

GAHC010075222022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2692/2022

FORCE NO. 060111875 EX SEPOY/GD VIBHAS CHANDRA
S/O LATE RAM EKBAL SHARMA, VILL-JAMALPUR, P.O.-NADAUL, P.S.-
MASAURHI, DIST-PATNA, BIHAR, PIN-804454

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI-110001

2:DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

3:INSPECTOR GENERAL OF POLICE
EASTERN SECTOR
CRPF
STONY HEAVEN
BISHOP COTTON ROAD
SHILLONG
MEGHALAYA-793001

4:DEPUTY INSPECTOR GENERAL OF POLICE
RANGE HEADQUARTER
CRPF
DAYAPUR
SILCHAR (ASSAM)

5:COMMANDANT 175 BATTALION
CRPF

RANI INDUSTRIAL AREA
KAMRUP
ASSA

Advocate for the Petitioner : MR. A R TAHBILDAR,

Advocate for the Respondent : ASSTT.S.G.I., MR. U K GOSWAMI,MR. U K GOSWAMI (C.G.C)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri AR Tahbildar, Advocate.

For the Respondents : Shri UK Goswami, CGC.

Date of Hearing : 20.08.2024.

Date of Judgment : 30.08.2024.

JUDGMENT & ORDER

An order dated 28.09.2020 of removal from service which is affirmed by the appellate authority and in respect of which even the revision has been rejected is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

2. The facts, as projected in the petition are that the petitioner was inducted as a Sepoy/GD in the CRPF on 27.05.2006. At the relevant point of time, he was posted in the 175 Battalion of the CRPF at Rani Industrial Area in the district of Kamrup.

3. The petitioner was served with a Memorandum of Charge dated 30.05.2020 and

he replied to the same. The said memorandum was basically on three charges which involved consumption of alcohol during duty and under the influence of alcohol threatening superior officers over telephone. The enquiry was done in which, 8 numbers of witnesses were examined by the employer and in the enquiry, the charges were held to be proved.

4. The response of the petitioner was sought for on the enquiry report and thereafter, the impugned order dated 28.09.2020 was passed whereby the petitioner was removed from service. As observed above, the departmental appeal was rejected on 03.12.2020 and further, the revision was also rejected on 24.12.2021.

5. I have heard Shri AR Tahbildar, learned counsel for the petitioner. I have also heard Shri UK Goswami, learned Central Government Counsel (CGC) for the respondents.

6. Sri Tahbildar, learned counsel for the petitioner has submitted that the charges against the petitioner were not proved in accordance with law in the departmental inquiry. He submits that the petitioner had actually applied for leave on 16.01.2020 which was however not granted. Thereafter on 17.02.2020 he had enquired about the status of his leave application by telephone with the Quartermaster. However, the said Quartermaster had abused the petitioner and on that incident, the disciplinary proceeding was initiated by levelling charges which were not correct.

7. It is submitted that the petitioner never consumed alcohol during duty on 19.05.2020 and the aspect of threatening superior officers was not there at all. The learned counsel has also submitted that the disciplinary authority took into consideration the earlier punishments imposed upon the petitioner for consuming alcohol on duty by submitting that such considerations are extraneous and foreign. He

submits that the entire action is vitiated by *mala fide* as the petitioner was enquiring about the grant of leave which irked the superior officers and whereas the petitioner was rebuked, the charges were falsely levelled against him.

8. As regards the nature of proof, the learned counsel for the petitioner has submitted that except the witness no. 5, all the other witnesses are not relevant and had only deposed that they heard from somebody regarding the incident. As regards the witness no. 5, one K. Jay Sinha, it is submitted that the said witness was biased as it was the same person who had abused the petitioner when he had made enquiry about his leave application. By drawing the attention of this Court to the CRPF Act 1949 (Act of 1949) and the Rules framed thereunder, the learned counsel has referred to Section 10A which lays down that the charge should be to be in a state of intoxication. It is submitted that consumption of alcohol *per se* would not mean that an incumbent is in the state of intoxication. He has also submitted that the petitioner had 16 years of dedicated service and this aspect was wholly ignored. He submits that the punishment of removal is grossly disproportionate to the nature of the allegations against him.

9. In support of his submissions, the learned counsel for the petitioner has relied upon a judgment of the Manipur High Court in the case of ***Panger Banger kumba Vs. The Union of India & Ors.***, reported in **2014 SC OnLine Mani 96**. In the said case, while the provisions of Section 10A of the Act of 1949 was discussed, it was held that only when an incumbent is in a state of intoxication, a penalty can be levied.

10. *Per contra*, Shri UK Goswami, learned CGC has submitted that the charges against the petitioner are grave in nature, more so when the services pertain to a disciplined force. By referring to the affidavit-in-opposition dated 09.12.2022, the learned CGC has submitted that abusing a superior officer under the influence of

alcohol with a threatening of life is a gross misconduct which cannot be tolerated in an organization like the CRPF. He has relied upon the case laws of Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Ghulam Mohd. Bhatt*** [Appeal (Civil) 4950 of 1999] and ***Union of India v. Diler Singh*** [Civil Appeal No. 1133 of 2016]. The learned CGC accordingly submits that no relief is entitled to by the petitioner and the writ petition is liable to be dismissed.

11. The rival submissions have been duly considered and the materials placed before this Court have also been carefully examined.

12. The charges against the petitioner is of consuming alcohol during duty hours on 19.05.2020 and also of a similar act on 17.02.2020 when he had threatened to throw acid on certain members of the Force and had also given life threatening. The records reveal that on the aforesaid incident, a preliminary inquiry was done followed by initiation of a disciplinary proceeding on 35.02.2020. It, however, transpires that even during the pendency of the proceeding, the petitioner had again consumed alcohol during duty hours. The records also reveal that on earlier occasions, the petitioner was penalized for similar offence. After completion of the inquiry, a second show cause notice was issued to the petitioner on 31.08.2020 and only after such procedure, the impugned order of removal from service was passed on 28.09.2020. The petitioner has harped that the charges were not proved.

13. It is seen that though the statements of the witness nos. 1, 2, 3, 4, 6, 7 and 8 appear to be hearsay, the statement of the witness no. 5 is direct as it was this person who was abused by the petitioner in a drunken state. The records also reveal that the abuse which was done over the telephone was recorded and the same was taken into consideration. An argument has been made that the medical certificate was not duly proved. It is, however, seen that the medical certificate is of the period when the

disciplinary proceeding had already started and in any case, the strict rigours of the Evidence Act which is applicable in a civil proceeding cannot be made applicable in a disciplinary proceeding. The disciplinary authority has also taken into account the past record and conduct of the petitioner. While the petitioner has claimed that he had served the organization for about 16 years, the materials on record would show that the petitioner was punished on earlier occasions on similar charge.

14. The Hon'ble Supreme Court in the case of the ***Diler Singh (supra)*** has laid down that the standard of proof in a disciplinary proceeding is on preponderance of probabilities. This Court is also of the view that the strict rules of the Evidence Act is not applicable in a disciplinary proceeding and unless, the incumbent delinquent is able to establish that there has been a gross violation of the procedure whereby the delinquent was denied of a reasonable opportunity to defend himself or there has been a case of established *mala fide*, interference by this Court would be loath. In this case, there is no allegation of *mala fide* and in any event, even if such allegation is there, the same cannot be taken into consideration as none of the parties against whom *mala fide* has been alleged have been made party respondents by name.

15. The Hon'ble Supreme Court in the case of ***Government of Andhra Pradesh & Ors. Vs. Mohd. Taher Ali***, reported in **(2007) 8 SCC 656** has laid down that in a disciplinary proceeding, the past conduct can be taken into consideration. For ready reference, the relevant observation is extracted hereinbelow:

“5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the

judgment of this Court titled State of Mysore v. K. Manche Gowda but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement."

It is found that the petitioner, in spite of being a member of a disciplined force had indulged in behaviour which is not appropriate at all. The materials on record would not lead this Court to a conclusion that the penalty imposed is anyway disproportionate to the charges levelled.

16. In view of the above, this Court does not find any merit in this case and accordingly the same is dismissed.

JUDGE

Comparing Assistant