respondents, without verifying the contents of the anonymous complaint, constituted a Complaint Committee to inquire into the charges leveled against the petitioner.



6. The Committee sought confirmation regarding the veracity of the complaint from the complainant, who denied having authored the two-page undated complaint, but nonetheless expressed her willingness to depose before the Committee affirming that the majority of the allegations made in the complaint were true.

7. The Committee, after a detailed inquiry involving the examination of ten prosecution witnesses, the complainant, and sixteen defense witnesses, submitted its report dated 27.01.2009. In its findings, the Complaint Committee held that the charges of sexual harassment against the petitioner stood proved.

8. Aggrieved by the findings of the Complaint Committee, the petitioner submitted a detailed representation dated 15.04.2009 against the report of the Complaint Committee to the Disciplinary Authority, challenging the inquiry report and seeking redressal.

9. The Disciplinary Authority, upon the advice received from the UPSC, proceeded to impose a major penalty of 'Removal from Service' upon the petitioner, *vide* the Order dated 14.01.2010.

10. The petitioner challenged the said order of the Disciplinary Authority *vide* a petition dated 30.03.2010 addressed to the Secretary, Ministry of Home Affairs, emphasizing the procedural irregularities in the inquiry as well as on merits, that is, the evidence examined by the Disciplinary Authority.

11. The said petition was rejected by the Competent Authority by an Order dated 24.06.2010, being devoid of merit.



12. Discontented by the rejection of his Statutory Petition, the petitioner has approached this Court by way of the present petition.

Submissions on behalf of the Petitioner

13. Mr. Shankar Raju, the learned counsel for the petitioner, contends that the Orders of the Disciplinary Authority as well as the Competent Authority were against the principles of natural justice as they failed to record any reason for the imposition of such a major penalty on the petitioner.

14. The learned counsel submitted that in the present case, not only were the principles of natural justice violated, but the evidence on record is also not legally acceptable.

15. The learned counsel pointed out that the petitioner was not granted a fair opportunity to defend himself as a Defence Assistance, who could have facilitated him in his defence, was not provided, though mandated by the Circular issued by the DG, CISF dated 15.01.2006 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ['CCS (CCA) Rules'].

16. The learned counsel further submitted that even a copy of the complaint was not furnished to the petitioner prior to the initiation of the proceedings. He submitted that it was only during the course of the Preliminary Hearing, that the complaint was made available to him.

17. The learned counsel for the petitioner contended that the procedure adopted by the Complaints Committee was fundamentally incorrect. While conceding that the strict provisions of the Indian Evidence Act, 1872 may not be applicable to departmental



proceedings, he submitted that the inquiry must nevertheless adhere to the foundational principles of natural justice. Placing reliance on the decision of the Supreme Court in **Roop Singh Negi v. Punjab National Bank & Ors.**, (2009) 2 SCC 570, he contended that the findings of the disciplinary authority must be based on some evidence that is legally admissible.

18. He contended that the Committee's formation itself became void, and that the Committee should have been prevented from proceeding, as the complainant during her cross-examination, explicitly denied having written any complaint against the petitioner. Thus, the very basis of constituting the Committee was bad in law.

19. He further submitted that the Complaint Committee acted in a pre-determined manner, failed to appreciate the evidence on record, and has taken into consideration extraneous matters, and proceeded under their assumption.

20. Moreover, he submitted that a copy of the Advice issued by the UPSC was not provided to the petitioner, which is a mandatory requirement before imposing a major penalty. Reliance in this regard was placed on **Union of India & Ors. v. R.P. Singh**, (2014) 7 SCC 340.

21. The learned counsel submitted that reasons are also to be given for rejecting the representation/appeal of the employee, which has not been done in the impugned order.

22. He, concluding his submissions, submitted that penalty awarded is disproportionate to the charge as proved against the petitioner.



Submissions on behalf of the Respondents

23. Ms. Anjana Gosain, the learned counsel for the respondents, while negating the submissions of the petitioner, urged that on 25.02.2008, during an inspection conducted by the Deputy Inspector General ('DIG'), the complainant had reported sexual harassment caused to her by the petitioner. She submitted that based on her complaint, a preliminary enquiry was conducted, wherein it was *prima facie* established that the petitioner had harassed the complainant by making telephone calls to her personal mobile phone from his office and residence.

24. She submitted that pursuant thereto, a Complaint Committee held a detailed enquiry into the allegations. The Committee, after examining the witnesses and affording the petitioner ample opportunity to defend himself, arrived at its findings that the charges against the petitioner had been substantiated.

25. The learned counsel further submitted that the UPSC meticulously reviewed the records of the case, including the proceedings conducted by the Complaint Committee, and duly advised the respondents about the punishment to be awarded. The Disciplinary Authority, after taking into account the advice tendered by the UPSC, imposed the appropriate penalty on the petitioner. The process was conducted in accordance with the applicable legal and procedural framework, ensuring fairness and due process. More so, the Competent Authority duly considered the Statutory Petition of the



petitioner based on the available evidence, thereby upholding the findings of the Disciplinary Authority.

26. According to the respondents, there is no merit in the petition.

Analysis and Findings

27. Having heard the learned counsel for the parties and carefully considering the same, and upon a perusal of the record, it is apposite to note that the petitioner has assailed the Impugned Order of dismissal not only on merits, but also on the ground of violation of the principles of natural justice, thereby leading to serious procedural lapses.

28. On merits, the learned counsel for the petitioner submitted that the complainant herself is an unreliable witness. During her cross-examination, the complainant stated that she had neither signed nor sent the complaint on the basis of which the Complaints Committee was constituted. Upon further questioning, she admitted that she had not even read the contents of the said complaint. The learned counsel contended that the discrepancies in the complainant's deposition cast a serious doubt on the veracity of her statement and indicate that the allegations were false.

29. He further submitted that although the complainant concurred with most parts of the complaint during her testimony, she denied the allegation that the petitioner used to make telephonic calls to her. Despite this denial, the Complaints Committee, without advertng to this material aspect of the evidence, proceeded to return a finding that the petitioner had made such calls to the complainant.



30. The learned counsel for the petitioner further contended that the complainant's deposition to the effect that she was harassed while being detailed as an office orderly under the petitioner, stands contradicted by the testimony of SI P.C. Sharma, who deposed that the complainant was neither deployed in the office nor for orderly duties.

31. It was also submitted that the complainant had alleged that in order to harass her, she was made to perform runner duties, however, in this regard, the learned counsel submitted that in the statement made by both SI K.P. Soman and SI R.M. Nair, they had stated that they had never seen the complainant being assigned or perform any such runner duties. The learned counsel also pointed out several other inconsistencies and contradictions in the evidence led during the inquiry, which, according to him, cumulatively undermine the credibility of the complainant's version and render the findings of the Complaints Committee untenable.

32. We may begin by noting the settled position of law, which is that this Court, in exercise of the power of judicial review in matters arising out of disciplinary proceedings, has a limited scope. This Court does not sit in appeal over the findings of the Disciplinary Authority, nor is it empowered to re-appreciate or reassess the evidence led in the inquiry. The Court may interfere only where it is shown that the decision-making process is vitiated by a patent error of law, procedural irregularity, or a manifest violation of the principles of natural justice, as is alleged to be the position in the present case.



33. With regards to the violation of principles of natural justice, the learned counsel for the petitioner submitted that the Complaints Committee acted in violation of not only the procedural safeguards contained in the CCS (CCA) Rules, but also of the Circular issued by the Director General, CISF, dated 15.01.2006. Paragraph 7(viii) of the said Circular clearly stipulates that while no Presenting Officer is to be appointed, a Defence Assistant has to be provided to the delinquent official, and that the remaining inquiry proceedings are to be conducted in accordance with the CCS (CCA) Rules. It was contended that in complete disregard of these provisions, the Committee failed to provide the petitioner with a Defence Assistant during the course of the inquiry. This, it was submitted, constitutes a clear violation of the principles of natural justice and vitiates the proceedings.

34. Refuting the aforesaid submission, the learned counsel for the respondents contended that there is no material on record to suggest that the petitioner had, at any stage, made a request for the appointment of a Defence Assistant. Consequently, there was no occasion for the Chairperson of the Complaints Committee to consider or reject the same. It was further submitted that had the petitioner sought the assistance of a Defence Assistant, the Complaints Committee, in accordance with the applicable rules, would have duly provided the same.

35. At this stage, it would be pertinent to note the decision of a Co-ordinate Bench of this Court in **Balwan Singh v. Union of India &**



Ors.,2013 SCC OnLine Del 3165, the relevant extract of which is reproduced as under:

“19. So far as the appointment of a defence assistant is concerned, it has been repeatedly held that the delinquent in disciplinary proceedings is required to be informed of his right to take help of another Government Servant before the commencement of the inquiry and a fair and reasonable opportunity to appoint one. ...”

36. This view was further reiterated by another Co-ordinate Bench of this Court in ***Shyamvir Singh Tyagi v. Union of India & Ors.***, 2024 SCC OnLine Del 5512, wherein it was held that the principles of natural justice require that a delinquent employee is informed of his right to seek the assistance of a defence representative during the course of an inquiry.

37. In the present case, there is a clear violation of not only paragraph 7(viii) of the aforesaid Circular but also of the fundamental principles of natural justice. It is well-settled that it is incumbent upon the Disciplinary Authority or, as in this case, the Complaint Committee to inform the charged official about his right to be assisted by a Defence Assistant during the course of the inquiry. Non-compliance with this mandatory safeguard, as envisaged under the said Circular as also the principles of natural justice, vitiates the inquiry proceedings.

38. Another submission made by the learned counsel for the petitioner was that a copy of the complaint forming the basis of the inquiry was not furnished to him prior to the initiation of the



proceedings. It was contended that the complaint was made available to him only during the course of the Preliminary Hearing, thereby depriving him of an adequate opportunity to prepare his defence.

39. In response thereto, the learned counsel for the respondents submitted that upon receipt of the Complaint, the Complaints Committee was duly constituted in accordance with the Vishaka guidelines laid down by the Supreme Court. It was further submitted that, as per the procedure prescribed in the said Circular, the Chairperson of the Complaint Committee is required, during the Preliminary Hearing, to provide the alleged officer with the gist of the complaint. In the present case, however, instead of furnishing the gist of the allegations, a copy of the complaint was supplied to the petitioner. Thus, it was submitted, there was no violation of the principles of natural justice.

40. The record indicates that a Board comprising of a Chairperson and 3 members initiated the inquiry against the petitioner on 08.07.2008. The petitioner was furnished a copy of the complaint on the same day, and was given some time to read the complaint and thereafter, the statement of the complainant was recorded on the same day itself. The petitioner cross-examined the complainant on 10.07.2008. During the inquiry, 10 prosecution witnesses and 16 defence witnesses were examined. Undoubtedly, the petitioner was not furnished a copy of the complaint or a copy of the list of witnesses before the inquiry commenced, thus, not making him adequately equipped with his defence in the inquiry proceedings.



41. The learned counsel for the petitioner further brought to the notice of this Court, the Office Memorandum dated 14.07.2016, to submit that before the petitioner could be heard on the punishment awarded, a copy of the advice of the UPSC, as relied upon by the Disciplinary Authority, must have been supplied to him in advance. In the absence of the same, he could not have defended himself on the question of the punishment, resulting in his dismissal from the service.

42. To appreciate the plea of the petitioner that non-supply of the copy of the advice of the UPSC has further violated the principles of natural justice, it would be apposite to refer to the said OM, which is reproduced herein below:

“Undersigned is directed to refer to the Department of Personnel and Training OM No. F. No. 11012/8/2011-Estt.(A) dated the 19th November, 2014 on the above subject and to say that Hon’ble Supreme Court had in Union Of India &Ors vs S.K. Kapoor, 2011 (4) SCC 589 decided that where the advice of the Union Public Service Commission is relied upon by the Disciplinary Authority, then a copy of the same must be supplied in advance to the concerned employee.

3. Representations received from Government servants against penalty in such cases may be dealt with in the following manner. Cases decided before the date of this judgement, i.e., 16th March, 2011 need not be reopened. In cases decided after 16th March 2011, where a penalty was imposed after relying upon the advice of UPSC, but where a copy of such advice was not given to the Charged Officer before the decision, the penalty may be set aside and inquiry taken up from the stage of supply of copy of the advice of UPSC.”



43. We may note that at the relevant time when the punishment was imposed, the judgment of the Supreme Court in ***Union of India v. T.V. Patel***, (2007) 4 SCC 785, was holding the field, which had held that it is not necessary to supply the copy of the advice tendered by the UPSC/PSC to the Delinquent Officer before imposing the penalty. The judgment of the Supreme Court in ***T.V. Patel*** (supra) was, however, held to be *per incuriam* by the subsequent judgment of the Supreme Court in ***Union of India v. S.K. Kapoor***, (2011) 4 SCC 589, and also in ***R.P. Singh*** (supra). It is for this reason that that OM dated 14.07.2016, relied upon by the petitioner himself, states that cases decided prior to the judgment in ***S.K. Kapoor*** (supra) need not be reopened.

44. In the present case, therefore, it was not mandatory for a copy of the advice received from the UPSC to have been supplied to the petitioner prior to the passing of the Impugned Orders in order to give the petitioner an opportunity to make submissions against the proposed penalty before it was formally imposed. Nonetheless, the same would have been the more appropriate approach; to have provided the petitioner with an opportunity of being heard prior to imposition of the major penalty of dismissal from service.

45. In view of the above, we find that there has been violation of the principles of natural justice, however, we would not delve deeper into the merits of the submissions raised by the petitioner, specifically as the petitioner would have superannuated in the year 2014 if he was



not removed from service with effect from 14.01.2010, and a period of over fifteen years has elapsed since then.

46. Therefore, another important issue that now requires determination is whether the petitioner can, at this stage, be directed to be re-instated in service by the respondents.

47. Generally, upon setting aside of the Impugned Order, the relief of reinstatement would have followed, else, the order would be quashed and the matter would be remanded back to the concerned authority for a *de novo* inquiry. In the facts of the present case, however, such an approach, would serve no purpose. In the instant case, because of the long time lag and other supervening circumstances, coupled with the fact that the past record of the petitioner remained unblemished except for a ‘warning’ being issued to him in the year 1991, it would be unfair and harsh to direct a fresh inquiry or for a fresh order to be passed by the Competent Authority. More importantly, the petitioner has made subsequent prayers *vide* written synopsis dated 04.04.2024, which are as under:

- “1. Convert the penalty of removal to compulsory retirement with retiral benefits as penalty being excess and disproportionate after 34 years service of the Petitioner.*
- 2. Compensation of Rs. 50,00,000/- inclusive of leave encashment.*
- 3. Quash the D.A & A.A orders and treat the Petitioner as deemed suspended from 14.01.2010 to 2014 with arrears with liberty to the petitioner to represent against UPSC advice and thereafter D.A to pass fresh order as per CCS(Pension) Rules, 1972.”*



48. From a reading of the above, what emerges is that the petitioner would be satisfied if the penalty of 'Removal from Service' is converted to that of the 'Compulsory Retirement' with all due retiral benefits accruing to him.

49. In the facts and circumstances of the present case, in our view, the ends of justice will, therefore, would be met by directing that the petitioner be treated to be in service till 14.01.2010, after which he will stand compulsorily retired from 14.01.2010, with full pensionary benefits. This course of action is also acceptable to the petitioner, as is evident from his written synopsis dated 04.04.2024. Let the exercise in terms of this order be carried out within a period of 8 weeks.

50. As far as the alternate prayer of the petitioner for award of compensation, in the facts of the present case, where the Impugned Order is being set aside only because of the technical infractions by the respondent in the inquiry proceedings, we do find any merit in the same. The same is accordingly rejected.

51. The writ petition is disposed of in the above terms.

SHALINDER KAUR, J

NAVIN CHAWLA, J

APRIL 24, 2025/kp/sk