

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

+ **W.P.(C) No.523/2012**

% **Date of decision: 14th August, 2013**

BALWAN SINGH Petitioner

Through: Ms.Avni Singh, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Asish Nischal, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. Petitioner has assailed the order dated 19th October, 2008 passed by the Commandant, 136 Battalion whereby he accepted the report dated 19th August, 2008 of the Enquiry Officer who found the petitioner guilty of two charges for which disciplinary proceedings were conducted against the petitioner. As a result the petitioner was dismissed from service by the same order

The petitioner has also impugned order dated 26th March, 2009 rejecting his appeal and the order dated 23rd March, 2010 passed by the Revisional authority rejecting his revision petition.

2. The facts giving rise to the present petition are briefly noted hereafter, the petitioner was recruited as a Constable /GD in the Central Reserve Police Force (CRPF) on 12th March, 2008. It appears that he was subjected to a disciplinary enquiry conducted pursuant to a chargesheet dated 12th March, 2008 on the following charges:

Charge – I

“That the above referred Force No.901112622 Constable/GD Balwan Singh (136 Battalion), being a member of the Force (constable) has violated the rule as provided under Section 11 (1) of the Central Reserve Police Force Act, 1949 and accordingly committed an offence of indiscipline and ignorance of duty, under which the above referred person obtained photocopies of some pages of Quarter Guard Register of main time table without permission of any competent officer, which is against the good character and discipline of Force.”

Charge – II

“That the above referred Force No.901112622 Constable/GD Balwan Singh (136 Battalion) being a member of the Force (constable) has violated the rule provided under Section 11 (1) of the Central Reserve Police Force Act, 1949 and accordingly committed an offence of indiscipline and bad conduct. In which the above referred person illegally obtained photocopies of some pages of Quarter Guard Register of main time table without permission of any competent officer and during the enquiry he gave false statement and told that the same has been received through higher officer and accordingly he misguided the office. Therefore, on the basis of the above referred situation being a member of the Force, this person has committed an offence of indiscipline.”

3. The petitioner has complained that the disciplinary proceedings which were conducted against him were held in violation of principles of natural justice inasmuch as the petitioner being in the rank of only a constable, was ignorant about the procedure relating to enquiries. The petitioner has complained that his request by a letter dated 11th April, 2008 for a defence assistant with not less than five years working experience was completely ignored by the enquiry officer. Instead a letter dated 3rd June, 2008 was issued by the enquiry officer informing to the petitioner that he was required to opt for a defence assistant of his own rank. In response to this letter, the petitioner had nominated five officers as his choice for appointment of a defence assistant by a letter dated 5th June, 2008. However, the request of the petitioner was ignored by the respondents who by a letter dated 6th June, 2008 again stated that the petitioner should choose a defence assistant of his own rank. It is urged by Ms Avni Singh, learned counsel for the petitioner that the insistence by the respondents upon the petitioner to appoint a defence assistant of his own rank tantamounts to denial of opportunity to have defence assistant of his choice. It is contended that a person in the same rank as of the petitioner would have been as ignorant of the applicable rules and procedure as the petitioner. Such defence assistant would also be in awe of the authority of the respondents and the enquiry officer as the petitioner.

4. So far as the enquiry is concerned, it is urged by Ms. Avni Singh, learned

counsel for the petitioner, that the respondents examined a total of ten witnesses in support of the charges. It is contended that despite the statements of ten persons, there is not a whisper of evidence to support the charges against the petitioner.

5. Learned counsel for the petitioner has urged that it was the case of the petitioner that the documents which were subject matter of the charges were actually supplied to him in previous enquiry proceedings which had been conducted by Shri Shahnawaz Khan as enquiry officer. It is contended that Shri Khan was a material witness in the case. It is pointed out that the witnesses who were examined by the respondents only established existence of the documents and not the contents which only Mr. Shahnawaz Khan could have done.

6. The petitioner submits that in view of the above material facts, the recommendation of the enquiry officer by the report dated 19th August, 2008 to the effect that the petitioner was guilty of charges; the impugned orders dated 19th October, 2008 of the Disciplinary Authority accepting the report; the orders dated 26th March, 2009 of the Appellate Authority and 23rd March, 2010 of the Revisional Authority and the order dated 24th June, 2011 passed by the Director General finding the petitioner guilty of the charges and sustaining the punishment of dismissal from service are in violation of principles of natural justice as well as well settled principles of law inasmuch as there was no evidence at all to support the charges levelled against the petitioner.

7. We have also heard learned counsel for the respondents on the above submissions and perused the original record which has been produced before us. We may now examine the first objection raised by the learned counsel for the petitioner to the effect that there was no evidence in support of the charges.

8. In the counter affidavit, the respondents have referred to two prior departmental inquiries against the petitioner. So far as the report in the first inquiry is concerned, the same had been kept in abeyance as per orders of the High Court of Jharkhand dated 2nd-3rd April, 2007.

9. A second departmental inquiry was conducted against the petitioner for alleged commission of offence under Section 11(1) of the CRPF Act, 1949. The report of the inquiry officer, finding the petitioner guilty of the charge, was accepted by the disciplinary authority who passed an order dated 15th May, 2006 awarding the punishment of “compulsory retirement from service” (page 158).

10. The petitioner’s appeal was rejected vide an order dated 26th March, 2009 with the finding that the same was devoid of merit. The petitioner’s review petition was accepted by the Inspector General of Police, North-East Sector, CRPF and by an order dated 2nd May, 2007, the petitioner was directed to be reinstated into service. The punishment of the petitioner was modified from compulsory retirement into punishment of stoppage of increment for a period of three years with cumulative effect.

11. The charges on which the disciplinary proceedings were commenced on third charge as set out hereinabove, refer to the “same documents”. A perusal of the petitioner’s appeal to the Director General of the CISF shows that in para 7, the petitioner has stated as follows:-

“7. Inspector General of Police, Shillong (Meghalaya) has given clarification in its order dated 01/05/2007 at page 5 para 3 that at the time of production of the documents (Photo copies); the commandant had enquired about these photocopies. The applicant had submitted these photo copies on 04/05/2006 in his defence. Constable Yogesh Sharma received total 21 documents on 04/05/2006 at 17:00 hours on the objection of applicant and accordingly he put his signature. Even the present investigating officer Shri Awadhesh Kumar has proved the charges after taking these photo copies from witness No.8(1). Serial numbers of these photo copies are 82, 83 and 84 in departmental enquiry. There is signature of Deputy Commandant Shri H.L. Ojha over these photo copies. Applicant has produced these photo copies during the period of 21/06/2005 to 30/06/2005 which is under the signature of Deputy Commandant Shri H.L. Ojha before the earlier enquiring officer Second Commandant Officer Shri Shahnawaj on 28/08/2008 in his defence. There is signature of both the officers over these photo copies. The Commandant had not asked even a single word about these documents at the time of submission on 04/05/2006. Rejecting the objection of Applicant, punishment of compulsory retirement was awarded on 15/05/2006. That punishment was cancelled by the Inspector General of Police, Shilong (Meghalaya) on 01/05/2007 and he reinstated the applicant in service.”

12. The petitioner has complained that the third disciplinary proceedings were initiated as the order dated 1st May, 2007 of reinstatement of the petitioner was not palatable to the authorities even though that they were without merit.

13. Our attention has been drawn to the testimony of seven witnesses i.e. PW 1 Hawaldar/GD Krishan Kumar; PW 2 Hawaldar/GD Akhtar Ali; PW 3 Hawaldar/GD Om Prakash; PW 4 Hawaldar/GD Kuldeep Singth; PW 5 Hawaldar/GD Zakir Hussain; PW 6 Hawaldar/GD Devendra Singh & PW 7 Ct./GD Haripal Singh who do not give an iota of evidence against the petitioner. It is evident from the above that the petitioner was subjected to disciplinary proceedings on a completely vague charge without even specifying the details of the documents which were alleged to have been illegally obtained without permission of the competent authority. There is no evidence that the signatures on the photocopies did not belong to the afore-noticed inquiry officer. It is an admitted position that there are signatures of the CRPF officials on the photocopies.

14. In view the above, it would appear that the petitioner had been given possession of the extract of the guard register in the previous enquiry and therefore he cannot be charged with commission of offence for illegally having obtained photocopies of the said extracts. The documents were given during the course of the disciplinary proceedings when they were relied upon by the respondents. The same therefore cannot be the subject matter of the disciplinary proceedings resulting in imposition of the serious punishment of removal from service. In view of the above facts, there is merit in the petitioner's contention that there was no

evidence to support charges.

15. So far as the petitioner's contention that Sh.Shahnawaz Khan a material witness who was not called into witness box is concerned, we find that the appellate authority in order dated 26th March, 2009 has placed reliance on message received from this officer stating that he had not provided photocopies of any page of the quarter guard register to the petitioner. The message has been received behind the back of the petitioner and outside the enquiry. This officer was not called in the witness box. Without having given an opportunity to the petitioner to challenge the statement attributed to him or to cross examine the said officer, could not have relied on such material to form the basis of the findings of guilty of the petitioner or his punishment.

16. So far as appointment of the defence assistant within the same rank as the petitioner is concerned, it is urged that the respondents have issued a circular dated 16th September, 2005, relevant portion of which reads as follows:

“3. Keeping in view the inherent problems likely to be faced by the administrative authority on account of requirement of a number of personnel to act as Defence Asstts in the large number of inquiries pending with the Deptt, on the one hand and at the same time the requirements of natural justice to be full filled in keeping with the observation of the Courts, it is hereby advised that in all Departmental Proceedings against NGOs in CRPF, the delinquent person may be represented/assisted by a person from within the rank whose services the delinquent may be able to procure and who shall be called as ‘Defence Assist’”.

17. This very issue has been the subject matter of consideration in an order dated 30th November, 2005 in WP (C) no.182/2005 *Vijender Singh vs. UOI and Others* wherein this court observed thereon as follows:

“While the circular displays an intent to abide by the requirement of natural justice, nevertheless the interpretation of the letter dated 22nd November, 2005 confining the defence assistance ‘within the rank’ does not appear to be justified and in consonance with the principles of natural justice. In other cognate military enactments no such restrictions exist. Accordingly, we direct that the defence assistance as prayed for by the petitioner which was rejected by the letter dated 22nd November, 2005, shall be provided to the petitioner in the inquiry against him.”

18. In the instant case, it is not the respondents’ contention that the persons named by the petitioner as his choice for appointment as defence assistant were not available for appointment as defence assistant. Shelter is taken only in the circular dated 16th September, 2005 to deny him a defence assistant of his choice. This was certainly in violation of natural justice. The denial of the defence assistant and the conduct of the enquiry proceedings in the absence of a defence assistant to the petitioner, were in violation of the principles of natural justice and are not sustainable.

19. So far as the appointment of a defence assistant is concerned, it has been repeatedly held that the delinquent in disciplinary proceedings is required to be informed of his right to take help of another Government Servant before the

commencement of the inquiry and a fair and reasonable opportunity to appoint one.

In this regard our attention has been drawn to *AIR 1983 SC 454 in Bhagat Ram vs. State of Himachal Pradesh & Ors.* wherein the Supreme Court has held as follows:

“In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting officer, it would be incumbent upon the Disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the Inquiry without obtaining assistance, one can say there is substantial compliance with the rules.”

20. In the instant case, the respondents do not state that the person whose names had been given by the petitioner as his choice for defence assistant were not the personnel of CRPF. The respondents' enquiry officer Shri Awadesh Kumar was of the rank of Deputy Commendant. Given the nature of the enquiry, this certainly would not have been fair in the facts and circumstances of the case and the petitioner has been deprived of an opportunity to represent himself.

21. The petitioner was only seeking a defence assistant who was senior to him and had knowledge of departmental enquiry proceedings. He had therefore given five names based on such requirement.

Such request of the petitioner was a reasonable request.

22. The enforcement of the condition that the defence assistance must be of the same rank, has been held to be unjustified and in violation of the principles of natural justice. The respondents have, thus, denied the petitioner of a fair and reasonable opportunity to defend himself at the disciplinary inquiries vitiating the proceedings and rendering all orders based on such proceedings as violative of principles of natural justice and illegal.

In view of the above, we find that findings of the enquiry officer which are based on no evidence and are perverse.

23. In view of the above, the orders dated 19th October, 2008, 26th March, 2009, 23rd March, 2010 and 24th June, 2011 are held to be violative of the principles of natural justice and contrary to law and are hereby set aside and quashed. As a result, it is directed that the petitioner would stand reinstated in service. The petitioner shall be entitled to consequential benefits of notional seniority and notional increments if any. The petitioner's pay fixation shall be made accordingly. The petitioner would also be entitled to back wages equivalent to 25% of his pay computed in terms of the above.

The present writ petition is allowed in the above terms.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

AUGUST 14, 2013
rb/aa