

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.452 of 2021

1. Shri. Kh. Brojen Singh, CT/GD No.940270123 CRPF age 48 years S/O (L) Kh. Konenjao Singh, resident of Malom Awang Leikai, P.O. Tulihal, P.S. Nambol, Bishnupur District, Manipur. PIN-795001.

.....Petitioner

– Versus –

1. Union of India represented through its Secretary (Ministry of Home affairs) North Block, Government of India, New Delhi-110001.
2. The Director General of Police, CRPF, CGO Complex, Lodhi Road, New Delhi-110003.
3. The IGP, Manipur and Nagaland Sector, CRPF GC Campus, Langjing, Imphal Manipur-795113.
4. The DIGP, Range CRPF, Imphal, having its office at Langjing CRPF Group Centre Campus, Manipur-795113.
5. The DIGP, Group Centre, CRPF Langjing, Manipur-795113.
6. The Commandant 27 Bn CRPF, Bawana, New Delhi. New Delhi-110039.

.... Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners	:	Mr. M. Devananda, Sr.Adv & Mrs. Donapriya, Adv.
For the Respondents	:	Mr. W Darakishwor, Sr.PCCG, Ms. Niana, Adv.
Date of reserved.	:	09.05.2024.
Date of order	:	13.05.2024

ORDER
(CAV)

[1] Heard Mr. M. Devananda, learned senior counsel assisted by Mrs. Donapriya Asem, learned counsel for the petitioner and Mr. W. Darakishwor, learned Sr. PCCG assisted by Ms. Niana, learned counsel for the respondents.

[2] The present writ petition has been filed by the petitioner praying inter alia for issuance of a writ in the nature of Certiorari or any other appropriate direction to quash and set aside the impugned order dated 13.09.2019 issued by Commandant 27 Bn CRPF; coupled with the prayer for directing the respondents to regularized the period of dismissal period from 30.08.2000 till the date of reporting dated 13.11.2018 and pay the entitled back wages of pay and allowances to the petitioner.

[3] The brief facts of the case leading to the filing of this case are that the petitioner initially joined service in the Central Reserve Police Force (CRPF in short) in the year 1994 as constable. The petitioner while serving as a constable/DVR of F/27 CRPF, an incident was occurred on 13.04.2000 in the evening when the petitioner along with other persons (CT/GDs Mutum Shanti Kumar Singh, Dimary and one relative of the petitioner) went to Station Charalia for making a telephone Call at PCO. After making the telephone Call the petitioner along with other incumbents entered the Subji Mandir, Charali to

purchase watermelon. During purchase, they entered into bargaining with the fruit seller. During the process of bargaining, the fruit seller rebuked the petitioner by using filthy language in Assamese. The said version of the fruit seller was translated by Constable/GD Daimary being an Assamese, hence, the quarrel was started between the petitioner and the other local public.

[4] Considering it as serious mis-conduct, they were placed under suspension vide order dated 13.04.2000 and a Preliminary Enquiry was order against them vide order dated 18.04.2000 for two articles of charge. As a result of Departmental Enquiry, all the three personnel including the petitioner herein were dismissed from service w.e.f 30.08.2000(AN) vide order dated 30.08.2000.

[5] Being aggrieved of the dismissal order dated 30.08.2000 issued by the Commandant 27 Bn CRPF, the petitioner approached before the Gauhati High Court, Imphal Bench and filed a writ petition being WP(C)No.507 of 2011. Subsequently, the Gauhati High Court set aside the dismissal order and directed for re-instatement of the petitioner vide its order dated 08.02.2012 passed in WP(C)No.507 of 2011 as the case is similarly situated with Mutum Shanti Kumar case in WP(C)No.297 of 2002.

[6] It is stated that the Union of India preferred an appeal No.32 of 2012 before the Division Bench and the same was dismissed on 24.08.2012 as devoid of merit. Thereafter, the Union of India preferred Special Leave Petition before the Hon'ble Supreme Court of India against the said judgment and order dated

24.08.2012 passed by the Gauhati High Court, Imphal Bench and the same has been converted to Civil Appeal Nos.9373-74 of 2013 and the Hon'ble Supreme Court vide order dated 02.07.2018 dismissed all the appeals subject to the liberty as granted by the High Court that it would be open for the appellants to proceed with inquiry afresh from the stage as directed by the High Court and it would be open for the appellants to decide on arrears of pay and allowances of the employees. Thereafter, the petitioner was reinstated to the service on 14.11.2018 in compliance of the Hon'ble Supreme Court order dated 01.07.2018 passed in Civil Appeal Nos. 9373-74 of 2013.

[7] It is stated that in compliance to Hon'ble Gauhati High Court order dated 24.08.2012 passed in WA No.32 of 2012 and Hon'ble Supreme Court order dated 02.07.2018 passed in Civil Appeal No.9373-74 of 2013, the authority conducted the fresh Departmental Enquiry against the petitioner on two Articles of Charges. The Departmental Enquiry was concluded after appointing the Presenting Officer by relying the statement given by the Prosecution witnesses in the year 2000. The Office of the Commandant – 27 Bn CRPF issued the order dated 13.09.2019 by giving a minor penalty for stoppage of Annual Increment for three years with cumulative effect. Hence, the writ petition.

[8] Union of India filed counter affidavit inter-alia stating that considering the case of the petitioner and taking a lenient view, the earlier punishment of dismissal from service was converted into a minor penalty of

stoppage of three increments with cumulative effect and the period of 18 years 2 months and 14 days (from date of dismissal from service to reinstatement 30.08.2000 to 14.11.2018) regularised as dies non. Relying on the decisions in (2009) 3 SCC 124 and (2009) 3 SCC 705, it is stated that full back wages would not be entitled to the employees on cancellation of their termination orders. It is prayed that the writ petition be dismissed.

[9] Mr. M. Devananda, learned senior counsel for the petitioner submits that one Mutum Shanti Kumar Singh who faced the same inquiry with the petitioner herein and was awarded similar penalty, also challenged the second order of stoppage of increment of three years and no back wages during the period of suspension by way of writ petition being WP(C) No.214 of 2020 inter-alia praying for regularization of service for the period of suspension with back wages. However, this Court dismissed the writ petition vide order dated 16.09.2021 and denied back wages. The same was challenged before the Division Bench by way of writ appeal being WA No.48 of 2022. However, during the pendency of the writ appeal, the respondents awarded subsistence allowances to him for the period of suspension vide a detailed order dated 23.12.2023 passed by the Commandant, 27-BN CRPF. During the course of hearing, learned senior counsel hands over a copy of the order dated 23.12.2023 and the same is taken on record. Relevant portion of the order dated 23.12.2023 issued by the Commandant, 27 BN, CRPF is reproduced below:

"9. Further, IGP, M&N Sector vide signal No.J.II-48/2022-M&N-Legal dated 21.11.2023 has also recommended that the 'subsistence allowance should have been paid from the date of first suspension, ie, 13.04.2000 to till date of his reinstatement, ie, 20.01.2011 as per Rule-53 of FR. This fact also elaborated in Explanation given under Rule 10(b)(4) of CSS(CCA) Rules under head 'Suspension' that 'Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal or compulsory retirement and shall continue to remain under suspension until further orders'.

10. Suspension period of the petitioner from 13.04.2000 to 30.08.2000 (ie, date of dismissal) was regularized 'as such'. Thus, the petitioner has already been paid subsistence allowance from 13.04.2000 to 30.08.2000.

11. In view of the above Judgement issued by the Hon'ble High Court Guwahati and the direction received from Digcent (Law) Dte. CRPF Sig. No. II-262/2020-LWP-II dated 07.12.2023 alongwith e-note No. J.II-262/2020-LWP-II dated 07.12.2023 duly mentioned complete details of petitioner there on approval by competent authority, and in accordance with opinion given by Ld DSGI, Manipur High Court, No. 941150344 CT/GD Mutum Shantikumar Singh of 27 Bn (now posted in 162 Bn) from 31.08.2000 (ie, from the next date of dismissal from service) to 20.01.2011 (ie, before the date of placing him under suspension after re-instatement) is hereby sanctioned subsistence allowance @ he was drawing prior to 31.08.2000 in terms of above Judgement. However, his period of suspension will be treated "AS Such" for all other service purposes."

[10] Mr. M. Devananda, learned senior counsel for the petitioner has pointed out that the above order has already been complied by making payment vide Signal dated 15.02.2024 issued by Accounts Officer, GC CRPF, Prayagraj. It is prayed that similar relief be granted to the petitioner herein as Mutum Shanti Kumar, another and the petitioner faced the same inquiry and awarded similar penalty.

[11] Mr. W. Darakishwor, learned Sr.PCCG submits that order dated 23.12.2023 as mentioned above in the case of Mutum Shantikumar cannot be relied in the present case, as the same is confined to the facts of that case alone. It is prayed that the writ petition be dismissed as back wages cannot be granted for the period not actually worked.

[12] This Court considers the submissions made at bar and the materials on record specially the subsequent development including order dated 23.12.2023 passed by the Commandant, 27-Bn CRPF. It is an admitted fact that three persons, namely- CT/GDs Dimary, Kh. Brojen Singh (petitioner herein) and Mutum Shanti Kumar Singh faced disciplinary proceeding for the same misconduct and in the first enquiry proceedings, they were dismissed from service. However, as per directions of the High Court in writ petition and writ appeal and also of the Hon'ble Supreme Court, their dismissal orders were set aside and fresh enquiry was conducted. In the second enquiry proceeding, the penalty of dismissal was converted to one stoppage of increment and no pay during the period of dismissal. By an order dated 23.12.2023 passed by the Commandant, 27-Bn CRPF, Mutum Shanti Kumar was granted subsistence allowance for the period of dismissal and the actual payment was made vide order dated 15.02.2024.

[13] This Court finds merit in the submission of Mr. M. Devananda, learned senior counsel for the petitioner to grant subsistence allowance to the

petitioner, as an employee is entitled to subsistence allowance during the period of suspension. The case of Mutum Shanti Kumar Singh cannot be differentiated from the case of the petitioner. Accordingly, the respondents are directed to grant subsistence allowances to the petitioner as done in the order dated 23.12.2023 issued by Commandant, 27-Bn CRPF. The exercise shall be completed within a period of 2 months from the date of receipt of a copy of this order.

[14] In terms of the above directions and observations, the writ petition is disposed of. Send a copy of this order to the Commandant, 27-Bn, CRPF, Bawana, New Delhi-110039 for information and necessary compliance.

JUDGE

FR/NFR

John Kom