

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

% Judgment Reserved on : 4th January, 2011
Judgment delivered on : 12th January, 2011

+ **W.P.(C) 4838/1993**

MALKHAN SINGH Petitioner
Through: Mr. Shyam Babu, Advocate

versus

UNION OF INDIA. Respondent
Through: Mr. Neeraj Chaudhary and Mr. Mohit
Auluck, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SURESH KAIT, J.

1. Alleging that the petitioner claimed reimbursement for stated medical expenses and in respect whereof furnished false medical documents during the period 15.03.1989 to 22.02.1992 in sum of ₹ 6281.40 a memorandum of charge was issued on 25.04.1992 by the Deputy Commandant CISF Unit, NFL Bhatinda. In response to the said memorandum the petitioner filed a reply denying the charge.

2. Considering the reply filed by the petitioner and finding the same inadequate, the Group Commandant appointed Sh.G.P.Rathore, Deputy Commandant CISF Unit Sawer Mines, Udaipur as the Enquiry Officer vide order dated 02.07.1990.

3. During inquiry the Enquiry Officer recorded statement of five prosecution witnesses, all of whom were

cross-examined by the petitioner. Defence statement of the petitioner was also recorded.

4. The petitioner had not denied receiving ₹ 6281.40 under 16 medical bills furnished by him and supported by the prescriptions of Dr.P.L.Sharma, Dr.M.M.Mathur, Dr.D.P.Sharma and Dr.S.N.Sharma, all of whom were examined during inquiry and all of whom denied having issued the prescriptions relied upon by the petitioner.

5. Petitioner filed an application before the inquiry officer praying that the chemist(s) from whom he had purchased the medicines and had obtained receipt be summoned and their evidence recorded; which application was dismissed holding that there was no necessity to summon said chemist(s).

6. Taking into consideration all the material facts proved by the prosecution as well as documentary evidence made available, the Enquiry Officer came to the conclusion that charge framed against the petitioner stands proved beyond doubt.

7. Furnishing a copy of the inquiry report to the petitioner and considering his reply and rejecting the same, vide order dated 16.12.1992 the disciplinary authority passed the penalty of "dismissal from service" upon the petitioner.

8. The petitioner preferred an appeal against the final order dated 16.12.1992 which was dismissed by the appellate authority vide order dated 23.04.1993 which reads as under:-

(i) Petitioner while working in CISF unit Zawar Mines Hindustan Zinc Limited , Udaipur got treated himself and his family members w.e.f. 15.03.1989 to 22.02.1992 through medical reimbursement application with the ill intention of earning money fraudulently from Hindustan Zinc Limited.

(ii) According to the petitioner in the charge-sheet

claiming of false please have been leveled against him but in the statement of allegation it is stated that he has not got any treatment, therefore, this is a contrary to charge and statement of allegation.

(iv) The appellate authority has considered enquiry report that the most of the bills were issued by Raj Ayurvedic Medical Store who is famous for such acts. Though the petitioner made an application before the Enquiry Officer to call for the original bills from the aforesaid medical store but the same was not considered on the ground that the petitioner submitted bills, prescription slips, there was no reference of the dates in the OPD register.

The appellate authority was of the view that there was no need of handwriting expert opinion with regard to the verification of Doctor's signatures. If the petitioner had any doubt on doctor's statement or on their signatures, he was duty bound to produce proof in that regard.

All the documents demanded by him were supplied by the Enquiry Officer. The Enquiry has been conducted according to the rules and sufficient opportunities have been afforded to the petitioner for his defence. Accordingly, the appellate authority confirmed the order of the Disciplinary Authority.

The counsel for the petitioner has raised legal issue that Deputy Commandant who issued the charge-sheet was not competent under Section 34 of CISF.

9. Three submissions were urged at the hearing of the writ petition. It was firstly urged that the Dy. Commandant could not issue the charge sheet as he was not the disciplinary authority and that it was only the commandant who could act as the Disciplinary Authority. Second contention urged was that by not permitting the chemist(s) whose receipts were filed by the petitioner to obtain medical reimbursement the Inquiry Officer had denied the petitioner a fair opportunity to make good the defence. Lastly it was urged that the findings returned by the Inquiry Officer are without any reasons.

10. The first plea requires this Court to look at Rule 29A Rule 31 and Rule 34 of the CISF Rules 1969 and Schedule II thereto.

11. Rule 29A reads as under:-

“Rule 29A.Disciplinary Authority:-The disciplinary authority in respect of a member of the force for the purpose of imposing any particular penalty or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule II under whose administration control of the member is serving and shall include any authority mentioned in the said Schedule superior to such authority.”

12. Rule 31 reads as under:-

“31.Nature of penalties:- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely—

(a) Dismissal

(b) Removal

(c) Compulsory retirement

(d) Reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time-scale of pay;

(e) Withholding of increment or promotion

(f) Removal from any office of distinction or deprivation of special emolument;

(g) Fine to any amount not exceeding 7 days's pay;

(h) Censure

13. Rule 34 reads as under:-

“34.Procedure for imposing major penalties:-

(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850), no order imposing on a member of the force any of the penalties specified in Clause (a) to (d) of rule 31 shall be passed except after an inquiry held as for as may be in the manner hereinafter provided.

(2) The disciplinary authority shall frame definite charges on basis of the allegation on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the member to the force and he shall be required to submit, within such times as may be specified by the

disciplinary authority a written statement on his defence and also to state whether he desires to be heard in person.”

Explanation:- *In this Sub-rule and sub-rule (3) the expression “the disciplinary authority” shall include the authority competent under these rules to impose upon the member of the Force any of the penalty specified in clauses (e) to (h) rule 31.*

(3)
(4)
(5)
(6)
(7)
(8)
(9)
(10)
(11)”

14. As per Schedule II the Disciplinary Authority listed pertaining to orders relating to dismissal, removal and compulsory retirement is Commandant and pertaining to reduction of pay, grade or rank, withholding increment or promotion or censure the Disciplinary Authority is Commandant as well as Deputy Commandant.

15. As per Rule 31 penalty envisaged under Clause (a), (b) and (c) has obviously to be inflicted by the Commandant for the Commandant would be the Disciplinary Authority to levy said penalties. But, the question arises whether the charge sheet should also emanate from him.

16. Relevant would it be to note that the procedure for imposing major penalties is provided by Rule 34 and it envisages that no penalty contemplated by clauses (a) to (d) of Rule 31 can be levied except after an inquiry is held, which as per sub-rule (2) of Rule 34 has to be pursuant to definite charges communicated in writing to the member of the Force

by the Disciplinary Authority and as per the explanation to sub-rule (2) of Rule 34, for the purposes of sub-rule (2) as also sub-rule (3) the Disciplinary Authority includes the authority competent to impose penalties specified under clause (e) to (h) of Rule 31 and thus it is apparent that the rules contemplate a Disciplinary Authority for the purposes of framing a charge and a Disciplinary Authority for the purposes of levy of penalty and the two can be different. Suffice would it be to note that as per Schedule II penalties envisaged by clause (e) to (h) of Rule 31 can be levied by the Deputy Commandant and thus it is apparent that by virtue of the explanation aforementioned the Deputy Commandant would be the authority competent to frame the charge sheet.

17. Thus, the first contention urged is of no use to the petitioner.

18. As regards the second contention urged it is to be noted that the four doctors on the strength of whose medical prescription the petitioner claimed to have purchased medicine from various chemists have denied before the Inquiry Officer of having issued the prescriptions and thus it did not matter whether the chemist would support the receipt or the bills issued by them. Thus, no prejudice is caused by not examining the chemists concerned. If the prescriptions, which were the basis on which medicines could be purchased were proved to be fabricated that was the end of the matter.

19. As regards the third plea, it may be noted that the Inquiry Officer has discussed the evidence very elaborately and has highlighted the features of the facts proved by the prosecution witnesses with reference to the statement of the four doctors followed by noting the defence statement.

Thereafter the admitted facts have been enumerated as also the disputed facts. While discussing the admitted and the disputed facts the Inquiry Officer has analyzed the evidence and at the end under the caption 'Findings' has concluded that the charge stands proved. Learned counsel for the petitioner kept on labouring that what is penned under the caption 'Findings' is without reasons ignoring that under the caption 'Findings' conclusions have been recorded and the reasoning is in the preceding 3 paragraphs. It hardly matters what the caption is. As long as reasons are to be found it would be sufficient compliance with law.

20. The writ petition is accordingly dismissed. But we refrain from imposing cost since the petitioner is without a job.

**(SURESH KAIT)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**JANUARY 12, 2010
'mr'**