

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

+ **W.P.(C) No.12952/2009 & C.M. No.13827/2009**

Date of Decision: 27.01.2010

RAM GOPAL

..... Petitioner

Through: Mr. Jayant K. Mehta, Advocate

versus

UNION OF INDIA AND OTHERS

..... Respondent

Through: Mr. Shariq Mohd. for Mr. Sachin
Datta, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE VIPIN SANGHI

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

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JUDGMENT (Oral)

GITA MITTAL, J.

1. By this petition the petitioner assails the order dated 26.08.2007 passed by the disciplinary authority removing him from service; order dated 22.12.2007 of the Appellate Authority dismissing the appeal against the same, and the order dated 01.07.2008 passed by the competent authority dismissing the petitioner's revision under Rule 29 of the CRPF Rules assailing the prior orders. There is no dispute so far as the material facts giving rise to the present petition or the allegations made against the petitioner, are

concerned.

2. It is contended by learned counsel for the petitioner that he is confining the challenge in the present petition to the correctness of the punishment awarded to the petitioner by the disciplinary authority as it is disproportionate to the allegations leveled against him. A submission is also made that the document being in the nature of the medical certificate of the petitioner's mother, has not been considered by either the disciplinary authority or the higher authorities before whom the appeal and revisions had been filed.
3. So far as the factual matrix is concerned, it is undisputed that the petitioner was enrolled as a Constable with the CRPF on 23.07.2004 pursuant to the orders dated 23.07.2004 and 12.08.2005. On 11.10.2006, the petitioner alongwith HC/GD Sanjeev Kumar was detailed for collection of new Maruti Gypsy allotted to the battalion vide IPG Provisioning Directorate Signal dated 31.08.2006 which mandated that the Maruti Gypsy would be collected by all units from the Group Centre Gurgaon for use during the 67th CRPF Anniversary celebrations. For this reason apart from the HC/GD Sanjeev Kumar and the petitioner, one constable-cum-driver Ashok Kumar was detailed for collection of the vehicle. They were dispatched for this purpose on 30.09.2006 from the battalion duly equipped with arms and the requisite authority letter. HC/GD Sanjeev Kumar was armed with a Carbine

Butt No.53 Body No.9902, two magazines, 35 live rounds of Carts SA Ball 9 mm. apart from the money and the documents. The petitioner was armed with a 7.62 Butt No.56, Body No.8652, 3 magazines and 60 numbers of 7.62 mm live rounds of 7.62 mm. Constable/Driver Ashok Kumar was carrying the authority letter for collecting of the vehicle.

4. This party collected the vehicle from the Group Centre Gurgaon and was dispatched to the 73 Battalion CRPF on 05.10.2006. They were said to have performed duties at this location till about 1400 hours on 11.10.2006. Thereafter a movement order was issued in respect of HC/GD Sanjeev Kumar and the petitioner by the battalion to proceed to the Unit Headquarters, 75 Battalion, located in Aizwal, Mizoram with their arms and ammunition. The driver as well as the vehicle was, however, detained at 73 Battalion CRPF to perform duties in connection with the anniversary parade. Instead proceeding to the unit headquarters in Mizoram, the petitioner and the HC/GD Sanjeev Kumar at about 1449 hours appear to have purchased on ordinary class railway ticket at the New Delhi Railway Station for journey from Delhi to Silchar on 11th October, 2006 against the railway warrant No.F 0324262.

5. They however, did not board any train despite availability of several trains for proceeding to the North-East. Instead, on

12.10.2006, the petitioner handed over his personal weapon/ammunition to HC/GD Sanjeev Kumar and proceeded to his hometown Pratapur, Kashganj, Etah District, UP. He is stated to have returned to Delhi back only on the night of 13.10.2006.

6. On 14th October, 2006 at 2130 hours, these two soldiers boarded the general compartment of the Brahmaputra Mail at Delhi Railway Station. The respondents have contended that HC/GD Sanjeev Kumar kept his weapon and ammunition detailed along with vehicle registration certificate, railway warrant, counter foil, movement order and government cash amounting to Rs.4150/- along with personal belongings in a private suit case. Both the soldiers are alleged to have fallen asleep after the train left the Aligarh Railway Station and woke up only at about 0200 hours at the Tundla Railway Station on the night of 14/15.10.2006. At that time they discovered that the suit case of HC/GD Sanjeev Kumar in which the aforesaid articles were stored was missing. A police complaint was lodged at Tundla. HC/GD Sanjeev Kumar and the petitioner returned to the unit 73 Battalion Aizwal, thereafter.

7. The respondents allege that the petitioner and HC/GD Sanjeev Kumar did not ensure compliance of instructions issued in writing pertaining to security of arms, ammunition and important Government documents and points to be kept in mind while on Government duty/transit.

It is on record that despite best efforts, the weapon which had been assigned to HC/GD Sanjeev Kumar has not been traced out till date.

8. In the above facts, the respondents were compelled to take a serious view in the matter. The petitioner not only entrusted the arm and ammunition assigned to him, to HC/GD Sanjeev Kumar, who was carrying his own arms and ammunition, but he proceeded to his hometown in District Etah, U.P., admittedly without obtaining any prior permission from the competent authority. The respondents have pointed out that so far as the permission to leave station and proceed to his hometown was concerned, the petitioner was required to take the same from the Commandant of 75 Battalion or the Company Commandant of his company. It has also been pointed out that CRPF Centres are in existence at Delhi as well as at Gurgaon, which have weapon and ammunition stores. In case the petitioner's need for leaving the station had been so emergent, he was required to follow the rules and have reported the same to the competent authorities and to these centres with regard to custody of the weapon and ammunition, which had been assigned to him.

9. In addition thereto, HC/GD Sanjeev Kumar and the petitioner were found to have purchased the ordinary class railway ticket on 11.10.2006 at about 1449 hours from Delhi to Silchar against the railway warrant, which was issued to them on 30.09.2006. They

claimed that they could not travel on the Brahmaputra Mail on 11.10.2006 for the reason that they could not reach New Delhi Railway Station from the Delhi Railway Station despite availability of six hours for this purpose. No effort was made to explore the possibility of any other convenient train on the 11th, 12th or 13th of October, 2006. Instead these two persons opted to perform the journey only on the night of 14th October, 2006. This journey was performed against a ticket which was invalid and had expired.

10. In this background, the respondents issued a joint chargesheet dated 8th March, 2007 to the petitioner as well as to HC/GD Sanjeev Kumar. Articles 1 & 2 relate to HC/GD Sanjeev Kumar. However, Articles 3, 4 & 5 relate to the petitioner. Having regard to the nature of challenge made before this Court, we consider it appropriate to set out the charges in extenso. The same read as follows:

ARTICLE-I

No.880480909 HC/GD Sanjeev Kumar of C/75 Bn while posted and functioning as Head Constable/General Duty in the month of October 2006 committed disobedience of order/ neglect of the duty/remissness in the discharge of his duty/ other misconduct in his capacity as a member of the Force U/s 11 (1) of the CRPF Act, 1949 in that he was detailed as Party Commander of Escort Party for Collection of Maruti Gypsy from GC, CRPF, Gurgaon with one more Ct/ GD alongwith personal arms and ammunition. While returning back to Unit Hqr. On 14.10.2006, he lost his Carbine 9 MM Butt No.53 Body

No.9902 two number of magazines, 35 live rounds of Carts SA Ball 9 mm Govt. Cash worth Rs.4150/-, Cash Bill worth Rs.850/- of registration of Maruti Gypsy and Railway warrant counterfoil etc while travelling in 4056 Brahaputra Mail in between Aligarh railway station to Tundla Railway Station in the intervening night of 14.10.2006 and 15.10.2006 which were kept in his personal suitcase. Thus the said No.880480909 HC/GD Sanjeev Kumar of C/75 Bn failed to strictly adhere to the instructions pertaining to the safety and Security of Arms/ Ammunitions and Govt. documents while performing journey on Govt. duty which were given to him verbally as well as in writing on 30.09.2006 alongwith Movement Order dated 30.09.2006. Thus he has failed to obey lawful orders, was negligent in the performance of such sensitive duties and has thus acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of the CRPF Act, 1949.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office/ place, No. 880480909 HC/GD Sanjeev Kumar of C/75 Bn was guilty of disobedience of orders/ neglect of duty/ remissness in the discharge of his duty/ other misconduct in his capacity as a member of the Force U/s 11(1) of the CRPF Act, 1949 in that while performing the duties of Party Commander of the Escort Party on 12.10.2006 and while at Delhi Railway Station, permitted No. 014746595 Ct/GD Ramgopal of C/75 Bn, CRPF to proceed to his home town leaving his service weapon and ammunition in his custody at New Delhi railway station violating all instructions given to him and contrary to the existing rules and regulations. Thus, the said No. 880480909 HC/GD Sanjeev Kumar of C/75 Bn committed an act of grave misconduct, dereliction of duty and acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of CRPF

Act, 1949.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office/place, No.880480909 HC/GD Sanjeev Kumar and No.041746595 Ct/GD Ramgopal of C/75 Bn was guilty of disobedience of orders/ neglect of duty / remissness in the discharge of his duty/ other misconduct in his capacity as a member of the Force U/s 11 (1) of the CRPF Act, 1949 in that while performing the duties of Party Commander and Party Member of the Escort Party respectively Purchased one ordinary Railway Warrant No.12432496 on 11.10.06 (for both of them) from New Delhi to Silchar against Railway Warrant No.0324262 dated 30.09.2006 on 11.10.2006 at 1449 hours from New Delhi railway station and performed journey on 14.10.2006 from Delhi Railway Station i.e. after expiry of valid period of travel ignoring all the rules and regulations of the Indian Railways and liable to be punished if apprehended under Indian Railways Act. Further as per statement of No.880480909 HC/GD Sanjeev Kumar of C/75 Bn they missed the 4026 Brahmaputra Mail on 11.10.2006 as they were unable to reach from New Delhi Railway Station to Delhi Railway Station within 06 hours. They did not board the Brahmaputra Mail on 12.10.2006 or 13.10.2006 and also did not consider the possibility to travel by any other convenient train proceeding to their destination. Thus the said No. No.880480909 HC/GD Sanjeev Kumar and No.041746595 Ct/GD Ramgopal of C/75 Bn committed an act of grave misconduct, dereliction of duty, remissness in the discharge of Govt. duty and acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of CRPF Act, 1949.

ARTICLE IV

That No. 041746595 Ct / GD Ramgopal of C/75 Bn CRPF while posted and functioning

as Constable / GD in the month of October, 2006 was guilty of disobedience of orders/ neglect of duty/ remissness in the discharge of his duty in his capacity as a member of the Force U/s 11(1) of the CRPF Act, 1949 in that on 30.09.2006 he was sent with escort party for collection of Maruti Gypsy from GC CRPF Gurgaon under the command of No.880460909 HC/GD Sanjeev Kumar. While returning back to Unit Hqr. On 14.10.2006 the HC/GD lost his carbine 9 MM Butt no. 53, Body no. 9902 two number of magazines, 35 live rounds of Carts SA Ball 9 mm Govt. Cash worth Rs.4150/-, Cash Bill worth Rs.850/- of registration of Maruti Gypsy and Railway warrant counter foil etc while traveling in 4056 Brahaputra Mail in between Aligarh railway station to Tundla Railway Station in the intervening night of 14.10.2006 and 15.10.2006. Since the said Ct/GD was detailed as member of the escort party alongwith one HC/GD it was also his primary duty to secure weapons during move alongwith HC/GD which he had failed to do thereby violating all laid down instructions on the subject pertaining to the safety and security of Arms/Ammunitions and Govt. document while on Govt. duty which were also given verbally as well as in writing on 30.09.2006 alongwith movement order dated 30.09.2006, before dispatch from Unit Hqr. Thus the said No. 041746595 Ct / GD Ramgopal of C/75 Bn CRPF failed to comply with the laid down instructions on the matter of security of weapons scrupulously during transit/ move which was briefed to him at the time of his move, and thus committed gross misconduct /neglect of duty/ remissness in the discharge of duty and failed to maintain absolute devotion to duty and acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of CRPF Act, 1949.

ARTICLE V

That during the aforesaid period and while functioning in the aforesaid office/place, No.

041746595 Ct / GD Ramgopal of C/75 Bn was guilty of disobedience of orders/neglect of duty/ remissness in the discharge of his duty/ other misconduct in his capacity as a member of the Force U/s 11(1) of the CRPF Act, 1949 in that while performing the duties of Escort Party on 12.10.2006 ignoring all the rules and regulations he proceeded to his home town Pratapur, Kasganj, Etah, UP from Delhi without prior approval /sanction of the Competent Authority, leaving his personal weapon in the custody of No.880480909 HC/ GD Sanjeev Kumar of C/75 Bn who was already in possession of his own personal arms/ ammunitions thus violating all orders and instructions on the subject and which is contrary to the instructions and amounts to desertion. Thus the said no. 041746595 Ct/GD Ramgopal of C/75 Bn CRPF committed an act of grave misconduct /neglect of duty / remissness in the discharge of duty and failed to maintain absolute devotion to duty and acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of CRPF Act, 1949 dereliction of duty and acted in a manner unbecoming of a member of the Force and thereby violated the provisions contained in Section 11(1) of CRPF Act, 1949."

11. Sh. V.K. Sharma, Deputy Commandant, was appointed as the inquiry officer to conduct the inquiry into the above charges. The record reflects that during the inquiry the delinquents admitted the charges leveled against them. The inquiry officer recorded statement of the witnesses of the prosecution and due opportunity to cross-examine the witnesses was accorded to the delinquents. Copies of the statement of witnesses as well as the inquiry report were handed over to the delinquents. On detailed consideration of the matter the inquiry officer submitted a report dated 30th July, 2007, inter alia,

finding the petitioner guilty of the charges leveled against him.

12. The report of the inquiry officer was placed before the disciplinary authority, who was of the opinion that the petitioner as well as the other delinquent have breached the rules at several stages and were guilty of carelessness resulting in loss of modern and sophisticated weapons which could not be traced out. The disciplinary authority has also observed that in case the weapon and ammunitions come into the hands of the terrorists, serious consequences could result.

13. We find that in the order dated 26th August, 2007, the disciplinary authority has carefully considered the culpability of the two delinquents while awarding the punishment. So far as HC/GD Sanjeev Kumar is concerned, having regard to his position, the disciplinary authority has directed that he should be dismissed from the service. Keeping in view the allegations and evidence produced against the petitioner, the disciplinary authority has directed his removal from service from the date of issuance of the order.

14. It is to be noted that so far as the two days. i.e. from 12th October, 2006 to 13th October, 2006 (which were spent by the petitioner unauthorisedly away from duty) were concerned, the disciplinary authority directed that the same shall be considered to be non-working days for all purposes. It was directed that this period would be treated as "*dies non*".

15. The petitioner filed the statutory appeal against the order dated 26th August, 2007 of the disciplinary authority. This was also rejected by an order passed on 22nd December, 2007. The petitioner's revision under Rule 29 of the CRPF Rules was also rejected by the order dated 1st of July, 2008.

16. The findings of culpability of the petitioner so far as the charges are concerned, have not been assailed. A grievance is only made that the petitioner's explanation for the same has not been considered. It is further urged that the punishment awarded is disproportionate to the nature of the allegations against the petitioner.

17. Mr. Jayant Mehta, learned counsel appearing for the petitioner, has taken us extensively through the order dated 23rd December, 2007 passed by the appellate authority as well as the order dated 1st July, 2008 passed by the revisional authority. Both the appellate authority as well as the revisional authority had considered the matter at length and have rejected the petitioner's contention that a more lenient view ought to have been taken. Before us, Mr. Mehta has vehemently urged that the petitioner was compelled to leave Delhi and go to his hometown on account of the sickness of his mother. It has been pointed out that the petitioner's mother was unwell and a medical certificate from the District Medical Superintendent has not been taken into consideration by the authorities.

18. The record shows that this contention of the petitioner has been considered by the authorities. The revisional authority in the order dated 1st July, 2008 has even noted that the petitioner's mother was suffering from malaria, which was not a disease of such seriousness, which could have justified the petitioner ignoring or bypassing the procedure for grant of leave. The appellate authority has observed that HC/GD Sanjeev Kumar was not competent to permit the petitioner to proceed on leave, and he ought to have followed the prescribed procedure for doing so. The revisional authority has pointed out that, in any case, the action of the petitioner in handing over his weapon to another soldier by itself merits serious consequences.

19. It needs no elaboration that the question of quantum of punishment in disciplinary matters is primarily for the Disciplinary Authority to decide. The jurisdiction of this Court in judicial review under Article 226 of the Constitution of India is limited and confined to the applicability of one or the other of the well known Wednesbury Principles. In the pronouncement of the Apex Court reported in ***Om Kumar & Ors. v. Union of India 2000 (7) SCALE 524***, the Supreme Court discussed the narrow scope of the court's jurisdiction in several cases. On the aspect of proportionality of punishment, the principles which were laid down in this pronouncement deserve to be considered *in extenso* and read as follows:

“28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are however given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article [14](#), the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article [14](#) applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment.”

20. Reference can usefully be also made to a prior pronouncement

of the Apex Court decision reported in **B.C. Chaturvedi v. Union of India** (1996) 111 ILJ 1231 (SC). In para 18 of this judgment, the Supreme Court has held as follows:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

21. A challenge to an administrative decision relating to punishment in disciplinary cases on the ground of the same being arbitrary under Article 14 of the Constitution of India by way of Article 226 of the Constitution of India requires the Court to examine the same as only a second reviewing authority. In **Union of India & Ors. v. Dwarka Prasad Tiwari (2006) 10 SCC 388**, the Supreme Court laid down the principle that the court would not apply proportionality as the primary reviewing court because no issue of fundamental freedom nor of discrimination under Article 14 applies in

such a context. Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of court/tribunal, there is no scope at all for interference.

22. In ***The Commissioner of Police & Ors. v. Syed Hussain*** (2006) 3 SCC 173 the court held that imposition of the punishment of removal from service keeping in mind the gravity of the charge was not disproportionate and hence, not violative of principles of proportionality.

23. We find that the disciplinary authority, the appellate authority and the revisional authority have adverted to the conduct of the petitioner and HC/GD Sanjeev Kumar in purchasing a ticket on 11th October, 2006 and undertaking travel thereon only on 14th October, 2006 i.e. after expiry of the validity period of the travel which was also in breach of rules and regulations of the Railways. We also find that there is no explanation at all for the petitioner leaving his weapon and ammunition with HC/GD Sanjeev Kumar while he opted to proceed to his hometown without the leave of the competent authority. The contention on behalf of the petitioner that the respondents have regularized his two days' absence without leave, and therefore, he could not be proceeded against on the charge of unauthorizedly proceeding on leave does not hold any water. In fact, the same shows that the respondents have taken a serious view so far as the conduct of the petitioner is concerned, and not condoned the same.

24. It cannot be denied that the actions of the petitioner in entrusting the weapon to the custody of another colleague, and leaving station for his hometown without permission from the competent authority, while he had been detailed on official duty, are by themselves extremely serious matter especially where an armed force or Central Reserve Police Force is concerned. Moreover, the carelessness of the petitioner in not protecting the arm, ammunitions and government documents while traveling in the train also constitute a serious misconduct. The petitioner was facilitating his senior in the duties for which they had been detailed. The purpose for which the petitioner was detailed for the aforesaid duty was precisely to guard the other members of the party and their arms, ammunition and official documents. The petitioner has miserably failed in the performance of that duty, which is evident from the fact that the suit case of HC/GD Sanjeev Kumar containing the arm, ammunition and government documents went missing from the general compartment of the train in which the party was returning. Merely because the suit case was that of HC/GD Sanjeev Kumar, and not that of the petitioner, does not mitigate the seriousness of the lapse or absolve the petitioner from his responsibility, as the responsibility of the petitioner extended to the protection of all the belongings, including the suit case of HC/GD Sanjeev Kumar. Not only this, the conduct of the petitioner and HC/GD Sanjeev Kumar in travelling without a valid ticket to Silchar on 14th October, 2006 itself

exacerbates the seriousness of his conduct and the rank indiscipline in which they have indulged.

25. The petitioner was a member of a disciplined para military force. The respondents have taken a careful and considered view in the matter while awarding the punishment of removal of service to the petitioner. A more serious view has been taken with regard to the conduct of his senior who stands dismissed. The impugned orders reflect application of mind. No violation of legal provisions or principles of natural justice is urged. No case of disproportionality of awarded punishment is made out in the given facts.

26. The writ petition and application are devoid of any legal merit and are, accordingly, dismissed.

GITA MITTAL, J.

VIPIN SANGHI, J.

JANUARY 27, 2010
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