

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

+ **W.P.(C) No.3225/2003**

Date of Decision 10.03.2010

EX. L/NK VED PRAKASH Petitioner
Through Mr. Ajay Veer Singh Jain, Adv.

versus

UOI & ORS. Respondents
Through Mr. Jeet Pathak, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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

GITA MITTAL, J (Oral)

1. By this writ petition, the petitioner assails an order dated 6th September, 2001 whereby he was found guilty of the charges in a disciplinary inquiry conducted against him and the punishment of dismissal from service was imposed.
2. The facts giving rise to the present petition are in narrow compass and are undisputed. The petitioner was appointed as a constable on 29th June, 1985 in the Central Reserve Police Force (CRPF) and was promoted on 20th February, 1995 to the post of lance naik. A departmental inquiry was ordered against the petitioner on 1st October, 1999 on the following charge:-

“That the said No.850773928 LNK Ved Prakash of E/71 Bn CRPF got enlisted in CRPF on 29-6-85 has committed an act of misconduct in his capacity as a member of the Force U/S 11(1) of CRPF Act 1949 in that he at the time of enlistment in the Force on above date has produced a fake Civil Education Certificate issued by the Central Board of Higher Education, Delhi which is not a recognised institution, which amounts to cheating and against the recruitment rules of CRPF.”

3. The Enquiry report dated 2nd May, 2000 had found the charges to be only partially proven. Report of the inquiry was served upon the petitioner under a communication dated 15th May, 2000. The petitioner had submitted a representation dated 24th May, 2000.
4. On a consideration of the above, the disciplinary authority passed an order dated 13th June, 2000, relevant extract whereof deserves to be considered in extenso and reads as follows:-

“11. After careful examination of all documentary evidence and report of the enquiry officer, I am fully convinced that the delinquent was having requisite standard of educational qualification (i.e. 8th class) for recruitment in CRPF during the year of 1985 (when LNK Ved Prakash was enlisted). Though his VIII class pass certificate has been verified from the school authority as per verification report which has been received in this office on 6/6/2000 from the Principal Cauri Sahah Ramjilal Govt. Secondary School Thathwart Distt. Jhunjhunu (Rajasthan), which is found valid and in order. I am fully convinced that the delinquent No.850773928 LNK Ved Prakash of E/71 Bn CRPF is not at fault as stated in the charge framed against him and I have come to the conclusion that the charge levelled against him has not fully proved in the formal D.E. because of evidence available on record. Therefore, No.850773928 LNK Ved Prakash of E/71 Bn CRPF will be retained in service on the basis of his VIII class pass certificate which was requisite standard at the time of his enrolment in CRPF during 1985. I therefore, taking into consideration all the aspects

and his 15 years of long service, hereby pass the following orders:

(A) No.850773928 LNK Ved Prakash of this unit is hereby reverted to the rank of CONSTABLE from the date of issue of this order (i.e. 13-06-2000) till such time he acquires rank qualification for further promotion.

(B) Rank pay of LNK @ Rs.15/- w.e.f. 20/2/95 to 31/7/97 and Rs.30/- from 1/8/97 till date paid to him be recovered and deposited into Govt. treasury which was not admissible to him.

(C) His educational qualification be recorded as VIII class instead of 10th class in his service book."

(Underlining supplied)

5. According to the respondents, during investigation of 71 battalion, CRPF by the DIGP where the petitioner was posted, it was observed by the respondents that the punishment awarded in the case was not commensurate with the gravity of the offence with which the petitioner was charged. For this reason, the case was called for review. The respondents took a view that there were a number of irregularities in the disciplinary inquiry proceedings. As a result, the punishment imposed on the petitioner by an order dated 13th June, 2000 was set aside. A de-novo departmental inquiry was ordered against the petitioner by an order dated 17th January, 2001 on the following charge:-

"That the said No.850773928 L/NK Ved Prakash of B/71 Bn managed to get enlisted in CRPF on 29/6/1985 on the strength of a High School Exam passed educational certificate issued by the Central Board of Higher Education, New Delhi, which is not a recognised educational institution by the Govt. and thus committed an act of misconduct U/S 11(1) of CRPF Act, 1949."

6. In these proceedings, the inquiry officer submitted a report dated 18th June, 2001. The inquiry officer held that the charge against the petitioner was not proved. The disciplinary authority did not agree with the report of the inquiry officer and a disagreement report was served on the petitioner along with the copy of the inquiry report vide a communication of 13th August, 2001. The respondents submitted a reply dated 17th August, 2001 which was considered by the disciplinary authority. By an order passed on 6th September, 2001, the disciplinary authority held that the petitioner was guilty of the charge and punishment of removal from service was imposed upon him.

Aggrieved by this order of punishment, the petitioner filed a statutory appeal on 3rd October, 2001 which was also rejected by an order passed on 12th December, 2001. The petitioner's revision assailing these orders against him was dismissed by an order passed on 14th January, 2003.

The present writ petition has been filed aggrieved by the punishment imposed upon him by the order dated 6th September, 2001 which has been confirmed in the appeal by the order of appellate authority as well as by the revisionary authority.

7. The orders against the petitioner have been primarily assailed on the ground that till the year 1987, the recruitment rules for appointment to the post did not postulate any educational qualification as a condition for eligibility. Therefore, the submission of a certificate from an unrecognised educational institution would have no bearing on the petitioner's appointment.

8. It is noteworthy that the charge which was framed against the

petitioner on 1st October, 1999 related to the allegations that at the time of enlistment in the force on 29th June, 1985, he had produced a fake civil education certificate issued by the Central Board of Higher Education, Delhi which is not a recognised institution which amounts to cheating and was against the recruitment rules of CRPF.

9. Perusal of the order of disciplinary authority dated 13th June, 2000 would show that the inquiry officer had got the class VIII certificate of the petitioner verified from the school authority and relied on the verification report received on the 6th June, 2000 from the Principal, Cauri Sahah Ramjilal Govt. Secondary School and held that the certificate was valid and in order. It was, however, found that the higher education certificate of 10th class pass issued by the Central Board of Higher Education, Delhi which was from an unrecognised educational institution. The inquiry officer concluded that the charges levelled against the petitioner have not been proved beyond doubt.

10. The second inquiry against the petitioner was conducted only on the charge that he had got enlisted in the CRPF on 29th June, 1985 on the strength of an educational certificate which had been issued by an educational institution which was not recognised.

11. The appellate order dated 12th December, 2001 shows that despite the above findings, in para 6 of its order the appellate authority has noted that there is nothing on record to prove that the appellant has produced an VIII class pass certificate at the time of recruitment in the CRPF. Such issue was not the subject matter of the charge. In any case, this finding was clearly contrary to the inquiry which was conducted against the petitioner and the material which was produced

and proved on record as per the report dated 2nd of May, 2000.

12. Be that as it may, there is yet another reason for which this writ petition has to succeed. An issue has been raised on behalf of the petitioner before this court to the effect that the recruitment rules for recruitment to the post of constable in the CRPF on 29th June, 1985 when the petitioner was recruited, did not prescribe any essential educational qualification. The submission is that in this circumstance, no misconduct on the part of the petitioner is made out and no inquiry against him could have been initiated. Reliance is placed on Rule 11 of the CRPF Rules, 1985.

13. Rule 11 of the CRPF rules as it stood at the relevant time, prescribed the standards thus:-

“11. Enlistment Standards

(a) Save as here in otherwise provided, no person shall be enrolled as a member of the Force unless he conforms to the following minimum standard:

(1) Height - 5'-7"

(2) Chest - 31 1/2" expanded 33"

(3) Age

(i) For Sub Inspector - Age no less than 19
and not more than
24 years.

(ii) For Head Constables - Age not less than 18
and not more than 23
years.

(4) Following shall be the minimum educational qualifications for direct recruitment in the following ranks, namely:-

Sub Inspectors	Graduate	(or Equivalent Army
Head Constables	Matriculation	(qualifications in the
or Naiks		(case of
Constables	Matriculation	(ex-Army men.

(b) The minimum standard laid down in sub rule (a) in so far as it relates to height may be relaxed from 5'-7" to 5"-5" in the case of people having martial traditions such as Gorkhas, Garkwalis, Kumaonese, Dogras and Marathas;

(bb) the minimum standard laid down in sub-rule (a) may be relaxed:-

(i) in so far as it relates to height, from 5'-7" to 5'-4".

(ii) in so far as it relates to chest measurement, from 31 1/2"-expanded 33 1/2" to 30"-expanded 32" for Adivasis.

(c) The minimum standard laid down in sub rule (a) in so far as it relates to

height may be relaxed from 5'-7" to 5'-4" in case of persons who have attained the age of eighteen years but have not attained twenty years;

(d) The minimum chest standard laid down in sub-rule (a) above may be relaxed by one inch in case of all persons including those belonging to hill tribes who have attained the age of 18 years but not more than 20 years

Provided that the exemptions specified in (c) and (d) above are made Subject to the condition that the medical officer certifies that a person concerned is likely to attain the minimum standard prescribed.

(dd) The minimum standard in respect of female candidate for direct recruitment to non-gazetted posts excluding the posts of followers in Mahila Battalion, shall be as under:-

Height: 5'-2 3/4" (157 cms)

5'-2" (155cms) for Gorkha/Garhwalies/Kumaoti/ Dogras and Marathas.

5'-1 1/2" (154 cms) for Adivasis.

The conditions regarding age limit and educational qualifications shall remain same as (those mentioned in clauses (a) above) laid down in sub-rule (a) above.

(e) Ex-service-men who are of exemplary or very good character may be enlisted notwithstanding that they are over 23 years of age provided they are under 30 years of age and are otherwise suitable for enlistment.

(f) Exception to any of these qualifications may be made with the prior approval of-

(i) The Ministry of Home Affairs in the case of any Superior officer.

(ii) The Inspector General in the case of a Subedar Major or Subedar (Inspector), and

(iii) The Deputy Inspector General in the case of any other member of the Force.

(g) The Commandant may at his discretion enlist as

enrolled Followers persons who have attained the age of 18 years but not more than 40 years provided they are medically fit.

(h) The upper age limit prescribed may be relaxed in the case of candidates belonging to the scheduled castes, the scheduled tribes and of special categories of persons in accordance with orders issued from time to time by the Central Government.”

14. There is no dispute on behalf of the respondent that a particular educational qualification was not necessary as a pre-requisite for obtaining employment to the post of constable at the relevant time.

15. The very issue raised by the petitioner has arisen before this court prior hitherto. We find that a writ petition being **WP (C) No.5552/2000 entitled Tara Chand Vs. UOI & Ors.** was filed before this court assailing a disciplinary inquiry and an order dated 17th January, 1999 by these very respondents whereby a sentence of dismissal from service was made on a charge similar to the charge for which the inquiry has been held against the petitioner. It had been alleged that for securing recruitment into the CRPF in 1988, Tara Chand had intentionally submitted a matriculation certificate granted by the Central Board of Higher Education, Delhi which was an unrecognised institution.

The petitioner has also obtained the certificate submitted by him with the respondents from this very institute.

16. Tara Chand had assailed the action of the respondents by way of the aforesaid writ petition on the very grounds on which the petitioner has challenged the inquiry proceedings against him. The writ petition was allowed by the judgment dated 27th of August, 2002. The

observations of the court in this judgment, which squarely apply to the instant case as well, deserve to be considered in extenso and read as follows:-

“9. A perusal of the said Rule would, therefore, show that at the relevant point of time, no educational qualification was necessary for obtaining an employment in the post of a Constable.

10. It stands accepted that the petitioner filed the said certificate in the year 1986. It also is not in dispute that the recruitment process began in the year 1986.

XXX

12. Once the certificate is held to be genuine, the question of producing a false certificate would not arise. The question which ought to have been raised in the afore-mentioned situation was as to whether the petitioner obtained employment in violation of the essential conditions of service rules. The service rules were amended in the year 1987 whereas the recruitment process had started in the year 1986. Only because the petitioner had filed the certificate to show his educational qualification, it cannot be said that he committed a misconduct of filing a false certificate to secure employment. The question of filing a false certificate to secure employment would arise provided holding of the said qualification was an essential term in terms of the statutory rules or otherwise.

XXX

16. Can it, in the afore-mentioned premise, be said that the petitioner has committed a misconduct? The answer thereto must be rendered in the negative. Firstly, the petitioner did not file any false or forged document with a view of securing employment, secondly, the qualification of holding a matriculation certificate being not essential, it is wholly immaterial as to whether such a certificate was filed for the purpose of showing the educational qualification held by the petitioner; and thirdly, the rules which were prevailing at the time when the recruitment process started would be applicable in the instant case (See A.A. Calton v. The Director of Education & Anr., AIR 1983 SC 1143, P. Mahendran and Ors. v. State of

Karnataka & Ors., AIR 1990 SC 405).”
(Emphasis furnished)

It was conclusively found by the court that the Recruitment Rules which were in vogue did not prescribe any educational qualification as a condition for recruitment.

17. The question which requires to be answered is as to whether the petitioner could be guilty of misconduct and therefore punished in these facts. In ***Tara Chand Vs. UOI & Ors. (supra)***, this court has noticed that misconduct not having been defined in the CRPF Act, must carry its ordinary meaning. Reliance was placed on several judicial precedents and legal texts as follows:-

“14 In Probodh Kumar Bhowmick vs. University of Calcutta & Ors., 1994 (2) Cal. LJ 456, it was observed:

14. ‘Misconduct’, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, “improper behaviour; intentional wrong doing on deliberate violation of a rule of standard or behaviour”:

“Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct.”

15. Even in Industrial laws, acts of

misconduct specified in standing order framed under Industrial Employment (Standing Order) Act, 1946 is not treated to be exhaustive. Various misconducts specified in Clause 14(3) of Model Standing Order are merely illustrative.

16. In (5) Mahendra Singh Dhantwal v. Hindustan Motors Ltd. reported in (1976) 11 LLJ 259 (264) SC, a three Judge Bench of the Supreme Court observed "standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action".

17. Even in the absence of rules specifying misconduct, it would be open to the employee to consider reasonably what conduct can be properly treated as misconduct.

See (6) W.M. Agnani v. Badri Das reported in (1963) 1 LLJ page 684 at 690.

18. In (7) Delhi Cloth and General Mills Co Ltd. v. Its Workmen reported in (1969) 2 LLJ 755 at 772 at Shah, J. states "misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby".

19. To some extent, it is a civil crime, which is visited with civil and pecuniary consequences See (8) Ramakant Mishra v. State of U. P., reported in 1982 Labour & 1C 1790 at 1792.

20. The Supreme Court in (9) State of Punjab and Ors. v. Ram Sing Ex. Constable, upon which Mr. Mukherjee himself has placed reliance upon held:-

“5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at Page 999 thus:

“A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in offence has been defined as:

“Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.”

21. P. Ramanath Aiyar's Law Lexicon, Reprint Edition 1987 at Page 821 defines 'misconduct' thus:

“The term misconduct implies a wrongful intention, and not a mere error of judgment, Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden

act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public official by which the rights of a party have been affected.”

6. This it could be seen that the word 'misconduct' though not capable of precise of definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.”

15. This aspect of the matter has recently been considered by the Apex Court in Baldev Singh Gandhi vs. State of Punjab & Ors., AIR 2002 SC 1124 in the following terms :

“9. 'Misconduct' has not been defined in the Act. The word 'misconduct' is antithesis of the word 'conduct'. Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behavior, misfeasance, wrong conduct, misdemeanour etc. There being different meaning of the expression 'misconduct', we, therefore, have to construe the expression 'misconduct' with reference to the subject and the context wherein the said expression occurs. Regard being had to the aims and objects of the statute.....”.

18. On application of the above principles to the facts in hand, the court held that the petitioner could not be said to have committed misconduct and the order imposing the punishment of dismissal from was set aside.

19. In Tara Chand Vs. UOI & Ors. (supra), this court noticed that the service rules were amended in the year 1987. Before that, no educational qualification had been prescribed for recruitment.

20. As per the chargesheet, the present petitioner was recruited as constable on the 29th June, 1985. The recruitment process would obviously have started before this date when there was no prescribed educational qualification.

21. The certificate of class VIII submitted by the petitioner has been verified in the first inquiry proceedings as noticed above.

22. The second inquiry has been held against the petitioner on a charge and allegation that he had managed to get enlisted in the CRPF on 29th June, 1985 on the strength of a high school exam pass educational certificate issued by the Central Board of Higher Education, New Delhi which was not a recognised institution by the Government.

23. The very principles laid down in Tara Chand's case (supra) apply to the instant case. The petitioner is alleged to have submitted an educational certificate from an institution which was not recognised. As per the rules which were applicable at the relevant time at the commencement of recruitment, no educational qualifications had been prescribed as being essential for the purposes of recruitment. Therefore, production of an educational certificate from any institution was immaterial to the recruitment. In the given circumstances, it cannot at all be held that the petitioner had committed misconduct.

24. We also find that the appellate authority in the order dated 12th December, 2001 has gone beyond the allegations made in the charge and gone to the extent of holding that there was nothing on record to

prove that the appellant had produced an VIII class pass certificate at the time of recruitment in the CRPF. This was contrary to the findings of the inquiry officer in the report dated 2nd May, 2000 as well as the order of the disciplinary authority dated 13th June, 2000. This finding was obviously without any basis or justification.

25. The petitioner has not assailed the second disciplinary on the ground that they were barred by principles of double jeopardy. So far as the second inquiry was concerned, this objection perhaps could also be available to the petitioner.

26. In view of the above, the order dated 6th September, 2001 passed by the disciplinary authority; 12th December, 2001 passed by the appellate authority and the order dated 14th January, 2003 passed by the revisionary authority are not sustainable in law and are hereby set aside and quashed. As a consequence, it is directed that the respondents shall forthwith reinstate the petitioner with all consequential benefits.

The writ petition is allowed in the above terms.

The petitioner shall be entitled to costs of the petition which are quantified at Rs.10,000/-.

GITA MITTAL, J

VIPIN SANGHI, J

MARCH 10, 2010

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