

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

Date of decision: 16th July, 2010

+ **W.P.(C) No.4668/2010**

Ex SEPOY/GD ANMOL KUMAR Petitioner
Through: Mr.S.S.Deswal, Advocate

versus

UOI & ANR. Respondents
Through: Ms.Rajdipa Behura, Advocate

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

GITA MITTAL, J(ORAL)

1. The petitioner assails an order of dismissal dated 1st November, 2008 passed by the Disciplinary Authority; an order dated 12th March, 2009 and order dated 8th March, 2010 passed by the Appellate and the Revisional Authority affirming the orders of dismissal from services of the respondents.

2. So far as the facts giving rise to the present petition are concerned, a Disciplinary Inquiry against the petitioner was directed by the Commandant of 124th Battalion CRPF by an order dated 12th August, 2008 on the following charges:-

"Charge No.1

That Force No.921290043 Sep/G.D. Anmol Kumar E/124, acting as Sepoy/G.D. being member of the Force under Section 11(1) of Central Reserve Police Force Act, 1949 committed misconduct that being on extremely sensitive duty, he went out of camp at about 11:30 hours on 03.08.08 without out pass and did not come back till evening roll-call, which is against good order and discipline of the Force.

Charge No.2

That Force No.921290043 Sep/G.D. Anmol Kumar E/124, acting as Sepoy/G.D. being member of the Force under Section 11(1) of Central Reserve Police Force Act, 1949 committed misconduct that in the night of 03.08.08, he was found in naked condition with a local tribal lady in extremely sensitive area in village Shankar Senapati Tribal basti, Limbuchera situated at a distance of 16km from the camp which is against good discipline of the Force.

Charge No. 3

That Force No.921290043 Sep/G.D. Anmol Kumar E/124, acting as Sepoy/G.D. being member of the Force under Section 11(1) of Central Reserve Police Force Act, 1949 committed misconduct that flouting camp standing orders and all guidelines and endangering his personal security, went to village Shankar Senapati tribal basti, Limbuchera situated 16 K.M. away from the camp and endangered his security. In the result Company Commander E/124 had to go by self with the escort in the night of 03.08.08 to the said village to bring him back. In this way, he endangered the security of Company Commander and escort endangering his life with others life unnecessarily, which is against good discipline of the Force."

3. The petitioner was recruited as a Sepoy/G.D. under the CRPF on 10th February, 1992 at Group Centre CRPF Gandhi Nagar. After completion of his basic training, he was posted at different places.

On 5th March, 2008, the petitioner was assigned the duty of Mess Sepoy. The respondents submit that the petitioner sought permission from Mess Commander to bring eggs from outside, which was not granted to him. On the pretext that he wanted to go to meet Sepoy Ravindra in Head Quarter to bring his money from him. The petitioner was permitted to leave the camp after distributing lunch and making proper entry in the out-pass Register. At about 1500 hours, the petitioner was required to perform certain mess duties but he was not available. The petitioner also did not report in the evening roll-call. The information of his absence was given to the higher authorities. Search of the whole camp to trace out the petitioner was futile. A check roll call at 2000 hours by the Company Commander was also called but of no avail. In this background, the Company Commander and other personnel of the force searched for the petitioner at nearby places including the bus stand, market, hospital etc., but the petitioner was not traceable anywhere.

4. In this background, at about 2200 hours, the Company Commander with other Jawans was compelled to visit the tribal village Shankar Senapati, Limbuchera and make enquiries there. On receipt of information, of the possibility of petitioner's presence in a nearby house, SI /GD Khageshwar Dass and Sepoy/GD Rajendra Parasad Swamy opened the door of this house. The petitioner was found in a state of undress in a compromising position with a tribal lady under influence of intoxication. The Company Commander along with the other Jawans put him in the vehicle. After sometime, the petitioner dressed himself. The petitioner was medically examined in Group Centre Agartala Hospital and brought to the

Battalion Headquarter. He was confined in the quarter guard.

5. In view of the seriousness of the issue, a preliminary inquiry was conducted into the whole matter and based thereon disciplinary proceedings into the aforestated charges were proposed.

6. The Commandant passed an order dated 26th September, 2008 appointing Sh. Vijay Kumar Verma, Second in-Command Officer as the Inquiry Officer. A detailed disciplinary inquiry was conducted against the petitioner who denied the charges levelled against him and pleaded not guilty thereto. The respondents have drawn our attention to the fact that four prosecution witnesses were examined in respect of the charges laid against the petitioner. It is not disputed that the petitioner received a copy of the statement of each of the witnesses. After completion of the prosecution evidence, the Inquiry Officer gave an extra period of fifteen days by 18th September, 2008 to the petitioner by communication dated 3rd September, 2008 to produce any document and evidence in his defence.

7. The records produced by the petitioner show that the petitioner refused to produce any documentary evidence or witness in his defence and filed a written reply denying the charges. The petitioner set up a defence of having been authorised to leave the camp for the purpose of purchasing eggs. He feigned ignorance of the circumstances in which he was located in the tribal village in a compromising position in the state of inebriation.

8. The Inquiry Officer disbelieved the defence set up by the petitioner and held that the charges have been proved in testimony of the four prosecution witnesses.

9. We may also notice that the Inquiry Officer has carefully

considered the statement of the prosecution witnesses laid before him. So far as the defence of the petitioner with regard to securing money from Sepoy Ravindra is concerned, Sepoy Ravindra has appeared in the witness box and made a statement that the petitioner did not meet him. The Inquiry Officer has examined the out-pass register and has found that the petitioner left the CRPF camp without making any entry of his departure in the out-pass register or signing the same. The detailed reference of the manner in which the Jawans have to leave the camp has been recorded by the Inquiry Officer. On a consideration of the prescribed procedure and the documentary evidence laid, the Inquiry Officer has found that the petitioner has left the camp without authorisation and did not follow the prescribed procedure. He made no entry in the out-pass register.

10. We also find that the Inquiry Officer recorded the statements of prosecution witnesses and documentary evidence in the presence of the petitioner and gave full opportunity to him to cross-examine the witnesses.

11. The petitioner has carefully conducted his defence and cross-examined the witnesses.

12. The petitioner gave no explanation at all for the circumstance and reason for not following the prescribed procedure and not signing the out-pass register prior to his departure from the CRPF camp.

13. The Inquiry Officer has found that the petitioner was out of the camp unauthorisedly for a long period of eight hours in an extremely sensitive area endangering his own personal security. It was found that the petitioner has not complied with the camp's standing orders

and guidelines which apply to a CRPF personnel desirous of leaving the camp for any reason. It was also found that the conduct of the petitioner necessitating the Company Commander and other jawans to conduct his search in the extremely sensitive area thereby endangering their personal security. In this background, the inquiry office recommended that the petitioner was guilty of the charges and had thereby committed offences punishable under the provisions of Rule 27 of the CRPF Rules, 1955.

14. The inquiry report was placed for consideration of the Commandant 124th Battalion who was the disciplinary authority of the petitioner.

15. It may be noted that the disciplinary authority has served a copy of the findings of the Inquiry Officer in the inquiry report upon the petitioner under cover of the letter No. P-eight-9/08 dated 14.10.2008 and gave him a period of 15 days till 29.10.2008 to submit his representation, explanation or report, if any, against the findings recorded against him. The petitioner made a representation dated 23rd October, 2008 against the findings of the Inquiry Officer. The disciplinary authority has considered the proceedings of the Inquiry Officer as well as the inquiry report and the representation dated 23rd October, 2008 submitted by the petitioner. On a careful consideration of the entire material, we find that the disciplinary authority has passed an order dated 1st November, 2008 finding the petitioner guilty of the three afore noticed charges. The order of the disciplinary authority records a detailed discussion and charge wise findings. So far as the petitioner's representation is concerned, it is noteworthy that the petitioner was assailing the testimony of the

prosecution witnesses only on matters of detail and pointing out such contradiction which were not on any discrepancies or contradiction of material facts but were of no consequence. The disciplinary authority exercised its jurisdiction and passed an order under Section 11(1) of CRPF Act, 1949 and Rule 27 of CRPF Rules, 1955 accepting the findings of the Inquiry Officer of guilt of the petitioner and ordered his dismissal from the force w.e.f. 1st November, 2008. Other consequential directions with regard to the pay and allowances, for the period of suspension were also recorded. Directions that awards given to the petitioner would be treated as seized and recovery of the amounts outstanding against the petitioner were also made in the same order.

16. Aggrieved by the findings of the disciplinary authority and punishment imposed upon him, the petitioner had filed an appeal under Rule 28 of the CRPF Rules, 1955 before the Deputy Inspector General of Police inter alia challenging the proportionality of the sentence of dismissal from the service which was imposed upon him by an order dated 1st November, 2008 passed by the Commandant E/124 Battalion. The appeal was rejected by the appellate order dated 12th March, 2009 passed by the Deputy Inspector General of police.

17. We find that the petitioner thereafter exercised his statutory right of filing a revision petition under Rule 29 of the CRPF Rules, 1955 which was considered by the Inspector General of Police, who was the revisional authority, and rejected by a detailed order dated 8th March, 2010.

18. We have carefully considered every ground of challenge by

the petitioner by way of the present writ petition to the orders dated 1st November, 2008; 12th March, 2009 and 8th March, 2010. The challenge in the writ petition to the impugned order is premised only on alleged contradictions in the evidence of two of the witnesses that too with regard only to the permission to leave the camp. In our view, nothing turns on these contradictions which are only in matters of detail and not on issues of consequences or in material particulars. Even if the witnesses were to be disbelieved there is no explanation at all so far as the documentary evidence is concerned or why the relevant out-pass register does not contain the petitioners signatures.

19. It is trite that the jurisdiction of this Court in exercise of power under Article 226 of the Constitution of India, so far as a challenge to the disciplinary proceedings is concerned, is circumscribed by a well established principles and is extremely limited. It is not open to this court to examine the evidence which was led in the inquiry as if this Court was sitting in an appeal or exercising the appellate jurisdiction.

20. The petitioner was a member of a disciplined force serving in a sensitive area. He was bound to carefully discharge the responsibility cast upon him, conduct himself with circumspection and ensure that he did not violate the prescribed rules relating to the discipline for leaving a camp. The charges against the petitioner were of a serious nature and stand established in view of the evidence which was led against him. The petitioner has been unable to shake the testimony of the Company Commander or the jawans who had found him in the compromising position. The story and explanation set up by the petitioner is not supported by the oral and

documentary evidence led during the inquiry and is clearly unworthy of any credence.

21. The proceedings of the Inquiry Officer and the impugned orders reflect that the statutory provisions and rules and regulations therein were carefully considered by the disciplinary authority. No objection of violation of any statutory provisions or principles of natural justice has been laid before us. We also find that there is no challenge to the orders which have been passed against the petitioner on grounds of illegality, arbitrariness or mala fide. In view of the above discussion, in our view, the writ petition has not been filed on such grounds on which such challenge could be sustained.

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

GITA MITTAL,J

J.R. MIDHA, J

JULY16, 2010
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