

**+ W.P.(C)No.4101/2010 & CM No.8146/2010**Date of Decision : 21<sup>st</sup> October, 2010

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GANESH CHANDRA GUPTA ..... Petitioner  
Through : Mr. Jai Bansal, Adv.

versus

UOI ..... Respondent  
Through : Ms. Saroj Bidawat with  
Mr. Hari Om Sharan Singh, 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? | <b>NO</b> |
| 2. | To be referred to the Reporter or not?                                | <b>NO</b> |
| 3. | Whether the judgment should be reported in the Digest?                | <b>NO</b> |

**GITA MITTAL, J. (Oral)****CM No.8146/2010**

Allowed, subject to just exceptions.

The application stands disposed of.

**W.P.(C)No.4101/2010**

1. By this writ petition the petitioner challenges the order dated 15<sup>th</sup> October, 1976 passed by the disciplinary authority finding him guilty of four charges and imposing the punishment of dismissal from service upon him. The petitioner has also assailed the order dated 29<sup>th</sup> December, 2006 whereby the Deputy Inspector General of the Border Security Force has rejected the petitioner's appeal.

2. The petitioner was enrolled in the Border Security Force on 16<sup>th</sup> of June, 1966 as a Compounder.
3. A show cause notice dated 5<sup>th</sup> April, 1975 was issued to the petitioner. The authorities considered his reply and past record and thereafter, vide a communication dated 19<sup>th</sup> of May, 1948, gave the petitioner a chance to improve. On a consideration of the matter by an order dated 26<sup>th</sup> August, 1943, the petitioner was informed that disciplinary inquiry was proposed against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 and he was informed of the substance of the imputations of the misconduct in respect of which the same was proposed to be sustained are enclosed as list of documents and list of witnesses.
4. Disciplinary proceedings were held against him on the following charges:-

#### ARTICLES OF CHARGE-I

That the said Shri Ganesh Chandra Gupta while functioning as compounder 48 Bn BSF during the period from 27-5-75 to 26-6-75 was directed by the Medical Officer 48 Bn BSF to vaccinate/inoculate approximately 450 persons whereas he has done vaccination/inoculation of only 54 persons during the period under report.

#### ARTICLES OF CHARGE-II

That during the aforesaid period and while functioning in the aforesaid unit Shri Ganesh Chandra Gupta was required to do the blood grouping of 8 persons only.

#### ARTICLES OF CHARGE-III

That Shri Ganesh Chandra Gupta will functioning as compounder 48 Bn BSF from Feb 74 to Aug 75 failed to submit the accounts of medicines/Medical appliances which were issued to him in the month of Feb 74, April 74 and July 74 when attached with different Coys on I S duty at Muzafar Nagar, Jullundur and border conformity.

#### ARTICLES OF CHARGE-IV

That Shri Ganesh Chandra Gupta while functioning as compounder 48 Bn BSF from 3-7-75 to 31-7-75 was attached with both day and night vide commandants 48 Bn BSF order No.O-V/4/75/135, dated 14.07.75, did not obey the orders and had been visiting the Bn HQ without permission of his Coy Comdr.

#### ARTICLES OF CHARGE-V

Shri Ganesh Chandra Gupta has in different record of service as per past reports different Commandants and as per other documents available on record.

5. The petitioner was called upon to submit his written statement. A grievance is made that the petitioner was not given sufficient time to submit his written statement of defence and was not furnished all documents and that he had made representations dated 17<sup>th</sup> September, 1975, in his behalf. Our attention has been drawn by learned counsel for the petitioner to the response dated 30<sup>th</sup> September, 1975 sent by the respondent to this representation informing the petitioner that after his return from temporary duty to the unit on 19<sup>th</sup> September, 1975, he had been granted sufficient opportunity of more than 10 days. It is noteworthy that the charge sheet had been delivered to the petitioner as back as on 26<sup>th</sup> August, 1975. The petitioner was on five days casual leave as well, from 12<sup>th</sup> September, 1975. Despite this position he was given further time till 3<sup>rd</sup> October, 1975 to submit his written defence.

The respondents have also answered the objection with regard to supply of the documents. It was pointed out that some of the documents sought by the petitioner were supplied on 26<sup>th</sup> August, 1975, while other documents, were to be supplied during the inquiry as per the applicable rules. The submission in this communication

have not been disputed by any further correspondence by the petitioner.

6. So far as the disciplinary inquiry is concerned, it appears seven witnesses were examined and documentary evidence was also produced. The enquiry officer found the petitioner guilty of four of the charges. The report of the inquiry was put up before disciplinary authority who agreed with the findings of the inquiry officer. Copy of the inquiry report was forwarded to the petitioner and he was given an opportunity of making a representation against the proposed penalty. The disciplinary authority on consideration of entire matter gave the petitioner benefit of doubt so far as article of Charge No.II is concerned, however, the petitioner was found guilty of the other charges. In this background, by the order dated 15<sup>th</sup> October, 1976, the penalty of dismissal from service was imposed on the petitioner.

7. It is noteworthy that petitioner appears to have filed a suit assailing the action taken against him. This suit was dismissed for the reason that the petitioner has not exhausted his statutory remedy. The petitioner's appeal assailing the trial court judgment was also dismissed. Thereafter, the petitioner filed CM (Main) No.344/2002 in this Court which was disposed of by an order passed on 23<sup>rd</sup> July, 2002 holding that no substantial question of law has been raised. The petitioner, however, was given liberty for filing an appeal or revision in accordance with law before the concerned authority. The petitioner filed the appeal dated 14-15/July, 2005. After perusal of the documents including the inquiry proceedings and the issues raised in the appeal, the inspector General of Border Security Force rejected the same by an order dated 29<sup>th</sup> December, 2006.

8. We have heard learned counsel for the petitioner. The petitioner is unable to make out any violation of the prescribed rules and regulations or of the principles of natural justice in the disciplinary proceedings conducted against him. The respondents gave opportunity to the petitioner to show cause with regard to the inquiry which had been proposed. The reply of the petitioner was found to be unsatisfactory. The inquiry was conducted after following due process and giving full opportunity to the petitioner to lead his defence, if any. The petitioner was also given an opportunity to make a representation against the punishment of dismissal which was proposed against him. The order of the disciplinary authority dated 15<sup>th</sup> October, 1976 is based on the evidence which has been carefully scrutinized. The petitioner's appeal against this order was rejected by the order dated 29<sup>th</sup> December, 2006 passed by the DIG of the Border Security Force which also records reasons in support.

9. In any case, it is trite that even if the petitioner may make out any legal ground of challenge, the same by itself may not justify interference by this court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Reference in this regard can be usefully made to the judgment of the Supreme Court reported at AIR 1997 SC 1236, Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors.

10. In the instant case, as noted above no legally tenable ground of challenge are made out. Learned counsel for the respondents has drawn our attention to the petitioner's service record from 1970 to 1975, extracts whereof have been placed on record by the petitioner. The petitioner's integrity was found doubtful for most of

the period concerned and adverse remarks have been repeatedly communicated to him. The petitioner was aware of these entries. While imposing the punishment, the disciplinary and appellate authorities have taken a view on a consideration of the entirety of the facts and circumstances.

11. No illegality in either the proceedings or in the impugned orders is pointed out or made out.

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

**GITA MITTAL, J**

**J.R. MIDHA, J**

**OCTOBER 21, 2010**  
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