

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

Date of hearing and Order: 20.11.2014

+ W.P.(C) 5451/2013

S.C. PARASHAR

..... Petitioner

Through Mr. Devananda Singh, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Vikas Mahajan, CGSC with
Mr. S.S. Rai & Mr. Rohan Gupta,
Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing the Order dated 09.04.2013, passed by respondent No.2 whereby the pay of the petitioner has been reduced by one stage in the time scale of pay for a period of two years i.e. from the pay band of Rs. 51,190/- to 49,440 to the pay band of Rs. 37,400 to Rs. 67,000 with grade pay of Rs. 8900/-.
2. In brief, the facts of the case are as follows:

The petitioner was functioning as a Commandant, 102 Bn RAF, Mumbai. Two coys of 102 Bn RAF were deployed in Goa for a temporary duty. Accordingly, C& D/102 moved to Goa on 22/11/2006 and on the same date the petitioner visited there in Goa. During the visit, he asked Shri M.K Singh, Assistant Commandant, and Officer Commanding – C/102 RAF to purchase liquor from Goa for the Battalion. He also allegedly directed Shri B.R Meena, Dy Commandant at Bn. Hqrs. to bring Rs.30,000/- from the Unit Canteen Fund for this purpose, without maintaining any record. Accordingly, OC-C/102 purchased about 51 cases of Goan liquor and brought to Bn. Hqrs. in the unit vehicle, when the coy returned to Bn Hqr, Mumbai from Goa on 05.12.2006. He also directed the Subedar Major to distribute the liquor to all Coy with a profit of Rs.2/- per bottle and accordingly the same was sold to the jawans. On 05.03.2008 a Memorandum of Charge of Article was issued to the petitioner alleging that the petitioner in his direction purchased 51 cases of liquor feni from Goa by his subordinate officer from canteen fund and under his direction the same was sold to the jawans at the profit of Rs, 2 or 3/- per bottle. After taking the number of prosecution and defence witnesses, the Presenting Officer submitted the prosecution brief to the Inquiry

Officer stating that the charges against the petitioner were not proved, but the latter, without considering the prosecution brief held that the charges of Article I and II has been partially proved. The Charge Officer (“CO”) submitted the representation to the Hon’ble President of India against the Inquiry Report of the Inquiry Officer by detailing the allegations made by the Inquiry Officer. The Commission of the Union Public Service without applying its mind or without considering the statement of the prosecution, advised the Disciplinary Authority to impose a penalty of reduction of pay by one stage in the time scale of pay for a period of two years with further direction that the CO will earn increments of pay during the period of such reduction and on the expiry of the period, the reduction would not have the effect of postponing the future increments of pay imposed on Shri S.C Parashar, the CO and consequently the Directorate General of CRPF issued the penalty on 09.04.2013 against the Charged Officer as “reduction by one stage in the time scale of pay for a period of two years i.e. from Rs. 51,190/- to 49,440 w.e.f. 01.05.2013 for a period of two years in the pay band of Rs. 37,400 to Rs. 67,000 with grade pay of Rs. 8900/- with further directions that the Charged Officer will earn increments of pay during the period of such reduction

and on the expiry of the period, the reduction will not have the effect of postponing the future increments of his pay.

3. Advancing the arguments on behalf of the petitioner, Mr. Devananda Singh, Advocate submits that the allegations levelled against the petitioner are purely malafide and form part of the vindictive action of the higher authorities to stall any further advancement of the petitioner in his service career. He also argued that even if there was any misconduct of bringing the said Goan liquor (Feni) from Goa to Bn Hqr., it was the sole responsibility of the Commandant concerned of the said C Coy i.e. Shri M.K Singh, as he was responsible for all activities during this period till the coys came back from Goa to Bn. Hqr., Navi Mumbai. He submitted that instead of initiating an action against him and the other officers involved, the petitioner was victimized illegally. He contended that there was no evidence qua the petitioner except baseless suspicion. At most, the petitioner is suspicious of having committed the 2nd aspect of Charge I and II. The mere presence of the said liquor at the Bn. Hqr., in the immediate custody of the jawans and in the canteen cannot be accorded to the petitioner to incriminate him in any wrong doing, since he was the Commandant of the Bn. who had the occasion to go to Goa

during the relevant time. He further contended that the first part of Charge 1 and II, which deals with the directions to purchase the said Goan liquor could not be established as there was no evidence against the petitioner. Therefore, the second part of Charge I and II which deals with the act of purchase and transportation must also fail. In support of his arguments, the learned counsel for the petitioner has placed reliance on the following judgments:

- a) *General Manager (P), Punjab & Sind Bank and ors. v. Daya Singh (2010) 11 SCC 233*
- b) *Champaklal Chimmanlal Shah v. Union of India AIR 1964SC 1854*
- c) *Nrayan Dattacharya Ramteer Thakur v. State of Mharashtra (1997) 1 SCC 299*
- d) *Nirmala Jhala v. State of Gujarat (2013) 4 SCC 301*
- e) *Krushankant B. Parmar v. Union of India (2012) 3 SCC 178*
- f) *Nand Kishore Prasad v. state of Bihar (1978) 3 SCC 366*
- g) *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10*

4. Opposing the present petition and the contentions raised by the learned counsel for the petitioner, Mr. Vikas Mahajan, the learned Standing Counsel for respondent No. 1 and 2 strenuously argued that the charge of corruption and misappropriation of Government funds was duly

proved against the petitioner and the penalty was imposed by the Disciplinary Authority after giving due consideration to the advice rendered by the UPSC. Thus, the same may not be interfered with by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. He further submitted that the Preliminary Inquiry Report submitted by the Inquiry Officer was duly examined by the Disciplinary Authority. Taking into considering the fact that a Senior Officer of the Force had indulged in malpractice by misusing his official position, the Central Vigilance Commission was consulted for their advice and based on the advice given by them, proceedings were initiated against the petitioner under Rule 14 of CCS (CCA) Rules, 1965. He further submitted that the petitioner had fully participated in the inquiry alongwith his defence assistant Shri L.N. Mishra, Commandant, CRPF. During the course of the inquiry, the Inquiry Officer had recorded the statements of 16 prosecution witnesses and 13 defence witnesses. Based on the evidence of these witnesses and other materials placed on record, the Inquiry Officer held that Article I and II of charges were 'partially proved' and Article III of charges was 'not proved'. Under Rule 14(2) of the CCS (CCA) Rules 1965, the report of the Inquiry Officer was duly

accepted by the Disciplinary Authority and the same was served upon the petitioner so as to give him an opportunity to file a representation against the same within a period of fifteen days. The petitioner had submitted his reply/representation on 24th March, 2012 and after examining it the Disciplinary Authority proceeded to impose a penalty on him. In order to take a final decision on the quantum of punishment, the UPSC was consulted in terms of the mandate of Article 321 of the Constitution of India.

5. We have heard the learned counsel for the parties at considerable length and have given our thoughtful consideration to the arguments advanced by them.

6. Having regard to the respective contentions, the question that arises for consideration is whether the order passed by respondent No.2, whereby the petitioner has been awarded the penalty of 'reduction of stage in the time scale of pay' is sustainable in law. The power of judicial review of this Court under Article 226 of the Constitution of India, is a limited power and this Court would not normally interfere with the findings recorded at the departmental inquiry by the Disciplinary Authority or the Inquiry Officer as a matter of course. The Court cannot

sit in appeal over these findings and assume the role of an Appellate Authority. However, this would not mean that the Court will not interfere in such cases where the order of the Inquiry Officer is inconsistent with the rules of natural justice, where the order is in violation of statutory rules prescribing the mode of inquiry or where the conclusion/finding reached by him is based on lack of evidence. The Supreme Court in ***Kuldeep Singh v. The Commissioner of Police & Ors., (1999) 2 SCC 10*** held:

“6..... The power of judicial review available to the High Courts as also to this Court under the Constitution takes in its stride the domestic inquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.”

7. A three Judge Bench of the Hon'ble Supreme Court has considered the scope of judicial review in ***B.C. Chaturvedi v. Union of India & Ors.*** [(1995) 6 SCC 749] and that:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding to fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceeding against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the findings and mould the relief so as to make it appropriate to the facts of each case.

8. In *Nand Kishore Prasad v. State of Bihar and Ors.*, AIR 1978 SC 1277, it was held by the Hon'ble Supreme Court that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character; therefore, it is necessary for the tribunal to arrive at its conclusions on the basis of some evidence. Such evidence should with some degree of definiteness, point towards the guilt of the delinquent and not leave the matter in a state of suspicion as mere suspicion does not replace the need for proof in domestic enquiries as well. If there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty and in such an event, the findings recorded by the Inquiry Officer would be perverse.

9. Further, in *State of Andhra Pradesh v. Sree Ram Rao (1964) 11LLJ 150 SC* the question was whether the High Court, under Article 226 could interfere with the findings recorded at the departmental inquiry, the Supreme Court held that the findings, recorded in a domestic inquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

10. As per the case of the prosecution, the petitioner was functioning as a Commandant, 102 Bn RAF, Mumbai. Two coys of 102 Bn RAF were deployed to Goa for temporary duty. On 22/11/2006 the petitioner visited the two companies in Goa. During his visit, he allegedly asked Shri M.K Singh, Assistant Commandant, and Officer Commanding – C/102 RAF to purchase liquor from Goa for the Battalion. He also directed Shri B.R Meena, Dy Commandant at Bn. Hqrs. to bring Rs.30,000/- from Unit Canteen Fund for this purpose. Accordingly, when the coy returned to Bn Hqr, Mumbai from Goa on 05.12.2006, Sh. M.K Singh, Assistant Commandant, purchased about 51 cases of Goan liquor and brought them to Bn. Hqrs in the unit vehicle. The petitioner also allegedly directed the HC Praja Singh, Subedar Major to distribute the liquor to all Coys and collect money from them, with an ulterior motive to make illegal gain from the transaction.

11. Thus, in the present case the charge against the petitioner is that under his directions, 51 cases of liquor (feni) were purchased from Goa by his subordinate officers i.e. B.R. Meena, SI Bhagwan Das and M.K Singh from the canteen fund. Furthermore, under the direction of the petitioner, his subordinate officer, HC Praja Singh sold the said liquor to

the jawans with a profit of Rs.2 or 3 per bottle. Therefore, B.R Meena (PW-1), Mr. M.K Singh (PW-2), HC Praja Singh (PW-8) and SI Bhagwan Das (PW-16) are the prime witnesses in this case. It is pertinent to mention that out of these four witnesses only PW-2 has made such an allegation against the petitioner and his statement not only lacks the support of any cogent evidence but has also been contradicted by various other witnesses time and again.

12. During the examination in chief, PW-2, M.K Singh deposed that the petitioner came to Goa to supervise the deployment. He stated that he accompanied the petitioner to a beach and while coming back from the beach, the petitioner asked him to purchase a bottle of feni from a roadside shop. He further stated that when he bought the bottle, the petitioner commented that the liquor should be bought for the canteen. According to him, the petitioner then called Sh. B.R. Meena, from his mobile phone and asked him to bring Rs.30,000/- from the canteen fund for the purchase of liquor and come to Goa. It is to be noted here that in his cross-examination, he categorically stated that he had no knowledge of the identity of the person whom as to the petitioner called from his mobile phone. He also stated that the person contacted by the petitioner

was one Sh. B.R. Meena as there was only one officer in the 102 Bn. RAF by the name “Meena”. As per his evidence, the call was made by the petitioner from his mobile phone; however he made no attempts to find if the call was indeed made to Sh. B.R. Meena only. Thus, his knowledge that the call was made to Sh. B.R Meena is only based on a presumption and nothing more. Further as per the evidence of Sh. B.R Meena, PW-1, he never received any call from the petitioner for purchasing liquor and in fact he has no knowledge about the purchase of liquor. In such circumstances, it is unclear as to whom the petitioner called asking for money.

13. PW-2 in his evidence stated that Sh. B.R Meena, came to Goa on 29.11.06 and went back to the Hqrs., the next day. While going back Sh. B.R. Meena told him that the petitioner had ordered him to purchase feni from Goa and had informed him that Rs. 30,000/- had been brought by SI Bhagwan Das. However, Sh. B.R Meena, PW-1 in his evidence deposed that SI Bhagwan Das was not carrying any money with him for the canteen purchase and he did not have any knowledge about the purchase of liquor. He also stated that he did not receive any direction from the petitioner to convey PW-2 for the purchase of liquor. Further SI Bhagwan

Das, PW-16 in his evidence deposed that he did not take any money from the canteen fund when he went to Goa and that he had no knowledge about the purchase of liquor from Goa.

14. PW-2 in his evidence also deposed that he was in constant touch with the petitioner and on his instructions he purchased three types of Feni from two different shops and directed Inspector Rajinder Singh to collect it. However, there is no proof of this conversation except for the fact that PW-3, Inspector Rajinder Singh admits to have received a telephone call from PW-2. This does not prove the communication between him and the petitioner. In his cross examination PW-2 deposed that he did not receive money from SI Bhagwan Das but asked Inspector Rajinder Singh to collect the money from him. However SI Bhagwan Das, PW-16 contradicted his statement by deposing that he did not pay any money but only collected the liquor from the said shop and PW-2 made the payments. PW-2 just gave a slip to him which was to be handed over to the dealer and therefore he collected the liquor after handing over the slip. In light of these facts and circumstances, the story narrated by PW-2 seems highly unbelievable and concocted.

15. PW-1, Sh. B.R Meena in his examination deposed that HC Praja

Singh, PW-8 asked him to get some money from the canteen. However, he refused as there was no written order. He further deposed that even SI Bhagwan Das, PW-16, who accompanied him, was not carrying any money for the canteen purchase and did not have any knowledge about the canteen purchase. Thus he categorically refused to have any knowledge of the incident or that he had any communication with the petitioner.

16. PW-8, HC Praja Kumar Singh deposed that on the morning of 29.11.2006 morning Bhagwan Das asked for Rs.30,000/-. On such a demand being made, he contacted canteen chairman Shri Kulbhushan, Asstt. Commandant alongwith SI/GD Bhagwan Das and the Canteen Manager, Amrik Singh to the parade ground. He stated that the canteen chairman made a temporary receipt of Rs.30,000/- and asked him to hand money over to SI Bhagwan Das; that on 05.12.2006 at about 11:00 p.m. he was called from his home to open the canteen to keep some liquor and since the keys were not with him, and it was kept in the co-operative shop. He stated that a truck was standing in front of the co-operative shop, Dewinder Pal Singh, Insp. Rajender Singh and a few jawans were present. In his cross examination he stated that he gave a report about the

arrival of the liquor to Shri Kulbhushan on the night of 05.12.2006 as well as in the morning of 06.12.2006; the canteen chairman himself went to ensure that the stock of liquor were brought. He stated that on 06.12.2006 he distributed the liquor to all coys and the money was received in a day or two which he deposited to Subedar Major. Thus in his entire evidence he nowhere named petitioner to be the person under whose direction the entire transaction was effected.

17. After considering the evidence of other witnesses, we find that neither the act of selling the alcohol to the jawans nor giving directions to procure the same, can be directly attributed to the petitioner. This can also be seen from the following statement of these witnesses:

- i. PW-3, Rajinder Singh in his examination in chief deposed that he was directed by PW-2 to only lift the liquor bottles from the shop and he was not given any such direction by the petitioner for the same.
- ii. PW-4, Inspector Dewinder pal Singh deposed that HC Praja Singh and SI Bhagwan Das came to him and asked for Rs.30,000/- for the purchase from canteen stores. He stated that a slip signed by Shri Kulbhushan, Assistant Commandant was brought by them and he gave the money to them. After two or

three days when he asked for red and black cheques, the Canteen Hawaldar returned him the money. He also stated that he never knew that the permission was given by the petitioner.

- iii. PW-5, Shri Kulbhushan, Assistant Commandant also deposed that before drawing the money he did not get any direction from the petitioner, however he reported the arrival of liquor to him because no one else was present in the office. Thereafter he distributed the same to the coy presuming that the petitioner must be having knowledge of the same.
- iv. PW-11, Bhopal Singh deposed that SM Divender Pal gave him the order to collect the liquor for the coy and he received four cases of liquor and distributed them to the coy. In the cross examination he deposed that he told his officer commanding i.e. the petitioner that he had received an order to collect liquor from the canteen. Thus, from his evidence, it can be seen that the petitioner had not given him any order to collect the liquor.
- v. PW-13 only deposed that he just issued a notice to the Petitioner.

Thus in a nutshell no one except PW-2 deposed that the petitioner gave any such direction.

16. It is also noted that PW-14, Smt. Sunita Amit Kumar in her examination in chief deposed that Shri Kishore Prasad and PW-2 were against the commandant for various reasons and they conspired to make the allegation and discredit the petitioner. They even influenced other people to complain against the petitioner.

17. PW-15, HC Manbir Singh in his evidence deposed that the petitioner in fact advised the jawans not to buy liquor and there was no liquor in his vehicle.

18. As per the Standing Order of the CRPF for Central Reserve Force Canteen Rules for Duties, the sanction of the Unit Welfare Committee/ Chairman is obtained for all items of expenditure out of the Canteen Fund for purchase of canteen assets exceeding Rs.2,000/-. In the present case no such consent had been taken. Further it has also come in the evidence of PW-4, Inspector Dewinder Pal Singh that when he asked for the red and black cheque (the authority for depositing and withdrawal of money from the SM's treasury), the Canteen Hawaldar returned the amount.

19. It is a settled legal position that preponderance of the evidence,

also known as balance of probabilities is the standard of proof required in most civil cases, unlike criminal cases where the prosecution is required to prove the case beyond reasonable doubt. The standard is met if the proposition is more likely to be true than untrue. Effectively, when there is a chance greater than 50 percent for the proposition to be true. (Ref. Lord Denning, in *Miller v. Minister of Pensions* 1947 (2 *All ER* 372).) In the present case, the respondents have clearly failed to discharge their burden of proof. None of the witnesses except PW-2, have directly attributed any role to the petitioner. For the reasons stated above, the statement of PW-2 has not been found reliable. In such circumstances merely because after bringing the liquor to the Bn. Hqr. the petitioner was informed about the same and on a search being conducted, it was found in the immediate custody of the jawans and canteen, the allegation that he gave the direction to purchase liquor and sell it to the jawans at profit of Rs.2/- or Rs.3/- per bottle does not stand proved. In the present case, the presenting officer had already stated in his report that the charges against the petitioner were not proved. However without considering the same, the Inquiry Officer held that the charges of Article I & II are partially proved. The Inquiry Officer

has thus failed to comply with the principles of natural justice, as the view taken by him is not supported by any evidence let alone cogent evidence. It is also disappointing to observe that the UPSC, which is considered to be the most reliable and experienced body in matters of appointments to Government employment, has failed to apply its mind to the evidence on record and instead has blindly accepted the Inquiry Report submitted by the Inquiry Officer and gave the advice of reducing the pay of the petitioner by one stage.

20. In the light of the aforesaid facts, the present petition filed by the petitioner deserves to be allowed. Accordingly, the order dated 09.04.2013 passed by respondent No.2 is hereby quashed.

21. With the aforesaid direction, the present Writ Petition is disposed off.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

NOVEMBER 20, 2014

v