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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.3256/2011

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Date of decision: 2nd November, 2012

ASHOK KUMAR

..... Petitioner

Through Mr.Ravi Prakash, Adv. with Ms. Avni
Singh, Adv.

Versus

UNION OF INDIA & ORS

..... Respondent

Through Ms. Anjana Gosain, Adv. with
Dr.Ashwani Bhardwaj, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL (Oral)

1. The petitioner before this court has assailed the disciplinary proceedings and the orders passed against him by the respondents pursuant to articles of charges which were served on the petitioner on 29th November, 2008; the order dated 7th November, 2009 passed by the disciplinary authority; the order dated 14th May, 2010 by the Appellate Authority; the order dated 9th November, 2010 by the Revisionary Authority and the order dated 22nd March, 2011 passed by the Director General of CRPF.

2. A petition was filed under Rule 30 of the Central Reserve Police Force Rules, 1955 with regard to incidents which occurred on 1st February, 2006 and 2nd February, 2006. A memorandum of charges

were drawn up against the petitioner on 31st March, 2006. 13

3. The respondents initially passed an order of dismissal on 13th May, 2006 against the petitioner without conducting disciplinary proceedings. The petitioner challenged the same by way Writ No.1749 (W) of 2006 before the High Court of Calcutta. This petition was granted by the court by the judgment dated 4th July, 2007 permitting the petitioner to submit a representation to the respondents with an application for condonation of delay within thirty days of the passing of the order and directed the appellate authority to examine the question of limitation keeping in view the observations made by the court.

4. The petitioner consequently submitted an appeal under Rule 28 of the Cr.P.F. Rules, 1955 on the 4th December, 2007 to the respondent no.4 making detailed submissions. An order dated 3rd July, 2008 was passed by the respondent no.4 setting aside the order of dismissal of the petition and directing his reinstatement with immediate effect with a further direction that a fresh departmental inquiry be conducted against the petitioner by the 38th Battalion instead of the 41st Battalion on the charges framed.

5. Pursuant to the said order, the Commandant of the 38th Battalion issued a memorandum dated 29th November, 2008 informing the petitioner of the proposal to conduct a fresh departmental inquiry. This communication was accompanied by the memorandum of articles of charges which were to the following effect:-

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"ARTICLE-1

That the said No.913156175 CT/Dvr Ashok Kumar of HQ 41 Bn CRPF, while attached for MT driver duties F/41 Bn, CRPF since 01/12/04, has committed acts of grave misconduct/disobedience of order in his capacity as a member of the Force, in that he absented himself from the F/41 Bn CRPF camp located at insurgently infested village of Madhyahaldibari, Distt. Jalpaiguri (W.B.) from evening hours of 01/02/06 to 0115 hrs on 02/02/06 unauthorisedly without any permission/sanction of the competent authority, which is prejudicial to good order and discipline of the Force and punishable under Section-11(1) of CRPF Act, 1949.

ARTICLE-II

That the said No.913156175 CT/Dvr Ashok Kumar while functioning as such in F/41, has committed acts of grave misconduct neglect of duty and misbehavior in his capacity as a member of the Force, in that he was again found absent from F/41, Bn, FRPF Camp, Madyahaldibari, Distt-Jalpaiguri (W.B.) in the afternoon of 02.02.06 unauthorisedly and without permission/sanction of the competent authority, Later when other coy personnel found him outside camp under the influence of excessive alcohol and around 1700 hrs brought him inside the camp he refused to perform his duties as M.T. Driver and uttered filthiest abuses for his CHM/OC, which is prejudicial to good order and discipline of the Force and for that he is punishable under Section 11(1) of CRPF Act, 1949.

ARTICLE-III

That the said No.913156175 CT/Dvr Ashok Kumar while functioning as such in F/41, has committed acts of gross misbehavior with his senior in his capacity as a member of the Force in that on 02/02/06 afternoon when he was produced before his superior officer, Shri Manoj Sanga, Asstt. Commandant, Officer Commanding of F/41 Bn, CRPF for his above said acts of gross misconduct/neglect of duty/disobedience of orders he attempted to physically assault Shri Manoj Sanga, A/C, which is prejudicial to good order and discipline of the Force and punishable under Section 11(1) of CRPF Act, 1949."

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6. It is noteworthy that the charges leveled against the petitioner in this memorandum dated 29th November, 2008 were identical to the charges which were levelled against the petitioner in the first proceedings.

7. We may note that pursuant to the directions made by this court, and, given the nature of the contentions raised by the petitioner, we had directed the respondents to keep available the original record of the proceedings conducted against the petitioner. The record has been produced before us. We find that the same contains a statement of defence on behalf of the petitioner which is dated 17th October, 2009. This statement of defence is a hand written document scribed in Hindi language and duly signed by the petitioner.

8. During the course of the disciplinary inquiry, five witnesses were examined in support of the charges against the petitioner. The petitioner has cross-examined the witnesses. He was given an opportunity to submit his statement of defence.

9. After consideration of the matter, the disciplinary inquiry submitted its report dated 9th September, 2009. The same was forwarded to the petitioner under cover of a letter dated 28th September, 2009.

10. On a consideration of the representation by the petitioner as well as proceedings of the inquiry and the recommendation of the inquiry officer, the disciplinary authority passed the order dated 7th November,

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2009 agreeing with the report of the inquiry officer and imposed the punishment of dismissal from service.

As noticed above, the petitioner assailed the same by way of an appeal dated 2nd December, 2009 under Section 28 of the CRPF Rules which was rejected by an order dated 14th May, 2010 passed by the respondent no.4.

11. The petitioner's revision dated 9th June, 2010 made under Rule 29 of the CRPF Rules, 1955 was considered by the respondent no.3. We may note that the respondent no.3 took sympathetic view in the matter on a consideration of the service record of the petitioner and held as follows:-

"7. Now, therefore, considering all aspects, I do not find any merits in the revision petition. However, since he has put in about 18 years of service, "Dismissal from service" with the consequent loss of pension is considered to be too severe and disproportionate to the gravity of offence. I hereby take a lenient view and modify the order of punishment of "Dismissal from service" passed by the Commandant-38 Bn, CRPF and uphold by the Appellate Authority to "Compulsory retirement from service" w.e.f. date of Dismissal from service i.e. 07/11/2009. However CT/Dvr Ashok Kumar of 38 Bn shall be granted full compensation pension and 2/3rd gratuity as admissible under rule from the date of Compulsory retirement."

12. The petitioner, thereafter, submitted a petition dated 7th December, 2010 under Rule 30 of the Cr.P.C. Rules, 1955 to the respondent no.2 which was rejected by an order passed on 22nd March, 2011.

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13. Aggrieved thereby, the petitioner has filed the present writ petition assailing the disciplinary proceedings as well as the aforesaid order. The primary contention raised by the petitioner before this court is to the effect that the inquiry was conducted in violation of the principles of natural justice. It is contended that the petitioner was neither informed nor granted opportunity of defence assistant. Learned counsel for the petitioner further contends that his verbal requests in this regard were not acceded to by the inquiry officer and his written request for appointment of a defence assistant was not taken on record.

14. On this ground of challenge, Ms. Anjana Gosain, learned senior standing counsel for the respondents has drawn our attention again to the original record of the inquiry officer in this regard. A perusal thereof shows that before commencing the inquiry proceedings, the inquiry officer has put five questions to the petitioner on 31st January, 2009. The proceedings on that date have been recorded in question and answer form. In answer to the questions put to him, the petitioner has accepted that he has received the copies of all the documents; that he had read the same and understood the same completely. The petitioner also submitted that he had no objection to the appointment of the inquiry officer. The inquiry officer even put a specific question to the petitioner with regard to his preference for the proceedings being conducted in Hindi or English language. The petitioner had requested

that the proceedings be conducted in Hindi language. 18

15. A specific question was put as question no.5 to the petitioner whether he wished to appoint the services of a defence assistant. The petitioner had stated that he did not want the assistance of a defence assistant. The petitioner has duly signed in the affirmation of the correctness of the record. Additionally a copy of the proceedings have been received by him and receipt thereof has been separately signed on the record.

We may note that the proceedings of 31st January, 2009 have been recorded by the inquiry officer in Hindi which is a language requested by the petitioner.

16. So far as the verbal and written requests mentioned before this court for appointment of defence assistant are concerned, we may note that the revisional order notices that the petitioner proceeded to conduct his defence without pressing for any defence assistant. Such an objection was made by the petitioner in his revision petition. In this regard, the revisional authority-the respondent no.3 herein has noted as follows:-

"5(a) The contention of petitioner is totally baseless and untenable. On completion of examination of the prosecution witnesses/ documents, the delinquent was given 15 days time by the E.O. vide memo dated 01/05/2009 to submit his reply and to produce documents/witnesses, if any, in his defence. In response, the delinquent submitted his application dated 16/07/09 wherein he stated that charges leveled against him are baseless, arbitrary and concocted story far from truth and

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requested that the DE against him may be quashed but he failed to furnish documentary/circumstantial evidences in support of his innocence. The delinquent was also given ample opportunity to cross examine the witnesses and examine prosecution documents during the course of D.E. Copies of the statements of PWs were also served to him by the E.O. during the course of preliminary hearing on 31/01/09, the delinquent was asked by the E.O. whether he wants to take any defence assistant but he clearly denied. As per Circular Order No.06/2005, the Defence Assistant may advise the delinquent on all points and suggest questions to be put to the witnesses but he shall not examine/cross examine the prosecution witness or address the Enquiry Officer whereas the delinquent has requested for defence assistant after recording statement of all the witness which is against the rules. In this connection, instruction contained in GOI decision No.19 below Rule-14 of CCS (CCA) Rules 1965 refers. Neither any evidence/statement regarding verbal request for Defence Assistant is recorded in the D.E. proceedings nor noticed from the statement of the delinquent as well as witness."

17. Given the care with which the inquiry officer has proceeded to ensure that all procedural safeguards are ensured to the petitioner when he put the five questions before commencing the inquiry on 31st January, 2009, we are unable to accept the contention made before us to the effect that the inquiry officer has violated principles of natural justice and has wrongly denied the defence assistant to the petitioner. The petitioner refused the appointment of the defence assistant when asked and has proceeded to cross-examine the witnesses by himself. At no stage during the recording of evidence has the petitioner made a request for appointment of a defence assistant or make any protest to either the inquiry officer or any higher authority with regard to denial of

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the defence assistant to him or any prejudice. We may note that the petitioner has also not disputed the correctness of the proceedings recorded on 31st January, 2009 at any stage. The same is also not disputed before this court. No other point is pressed before this court.

18. Our attention has also been drawn by learned counsel for the respondents that after receipt of the inquiry report, the petitioner has submitted a detailed representation dated 17th October, 2009 running into six hand written pages sheet in Hindi language. He has taken all kinds of objections in this representation. There is not even a whisper of an allegation that the petitioner had sought a defence assistant at any time whatsoever which has been denied to him. In view of the above, we are unable to hold that there has been violation of principles of natural justice in conducting the disciplinary proceedings against the petitioner or any orders which have been assailed before us.

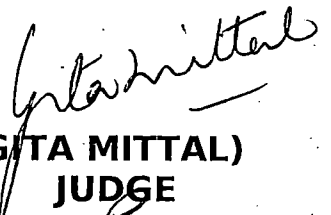
19. The respondent no.3 has noted that in view of the government order, the defence assistant has hardly any role to play once the evidence stood completed. The petitioner does not plead any prejudice in the matter. Looked at from any angle, the petitioner has failed to make a case to support its objections.

20. Learned counsel for the petitioner has contended that this court may examine the matter from the aspect of the punishment being disproportionate to the gravity of the allegations against the petitioner. As noted above, the revisional authority has gone into this aspect of the

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matter and has converted the petitioner's dismissal which punishment was imposed upon him by the disciplinary authority to compulsory retirement. The petitioner has thereby been rendered eligible for grant of pensionary benefit. In this background, this contention is also rejected.

21. For all the foregoing reasons, we find no merit in the writ petition which is hereby dismissed.


(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

NOVEMBER 02, 2012

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