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

% Date of Decision: 23rd October, 2009

+ W P (C) 8184/2009

EX SI/GD I.A.KHAN Petitioner

Through: Ms. Rekha Palli, Advocate and
Ms. Amrita Prakash, Advocate

versus

UOI & ORS. Respondents

Through: Mr. Pankaj Batra, Advocate

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? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Rule DB.
2. Heard for disposal.
3. The petitioner was employed as a constable under CRPF on 7.5.1970 and earned promotions reaching the post of a Sub Inspector. Further promotional post available for the petitioner was the post of inspector. All was fine in the service career of the petitioner till a turbulence took place in the year 2007.

4. In the said year, the petitioner was posted in D-10 Bn. CRPF, Kulai in District Dhalai, Tripura.

5. For being promoted to the post of an inspector, the petitioner was required to undertake a SSICC course, and for which, he was selected for detainment in No.31 SSICC course.

6. The turbulence took place at this stage.

7. According to the petitioner due to his excellent service record, notwithstanding he was holding the rank of a Sub-Inspector, he was assigned the duty of Officer Commander of the company.

8. On 18.3.2007, along with 42 other personnel, the petitioner was directed to go out for intelligence duty. One HC/GD B.D.Barma posted in the General Branch met with a fatal accident while riding a private motorcycle. He i.e. HC/GD B.D.barma was outside the precincts of the camp ostensibly in an operational intelligence collection duty.

9. According to the petitioner, B.D.Barma was deputed for the duty by the Commandant 10th Bn. who put the blame on the petitioner.

10. As per the petitioner, the Commandant, to save his own skin, without serving a charge memo and without granting an opportunity to be heard, vide order dated 30.4.2007, imposed a penalty of censure upon the petitioner holding that

the petitioner had permitted B.D.Barma to keep a private conveyance in the camp and had permitted him to move out of the camp for official work in his private conveyance. It was alleged that due to dereliction of duty by the petitioner, the death of a member of the Para Military Force has resulted.

11. As per the petitioner, in spite of being selected for being deputed at No.31 SSICC Course, he was not permitted to proceed and the movement order was withdrawn resulting in his being sent back to the 10th Bn. CRPF, Kulai. This resulted in his not being promoted to the post of Inspector.

12. According to the petitioner the order of censure is not only mala fide but is in violation of the principles of natural justice and since it has adversely affected his further promotional career, instant petition was filed praying that the order dated 30.4.2007 imposing the penalty of censure be quashed and a mandamus be issued to the respondents to promote the petitioner to the rank of an Inspector. The petitioner superannuated as a Sub-Inspector on 30.6.2008. Consequential benefits have been prayed for.

13. As per the counter affidavit filed, the order of censure dated 30.4.2007 has not come in the way of the promotion of the petitioner. It is stated that for the year 2006-07 the grading awarded to the petitioner was 'Average' and as

per the standing order No.6/1999, the impediment in the promotion of the petitioner and even his detainment in SSICC course is of his being rated as 'Average' in the ACR grading for the year 2006-07.

14. Learned counsel for the petitioner states that the petitioner has not filed any representation against the ACR grading for the year 2006-07 since the same has been supplied to the petitioner and in the absence of the same being supplied, the petitioner is handicapped in making any representation. Counsel urges that the petitioner has simply been informed of being graded as 'Average' in the year 2006-07.

15. It is not in dispute that the order of censure was not preceded by any show cause notice being issued to the petitioner.

16. It does not matter whether, at the moment, the respondent has not predicated its decision on the penalty order of censure.

17. It is possible that the order imposing the penalty of censure may have an adverse impact upon the petitioner for the reason we propose to dispose of the writ petition requiring the respondents to supply the ACR grading including the basis thereof for the year 2006-07 to the petitioner with a right to

the petitioner to make a representation against the same. If the representation of the petitioner is accepted and his ACR grading is upgraded, it is possible that the order of censure may then come in the way of the petitioner.

18. Suffice would it be to state that any order which visits a penal consequence upon the person against whom the order is passed is entitled to an opportunity of a fair hearing.

19. Since the order of censure was not preceded by any show cause notice or the service of a charge memo upon the petitioner, we quash the order dated 30.4.2007 imposing the penalty of censure upon the petitioner.

20. It would be open to the respondents to serve a show cause notice or a charge memo proposing minor penalty of censure. If the respondents do so within 8 weeks from today, the petitioner would submit a written response thereto within further 4 weeks. Reasoned decision after granting a personal hearing of the petitioner would be taken and conveyed to the petitioner within further 4 weeks.

21. Needless to state, if the respondent chooses not to levy any penalty that would be end of the matter. Should the penalty be re-imposed, remedy as per law would be available to the petitioner.

22. Pertaining to the ACR grading for the year 2006-07,

learned counsel for the respondent states that within 8 weeks from today, the respondent would supply the petitioner his ACR grading as per rules. Counsel states that the petitioner would be granted 4 weeks time to file response thereto and that a decision on the representation submitted by the petitioner would be taken within further 4 weeks and communicated to the petitioner.

23. Needless to state if the ACR grading of the petitioner is, on review, enhanced, the respondents would reconsider the case of the petitioner for promotion to the rank of an inspector as per rules.

24. Should the respondents reject the representation of the petitioner, remedy as per law would be available to the petitioner.

25. The writ petition stands disposed of in aforesaid terms.

26. There shall be no order as to costs.

27. Copy of this order be supplied dasti to learned counsel for the parties.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

**OCTOBER 23, 2009
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