

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

+ WP (C) No.15450/2006

% Date of decision: May 21, 2008

Ravi Shanker Sharma

...PETITIONER

Through: Mr.Rajesh, Advocate.

Versus

Union of India

...RESPONDENTS

Through: Ms. Jyoti Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

SANJAY KISHAN KAUL, J. (ORAL)

1. Rule DB.
2. At the request of learned counsel for the parties, petition is taken up for final disposal.
3. The petitioner was appointed as a Constable in the CRPF on 15.3.1988. The petitioner was posted at Nizamabad, Andhra Pradesh when disciplinary proceedings were initiated against the petitioner by issuance of a memorandum dated 2.12.2001. The petitioner is alleged to have quarreled with the two Head Constables on 24.01.2001 and 26.01.2001 and further on

26.10.2001 is alleged to have willfully fired a round in the air from his service weapon.

4. A preliminary enquiry was initially held which found his conduct blame-worthy resulting in the departmental enquiry. It may be noticed that the petitioner is alleged to have deserted the lines even during the departmental proceedings and warrants of arrest had to be issued. The petitioner however reported on his own for duty and the warrants of arrest were withdrawn.

5. The departmental enquiry resulted in finding of a guilt against the petitioner and the petitioner was imposed with the penalty of dismissal from service on 28.2.2002. The suspension period and the desertion period were however regularized into extraordinary leave.

6. The petitioner approached the Allahabad High Court aggrieved by the said order but was directed to seek redressal by first filing a statutory appeal under Rule 28 of The CRPF Rules 1955 (hereinafter referred to as the said Rule). The petitioner accordingly filed an appeal but the same was dismissed on 13.5.2005. The revision petition filed by the petitioner thereafter also met with the same fate on 20.10.2005. Thus, the petitioner again approached the Allahabad High Court but on 11.5.2006 but withdrew the petition to file the writ petition before the competent court of territorial jurisdiction and thereafter the present writ petition has been filed.

7. The sum and substance of the contention of learned counsel for the petitioner is that the earlier conduct of the petitioner whereby he is alleged to have got three red-ink entries was taken into account by the disciplinary authority even though the same

formed not part of the two articles of charges. Thus material extraneous to what is stated in the article of charges is alleged to have weighed with the disciplinary authority both while finding the petitioner guilty and while imposing the punishment.

8. Learned counsel for the petitioner has relied upon the Constitution Bench Judgment of the Supreme Court in the case of **State of Mysore Vs. K. Manche Gowda** reported in **AIR 1964 SC 506**. In para 8 of the Judgment it is observed as under:

“Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same”.

9. The aforesaid expression of views shows that though a suggestion was made that the material which did not form a part of

the statement of charge should not be taken into account that view was left open as it did not require adjudication. It was, however, observed that nothing in law prevents the punishing authority from taking the past conduct into consideration during the second stage of enquiry for its essentially relates to the domain of the punishment rather than finding of guilt. Thus the Government servant should be given a reasonable opportunity to know the fact and meet the same.

10. Learned counsel has also drawn our attention to an Office Memorandum No. 134/20/68-AVD-28-8-68 issued under the CCS(CCA) Rules which is as under:-

"It is considered that if previous bad record, punishment, etc, of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings, and so should be eschewed".

11. Learned counsel submits that the aforesaid rule would apply to the petitioner and in any case analogous principle must be held applicable and thus if the previous bad record, punishment etc. of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself failing which the proceedings would be vitiated.

12. Learned counsel for the respondents, however, opposes the petition and submits that the past record of the petitioner showed his quarrel-some nature and his propensity to overstay on leave.

The past red-ink entries have not improved the conduct of the petitioner. Learned counsel submits that in a recent decision of the Apex Court in **Government of Andhra Pradesh & Others Vs. Mohd. Taher Ali, (2007) 8 SCC 656**, it has been observed that the matter should not have been remanded back by the Tribunal and the High Court to the disciplinary authority for reconsideration of punishment merely on the ground of his earlier mis-conduct not being mentioned in the charge-sheet. A reading of the said Judgment however shows that the Constitution Bench Judgment in the **State of Mysore Vs. K. Manche Gowda** (supra) was taken note of but in the given facts of the case, it was observed that the nature of mis-conduct of the petitioner was such that the imposition of penalty was justified. Thus, the naturally, the principles, as set out in **State of Mysore Vs. K. Manche Gowda** (supra), would hold good as they form a part of the observations of the Constitution Bench of the Supreme Court.

13. Learned counsel for the respondents also relied upon the Judgment of Supreme Court in the case of **Karnataka State Road Transport Corporation Vs. S.G. Kotturappa & Anr., (2005) 3 SCC 409** to contend that if there is past mis-conduct, requirements of natural justice are deemed to be complied with where the delinquent official has been given opportunities in the past to redress his behavior. It is thus contended that there was no improvement in the conduct of the petitioner and even during the enquiry proceedings the petitioner's conduct left much to be desired. Thus, the principles of natural justice would not apply in

the present case. The CCS(CCA) Rules are stated to be not applicable.

14. In the end, it is canvassed before us that the petitioner has not even taken the aforesaid plea in the grounds of appeal filed before the appellate authority and cannot be permitted to urge this plea at this stage.

15. We have examined the rival contentions of the parties. It is no doubt true that there are past three red ink entries against the petitioner but they relate only to the overstay on leave for short periods of duration. The mis-demeanor of the petitioner in the incident in question is, however, more serious. It is also not in dispute that the article of charges did not include the past conduct nor was the petitioner put to notice of this aspect either at the stage of holding of enquiry or at the stage of punishment. The observations of the Apex Court in **State of Mysore Vs. K. Manche Gowda** (supra) clearly show that at least at the stage of punishment, the question of the petitioner being put to notice about the past material being used against the petitioner should have been put to him. This has undoubtedly not happened in the present case. Thus a serious legal issue is raised in respect of the past material not being put to the petitioner at the stage of punishment. In the given facts of case, what is important is that the past conduct, though repeated, were minor aberrations in terms of overstay of leave for small periods.

16. The government itself has issued office order dated 28.8.1968 which has been quoted above which reinforces the principle that prior to the imposition of penalty, the past material against the

delinquent official to be taken into consideration must be put to that officer. This plea of the petitioner thus cannot be brushed aside and at least analogous principles would apply even if those rules are not directly applicable.

17. The question is whether we should ourselves examine this material to take a decision in view of the aforesaid principles of Law or whether the Appellate authority should have an opportunity to deal with the submission of the petitioner since the absence of such grounds being raised by the appellant earlier has denied the appellate authority of such an opportunity. We are inclined to take the second course of action. We think that the matter is serious enough for a rethink by the Appellate authority on the basis of principles referred to by the petitioner. The petitioner has served for more than 14 years and does not has a pensionable service even if the punishment of the petitioner was converted from one of dismissal from service to compulsory retirement. In this behalf our attention has also been invited to the Division Bench Judgment of this court in the case of WP(C)No.4656/2003 **Ex.sepoy Sube Singh Vs. UOI & Ors.** decided on 20.4.2007 where the court suitably moulded the relief in such a manner as to give the benefit of service pension to the petitioner therein without grant of the relief of reinstatement by granting a notional period of service without monetary benefits so that the person can avail of the pensionary benefits. However, this would be an aspect to be considered by the appellate authority while arriving at the finding in respect of the challenge to the order of guilt as well as the question of sentence.

18. The result of the aforesaid is that a writ of mandamus is issued quashing the order of the appellate authority dated 10.9.2005 and of the revision authority dated 27.1.2006 and remanding the matter back to the appellate authority for reconsideration of the appeal keeping in mind the plea of the petitioner as referred to aforesaid and the observations made by this court. The appellate authority to take a decision within three months of the receipt of this order.

19. The parties are left to bear their own costs.

SANJAY KISHAN KAUL, J.

MAY 21, 2008
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MOOL CHAND GARG, J.