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

+ **WP(C) No.8439/2011**

% Date of decision : 13th March, 2013

DINESH UNIYAL PETITIONER

Through : Mr. Ravi Prakash and
Ms. Avni Singh, Advs.

versus

UNION OF INDIA & ANOTHER RESPONDENTS

Through : Mr. Saqib, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J. (Oral)

1. The petitioner in the instant case assails the disciplinary proceedings initiated against him pursuant to a chargesheet dated 18th May, 2007; the disagreement note dated 2nd March, 2009 issued by the disciplinary authority; the advice of the UPSC dated 31st March, 2010 and a final order dated 21st May, 2010 issued by the disciplinary authority holding against the petitioner and imposing the penalty of withholding of one increment for a period of one year without cumulative effect as well as the order dated 9th June, 2011 rejecting the petitioner's statutory memorandum.

2. The facts giving rise to the present petition are within a narrow compass. The instant case is concerned with an

advertisement issued in September 2000 for recruitment of Constables/General Duty (CT/GD) in the Central Reserve Police Force (CRPF). The petitioner was posted at Lucknow and was initially inducted as a member of the Lucknow Recruitment Board which was headed by one Sh. Joginder Singh, Commandant. The petitioner's name was included in the Recruitment Board pursuant to an amending order dated 17th December, 2003 whereby he was appointed as the Presiding Officer.

3. The petitioner assigned specific duties to the various members of the Lucknow Recruitment Board vide a communication dated 19th December, 2003. So far as the task of compilation of the result and roll of the merit list of SC/ST/OBC (male/female) was concerned, the petitioner had assigned the same to Sh. C.M. Thomas and himself.

4. A merit list compiled by the Recruitment Board was sent on 29th February, 2004 to the ADIGP, CRPF for his scrutiny as per instructions. It is the contention of the petitioner that the petitioner's responsibility was only the compilation of the said list, that too jointly and recommending the same to the ADIGP while the checking of the list as per the instructions was the responsibility of the ADIGP alone.

5. In the instant case, merely one day after the submission of the merit list, the ADIGP gave directions on 1st March, 2004 for

dispersal of the Recruitment Board and returned the members to their respective units.

6. Inasmuch as the instant case raises a controversy with regard to the interpretation of Clause XV(C) of the Recruitment Guidelines issued by the Directorate General, CRPF on 9th September, 2000 and the implementation thereof, for convenience, the same is reproduce extenso and reads as follows:

“XV FINAL SELECTION

A) The final selection of the candidates will be made in order of merit in each category from each centre separately as per allotment of vacancy.

B) The cut off percentage of marks for appointment will be as under:

General and Ex-servicemen : 35%

SC/ST/OBC : 33%

C) The result of all the shortlist candidates who were medically examined and interviewed shall be compiled on the last day of the recruitment programme by each centre and category wise merit lists for each centre will be prepared by the recruitment board authority of the centre in a state designated by the ADG Zone/IGP sector. These merit list shall be handed over to the Addl. DIG/Principal/Commandant of the designated application receiving centre. Offer of appointment will be issued as per the availability of vacancies in each category in the order of merit from each merit list by the respective Addl. DIG/designated authority. One format each for pre-verification certificate will also be enclosed alongwith the offer of appointment

for obtaining the certificate from the designated civil authorities and submission when the candidate report for appointment to the application receiving centre by a stipulated date.”

7. It appears that there was no dispute or difficulty at all with regard to the working of the Clauses (A) and (B). Inasmuch as Clause (C) stipulated that the result of all the shortlisted candidates who were medically examined and interviewed shall be compiled on the last day of the recruitment programme by each centre and category wise merit lists for each centre would be prepared by the recruitment board authority of the centre in a state designated by the ADG Zone/IGP sector, the petitioner with Sh. C.M. Thomas had compiled such result of the Lucknow Recruitment Board which was sent to the ADIGP on 29th February, 2004. No objections were received with regard to the compilation submitted by the Lucknow Recruitment Board which was presided over by the petitioner.

8. A chargesheet dated 18th May, 2007 was issued to the petitioner whereby it was proposed to commence disciplinary proceedings against him on the following charge:

“That the said Shri Dinesh Uniyal, 2 I/C (now Commandant) while posted and functioning as 2 I/C in 127 Bn, CRPF was detailed as Presiding Officer of the rectt. Board of Ct/GD Male/Female at GC, CRPF, Lucknow centre held during December 2003 to February 2004, committed an act of remissness in discharging his duties in that he while preparing and submitting the merit list of selected personnel for

enlistment as Ct/GD, ignored the instructions issued in connection with preparation of merit list of short listed candidates, by the Directorate General, CRPF vide letter No. R.II-15/2000-Pers-II dated 09.09.2000, which resulted into inclusion of 23 unqualified candidates of SC/ST categories in the merit list and issue of offer of appointment to them. Thus Shri Dinesh Uniyal, 2 I/C (now Commandant) failed to maintain absolute devotion to duty, thereby violated the Provisions contained in Rule 3(1) (ii) of CCS Conduct Rules, 1964.”

9. The petitioner’s representation against the same pointing out the above guidelines as well as the fact that he had been singled out for the issuance of the chargesheet and the proposed disciplinary action did not receive a favourable consideration. The respondents appointed an enquiry officer.

10. Mr. Ravi Prakash, learned counsel for the petitioner has drawn our attention to a brief submitted by the presenting officer on 10th March, 2008 to the enquiry officer. The relevant extract of the same is reproduced as under:

“Inclusion of names of candidates having less than the cut-off marks in the final list were also found in the list of other two Boards in UP who were detailed simultaneously for Rampur and Allahabad centre but those were timely detected and rectified before issue of the offer of appointment which could not be done in the case of Lucknow Board.

8) CONCLUSION

After going through the above facts at length it may easily be concluded that firstly confusion on correct

interpretation of Para XIV and XV of the Dte. Genl, CRPF letter No. R.II.15/2000-Pers-II dated 9/9/2000, which persisted not only in the mind of Lucknow Board members, but also in the Rampur and Allahabad Board members led to inclusion of 23 candidates having less than cut-off marks in the merit list submitted by the Lucknow Rectt. Board presided by Shri Dinesh Uniyal then 21/C 127BN. CRPF (now Commandant 79 BN. CRPF) and secondly due to non scrutiny of the merit lists submitted by the Lucknow Board at ADIG GC CRPF Lucknow level which was otherwise mandatory before issuing offer of appointment. This led to issuance of offer of appointment to 23 ineligible candidates.

Above mistakes cannot be construed as an act of remissness on the part of Shri Dinesh Uniyal the then 21/C 127 BN in discharging his duties as Presiding Officer of the Rectt. Board of CT/GD Male/Female at GC CRPF Lucknow centre held during Dec '2003 to Feb '2004. This mistake had occurred only due to different interpretation of ambiguous instructions issued by the Dte. quoted in above paras. Further had the scrutiny work at ADIG GC CRPF office level been done, the above mistake could have easily been detected and rectified before issue of offer of appointment to 23 ineligible SC/ST candidates by GC Lucknow."

(Emphasis by us)

11. It would appear that the presenting officer was also of the view that there was no act of misconduct on the part of the petitioner. On a consideration of the entire matter and the evidence placed before it, the enquiry officer submitted a report dated 7th April, 2008. The relevant extract of the same is reproduced hereunder:

“After going through the above facts in length it may easily be concluded that firstly, confusion on correct interpretation of Para XIV and XV of the Dte. Genl., CRPF letter No. R.II.15/2000-Pers-II dated 9/9/2000, persisted not only in the mind of Lucknow Board members, but also in the Rampur and Allahabad Board members, which led the inclusion of 23 candidates having less than cut-off percentage of marks in the final selection list submitted by the Lucknow Rectt. Board, presided by Shri Dinesh Uniyal, then 21/C, 127 Bn, CRPF (now Commandant 79 Bn, CRPF) and secondly due to non scrutiny of the selected lists submitted by the Lucknow Board at the ADIG, GC CRPF Lucknow office, though it was otherwise mandatory before issuing of appointment letter and which ultimately led to issuance of appointment letters to 23 ineligible candidates.

Above mistake never can be declared as an act of remissness on the part of Shri Dinesh Uniyal, then 21/C, 127 Bn in discharge of his duties as Presiding Officer of the Rectt. Board of CT/GD Male/Female at GC CRPF Lucknow centre held from Dec ‘2003 to Feb ‘2004. This mistake occurred only due to different interpretation of instructions issued by Dte. quoted in above paras. Had the scrutiny work at ADIG, GC, CRPF office level been done, above mistake could have easily been detected and rectified.

FINAL ANALYSIS

In my final analysis after assessing the statements of PWs, Exhibits produced and brought on record and also the argument put forth by the charged officer and his defence assistance, it is found that the prosecution has failed to substantiate the charges against the charged officer.

FINDINGS

Having assessed the evidences brought out by the prosecution in the form of Statements/exhibits, replies given by the PWs during cross examination by defence and arguments put forth in the briefs submitted by the PO & DA, I find that:-

The charge contained in the Article-1 that charged officer has committed an act of remissions in discharging his duties and has failed to maintain absolute devotion to duty stands not proved.”

(Emphasis by us)

12. Unfortunately for the petitioner, the disciplinary authority did not agree with the recommendations of the enquiry officer and issued a tentative disagreement note dated 2nd March, 2009 which was furnished to the petitioner for his comments. The disciplinary authority was of the view that the fact that the same mistake in construction of Clause XV (C) was committed by the Rampur and Allahabad Recruitment Boards was not relevant and also pointing out certain specific recommendations and remarks against candidates which required consideration. The disciplinary authority was of the view that the Recruitment Board at Lucknow had failed to give any remark against the 23 candidates which were erroneously issued offers of appointment in view of the list which had been prepared. The petitioner sent a detailed representation dated 27th March, 2009 pointing out that the compilation which was submitted by the Recruitment Board was required to scrutiny inter alia at the office of ADIGP. It was also pointed out that even though the action of the Board involved other officers, only the petitioner had been singled out for the disciplinary proceedings.

13. Mr. Ravi Prakash, learned counsel for the petitioner has drawn our attention to the fact that the respondents conducted a departmental enquiry against Sh. Jaidev Kesri one more member of the Lucknow Recruitment Board. With regard to the disciplinary proceedings which were initiated against Sh. Jaidev Kesri, the UPSC had given the following advice vide letter dated 30th March, 2010:

“3.2.1 However, in terms of the ‘Notes for meeting regarding recruitment of Ct/GD Male/Female.’ The concerned DIGP and Addl. DIGP would ensure that the proceedings have been drawn as per instructions, and only after being satisfied the Boards will be disbursed. Therefore, dispersing the members of the board without scrutiny of board proceedings is contrary to the directions issued by the IGP. These notes also mention that in case discrepancy is found later on, after dispersal of Boards, the concerned ADIG GC would be held responsible. As such, if the merit list was not found correct subsequently then the Members of the Board, including the CO, cannot be held responsible for any such discrepancy. Thus, the mistake occurred not at Board level but only subsequently, firstly by dispersing the Board without ensuring that the proceedings had been drawn properly and secondly by issuing offers of appointment to those SC/ST candidates who had secured less than cut off marks of 33% prescribed for appointment.”

(Emphasis supplied)

14. The final order bearing No. D.IX-11(JDK)/2005-CRC dated 25th May, 2010 was issued in the departmental enquiry against Shri

Jaidev Kesri whereby the respondents communicated the decision not to impose any penalty on him.

15. We are informed that no enquiry was conducted against Sh. C.M. Thomas who was also a member of the Recruitment Board Lucknow. The other members of the same Board who were party to the drawing up of the merit list who also stood exonerated in the disciplinary proceedings except the petitioner.

16. In the case of the petitioner, the UPSC made recommendations on 31st March, 2010 supporting the point on which the disciplinary authority had disagreed with the report of the enquiry officer. A final order dated 21st May, 2010 was passed by the disciplinary authority holding the charge as having been proved against the petitioner and imposing the penalty of withholding of one increment for a period of one year without cumulative effect.

17. The petitioner submitted a Presidential Memorandum against the order of the disciplinary authority as well as the penalty imposed on him. This Presidential Memorandum was rejected by an order dated 9th June, 2011 resulting in the filing of the present writ petition.

18. The petitioner has contended that the brief of the presenting officer as well as the report of the enquiry officer clearly shows that no case was made out against the petitioner. So far as the construction of the earlier Clause XV (C) of the Recruitment

Guideline is concerned, the Boards at Rampur, Allahabad as well as Lucknow interpreted the same identically and no action was taken so far as the Recruitment Boards at Allahabad and Rampur was concerned. The respondents had themselves found that there was ambiguity in the rule resulting in similar error occurring in the Recruitment Board at Lucknow and Rampur.

19. We also find that the respondents have themselves removed the anomaly and amended the guidelines by the circular dated 15th July, 2005 and instruction No.XV(C) has been removed from the guidelines. Learned counsel for the petitioner has drawn our attention to the circular bearing No.R.II.15/2005-Pers.II dated 15th July, 2005 whereby the respondents amended the Recruitment Guidelines and removed the ambiguity in the instructions. Perusal of this circular would show that the respondents had removed instruction XV(C) from the guidelines and the relevant extract thereof reads as follows:

“XV FINAL SELECTION

A) The final selection of the candidates will be made in order of merit in each category from each centre separately as per allotment of vacancy.

B) The cut off percentage of marks for appointment will be as under:

General and Ex-servicemen	:	35%
SC/ST/OBC	:	33%”

There is, therefore, substance in the petitioner's contention that the conduct of the petitioner was bonafide and honest.

20. Learned counsel for the petitioner has contended that mere error of judgment or a wrong interpretation of the rules, regulations and guidelines does not tantamount misconduct within the meaning of the expression so far as service jurisprudence is concerned. In support of this contention, reliance is placed on the pronouncement of the Supreme Court reported at (1992) 4 SCC 54 *State of Punjab and Others v. Ram Singh Ex-Constable*, whereby it has observed that:

“6. Thus it could be seen that the word ‘misconduct’ though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It **may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.** Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

21. To buttress the submission that wrong interpretation of a rule or regulation would not tantamount to misconduct inviting disciplinary action, learned counsel for the petitioner has placed reliance on the pronouncement of the Supreme Court reported at ***(1999) 7 SCC 409, Zunjarrao Bhikaji Nagarkar v. Union of India and Others***, wherein the Court held as follows:

“43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

22. We also find that in para 3.2.1 of the advice tendered by the UPSC dated 31st March, 2010 in the case of Sh. Jaidev Kesri, the UPSC has specifically observed that Members of the Board,

including the CO, cannot be held responsible for any such discrepancy and that the mistake occurred not only at level of the Recruitment Board but also subsequently, UPSC makes a reference to the mistake occurring at the first stage thereafter by the order passed by the ADIG on 1st March, 2004 dispersing the Board without ensuring that the proceedings have been drawn up properly and thereafter repeating mistake by issuing offers of appointment to those SC/ST candidates who had secured less than cut off marks of 33% prescribed for appointment. These recommendations were accepted without any reservation by the respondents. The charge against the petitioner was identical to the charge levied against Sh. Jaidev Kesri. The respondents held that Sh. Kesri was not guilty of the charge. In this background, the finding that the petitioner was guilty of misconduct is certainly devoid of any legal merit.

23. The respondents are unable to explain if the Recruitment Board was guilty of misconduct why no proceedings were drawn against Sh. C.M. Thomas and also as to how all other members of the Board against whom disciplinary proceedings were conducted, have been exonerated of charges.

24. In support of the writ petition, learned counsel for the petitioner has also placed reliance on the pronouncement of the Supreme Court reported at *(1999) 8 SCC 582 Hardwari Lal Vishal Yadav. State of U.P. & Ors.*

25. Placing reliance on *(2007) 7 SCC 206 Bongaigaon Refinery & Petrochemicals Ltd. Vs. Girish Chandar Sarma*, it is urged that

if any decision is taken collectively, one person cannot be singled out for disciplinary action. In the instant case, no action at all has been taken against any other person despite the clear and admitted instructions by the petitioner's superior or against the board members who effected the recruitment.

26. Our attention is drawn by learned counsel for the petitioner to a judgment dated 5th September, 2012 passed in ***WP (C) No.5564/2012 R.T. Paramhans Vs. Union of India & Anr.*** The petitioner had raised a challenge similar to the instant case. The observations and findings of the court in paras 16 to 20 of this judgment are material and read as follows:-

“xxx 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 superceded 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 WP (C) No.5564/2012 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.”

27. In view of the above discussion, the disciplinary action against the petitioner was unwarranted and the impugned order were clearly contrary to law. The present writ petition has to be allowed.

28. We accordingly direct as follows:

(i) The disciplinary proceedings initiated against him pursuant to a chargesheet dated 18th May, 2007; the disagreement note dated 2nd March, 2009 issued by the disciplinary authority; a final order dated 21st May, 2010 and order dated 9th June, 2011 are hereby set aside. As a result, the petitioner shall be entitled to all consequential reliefs as if the aforesaid orders had never been passed.

(ii) The respondents shall pass appropriate orders with regard to arrears of salary etc. within a period of six weeks which shall be communicated to him forthwith. Payment of the dues shall be positively effected within a further period of six weeks thereafter.

29. This writ petition is allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

MARCH 13, 2013

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