

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

% *Judgment Pronounced on: September 05, 2012*

+ **WP (C) No.5564/2012**

R.T.PARAMHANS

..... Petitioner

Represented by: Mr.Atul Nanda, Sr. Advocate
instructed by Mr.Priyadarshi Gopal &
Ms.Avni Singh, Advocates

versus

UNION OF INDIA AND ANR

..... Respondents

Represented by: Mr.Ruchir Mishra, Advocate with
Mr.Sanjiv Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The petitioner has filed the present writ petition seeking to quash the impugned orders dated 15th May, 2012 and 26th June, 2012.
2. The facts of the case are that the petitioner joined the CRPF on 4th July, 1989 as an Asstt. Comdt. And is holding the post of Commandant w.e.f. 24th May, 2005 and posted at GC, CRPF Nagpur since 22nd July, 2010. While he was posted in 47 Bn., CRPF in 2007 a departmental inquiry was ordered against him under Rule 14 of CCS (CCA) Rules, 1965.
3. Vide Presidential Memorandum No.D.IX-23/2007-CRC dated 22nd January, 2008 issued by the respondents, a departmental enquiry is initiated against the petitioner, a Commandant in the Central Reserve Police Force on the following charges:-

“CHARGE-I

That the said Shri R.T.Paramhans, Commandant, IRLA No.2795 while functioning as Commandant 47 Bn., CRPF, during the year 2007 has committed an act of serious misconduct in that while detailed as Presiding Officer of the Board for recruitment of CT/DVR and CT/FTR held at GC CRPF, Greater Noida wef 15/02/07, he failed to ensure that the candidates permitted to appear in different tests and finally brought on merit list were having minimum educational/trade qualification and experience certificate/driving license etc. which was pre-requisite for their recruitment as per eligibility conditions prescribed. On noticing the irregularities, issue of offer of appointment to such ineligible candidates were withheld resulting in ‘*dharna*’ by some of the ineligible candidates which was reported by the media on 21/03/2007 and tarnished the image of the Force. Thus, the said officer by failing to adhere/follow the instructions on the above recruitment has failed to maintain absolute devotion to duty and thereby violated the provisions contained in Rule 3(1)(ii) of CCS(Conduct) Rules, 1964.

CHARGE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri R.T.Paramhans, Commandant committed an act of serious misconduct in that he did not conduct appropriate trade test to judge the professional aptitude of candidates who appeared for recruitment as CT/FTR in above recruitment and instead relied on simple verbal question-answer session conducted by the co-opted member. Thus, the said Officer by failing to adhere/follow the instructions on the above recruitment has failed to maintain absolute devotion to duty and thereby violated the provisions contained in Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.:

4. That on 24th May, 2010, the Presenting Officer submitted the prosecution brief dated 24th May, 2010 in respect of the departmental enquiry against the petitioner. On 16th July, 2010, the petitioner submitted his defence brief in reply to the prosecution to the Enquiry Officer, giving detailed submissions in respect of each charge against him and divided charge-I into two parts as follows:-

- (a) The charged officer failed to ensure that the candidates permitted to appear in the different tests and finally brought on merit list were not having minimum educational/trade qualification and experience certificate/driving license etc., which was a pre-requisite for their recruitment as per eligibility conditions prescribed; and
- (b) On noticing the irregularities, issue of offer of appointment to such ineligible candidates, was withheld, resulting in a Dharna by some of the ineligible candidates in front of the GC Greater Noida Campus which was reported by the media on 21.3.2007 and tarnished the image of the Force.

5. On 11th March, 2011, the petitioner was issued the report of the Enquiry Officer wherein the Enquiry Officer has also adopted the division of charge-I as submitted by the petitioner in his defence brief and held part (a) of the charge-I to be only “partially proved” and both part (b) of Charge-I and the whole of charge-II to be “not proved”. The findings of the Enquiry Officer, *inter-alia*, are as follows:-

- “(i) The job of the Board was to select candidates provisionally and submit the proceedings to ADIGP, GC, who will issue offer of appointment after due verification/checking of documents. The documents of the candidates are also to be checked again at the time of their joining before finally selecting them for

recruitment in CRPF. In this case, the Board had provisionally selected the candidates and sent the list to the ADIGP, GC. However, due check was not adopted at the time of issue of offer of appointment. *“If due checks were exercised at the time of issue of Offer of Appointment this sordid situation could have been avoided.”*

(ii) No time or opportunity was given to the Board to rectify the mistakes, which is otherwise normally done in a recruitment process.

(iii) The statement made by PW does not bring out or substantiate part (a) of Charge I, *“it is only the documents which has been produced as exhibits which speaks of the short-comings noticed in the merit list drawn.”*

(iv) There is no malafide intention which comes across. There are only certain procedural mistakes which had occurred due to short time allowed for verification of documents/certificates. In normal recruitment also, the verification of certificates is usually done after the recruitment process is complete and the candidate is selected.”

6. On 6th April, 2011, the petitioner submitted a detailed reply of even date against the findings of the Enquiry Officer, limiting his submissions to part (a) of Charge-I since the remaining charges had been completed disproved.

7. Being aggrieved by the report of the Enquiry Officer with respect to part (a) of Charge-I, the petitioner requested a personal hearing with the then IGP, North Sector who heard the petitioner and in the interest of justice, took up the case with the Director General, CRPF in a letter dated 25th August, 2011. The salient points brought out by the then IGP (NS) are as follows:-

“1. The advertisements which have been issued in the last 20 years calling for applications for Fitter in CRPF have mostly remained the same. Fitters (Diesel) have always been considered to be eligible for selection as Fitters. This is the reason why several Fitters (Diesel) are working in CRPF as Fitters.

2. There was a simultaneous recruitment going on, parallel to the recruitment being done by the petitioner, who also recruited Fitters (Diesel) as Fitters in CRPF on the basis of the same advertisement. However, no action has been taken against the second Board of Officers.

3. The recommendations have not been made by the petitioner alone but are the collective decisions of the entire Board.

4. Usually for these kinds of mistakes, enquiries are not held rather the Board proceedings are returned for correction.”

8. On 26th March, 2012, the UPSC submitted its findings in respect of the charges against the petitioner, stating as below:-

“The Commission observes that in view of the above, there is no doubt that while some liability for the lapses noticed in the recruitment process does lie on the shoulders of C.O., the same has ultimately been found to be procedural/scriptory in nature and besides several mitigating circumstances have also been found in C.O.’s favour by the I.O. It is, therefore, clear that the charge against C.O. is proved only to the above limited extent.”

9. Vide Order No.D.IX-23/2007-CRC dated 15th May, 2012, the final order in the departmental enquiry against the petitioner was issued whereby the petitioner has been awarded the punishment of “Censure”.

10. In view of said order dated 15th May, 2012, the petitioner superceded by his juniors. He submitted representations dated 25th May, 2012, 12th June, 2012 and 4th July, 2012 to the Director General of Police, stating that he was considered for promotion to the rank of DIGP in 2010-11, however, due to the ongoing departmental enquiry, the same was kept in sealed cover. It was further stated that many of the petitioner's juniors have already been promoted to the rank of DIGP, whereas his promotion has not yet been released even after the conclusion of the departmental enquiry and as such, it was requested that he be promoted to the rank of DIGP at the earliest.

11. Vide letter bearing No.P.VII-3/2012-Pers-DA-I dated 26th June, 2012 which was received by the petitioner on 25th July, 2012 the petitioner was informed that his request for the release of his promotion was rejected on account of the following:-

“It is further informed that as per para 17.6.1 of DPC Rules, sealed covers can only be opened on conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant. Whereas in the instant case, the Officer has not been fully exonerated of the charges/allegations and penalty of CENSURE has been imposed on him, as such the findings of the sealed cover cannot be acted upon as per para 17.6.2 of DPC Rules. Therefore, request made by the Officer merits no consideration.”

12. Aggrieved by the said orders, the present writ petition has been filed by the petitioner for quashing the said orders.

13. The job of the Board was to select candidates provisionally and submit the proceedings to ADIGP, GC, who would then issue offer of appointment after due verification/checking of documents. In the present case, the Board had provisionally selected the candidates and sent the list to the ADIGP, GC.

14. One of the main grievances of the petitioner is that the Enquiry Officer did not give any opportunity to rectify his mistakes before the Board, although the same is done in the recruitment process normally and if any irregularity is found in the recruitment process, the selection list is sent back to the Board for rectification by the superior authorities, however, in the present case, no such opportunity was given to the petitioner.

15. It is also argued by the learned counsel for the petitioner that for the last 20 years, the same process has been adopted throughout CRPF for the recruitment of Fitters, inasmuch as Fitters (Diesel) have always been considered to be eligible for selection as Fitters. Therefore, the selection criteria used by the petitioner's Board is not against the earlier practice.

16. The main contention of the petitioner is that the decisions of the respondents in holding the petitioner liable with respect of para-A of Charge-I are perverse, as there is no evidence on record to prove the guilt against the petitioner. He further states that no action was taken against any member of the Board of Officers who had conducted a recruitment process in Nagpur wherein same recruitment of Fitter (Diesel) has been made as Fitters in CRPF. The petitioner is superseded by his juniors who have already been promoted to the rank of DIGP, as a result of departmental inquiry against him.

17. It is also alleged that the petitioner is suffering since 2008 as a result of departmental enquiry against him and will continue to suffer unless the petitioner be exonerated of the penalty of 'Censure' which was imposed upon him.

18. There is no denial that the same process which was adopted by another recruitment Board taken place in Nagpur and the candidates selected by the second Board are currently working in CRPF and no action was taken

by the respondents against any member of the second Board for adopting exactly the same process which was done by the petitioner and he was charged with. Therefore, it appears from the material placed on record that the respondents have ignored the findings of the Enquiry Officer wherein it was stated that usually, the normal course of action adopted by the authorities in case of procedural errors in the recruitment process is for sending the same back for rectification by the Board of Officers which was not done in the present case.

19. The petitioner was considered by DPC for promotion from the rank of Commandant to DIGP and his recommendation is kept in sealed cover.

20. We are of the view, even if the petitioner was responsible for an error which was made collectively by the Recruitment Board in the present case, no opportunity was given to the petitioner to cure his mistakes. Further, no action was taken against any members of the Board who had conducted a recruitment process in Nagpur wherein similar recruitment of Fitters (Diesel) has been made as Fitters in CRPF.

21. In view of the facts and circumstances in the present case, the writ petition is allowed. The order imposing penalty of 'Censure' dated 15th May, 2012 and order dated 26th June, 2012 rejecting the petitioner's representation for release of his promotion are quashed. No costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 05, 2012/ka