

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10686 OF 2017**

**UNION OF INDIA THROUGH SECRETARY  
MINISTRY OF HOME AFFAIRS & ORS.**

**Appellant(s)**

**VERSUS**

**EX. CONST. SANJAY KUMAR DUBEY**

**Respondent(s)**

**W I T H**

**CIVIL APPEAL NO. 10687 OF 2017**

**O R D E R**

Heard Mr. K. Parameshwar, learned counsel appearing for the appellants. Also heard Mr. Mohan Kumar, learned counsel appearing for the respondent (in Civil Appeal No. 10686 of 2017). The respondent (in Civil Appeal No. 10687 of 2017) was unrepresented and accordingly Mr. Venkata Krishna Kunduru, learned counsel has made submissions on his behalf as the Amicus Curiae.

2. These two appeals arise out of a common judgment and order dated 18.03.2016 of the High Court of Delhi whereunder the learned Judge while upholding the finding on the misconduct of the two respondents herein opined that it arose out of a near spontaneous altercation and fistfight. It was accordingly observed that the misconduct is not so serious as to warrant removal/dismissal of the two delinquents CISF constables. The Court then substituted the penalty in both cases by ordering for withholding of three increments with cumulative effect. It was also ordered that the respondents shall not be entitled to count the period out of

employment for the purposes of service benefits and the such period would be treated as dies non.

3. The respondents at the relevant time were posted as CISF Constables at the IGI Airport, New Delhi. On 04.10.2009, respondent-Sanjay Kumar Dubey was detailed on day shift duty from 0700 hours to 2000 hours and the respondent-Rajesh Kumar Patel was detailed for night shift duty from 2000 hours to 0700 hours. During the shift change, both met at the duty station and because of some domestic incident in their living quarters, both indulged in exchange of words and also scuffled with each other. During the squabble, respondent-Rajesh Kumar Patel gave blows to the respondent-Sanjay Kumar Dubey when Sanjay Kumar Dubey took out his loaded pistol from the Holster in a threatening manner. At that stage the colleagues and superiors intervened, preventing any further blow up.

4. For the incident in question, a preliminary enquiry was conducted by the Deputy Commandant. Subsequently, by invoking the special procedure and dispensing with enquiry under Rule 39(ii) of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the "CISF Rules"), the respondents were dismissed from service.

5. When the dismissal orders were challenged through separate writ petitions, the High Court set aside those but granted liberty to the CISF to conduct inquiries, after chargesheeting the delinquents.

6. The respondents were then reinstated in service but were placed under suspension and departmental inquiries were initiated against them. In the Civil Appeal No. 10686 of 2017 relating to Sanjay Kumar Dubey, the testimony of PW-1, PW-2, PW-3, PW-4 and PW-5 were considered relevant. In the Civil Appeal No. 10687 of 2017, the testimony of the same set of witnesses were relied upon and the enquiry officer concluded that misconduct was proved against both delinquents. Thereafter, the respondents were dismissed from service imposing a major penalty, under Section 34 of the CISF Rules.

7. The Appeals and the Revisions preferred by the dismissed CISF Constables were answered in the negative which led to the delinquents again approaching the High Court by filing WP(C) No. 6289 of 2013 by Sanjay Kumar Dubey and WP(C) No. 9219 of 2014 by Rajesh Kumar Patel. As earlier noted, under the common judgment dated 18.03.2016, the High Court while upholding the misconduct finding, thought it appropriate for the reasons recorded, to modify the penalty of dismissal from service with the lesser penalty of withholding of three increments with cumulative effect.

8. For the appellants, Mr. K. Parameshwar, the learned counsel would submit that the delinquents were CISF Constables and were on duty in the high security IGI Airport and the scuffle which led to one of the delinquent drawing out his loaded pistol were rightly given the major penalty of dismissal. The reliance placed by the High Court on this Court's judgment in *Vishwanath v. Union of India* reported in AIR ONLINE 2007 SC 203 to show leniency is questioned by

the appellants counsel by pointing out that the facts in the relied upon case was entirely different.

9. On the other hand, Mr. Mohan Kumar, learned counsel and Mr. Venkata Krishna Kunduru, learned Amicus Curiae for the delinquents while admitting the exchange of words and the scuffle between the two CISF Constables would point out that neither the delinquents nor any of their colleagues or civilians were injured in the incident. Moreover although the pistol was unholstered by the Costable Sanjay Kumar Dubey the weapon was not aimed at anyone. Evidence is in fact available to suggest that the Constable wanted to secure his weapon in the high security area and the testimony of witness would show that the pistol was aimed towards the sky and was never intended to fire upon anyone.

10. As noted by the High Court, it was not a pre-meditated incident but was a spontaneous act. The presence of both constables, one at the end of his duty hours and the other coming in to join duty for the next shift was natural at the place, where the incident had occurred. The evidence would show that the two delinquents had entered into a verbal spat due to some domestic issues in their residential quarter. The High Court had the occasion to examine the CCTV footage of the airport area and remarked that these footage does not bear out the allegation that the pistol was cocked by the delinquent Sanjay Kumar Dubey. This would reasonably mean that the constable wanted to secure his pistol and did not intend to fire at anyone.

11. The conduct of the respondents as members of a disciplined force in a high security zone is indeed condemnable and their misconduct cannot go unpunished. The redeeming aspect of the incident was its spontaneity, as was noted by the High Court fortunately. Moreover, none was injured in the incident. The pistol was not cocked at anyone but was safely secured as it was handed over peacefully by the Constable Sanjay Kumar Dubey. These are the redeeming features which were taken into account by the High Court to substitute the penalty of removal (in case of Sanjay Kumar Dubey) and the penalty of dismissal (in case of Rajesh Kumar Patel) under the Rule 34(II) and Rule 34(I) respectively of the CISF Rules.

12. It must be observed herein that most surprisingly the dismissal penalty was imposed on Constable Rajesh Kumar Patel although he was not armed at the relevant point of time while the penalty of removal was ordered for the Constable Sanjay Kumar Dubey who had unholstered his pistol during the scuffle. Of course, the consequences for both penalties would be the same as the removal order itself indicated that it shall be a disqualification for future employment. Thus there is no material difference in the penalty imposed for the two delinquents.

13. The respondents counsel concede that indulging in verbal spat and scuffle in the high security zone was a lapse which require some action. But they submit that the lesser penalty ordered by the High Court would be the just and adequate penalty.

14. We have considered the submissions made by the rival counsel. The relevant materials on record are also perused with the assistance of the counsel for the parties.

15. Taking all the circumstances into account, we feel that the discretion exercised by the High Court to substitute and inflict lighter penalty, would meet the ends of justice. Accordingly, the appeals are not entertained and the same are dismissed. The result of this order would be that the respondents are to be reinstated in service forthwith. No arrear wages is payable for the period when the respondents remained out of service. This period shall nonetheless be notionally taken into account for the purpose of retiral benefits for the respondents.

16. The above order is rendered in the peculiar facts of this case and the question of law if any is left open to be decided in a more appropriate case.

17. Pending application(s), if any, shall stand disposed of.

.....J.  
(HRISHIKESH ROY)

.....J.  
(SANJAY KAROL)

NEW DELHI;  
SEPTEMBER 20, 2023.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGSCivil Appeal No(s). 10686/2017UNION OF INDIA THROUGH SECRETARY  
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VERSUS

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Respondent(s)

WITH

C.A. No. 10687/2017 (XIV-A)  
(Mr. Venkatakrishna Kunduru, Advocate (A.C.))

Date : 20-09-2023 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE SANJAY KAROLFor Appellant(s) Mr. K Parameshwar, Adv.  
Mr. T A Khan, Adv.  
Ms. Ranjana Narayan, Adv.  
Ms. Rekha Pandey, Adv.  
Mr. Padmesh Mishra, Adv.  
Mr. Arvind Kumar Sharma, AORFor Respondent(s) Mr. Mohan Kumar, AOR  
Mr. Venkata Krishna Kunduru, Amicus Curiae  
Ms. Suneeta Kurdukar, AOR

UPON hearing the counsel the Court made the following

## O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)  
COURT MASTER (SH)(KAMLESH RAWAT)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)