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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RESERVED ON: 31.01.2013

DECIDED ON: 21.02.2013

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WP (C) 5499/2000

K.L. SHARMA

..... Appellant

Through: Mr. Deepak Dewan, Advocate.

versus

UOI & ORS

..... Respondents

Through: Mr. Saqib, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT

1. The petitioner in this proceeding, under Article 226 of the Constitution of India challenges and seeks quashing of the order dated 5.9.1997 issued by the second respondent, i.e., Central Reserve Police Force (CRPF) removing him from its service.

2. The brief facts are that the petitioner joined the services of CRPF on 6.1.1971 as a Constable/Sepoy; he was promoted later on 4.11.1985 to the post of Lance Naik and later on 15.3.1988 as Naik. He was promoted yet again on 24.11.1991 as Head Constable.

3. Whilst in service and on duty, the petitioner by virtue of a movement order dated 27.2.1997, went to Jammu for convoy duty and collection of

sugar from the FCI godown, along with Driver Constable Bhagwan Singh and Lance Naik Ram Singh. He claims that subsequently, on 1.3.1997, he left from Jammu to Bantalab for filling oil. He claims that on 4.3.1997, after the work in the FCI godown was completed, at about 3:00 PM, Bhagwan Singh asked him for some money which he refused and thereupon he stated that there was no oil in the vehicle and that he had to go to Bantalab. The petitioner claims that he was forced by the Driver Bhagwan Singh to sit in the back of the vehicle and that Lance Naik Ram Singh was not in the vehicle. The truck proceeded at about 3:30 PM to G.C. Bantalab where it was parked and fuel was loaded. The events which took place thereafter are the subject matter of the controversy. The CRPF alleged that Bhagwan Singh, the Driver, kidnapped an eight year old minor girl and that he, i.e., the petitioner had been given some drug/intoxicant, as a result of which, he became senseless in the back of the truck. It is alleged that Bhagwan Singh then tried to commit rape upon a minor girl which led to her screaming out. He was apprehended subsequently and the petitioner too was taken into custody. In the ensuing events, the First Information Report (FIR) was lodged alleging complicity of both Bhagwan Singh and the petitioner. The CRPF also enquired into the matter through initial preliminary enquiry regarding the incident and subsequently instituted disciplinary proceedings. In the course of these disciplinary proceedings, the victim, i.e., the minor girl also deposed; her father and others also deposed. After conclusion of the proceedings, the petitioner was found guilty of the charges leveled against him, i.e., involvement in the criminal incident as well as his omission to perform duties diligently and further failure to exercise supervisory control over the Driver Bhagwan Singh. Consequently,

the impugned removal order was made against him.

4. It is argued by the petitioner that the impugned order is predominantly based upon his involvement in the crime. However, argues his counsel, by the judgment and order dated 28.6.2000, the Criminal Court, i.e., the Second Additional Judge, Jammu acquitted him of the charges. It is emphasized that the Court was impressed by the fact that the prosecutrix did not mention about the involvement of the petitioner, nor even detailed his alleged involvement in the first statement made to the police. Learned counsel argued that having regard to these circumstances, the respondents ought to have considered his appeal and set aside the order of removal and reinstate him in the service.

5. It is submitted that since the competent criminal court, having regard to all the facts and overall circumstances, exonerated the petitioner completely and acquitted him of the charges, the least CRPF ought to have done is to review its previous removal order and reinstate him. It is also submitted that the punishment of removal, in the facts and circumstances, is a shockingly disproportionate penalty. The petitioner had a record of 20 years unblemished service which was completely ignored by the CRPF when it choose to remove him from his service thus depriving him of all terminal and pensionary benefits. It was argued that the circumstances of the case clearly pointed to the fact that the Driver Bhagwan Singh had mixed some intoxicant or drug like substance along with the tobacco and given it to the petitioner; which resulted in his becoming senseless and lying at the back of the truck, when he (Bhagwan Singh) attempted to perpetrate the crime. The petitioner was neither an accomplice nor an accessory but in fact was the victim of these circumstances. In support of this argument, learned

counsel relied upon the statement made by the petitioner during the course of the enquiry as well as during the course of the trial to submit that he consistently stuck to his version about being drugged and rendered senseless; which resulted in his inability to exercise control over Bhagwan Singh, and restrain him from acting the way he did. It was also argued that in the present facts and circumstances, the petitioner has become the culprit and received the extreme penalty of removal even while Bhagwan Singh, the real perpetrator has absconded. Counsel highlighted the fact that though Bhagwan Singh was initially arrested, later after grant of bail, he fled justice and evaded arrest. He did not face trial. Having regard to all these circumstances, counsel argued that even if this Court were not to quash the order of removal, it should at least reduce the penalty and instead impose a milder one so as to enable the petitioner to earn pension and other benefits.

6. Learned counsel for the respondents argued that later exoneration in a criminal trial which might result in the acquittal does not by itself invalidate the penalty imposed during departmental proceedings. It was argued that deposition of all the concerned individuals including the victim/prosecutrix, the minor girl were taken into account after which the CRPF concluded that the petitioner had utterly failed to exercise disciplinary control over his subordinate, i.e., the Driver. Counsel also emphasized the fact that at the time the order of the disciplinary authority was made, the material on record included the First Information Report, statements made by the girl and her parents and even the chargesheet filed by the police. All these were duly considered along with the materials placed on the record during the departmental enquiry. After due deliberations and through a reasoned order, the enquiry report concluded that the petitioner was guilty not only for his

complicity in the incident but also for his abject failure in controlling his subordinate. Had he discharged his duties diligently, the incident would not have occurred in the first instance.

7. Learned counsel further argued that though Courts have at times interfered with orders of penalty, such instances have only been when there is an expressed finding of the punishment being shockingly disproportionate has been rendered. The facts of this case, argued counsel for the respondents, nowhere reveal how the punishment of removal from service is shockingly disproportionate. It was argued that CRPF is a paramilitary force and functions primarily on discipline and obedience of orders. In this case, the petitioner was deployed for a specific duty, i.e., to collect sugar from Jammu. The records reveal that there was delay in the discharge of the task assigned and that even according to the petitioner's own admissions, his subordinate, i.e., Bhagwan Singh was able to prevail upon him which resulted in the unfortunate events that led to an attempt to rape a minor girl. Having regard to these facts, this Court should desist from holding that the punishment imposed upon the petitioner was disproportionate. Therefore, argued counsel for the respondents, the writ petition deserves to be rejected.

8. In this case, the charges leveled against the petitioner are as follows: -
- (i) The truck was taken away by Driver Bhagwan Singh unauthorizedly on 4.3.1997 at 3:00 PM;
 - (ii) Bhagwan Singh had kidnapped the minor girl – the prosecutrix;
 - (iii) The Driver Bhagwan Singh committed misconduct by absenting himself and leaving behind the vehicle;
 - (iv) Driver Bhagwan Singh failed to maintain a car diary of the truck for the period 1.2.1997 to 4.3.1997;

- (v) The petitioner failed to control and prevent Bhagwan Singh from transporting in the truck the minor girl, i.e., the prosecutrix but was also instrumental in the transportation of the girl;
- (vi) The petitioner failed to prevent unauthorized movement of the truck by the Driver; and
- (vii) Being a party commander, he failed to exercise control over Driver and Lans Naik Ram Singh.

9. It can be seen that of the seven charges, three were attributable to the petitioner. The most serious one was his complicity in transporting the girl. The preliminary enquiry which had been initially initiated went to the extent of saying that the petitioner was under the, “influence of intoxication”, during duty and further that the petitioner along with Bhagwan Singh kidnapped a minor girl; and that the Driver Bhagwan Singh later tried to commit rape upon her. It is in these circumstances that the petitioner’s counsel argues that his subsequent acquittal of the gravest charge has resulted in his entitlement for reinstatement.

10. This court would first deal with the petitioner’s argument that his acquittal by the criminal court entitles him to reinstatement. The issue has been considered and discussed in several decisions of courts in India. In *Lalit Popli v. Canara Bank and Ors.* AIR 2003 SC 1796, the Supreme Court held that:

“While considering the nature of proof required in a departmental enquiry on the scope of judicial review of the High Court under Article 226, this Court held as follows:

It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (State of Rajasthan v. B.K. Meena and Ors. 1997(1997)ILLJ746SC . In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

In B. C. Chaturvedi v. Union of India and Ors. (1996)ILLJ1231SC the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

As observed in R. S. Saini v. State of Punjab and Ors. (1999)ILLJ 1415 SC in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits."

Further clarifying the difference in approach between departmental proceedings and criminal proceedings, the Supreme Court held, in *Ajit*

Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors. AIR 2005 SC 4217 that:

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings.”

11. In the present case, the judgment of the concerned Sessions Judge clearly exonerates the Petitioner, since it unambiguously records that his involvement was not spoken of by the prosecutrix/victim. The judgment also indicates that the main accused, Bhagwan Singh fled after the grant of bail, and did not stand trial. The question therefore is whether the CRPF could be faulted in deciding – on the basis of the charges levelled against the petitioner (which included his complicity in the attempt to rape) that the penalty of removal had to be imposed.

12. The charge sheet in this case included allegations of several misconducts. Broadly, they fell into three heads. One, allowing his subordinate to go on unauthorized leave; failure to exercise control and

discipline over the subordinate, i.e. driver Bhagwan Singh, and lastly, complicity in the crime alleged. The records would reveal that as far as charges pertaining to the last allegations are concerned, the petitioner continued to protest his innocence, right from the beginning. His involvement was not found during the trial; even the minor girl, the victim did not incriminate him during her deposition. That is not the end of the matter, however. The respondents' order – based on the Enquiry Report, also indicted him for his failure to exercise control and discipline over the real culprit. This charge is no doubt a serious one. The petitioner was in charge of a truck, deployed for the purpose of fetching sugar for a unit, deployed in a border area. He appears to have not been able to fetch the supplies. It was in this duration that the truck was taken out and whilst on its way, he was at the back.

13. The petitioner's statement to the police as well as during the enquiry, was that the driver had administered him with some intoxicating or narcotic substance, mixed with tobacco, which rendered him either senseless or unconscious, due to which the unfortunate incident occurred. This can be looked at in two ways; either that his fraternizing with a subordinate led to this episode, or that some sort of camaraderie or rapport – sometimes necessary for para-military personnel, especially deployed in forward areas- induced him to accept the tobacco or some other food article, laced with the narcotic or intoxicating substance. Either way, the lapse was damaging, even if the petitioner's version were to be accepted. At the same time, the CRPF's inquiry – leading to the report and the disciplinary authority's order- led to a severe order – of removal.

14. This court is conscious of the law relating to proportionality of punishments, and the approach which is appropriate in writ proceedings. For the court to substitute its opinion with that of the decision maker, it should necessarily find that the penalty is shockingly disproportionate (*B.C. Chaturvedi v. Union of India* 1995 (6) SCC 749, *Union of India v. G. Gunayuthan* 1997 (7) SCC 463, and *Bank of India v. Degala Suryanarayana* 1999 (5) SCC 762 and *State Bank of Bikaner and Jaipur v Nemi Chand Nalwaya* AIR 2011 SC 1971). Be that as it may, in the overall facts and circumstances of this case, this Court does not consider it appropriate to substitute its own opinion and act as the primary decision maker, in substituting the penalty order.

15. The above observations are however, not dispositive of the petition. The tenor of the charges and the evidence led during the disciplinary inquiry clearly pointed to the fact that the facts alleged by the CRPF were largely – perhaps primarily influenced by the attempt to rape charges. The petitioner was even found complicit. Though the standard of proof in criminal charges is different from that in disciplinary proceedings, this was a clear case where there was no evidence of the petitioner’s complicity. Therefore, this court cannot fathom the extent to which those charges (held to be proved during disciplinary inquiry) weighed with the CRPF authorities, in imposing the penalty of removal. While the other conduct alleged is serious enough, whether the findings in regard to those were *ipso facto* deemed sufficient to warrant removal, is a matter which should, in the opinion of the court, be gone into, in the larger interests of justice. This is because the petitioner apparently had an unblemished record of 26 years or so service, during

which he earned at least three promotions. The pleadings also point to his having been reduced penurious circumstances and further suffering from serious illness. Therefore, this court is of the opinion that the respondents should conduct a limited review of the penalty of removal, imposed upon the petitioner, and decide whether the circumstances warrant a less severe one, such as reduction in rank or compulsory retirement, having regard to the overall interests of justice. The respondents shall undertake and complete this exercise, in the light of the circumstance that the petitioner was acquitted of the charges, cleanly, for no evidence. The review directed by the court shall be conducted by the respondents, within eight weeks from today, and its result directly communicated to the petitioner.

16. The writ petition is disposed of in terms of the above directions without any order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

FEBRUARY 21, 2013