

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

+ **WP(C) No.8938/2011**

% **Date of Decision: 21.12.2011**

Babu Lal Meena Petitioner

Through Mr.N.K. Katyal, Advocate

Versus

Union of India & Ors. Respondents

Through Mr.Rajinder Nischal, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS. JUSTICE INDERMEET KAUR

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 29th June, 2009 passed by the Disciplinary Authority, order dated 27th April, 2010 passed by the Appellate Authority, order dated 6th December, 2010 passed by the Reviewing Authority and order dated 12th August, 2011 passed by the Director General, CRPF removing the petitioner from service on account of his misconduct after a proper inquiry. The petitioner has also sought regularization of his absence from duty from 10th January, 2009 to 29th June, 2009 and payment of his salary and other allowances.

2 The petitioner was enrolled as a Constable in CRPF w.e.f. 5th March, 2003 in 150th Battalion. A memorandum of charge dated 11th February, 2009 was issued against the petitioner alleging that the petitioner misconducted under the provision of Clause 11(1) of CRPF Act, 1949 as he was assigned duty in a very sensitive area and he remained absent without any intimation; the petitioner misbehaved with Platoon Commander/Guard Commander and used criminal force against Guard Commander on 18th December, 2008 and that he was found drunk during the duty timings on 18th December, 2008.

3. The charge sheet along with the documents relied on by the respondents were given to the petitioner. The petitioner had sought ten days time to submit his reply which was granted to him. The petitioner, however, sought leave for 15 days with permission to leave the Camp due to illness of his wife. The leave of the petitioner was granted and he was allowed to leave the Camp for 15 days from 13th February, 2009 to 27th February, 2009.

4. The petitioner, however, did not come back after 27th February, 2009 nor was any representation received from him. An inquiry officer was appointed by order dated 7th March, 2009 to inquire into the charges leveled against him.

5. The inquiry officer summoned the petitioner on 31st March, 2009 for preliminary hearing and on 4th April, 2009, the charges levelled against the petitioner were conveyed by the Investigation Wing of the respondent. The petitioner admitted Charges No. 1 & 3 and denied Charge No. 2.

6. During the inquiry proceedings, five witnesses appeared before the enquiry officer and their statements were recorded and the petitioner had the opportunity to cross-examine them. However, after the witness No. 1 was cross-examined, the petitioner sought leave on account of the death of his son and by order dated 23rd April, 2009, the petitioner was granted leave from 24th April, 2009 to 8th May, 2009.

7. After 8th May, 2009, the petitioner, however, remained absent till 20th June, 2009 without any intimation and without any sufficient reason. No representation or application was received by the respondents from the petitioner for extension of the leave of the petitioner. Though the petitioner was sent a communication dated 13th May, 2009 directing him to appear in the departmental inquiry and also to report for the duty, the petitioner did not appear before the Departmental Proceedings nor reported for duty nor sent any documents showing his inability to appear on any account.

8. The Inquiry Officer completed the Inquiry on 29th May, 2009 and sent it to the Disciplinary Authority. The Disciplinary Authority sent a copy of the inquiry report at the residential address of the petitioner as per Rule 15 of the Central Govt. Service Rules, 1965. The petitioner did not respond to same nor sent any communication disclosing any reason for his non appearance for duty. The petitioner was required to send his comments and reply to the inquiry report within 15 days, however, nothing was received from the petitioner and consequently, the Disciplinary Authority accepted the inquiry report and imposed the punishment of removal from service. The Disciplinary Authority also agreed with the report of the Inquiry Officer that the charge of misconduct/misbehavior with the Platoon Commander and Guard Commander and the physical assault on the Guard Commander on 18th December, 2008 had not been made out and did not dissent with the finding of the enquiry officer in this regard.

9. Relying on the Inquiry Report, the Disciplinary Authority agreed that the petitioner remained absent from the sensitive duty without authorization and he was found drunk while on duty, which was against Clause 11 (1) of CRPF Act. Though, the petitioner had admitted the Charges No. 1 & 3, however, the misconduct as imputed under Charges No. 1 & 3 was also established against the petitioner before the Inquiry Officer. The Disciplinary Authority held that any leniency shown to the petitioner will adversely affect other members of the Force

and shall lower the discipline of the Force and therefore, the misconduct on the part of the petitioner is to be dealt with strictly. Consequently, by order dated 29th June, 2009, the punishment of petitioner and the period of suspension from 10th January, 2009 to 8th May, 2009, i.e., of 119 days was ordered to be treated as suspension period and the period of absence from 9th May, 2009 was ordered to be treated as non working days as dies non.

10. The appeal filed by the petitioner before the Appellate Authority against the order of removal dated 29th June, 2009 was found to be barred under Rule 28 (d) of CRPF Rules, 1995 as the appeal was not filed within 30 days of the final order and the appeal was filed beyond six months without any sufficient reason disclosed for condonation of delay. The appeal was, however, considered by the Appellate Authority. The Appellate Authority considered the departmental investigation filed and other documents and the testimonies of witnesses recorded during the departmental proceedings.

11. The plea of the petitioner before the Appellate Authority that he had requested for a defence assistant but was not provided with, was repelled on the ground that under para 4 of the Circular Order No. 06/05 the defence assistant could be provided on the request of the petitioner. However, the petitioner never requested to the Inquiry Officer for appointment of a defence assistant.

12. The Appellate Authority also noted that the son of the appellant had died on 22nd April, 2009 and he went to his native village. The Appellate Authority also took into consideration certificate issued by the Medical Board regarding mental depression of the petitioner from 9th May, 2009 to 16th December, 2009. The plea given by the petitioner was, however, found to be fabricated as the petitioner had submitted the application for 15 days leave due to illness of his wife which was granted by the order dated 12th September, 2009 for 15 days, i.e., from 13th February, 2009 to 27th February, 2009. However, the petitioner did not present himself from 27th February, 2009 but appeared on 25th March, 2009. Thereafter, the petitioner again gave another application on account of the death of his son and the leave was granted to the petitioner by order dated 23rd April, 2009 from 24th April, 2009 to 8th May, 2009. The appellant again did not report on 9th May, 2009 and remain absent till 29th June, 2009. After the expiry of the leave, the petitioner did not give any intimation nor produced any certificate demonstrating that he was unable even to intimate the respondents about his inability to come back and join the duties. The Appellate Authority categorically noticed that the appellant was supposed to leave his house on 6th May, 2009, three days prior from 9th May, 2009, the date of his reporting in the Camp. However, the petitioner procured a certificate from 9th May, 2009 which, according to Appellate Authority, was a well thought out story, misleading and to evade the real issues. The petitioner did not disclose as to why he did not leave on 6th May,

2009 for reporting on 9th May, 2009. The Appellate Authority, therefore, by order dated 27th April, 2010, dismissed the appeal and sustained the order of the petitioner's removal from service.

13. Though in the appeal, the petitioner had not denied that he had admitted the Charges No. 1 & 3 against him, however, in his petition dated 22nd December, 2010, to the Director General, the petitioner denied that he had pleaded guilty of Charges No. 1 & 3. The petitioner also alleged that there had been violation of the principal of natural justice during the inquiry proceedings.

14. The memorandum and article of charge was given to the petitioner. The petitioner did not seek appointment of defense assistant. The witnesses on behalf of respondents were to be examined in his presence and he was entitled to cross-examine them. One witness was examined in his presence which was also cross examined by him. The petitioner went on leave first on account of the illness of his wife and then on account of death of his son and over stayed without any leave or any sanction to the respondent. The medical certificate produced by the respondent has also not been accepted by the respondents for cogent reasons. The petitioner did not appear before the enquiry officer despite intimation to him by communication dated 13.5.2009.

15. The petitioner has now challenged the order contending, *inter alia*, that due to prolong sickness of his wife and death of his son, the departmental proceedings taken against him and the punishment imposed on the petitioner is a harsh punishment and in any case, the respondents were liable to advertise the notice, calling the petitioner to join the departmental proceedings, before proceeding *ex parte* and commencing ex-parte proceedings and before passing the final order. The petitioner has also contended that the respondents failed to refer the matter to the Medical Board for genuineness of the medical certificate submitted by the petitioner to the Disciplinary Authority and that he has been awarded disproportionate punishment on account of minor offences.

16. This Court has heard the learned counsel for the petitioner and the counsel for the respondents, Mr. Rajinder Nischal, who appeared on advance notice. The learned counsel for the petitioner is unable to point out that after the petitioner failed to return on expiry of his leave on 8th May, 2009, a communication letter No. P-8-1/2009 dated 13th May, 2009 was sent to the petitioner to be present in the departmental inquiry and also to report for duty at the Battalion Headquarter.

17. The petitioner ought to have appeared in the inquiry proceedings pursuant to the said communication dated 13th May, 2009 or should have sent intimation about his alleged inability to appear in the inquiry

proceedings or should have sought more time to appear before the enquiry officer. Admittedly, neither any intimation was sent showing/ demonstrating any inability on the part of the petitioner to appear before the inquiry officer nor any medical certificate was sent at that time, which would have shown that the petitioner was unable to come and join the inquiry proceedings. Though the petitioner was allegedly suffering from mental depression, however, the medical certificate is of a date after the date when the petitioner ought to have returned and therefore, it has not been construed as an appropriate medical certificate. Since the petitioner did not appear before the Inquiry Officer despite due intimation, the *ex parte* proceedings initiated against the petitioner cannot be held to be illegal or irregular nor any sufficient ground has been made out for setting aside the ex-parte proceedings initiated against him.

18. The learned counsel for the petitioner has contended that there should have been a publication of notice and intention of the respondents to proceed ex-parte against the petitioner in the inquiry proceedings. No Rule or law has been cited which makes it mandatory for the Inquiry Officer to proceed *ex parte* against the delinquent officer after getting the notice published in the newspaper or any other journal as is sought to be contended on behalf of the petitioner despite the communication dated 13.5.2009 sent to him. The petitioner was duly intimated about his liability to appear before the Inquiry Officer by

communication dated 13th May, 2009, receipt of which has not been denied by the petitioner. In the grounds raised by the petitioner, *ex parte* proceedings against him, has not been faulted on any of the cogent grounds. The petitioner has not been able to make out sufficient cause for setting aside the *ex parte* inquiry proceedings against him in the facts and circumstances.

19. The learned counsel for the petitioner has also very emphatically contended that though the petitioner was drunk but he was not drunk during the duty hours. The respondents have inferred on the basis of the inquiry report that the petitioner was drunk during the duty hours and he had also admitted his guilt before the charge sheet was issued against him. This cannot be disputed by the petitioner that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is concerned in judicial review with the decision making process and does not have to re-appreciate the evidence. In any case the learned counsel for the petitioner has not been able to point out any evidence which has not been considered by the inquiry officer or any documents, which established any of the pleas and contentions of the petitioner which has not been considered by the inquiry officer. The inquiry officer performs quasi judicial functions, who analyses the documents and evidence and arrives at a conclusion on the basis of preponderance of probability to prove the charges. This has not been shown that while doing so, he has taken into consideration irrelevant facts or has refused

to consider the relevant facts or has shifted the burden of proof illegally. Nothing has been pointed out which will reflect that he has rejected the testimony of the witnesses on the basis of surmises and conjectures or that the Inquiry Officer has enquired into the allegations which the delinquent officer/petitioner has not been charged. The petitioner was given adequate opportunity inasmuch as the copy of the charge sheet was given to him and he was asked to give a reply. The petitioner appeared during the earlier stages of inquiry when the witnesses on behalf of the respondents were examined and he had even cross-examined one of them. Though the petitioner initially did not make any grievance about the defence assistant and for the first time, the allegation was made that the defence assistant was not provided at the time of filing the petition before the Director General, which has been rightly repelled by the respondents on the ground that during the inquiry, the petitioner did not ask for the defence assistance.

20. In the circumstances, no procedural impropriety or violation of any rule or regulation has been made out by the learned counsel for the petitioner so as to require any interference by this Court in exercise of its jurisdiction.

21. Leaned counsel for the petitioner has also very emphatically contended that the punishment of removal from service is disproportionate to the charges against the petitioner. This has been

established that the petitioner was given duties in a sensitive area and without any cogent or acceptable reason, he absented himself which is quite serious considering that the petitioner is a member of the disciplined Force. Even from the rules, it has not been shown that on account of misconduct on the part of the petitioner, he will not be liable for the major punishment. The other charge against the petitioner which has been established and for which the punishment of removal has been awarded to him is that the petitioner was found drunk while on duty. The petitioner being a member of a disciplined force, therefore, cannot claim that the punishment of removal accorded to him is disproportionate to his misconduct in the facts and circumstances nor it will be justifiable for this Court to sympathise or to show any benevolence. It has been held by the Supreme Court that the relief granted by the Court should be legal and tenable within the framework of law and should not incur the criticism that the Court has exercised the jurisdiction based on misplaced sympathy/generosity and to provide benevolence. The Supreme Court in Life Insurance Corporation of India Vs. R. Dandapani, AIR 2006 SC 615 had held as under:-

“9. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial

results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. MANU/SC/0885/1993 : (1994)IILLJ888SC.]”

22. In the totality of the facts and circumstances, the learned counsel for the petitioner is unable to show any procedural lapse in conducting the inquiry and awarding the punishment by the Disciplinary Authority to the petitioner and sustenance of the punishment by the Appellate and other Authorities on account of misconduct on the part of the petitioner.

23. The petitioner has not been able to make out sufficient cause for his non-appearance before the inquiry officer leading to *ex pate* proceedings initiated by the Inquiry Officer and there are no sufficient grounds for setting aside the inquiry proceedings.

24. In the entirety of the facts and circumstances, there is no such illegality, irregularity or perversity in the actions of the respondents removing the petitioner from service on account of misconduct on the part of the petitioner and imputable to him which will require interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

25. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

INDERMEET KAUR, J.

December 21, 2011.

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