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MUKESH KUMAR Petitioner
 Through : Mr. Narender Dutt Kaushik,
 and Ms. Manpreet Kaur, Advs.
 versus

UOI &ORS. Respondents
 Through : Mr. R.V. Sinha, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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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. The petitioner has filed the present writ petition assailing the order dated 30th April, 2004 passed by the Commandant being the disciplinary authority; appellate order dated 16th November, 2004 and the revisional order dated 31st January, 2008 passed against him. The facts giving rise to the present writ petition are briefly noted hereafter.

2. The petitioner was enlisted as Constable with the Central Reserve Police Force ('CRPF' hereafter) on 30th August, 1994. At the time of his enlistment, the petitioner had furnished his home address as "House No.311, Village Alipur, Delhi - 110036" for the service record. Seven years after his

enlistment, the petitioner made an application for change of his address from “House No.311, Village Alipur, Delhi – 110036” to “Village Alipur, Post Office Badli, Police Station Bahadurgarh, District Jhajjar (Haryana)” on the plea that he has purchased a land and constructed a house at the new address in his name. As per the applicable rules, CRPF was required to conduct a verification of the stated facts. In this view of the matter, Group Centre, CRPF Bhopal where the petitioner was posted, proceeded to effect the police verification with regard to the application for change of address.

3. During such verification, the Deputy Commissioner of the Special Branch, Delhi Police, Delhi vide letter dated 14th March, 2001 informed the respondents that the petitioner was neither residing at House No.311, Village Alipur, Delhi – 110036 nor he has ever owned the subject property at Delhi. The respondents were also informed that one Shri Sube Singh, son of Chhunni Lal, a relative of the petitioner was the owner of this property. The police verification also revealed that the petitioner was actually a resident of Village Badli, District Jhajjar (Haryana) before his enlistment.

4. The respondents have pointed out that the petitioner had produced a domicile certificate dated 30th March, 1993 issued by the authority in Delhi to meet the requirement of enlistment that he was a resident of Delhi for three years. The petitioner’s recruitment and enlistment was effected based on this certificate which he had produced at the relevant time.

5. The respondents have referred to OM No.11012/7/91-Estt(A) dated 19th May, 1993 stands issued by the Government of India which mandates that whenever it is found that the government servant who was not qualified or was not eligible in terms of the recruitment rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service.

6. In view of the above facts, the respondents were prima facie of the view that the petitioner had fraudulently got enlisted into the CRPF even though he was not eligible for the same as he was not the resident of Delhi for a requisite period of three years preceding the recruitment. Consequently, by a memo dated 28th September, 2001, the respondents had proposed a disciplinary inquiry to be held against the petitioner on the following charges:-

“PROVISO – I

Constable Mukesh Kumar, Force No.941198126 is employed in E/129 Battalion. At the time of his recruitment, the abovesaid employee, in his place of residence, given, as son of Shri Sardare, address: House No.311, Village Alipur, Delhi-36, whereas on investigation this fact has come to light that at this address Shri Sube Singh son of Shri Chunni Lal was there, who intimated that I am the owner of this house. Mukesh Kumar is my brother-in-law (Sala), who is the original resident of Haryana. That the employee, for being recruited in C.R.P.F., by giving/intimating, wrong address of place of residence, has got the recruitment. Under Section 11(1) of the C.R.P.F. Act, 1949, due to being a Member of the Force, has violated the Rules of the Force, and

dereliction in the performance of his duty, and has tried to mislead.”

“PROVISO – II

In support of the items of charges leveled against Constable Mukesh Kumar, Force No.941198126, in the description of violation of the Rules of the Force, and misleading, Constable Mukesh Kumar, Force No.941198126, at the time of recruitment in the year 1994, in Jharoda Kalan, New Delhi, specifically on the post of Constables, for the residents of Delhi, during the course of recruitment, the abovesaid employee (Mukesh Kumar), by giving his place of residence: son of Shri Sardare, address: House No.311, Village Alipur, Delhi -36, got recruited. After the recruitment, for verification of the permanent residence of the above employee, by Group Centre, Bhopal, (M.P)., The Deputy Commissioner Police, Special Branch, Delhi, under his letter No.18405/ Raj Shakha/5 dated 14.3.2001, has highlighted this that at the permanent address given by Mukesh Kumar, Shri Sube Singh, son of Chunni Lal met, who intimated that I am the owner of the house. Mukesh Kumar is my brother-in-law in relation, who is the original resident of Village Badli, District Jhajhar, Haryana, the complete and correct name of whose father: Sardare, and in the Form Sardare Aalam has been written, which is wrong and is having relations with the Jaat Community, and in the name of his father, moveable and immovable property is in District Jhajhar, Haryana. In Alipur, Delhi-36, there is no moveable – immoveable property in this name. The applicant Mukesh Kumar on account of relationship keeps in coming – going to this house, is not residing there. Because, at the address given, the sister of Mukesh Kumar is married. Only keeps on coming – going here. It is not his permanent address.”

7. It appears that certain irregularities were found in the procedure adopted in the inquiry which was conducted by Shri S. Vishal, Assistant Commandant who had been appointed as inquiry officer. In view thereof, by an order dated May, 2001,

the Commandant had set aside its inquiry proceedings and directed de novo inquiry proceedings.

8. The petitioner had contested the inquiry and had submitted a representation dated 25th July, 2002 largely placing reliance on the domicile certificate and a ration card which was held by him at the address at Alipur, Delhi. The petitioner's reply was not found satisfactory. The petitioner had entered a plea of not guilty to the charges. The matter proceeded for recording of evidence

9. After recording detailed proceedings and compliance of principles of natural justice, the report dated 31st July, 2002 was submitted by the Inquiry Officer to the Commandant of the petitioner's unit who was his disciplinary authority. The report of the Inquiry Officer was provided to the petitioner by the commandant by communication dated 8th August, 2002 with a direction to submit a representation, if any, within 15 days. The petitioner had submitted a representation on 12th August, 2002. After examining the entire proceedings of the inquiry as well as report and the representation of the petitioner, the disciplinary authority passed an order dated 30th April, 2004 finding the petitioner guilty of the charge leveled against him and awarded the punishment of "removal from service".

10. The petitioner's appeal against the order of the Commandant was rejected by the appellate authority by an order dated 16th November, 2004 who found the same as devoid of merits.

11. Aggrieved by the above orders against him, petitioner filed a writ petition bearing WP(C) No.7005/2005 in this court. This writ petition was came to be disposed of by an order passed on 20th July, 2007 permitting the petitioner to file a revision petition in terms of Rule 29 of the CRPF Rules with a direction to the revisional authority to entertain, consider and dispose of the same on merits as though the petition has been filed within the period of limitation. Liberty was granted to the petitioner to assail the revisional order in case the petitioner was aggrieved thereby.

12. It is undisputed that the petitioner had filed a revision petition on 28th August, 2007. The revisional authority found no merit in the revision and on a detailed consideration of the record which were placed before the disciplinary and appellate authority as well as the revisional authority, after a detailed consideration, by an order passed on 30th January, 2008 rejected the revision. It is noteworthy that the revisional authority carefully examined the gravity of the allegations levelled against the petitioner and was of the view that the petitioner had not brought out any new material facts or evidence warranting reconsideration or interference with the orders passed by the disciplinary and the appellate authorities. The matter was examined also from the aspect of the proportionality as had been directed in the order dated 9th March, 2007 passed by this Court on the petitioner's earlier writ petition.

13. Before us the challenge is premised by the petitioner purely on questions of facts. It has been submitted by learned counsel for the petitioner that the petitioner had been actually residing at property No.311, Village Alipur, Delhi-110036 for a period three years prior to recruitment and enlistment with the CRPF and the domicile certificate had been validly issued. Reliance has been placed also on a ration card which is held by the petitioner at this address.

14. We may note that these documents have been considered at great deal by the inquiry officer and all the authorities in the impugned orders. The petitioner is, however, unable to satisfactorily explain the facts we are considering hereafter. It is undisputed even before us that the petitioner had passed his 12th class (Arts) examination on 11th July, 1990 from the Government Senior Secondary School, Village Badli, District Jhajjar (Haryana). The respondents have placed reliance on the report received from the Principal of this School in Village Badli, District Jhajjar (Haryana) who has informed that the petitioner had joined the school in class 12 on 11th July, 1990 vide admission No.554 and as per the school records his home address was Village and Post Office Badli, Tehsil and PS Bahadurgarh, District Jhajjar (Haryana). He is stated to have passed the senior school examination only in March, 1991 from Haryana.

15. It needs no elaboration that in order to undertake the Senior Secondary Examination, the petitioner would have been

required to meet the attendance requirement prescribed by the concerned Board. Consequently, the petitioner could not have been the resident of Delhi till March, 1991 in any case.

16. It is evident, therefore, that the domicile certificate dated 30th March, 1993 relied upon by the petitioner contains entries of the false and incorrect statement that the petitioner was a resident of Delhi for a period of three years preceding its issuance.

17. There is one more material aspect so far as the domicile certificate is concerned. The verification report which was effected by the respondents resulted in receipt of information from the SDM, Narela on 30th June, 2003 to the effect that the record concerning the issuance of the domicile certificate of the petitioner is not traceable being an old case. This would only lend support to the charge levelled by the respondents against the petitioner. Interestingly, the petitioner waited for a long period of seven years after his enlistment and transfers at different places by the CRPF before he put in a request of change of address. The same lends colour to the respondents allegations against the petitioner that he was not eligible for enlistment at the time the recruitment was effected at Delhi which fact is manifested from the manner in which he has proceeded in the matter.

18. The other document relied upon by the petitioner is a ration card. The inquiry report has noticed that this ration card which is relied upon by the petitioner was issued only on 1st

January, 1996 which is long after the petitioner's recruitment and in any case would not evidence petitioner's residence in Delhi for three years before his recruitment on 30th August, 1994. The inquiry officer has doubted this document also for the reason that the names of eight members of the family have been written in English while the petitioner's name is in Hindi and the writing also appears to be different.

19. We may notice here so far as house No.311, Village Alipur, Delhi – 110036 is concerned, the respondents have been able to ascertain that this property is owned by one Shri Sube Singh who is the petitioner's paternal aunt's husband ('Phoophu'). This would suggest that the petitioner has tried to create record relating to his residence at the address of a relative in Delhi but unfortunately has failed to support the same by any cogent and credible material. In fact, the petitioner has placed reliance on documents including his school leaving certificate, which shows that he was not residing in Delhi. It is an admitted position before us that in 1992, the respondents were effecting recruitment of persons who were domiciled in Delhi. The petitioner is unable to establish that he was residing at and domiciled in Delhi as required.

20. We may also notice that learned counsel for the petitioner was unable to point out any legal infirmity in the inquiry proceedings which were conducted against the petitioner. No violation of principle of natural justice, statutory provisions or rules or regulation thereunder has been pointed out.

21. The jurisdiction of this court to examine the challenge to disciplinary action against the person on questions of facts in proceedings under Article 226 of the Constitution of India is extremely limited. In the light of the above discussion, we find no infirmity in the findings returned by the inquiry officer, disciplinary authority as well as appellate and revisional authorities.

22. We find no merit in this writ petition which is hereby dismissed.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 13, 2010
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