

**(2011) 12 CAL CK 0080**

**Calcutta High Court**

**Case No:** Writ Petition No. 11362 (w) of 2010

M. Kamaruzzaman

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Dec. 16, 2011

**Acts Referred:**

- Central Industrial Security Force Rules, 2001 - Rule 19, 34, 36, 36(11), 36(19)

**Hon'ble Judges:** Harish Tandon, J

**Bench:** Single Bench

**Advocate:** K.B.S. Mahapatra, Mr. Moloy Basu and Mr. Gakul Chandra Chakraborty, for the Appellant; Gopa Roy For UOI, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Harish Tandon, J.

The petitioner in this writ petition has assailed the order of the disciplinary authority dated 14.11.2009 by inflicting the punishment of removal from service with immediate effect which was affirmed by the appellate and revising authorities by order dated 05.02.2010 and 16.04.2010 respectively.

2. The short facts which are necessary for the present purposes are that the petitioner, an employee under the Central Industrial Security Force (for short CISF) was posted at CISF Unit, Kolkata Port Trust at the relevant time. The petitioner has been suspended as during the surprise visit on 14.05.2009, he was found in possession of 7 pieces of cloths for which he could not satisfactorily accounted for. The petitioner submitted his statement on 14.05.2009 pleading his guilty but subsequently filed further statement on 15.05.2009, on the score that the said statement should not be considered as has been done under tremendous pressure and mental agony. The petitioner was put under suspension with effect from 14.05.2009. The Enquiry Authority framed the article of charge and the statement of imputations of misconduct or misbehaviour together with the list of documents and

witnesses and served the same upon the petitioner inviting his statement against the said charge. The witnesses on behalf of the prosecution deposed and were cross-examined by the petitioner. The Presenting Officer, thereafter, submitted his finding to the inquiry officer who afforded an opportunity to the petitioner to give reply to the said finding. Ultimately, after considering the finding of the presenting officer and the reply of the petitioner, the inquiry officer found that the charge against the petitioner is proved and forwarded his report to the disciplinary authority for further action. The disciplinary authority after giving an opportunity to the petitioner to make further representation and/or submission against the report of the inquiry officer found the petitioner a guilty of misconduct having violated the prescribed standing operation procedure and inflicted the penalty of removal from service with immediate effect.

3. The appellate and revising authorities also did not interfere with the said order of the disciplinary authority and merely affirms an order inflicted the punishment of removal from service.

4. Mr. Moloy Kumar Basu, the learned Advocate appearing for the petitioner attacked the decision of the disciplinary authority, appellate and revising authorities in contending that the employee cannot be punished on the charge which is not included in the article of charges. He further submits that if the disciplinary authority decided to hold an inquiry by appointing an enquiry officer then the enquiry officer after complying the provisions contained under Rule 36 of the Central Industrial Security Force Rules 2001 shall return the finding of guilty in respect of those article of charge for which the enrolled member of the force is found guilty under Sub Rule 19 of the said rule. He contends that there is no statutory rule which provides that the enrolled member of the force should keep Rs. 20/- Only while on duty. He further contends that even if there is any executive instruction, the same has no statutory force and relies upon a judgment of the Supreme Court in case of [Moni Shankar Vs. Union of India \(UOI\) and Another](#), He vehemently submits that the enquiry officer cannot take into consideration any fact which does not relate to the article of charge and also cannot shift the burden of proof, by placing reliance upon a judgment of the Supreme Court in case of [M.V. Bijlani Vs. Union of India \(UOI\) and Others](#), .

5. By submitting that the enquiry officer acted both as the enquiry authority as well as the presenting authority and thus have acted both as the prosecutor and the judge, he placed reliance upon unreported judgment of the Single Bench of this court in case of R.K. Sharma Vs. Union of India and Ors. , W.P. 11903 (w) of 2006 decided on 11.03.2011.

6. Mrs. Gopa Roy, learned Advocate appearing for the respondents submits that the petitioner is a enrolled member of Central Industrial Security Force which is a disciplined organization and was caught red handed having possessed 7 pieces of new cloths and as such the authorities have inflicted a major penalty in the form of

removal from service. She further submits that the petitioner was afforded the reasonable opportunity to defend and thus cannot take a stand as to the violation of principle of natural justice. She submits that the Writ Court should not interfere with the order passed in a departmental proceeding, unless a case is made out that such finding has been arrived on the basis of no evidence.

7. Having considered the respective submissions of the parties, before dealing the same, it would be profitable to quote Rule 36 of the Central Industrial Security Force Rules, 2001 which reads thus:

36. 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 an enrolled member of the force any of the penalties as specified in clauses (I) to (v) of Rule 34 shall be made except after an inquiry held, as far as may be, in the manner hereinafter provided.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an authority to inquire into the truth thereof.

(3) Where it is proposed to hold an inquiry against an enrolled member of the Force under this rule the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the enrolled member of the Force,

(b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the enrolled member of the Force a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the enrolled member of the force to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority not below the rank of Inspector for the purpose, and where all the articles of the charge have been admitted by the enrolled member of the Force in his written statement of

defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall pass an order in the manner laid down in sub-rules (20) to (22).

(b) If no written statement of defence is submitted by the enrolled member of the Force, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the Inquiring Authority, forward to the inquiring authority-

(i) A copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) A copy of the written statement of defence, in any, submitted by the enrolled member of the Force;

(iii) A copy of the statement of witnesses, if any, referred to in sub-rule(3);

(iv) Evidence proving the delivery of the documents referred to in sub-rule (3) to the enrolled member of the Force;

(v) A copy of the order appointing the Presenting Officer.

(7) The enrolled member of the Force shall appear in person before the inquiring authority on such day and at such time and place, within ten working days from the date of receipt by him of the article of charge and the statement of imputation of misconduct or misbehaviour as the inquiring authority may, by notice in writing, specify in this behalf or within such further time, not exceeding ten days as the inquiring authority may allow.

(8) (a) The enrolled member of the Force so charged may be permitted by the inquiring authority to present his case with the assistance of any other member of the Force posted at the place of inquiry. He will give three choices for his defence assistance and the controlling officer will depute any one of the three indicated by him.

(b) The member of the Force cannot have more than three cases in hand in which he is rendering defence assistance. However, the controlling authority of such person who is sought to be engaged may refuse permission for his working as defence assistant if the public interest so demands.

(9) If the enrolled member of the Force who has not admitted any of the article of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the enrolled member of the Force thereon.

(10) (a) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the enrolled member of the Force pleads guilty;

(b) The Inquiring Authority shall, if the enrolled member of the Force fails to appear within the specified time or refuses or omits to plead, require the presenting officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the enrolled member of the Force may, for the purpose of preparing his defence-

(i) Inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule(3);

(ii) Submit a list of witnesses to be examined on his behalf;

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow, for the discovery or production of any documents which are in the possession of government but not mentioned in the list referred to in sub-rule (3).

(11) The Inquiring authority shall, on receipt of the notice for the discovery or production of documents forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

provided that the Inquiring Authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(12) On receipt of the requisition referred to in sub-rule (11), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the enrolled member of the Force and withdraw the requisition made by it for the production or

discovery of documents.

(13) \*\*\*\*\*

(14) \*\*\*\*\*

(15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witness shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the enrolled member of the Force. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(16) If it shall appear necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to Produce evidence not included in the list given to the enrolled member of the Force or may itself call for new evidence or recall and re-examine any witness and in such case the enrolled member of the Force shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The Inquiring Authority shall give the enrolled member of the Force an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the enrolled member of the Force to produce new evidence, if it is of the opinion that the production of such evidence is necessary, if the interests of justice.

Note.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(17) when the case for the Disciplinary Authority is close, the enrolled member of the Force shall be required to state his defence, orally or in writing as he may prefer. If the defence is made orally it shall be recorded, and the enrolled member of the Force shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the presenting Officer, if any appointed.

(18) (a) The evidence on behalf of the enrolled member of the Force shall then be produced. The enrolled member of the Force may examine himself in his own behalf if he so prefers. The witnesses produced by the enrolled member of the Force shall then be examined and shall be liable to cross-examination, re-examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority

(b) The Inquiring Authority may, after the enrolled member of the Force closes, his case, and shall, if the enrolled member of the Force has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the enrolled member of the Force to explain any circumstances appearing in the evidence against him.

(c) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the enrolled member of the Force, or permit them to file written briefs of their respective case, if they so desire.

(d) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in any inquiry ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(e) if the enrolled member of the Force to whom a copy of the articles of charge has been delivered, does not submit written statement on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiring Authority may hold the Inquiry ex-parte.

(19) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the enrolled member in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons thereof.

(ii) the inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of enquiry which shall include

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the enrolled member;

(c) the oral and documentary evidence produced in the course of inquiry;

(d) written brief, if any, filed by the enrolled member or the presenting officer during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiry authority in regard to the enquiry.

(20) (i) Where a disciplinary authority competent to impose any of the minor penalties and not competent to impose any of the major penalties specified in rule 34 has itself inquired into or cause to be inquired into the articles of any charge and that authority having regard to his own finding or having regard to his decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the major penalty specified in rule 34 should be imposed upon the enrolled member, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose any of the major penalties.

(ii) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may remit the case to the disciplinary authority from whom the records were forwarded or the inquiring authority, as the case may be, for further inquiry and report on any point.

(21) (i) the disciplinary authority, if it is not itself the inquiry authority, may consider the records of inquiry and record its findings on each charge. The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiry authority shall thereupon proceed to hold the further inquiry according to the provisions of this rule as far as may be.

(ii) the disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(iii) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with reasons for disagreement, if any, and record its own findings on any article of charge, to the enrolled member of the Force who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days irrespective of whether the report is favourable or not to the enrolled member of the Force.

(iv) The Disciplinary Authority shall consider the representation, if any, submitted by the enrolled member of the Force before proceeding further in the manner as provided in sub-rule (22) of Rule 36.

(22) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties specified in rule

34 should be imposed on the enrolled member, it shall, notwithstanding anything contained in rule 37, make an order imposing such penalty.

(ii) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of evidence adduced during the course of inquiry, is of the opinion that any of the major penalties specified in rule 34 should be imposed on the enrolled member, it shall make an order imposing such penalties and it shall not be necessary to give the enrolled member any opportunity of making representation on the penalty proposed to be imposed.

8. Admittedly, the petitioner who being the enrolled member of the force was proceeded with the departmental proceeding on the alleged misconduct and/or misbehaviour. The case of the CISF is that the petitioner was posted at CISF Unit, Kolkata Port Trust and was found to have possessed 7 pieces of clothes in the surprise checking. Initially the petitioner pleaded guilty but subsequently made further representation and/or statement by denying the allegations with the further prayer for withdrawal of the said statement pleading guilty, for being made under mental stress and agony.

9. From the perusal of the Rule 36 of the CISF Rules, the disciplinary authority has been conferred power to investigate and/or enquire itself or the said disciplinary authority may appoint the enquiry authority for holding an enquiry and may also appoint a presenting officer to present the case in support of the articles of charge. In the instant case, the disciplinary authority while appointing the enquiry authority had also appointed the presenting officer which would be evident from the brief note of statements and/or findings submitted by the presenting officer to the enquiry authority being Annexure-P6 to the writ petition. The Inquiry Authority, thereafter, permitted the petitioner to file reply to the finding and/or brief note submitted by the presenting officer which duly availed of. Therefore, it cannot be said that the enquiry authority acted both as the prosecutor and the judge in absence of the presenting officer. Thus the judgment of the single bench in case of R.K. Sharma (supra) relied upon by the petitioner has no manner of applicability in the instant case as in the said case, the enquiry authority acted as the prosecutor as well as the judge in absence of presenting officer.

10. Rule 36(19) of CISF Rules postulate that after the conclusion of enquiry, the enquiry authority shall prepare the report which should contain the articles of charge and the statement of imputations of misconduct or misbehaviour, the defence of enrolled member in respect of each article of charge, and assessment of evidence in respect of each article of charge and its finding and reasons thereof.

11. According to the petitioner, the article of charge as framed under Sub Rule 3 of Rule 36 of CISF Rules contains an allegation of possession of 7 pieces of clothes and does not contain any charge of possessing Rs. 50/- which the petitioner received as reward from the peas loading supervisor.

12. It is undisputed that there is only one article of charge framed by the disciplinary authority and the enquiry was conducted on the basis thereof. It would be material to place that the petitioner took the defence that he purchased the said 7 clothes from one of the porter and/or labourer who brought the same from the Metiabruz where the cloths are sold at the cheaper rate, as his wife is engaged in a tailoring and/or sewing business. It is a specific stand of the petitioner that the said clothes were purchased at the price of Rs. 50/- which he received as reward from the peas loading supervisor. Such statement was submitted by the petitioner on 15.05.2009 whereas the disciplinary authority drew the proceeding on 16.06.2009 by framing a definite and distinct article of charge which reads thus:

No. 912240057 Constable M Kamaruzzaman of "B" coy of CISF Unit KoPT Kolkata was detailed for "A" shift duty at West Container Yard and Shed No. 08 & 10 from 05.00 hrs to 13.00 hrs on 14.05.2009. At about 12.55 hrs during surprise checking of the area by Shri R K Vaish, Dy Commandant and Insp/Exe A K Jha, I/C CIW Constable M Kamaruzzaman was found keeping a plastic bag in his hand. On being asked about the bag by the Dy Commandant and I/C CIW, he could not give any satisfactory reply. Immediately his bag was checked by Insp/Exe A K Jha and found 07 (seven) pieces of new cloth ( 04 Nos. of pant piece and 03 Nos. of shirt piece) kept concealed in the bag along with one folding umbrella. In this connection a GD entry vide No. 301 dated 14.05.2009 has been made and a detail report dated 14.05.09 has been sent by the Coy Commander "B" Coy together with a seizure memo dated 14.05.09.

Thereby, No. 912240057 Constable M Kamaruzzaman committed an act amounts to clear violation of prescribed standing operation procedure for the said duty post gross indiscipline and unbecoming of member of a disciplined force. Hence, the charge.

13. The entire enquiry was conducted on the basis of the said article of charge and not on the basis of the misconduct of the petitioner for receiving a reward of Rs. 50/- from the peas loading supervisor which would be evident from the finding recorded by the enquiry officer which reads thus:

In course of Area checking DC Shri R.K. Varish, PW-I reached West Container Yard (KPD-1) on 14.05.09 at 1255 hrs and found charged official No. 912240057 M Kamaruzzaman standing with a plastic bag. On interrogation charged official in reply stated "Rain Coat" but on checking it was revealed that he was in possession of 07 pieces of New Cloth unauthorisedly (4 Pant Pcs and 03 Shirt Pcs) which is corroborated with the statement of IN sp/Exe. A K Jha (PW-III) since he was accompanying DC Shri R K Vaish while he was on area checking on 14.05.09 after a meeting with KoPT Officials on security matter. Mean while, AC Shri N C Choudhury, Sector Commander (PW-II), Insp/Exe. A K Singh, Coy Commander "B" Coy (PW-IV) and SI/xe. Harpal Singh, 2I/c (PW-VII) along with Insp/Exe A K Singh, reported to West Container Yard, KPD-I at about 1300 hrs after receiving phone call from DC

Shri R K Vaish and Insp/Exe A K Jha, IC CIW respectively and found charged official No. 912240057 Constable M Kamaruzzaman standing with a plastic bag which contains 07 piece of new cloths ( 4 pant pcs and 3 shirt pcs). Since, charged official was in possession of unauthorised articles which clearly violates the standing operation procedure (PW-V/Ex-P/14), he was taken to CIW office and a seizure list was prepared (PW-III/Ex P-4) in which aforesaid GOs and SOs put their signature as a witness. Insp/Exe A K Jha prepared the seizure list and obtained the signature of the charged official, deposited the seized items (07 Pieces of cloths) in CIW office as confiscated from charged official No. 912240057 Const M Kamaruzzaman after obtaining signature in each and every pieces of cloth as per procedure. Charged official No. 912240057 Constable M Kamaruzzaman given his confession (initial) statement in Bengali which was translated by Const Sushant Saha (PW-VIII) and recorded by SI/Exe. Sanjeev Kumar duty officer gate No. 2 (KPD-I) PW-VI in presence of Shift I/c LSI/Exe. Asha Dhar (PW-V) who put their signature on the said statement witnesses and stated in their deposition the same thing which was corroborated each other. Charged Serial No. 912240057 Const M Kamruzzaman in his initial statement dated 14.05.09 clearly deposed that he purchased the cloths from a laborers, and paid Rs. 50/- only because as per standing order he had only Rs. 20/- as pocket money while mounted on duty (PW-V/Ex:P-1). He collected Rs. 50/- from peas loading supervisor as a reward according to him. The above fact is corroborated with the statement of PW-I, PW-II, PW-III, PW-IV, PW-V, PW-VI and PW-VII. Moreover, during the course of enquiry the charged official on his defence statement stated in reply to question No. 06 that he informed about his mental agony to Insp/Exe A K Singh PW-IV and if so why he has not confirmed the same from PW-IV during cross examination by him. Therefore, it is crystal clear that the charged official was well awarded about his initial statement and did not ask any question about his mental agony to PW-IV during cross-examination by him to avoid the truth. In view of the above facts and material evidence held on record it is clearly established that No. 912240057 Constable M Kamaruzzaman while posted at "B" Coy of CISF Unit KoPT Kolkata was detailed for "A" shift duty from 0500 hrs. To 1300 hrs on 14.05.09 at West Container yard and Shed No. 8 & 10. During surprise checking by Shri R K Vaish Dy, Commandant and Insp/Exe A K Jha I/C CIW at about 1255 hrs, he was found having 07 pieces of new clothes (04 pant pieces and 03 shirt pieces) unauthorizedly in his possession which amounts to clear violation of prescribed standing operation procedure for the said duty post, gross indiscipline and unbecoming of member of a disciplined force. Hence, the article of charge framed against No. 912240057 Constable M Kamaruzzaman stands PROVED.

14. The disciplinary authority while inflicting the punishment of removal from service proceeded not only on the basis of the article of charge initially framed but on other allegations for which the article of charge was never framed. On the perusal of the order of the disciplinary authority, it is noted that the disciplinary authority found the petitioner to have guilty of an act of gross indiscipline and/or

violating the prescribed standing operation procedure as well as indulged in malpractice by taking money from peas loading supervisor.

15. The disciplinary authority cannot charge the enrolled member of the force on any other misconduct and/or misbehaviour de hors the article of charge. The charges relating to the violation of the prescribed standing operation procedure, acting in gross indiscipline and unbecoming the member of the disciplined force and receiving an honorarium from a peas loading supervisor were never framed and/or included in article of charge. In absence of any charge as aforesaid the delinquent cannot be punished and/or penalised.

16. In this regard the reference is made to the judgment of the Apex Court rendered in case of M.V. Bijlani (supra) where the Supreme Court held:

It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

17. There is another aspect of the matter as has been noticed that the appellate and the revising authorities have simply concurred with the decision of the disciplinary authority without making its independent finding.

18. Rule 46 of the CISF Rules provides for an appeal against the order passed by the disciplinary authority, whereas Rule 52 of the said rules postulates the parameters for consideration of such appeal which requires that the appellate authority shall consider whether the order of removal from service has been passed in compliance of the procedure laid down in the said rules or the finding of the disciplinary authority is on the basis of the evidence on record or the penalty imposed, is excessive or adequate either while affirming, confirming and/or setting aside the penalty.

19. As notice from the order passed by the appellate authority one can have an inescapable impression that the same has been passed in mechanical and routine manner without having any independent reasoning and/or finding. It would be trite to court the ultimate finding of the appeal arrived by the appellate authority in the said order which reads thus:

I have carefully considered the appeal preferred by the appellant, the departmental proceeding files, findings of the Enquiry Officer and other related documents held on record and I have applied my mind to the case. I find that the Article of charge leveled against the appellant was held proved on the basis of overwhelming evidence held on record. The Enquiry Officer had conducted the enquiry in a fair and judicious manner and afforded him all reasonable opportunities to rebut the adverse evidence and to submit sufficient material in support of his defence. He, however, failed to do so. There is also no material irregularity or miscarriage of justice in this case. The disciplinary Authority has passed the Final Order after considering all aspects of the case held on records and awarded the penalty of "Removal from service" to the appellant vide Final Order No. V-15014/Maj-5/Disc/AMK/8235 dated 14-11-09 for having 07 pieces of new cloths (04 Pant pieces and 03 shirt pieces) unauthorisedly in his possession. The appellant has not come up with any cogent and logical reason that warrants consideration. Many other pleas put-forth by the appellant in his appeal do not have any merit.

20. Thus the appellate authority has not recorded its independent finding and has put its rubber stamp while concurring with the order passed by the disciplinary authority.

21. As indicated above, the disciplinary authority have inflicted the punishment of removal from service on the basis of the allegations for which no definite articles of charge was framed and thus the order passed is not sustainable.

22. Thus, the order passed by the disciplinary authority as well as appellate authority and revisioning authority are hereby quashed and set aside.

23. Since the enquiry authority has restricted its finding on the article of charge framed by it, it would not be proper to quash and set aside the entire disciplinary proceeding. The disciplinary authority is directed to make a denovo enquiry and the entire exercise shall be completed within 10 weeks from the date of the communications of this order.

24. The writ petition is allowed.

25. However, there shall be no order as to costs.

26. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.