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

+ W.P.(C) 10845/2016

RAMBABU BANTUMILLI

..... Petitioner

Through Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Roshan Lal Goel, Advocate for
UOI along with Mr. S.S. Sejwal, Law
Officer, CRPF.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **16.11.2016**

This writ petition has been filed challenging the orders dated 14.06.2008, 08.04.2009 and 21.02.2011 passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority, whereby, the petitioner has been dismissed from service and his dismissal upheld in appeal. The revisional application has also been rejected.

Mr. Goel appearing on behalf of the respondents took a preliminary objection to the writ petition on the ground of delay of over five years in filing the writ petition.

It is true that delay in filing a writ petition is not a complete bar to a writ petition being entertained. In appropriate cases, a writ petition may be entertained to put an end to a continuing illegality. However, ordinarily, the writ court does not exercise its extraordinary discretionary jurisdiction

where there is gross laches on the part of the petitioner and more so, when the grant of relief would result in unsettling of things already settled.

The petitioner in this case was appointed Sub Inspector in the Central Reserve Police Force sometime in 2004. On 16.07.2007, a charge sheet was issued to the petitioner calling upon the petitioner to show cause as to why the petitioner should not be proceeded against on the following two Articles of Charge.

ARTICLE-I

“That the said No.047010196 SI/GD Ram Babu Bantumilli of F/157 Bn, CRPF, committed an act of disobedience of order/neglect of duty/remissness in the discharge of his duty in his capacity as a member of the force in that, on 16/5/07; while he was deployed as Platoon Commander of Road Opening Party from Hillar to Badasgam (J&K); left the party and went inside the house of Smt. Tahira (SPO) W/O Shri MOhd Baba R/O Badasgam, District-Anantnag (J&K) while on active duty and thus endangered his as well as life of party personnel in the highly terrorist infested area of Kashmir Valley. Thus, No. 047010196 SI/GD Ram Babu Bantumilli has committed a misconduct which is punishable under section 11(1) of CRPF Act, 1949 read with rule 27 of CRPF Rules, 1949.

ARTICLE-II

That during the above said period and while functioning as Sub-Inspector/GD in 157 Bn, CRPF No. 047010196 SI/GD Ram Babu Bantumilli committed an act of disobedience of order/neglect of duty/remissness in the discharge of his duty in his capacity as a member of the force in that, on 16/5/07, while he was deployed as Party Commander of Road Opening party from Hillar to Badasgam left the party and entered into the house of a civilian lady namely Smt. Tahira (SPO) W/O Shri Mohd Baba R/O Badasgam, District: Anantnag (J&K) with an

ulterior motive of molestation which is pre-judicial to good order and discipline of the force. Thus, No.047010196 SI/GD Ram Babu Bantumilli of F/157 Bn has committed a misconduct which is punishable under section 11(1) of CRPF Act, 1949 read with rule 27 of CRPF Rules, 1949.”

The petitioner replied to the charge sheet after which, disciplinary proceedings were initiated. The Enquiry Officer found the petitioner guilty of the first Article of Charge, but not the second Article of Charge. It appears that the decision of the Enquiry Authority in respect of the second charge was based on the order of the Criminal Court acquitting the petitioner of the charge of molesting a lady.

The Disciplinary Authority not only accepted the findings of the Enquiry Authority on the first charge but also found the petitioner guilty of the second charge observing that the order of the concerned Magistrate was on the base of a compromise arrived at with the complainant of the case.

Ms. Saahila Lamba, Advocate appearing on behalf of the petitioner strenuously contended and perhaps even rightly, that the Disciplinary Authority erred in law and acted in violation of the principles of natural justice by recording a finding against the petitioner on the second charge without giving the petitioner an opportunity of hearing.

Ms. Lamba referred to a judgment of a Division Bench of this Court dated 12.01.2015 in W.P.(C) No. 10253/2009 (Ranbir Singh vs. UOI & Ors.) where this Court referred to and relied upon two judgments of the Supreme Court, Punjab National Bank & Ors. vs. Kunj Behari Mishra reported in AIR 1998 SC 2713 and Yoginath D. Bagde vs. State of

Maharashtra & Anr. reported in (1999) 7 SCC 739 and held in effect that the Disciplinary Authority had erred in reversing the findings of the Enquiry Authority in respect of one charge, to the detriment of the petitioner, without giving the petitioner an opportunity of hearing.

In this case, however, the petitioner appealed against the decision of the Disciplinary Authority. No objection was taken in the appeal to the action of the Disciplinary Authority in deciding the matter without giving the petitioner an opportunity of hearing in relation to the second charge. The decision of the Disciplinary Authority was questioned on merit and the appeal was rejected. A revisional application was also rejected by the Revisional Authority. That apart, the first charge which is an equally serious charge which could entail the punishment of dismissal from service has been proved. Even assuming there was any lacuna in acceptance of the second charge by the Disciplinary Authority without adequate opportunity to the petitioner, the ultimate decision need not be set aside, since as observed above, the first charge stood proved.

Further more, the decision of the Disciplinary Authority is a reasoned decision. The reason for accepting the charge by reversing the finding of the Enquiry Authority is a plausible one. The Disciplinary Authority proceeded on the basis of an order of the Magistrate which was passed on compromise. Furthermore it is well settled that the standards of proof required in a criminal case do not apply to disciplinary proceeding.

As rightly argued by Mr. Goel, there has been long delay. The dismissal has taken affect. The petitioner has

been out of service for over five years after his revisional application got rejected. The vacancy caused by the dismissal of the petitioner in all probability has been filled up. The order of dismissal cannot be reversed at this belated stage. The writ petition is, therefore, dismissed.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

NOVEMBER 16, 2016

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