

GAHC010116722015



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

Case No. : WP(C)/3120/2015

ANNET KUMAR
S/O- DALVEER SINGH, R/O- GARHI DHARMPAL, P.O.- MURKIA, AGRA,
UTTAR PRADESH, PIN- 283102.

VERSUS

THE UNION OF INDIA and 4 ORS
THROUGH THE SECY., MINISTRY OF HOME AFFAIRS, NEW DELHI- 110003.

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI- 110001.

3:THE INSPECTOR GENERAL OF POLICE
NES
CRPF
SHILLONG
MEGHALAYA.

4:THE DY. INSPECTOR GENERAL OF POLICE
GROUP CENTRE
CENTRAL RESERVE POLICE FORCE
AMERIGOG
GUWAHATI
ASSAM
PIN- 781023.

5:THE COMMANDANT
48 BATTALION
CENTRAL RESERVE POLICE FORCE
PRESENTLY LOCATED AT GAURIPUR

DHUBRI
ASSAM
PIN- 783301

Advocate for the Petitioner : MRU SARMA, MS.R DUTTA,MR.R MAJUMDAR,MR.M KALITA,MRSP RAI,MR.H BEZBARUAH

Advocate for the Respondent : C.G.C., MRS. A GAYAN,ASSTT.S.G.I.,,MRS.A DASS,,

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT& ORDER

Date : 19-09-2024

Heard Mr. R. Mazumder, learned counsel for the petitioner. Also heard Mrs. A. Gayan, learned CGC appearing for the respondents.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has assailed the enquiry report dated 02.03.2015 and the order dated 30.03.2014 passed by the Commandant 48 Battalion, Central Reserve Police Force, by which, the petitioner had been removed from service.

3. The facts of the case are that the petitioner joined the service of Central Reserve Police Force as a Constable/General Duty in the year 2011 and he had availed earned leave w.e.f. 20.06.2014 to 20.07.2014. It is the specific case of the petitioner that the petitioner applied for extension of his leave on medical ground and that on 24.07.2014, he was informed that the said request has been rejected. Accordingly, on 26.07.2014, the petitioner proceeded to Dhubri to join his duty by travelling in the North East Express train. However, while he was travelling in the said train on 27.07.2014, the Government Railway Police,

Fatehpur arrested him along with another person on the basis of an FIR lodged by a co-passenger to the effect that the petitioner and other person had scuffled with the brother of the informant. It is the specific case of the petitioner that the GR Police Station Fatehpur accordingly informed the Office of the respondents on 28.07.2014 about his arrest, whereafter, the respondents by an order dated 08.08.2014 placed the petitioner under deemed suspension w.e.f. 27.07.2014. It is the further case of the petitioner that after the petitioner reported back to his unit on 13.08.2014 on being released on bail, the said suspension order was revoked by an order dated 26.08.2014. It is the case of the petitioner that pursuant to an enquiry constituted and the Enquiry Officer having submitted its report on 02.02.2015, the petitioner was removed from service w.e.f. 30.03.2015 by an order dated 30.03.2015 passed by the disciplinary authority. Situated thus, the present writ petition has been filed.

4. Mr. R. Mazumder, learned counsel for the petitioner submits that the alleged charge offence are not listed offence and as such, no case of misconduct whatsoever can be said to have been made out against the petitioner.

5. He further submits that assuming but not admitting that the charges have been proved against the petitioner, the penalty of removal from service is not proportionate to the charges and therefore, the same warrants alteration from this Court. In support of the aforesaid submission, he relies upon the following judgments of the Apex Court.:-

1. *M/s Glaxo Laboratories (L) Ltd –vs- Presiding Officer, Labour Court, Meerut, and Others* reported in (1984) 1 SCC 1;

2. *S.R. Tewari –vs- Union of India* reported in (2013) 6 SCC 602;

3. ***Jai Bhagwan –vs- Commn. Of Police & Ors*** reported in **(2013) 11 SCC 187.**

6. He further relies upon the decision of the Rajasthan High Court in the case of ***Const. Sunil Kumar –vs- Union of India*** reported in **2017 Legal Eagle (Raj) 743.**

7. Per-contra Mrs. A. Gayan, learned CGC by vehemently opposing the petition submits that the charges levelled against the petitioner has been duly established and proved before the Enquiry Officer and the same being less heinous offence in terms of Section 10 of the Central Reserve Police Force, Act, 1949 (in short, "Act of 1949") for which the punishment prescribed under Section 11 of the said Act includes "removal from service", the punishment awarded by the disciplinary authority warrants no interference from this Court.

8. In support of the aforesaid submission, she relies upon the decision of the Hon'ble Apex Court :-

1. ***Union of India and Others –vs- Ghulam Mohd. Bhat*** reported in **(2005) 13 SCC 228;**

2. ***Ex-Const/DVR Mukesh Kumar Raigar –vs- Union of India and Others*** reported in **(2023) 11 SCC 159.**

9. She further submits that the power of judicial review under Article 226 of the Constitution of India, while examining validity of the disciplinary enquiry and the consequent punishment awarded thereof is limited and this Court while exercising such power is not an Appellate Court, but reviews the manner in which the decision is made.

10. I have given my prudent consideration to the argument made by the learned counsel for the parties and have perused the materials available on record including the citation cited at the Bar.

11. Apt to refer to the relevant provisions of the Act of 1949 before entering into the merits of the matter. Section 9 and 10 defines more heinous offences and less heinous offences respectively and Section 11 prescribes the punishment to be awarded when one is found guilty of disobedience, neglect of duty or remissness in the discharge of duty or of other mis-conduct in his capacity as a member of the Force.

12. Section 10 and 11 of the Act of 1949 are reproduced hereunder for ready reference:-

“10. Less heinous offences -Every member of the force who-

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or

(b) strikes or attempts to force any sentry; or

(c) being in command of a guard, piquet or patrol, refuses to receive any prisoner or person or person duly committed to his charge or without proper authority releases any person or prisoner placed under his charge or negligently suffers any such prisoner or person to escape; or

(d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or

(e) is grossly in-subordinate or insolent to his superior officer in the execution of his office ; or

(f) refuses to superintend or assist in the making of any fieldwork or other work of any description ordered to be made either in quarters or in the field; or

(g) strikes or otherwise ill-uses any member of the force subordinate to him in rank or position ; or

(h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accountrement or any such articles entrusted to him or belonging to any other person ; or

(i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(j) with intent to render himself or any other person unfit for service , voluntarily causes hurt to himself or any other person; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the force forthwith deliver up, or duly account for, all or any arms,. Ammunition, stores, accountrements or other property issued or supplied to him or in his custody or possession as such member; or

(l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of or any member of, or any person attached to the force or who through design or culpable neglect, omit, or refuses to make or send any return or report of the matters aforesaid; or

(m) absent himself without leave, or without sufficient cause overstays leave granted to him: or

(n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline: or

(o) contravenes any provision of this Act for which no punishment is expressly provided: or

who, while not on active duty:-

(p) commits any of the offences specified in clauses (e) to (l) (both inclusive) of section 9.shall be punishable with imprisonment for a term which may extend to

one year, or with fine which may extend to three months pay, or with both.

11. Minor punishments. (1) *The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considered to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force, that is to say :-*

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty eight days with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the force.

(2) Any punishment specified in clause (c) or clause (b) of sub-section (I) may be awarded by any gazetted officer when in command of any detachment of the force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The Assistant Commandant ,a Company Officer or a Subordinate Officer , not being below the rank of Subedar or Inspector commanding a separate detachment or an outpost, or in temporary command at the headquarters of the force, may, without a formal trial, award to any member of the force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act or which is not of a sufficiently serious nature to require prosecution before a Criminal Court that is to say:-

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances

during its continuance;

(b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters, lines ,or camp.

(c) censure or severe censure

Provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A Jemadar or Sub-Inspector who is temporarily in command of a detachment or an outpost may in like manner and for the commission of any like offence award to any member of the force for the time being subject to his authority any of the punishment specified in clause (b) of sub-section (3) for not more than fifteen days."

13. In the present case, it appears that the petitioner was charged as under:-

Article No.1

That the aforesaid force No.115262497 Constable/GD Aneet Kumar of F/48 Bn. has committed an act of disobedience of orders as defined in Section 11(1) of the Central Reserve Police Force Act in his capacity as a member of the force in that on 27/07/2014 he was found at the Fatehpur Railway Station/public place in a state of intoxication which is suggested by the FIR and medical documents. This act of the employees is a serious and punishable offence under the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949.

Article No.2

That force No.115262497 Constable/GD Aneet Kumar of F/48 Bn. has committed a misconduct in his capacity as a member of the force in that while the employee was arrested by the GRP, Fatehpur pursuant to Case No.38/2014 under Section 308/504 IPC, which the employee did not inform the department

on his own and kept hidden. Therefore, this act of the employee is an act of grave mis-conduct of negligence towards his duties/orders under Section 11(1) of the Central Reserve Police Force Act, 1949 which is punishable under Rule 27 of the Central Reserve Police Force Rules, 1955."

14. Apparent that the petitioner was firstly charged for being found in a state of intoxication at the Fatehpur Railway Station/public place as suggested by the FIR and medical document and secondly, for not informing the department as regards his arrest in connection with the aforesaid FIR. Both the charges apparent on the face of it are not listed offences.

15. Section 10(a) of the Act of 1949, provides that if a member of the force is found in a state of intoxication during duty or on parade or on the line of march, the same shall constitute a less heinous offence. Admittedly in the present case, the petitioner was not on duty or on parade or on the line of march. Hence Section 10(a) of the Act of 1949, is not attracted in the case in hand. Though, Section 10(n) of the Act of 1949, provides a member of the force to be guilty of an offence which is not listed, the condition precedent for such act or omission to be an offence, is that such act or omission must be prejudicial to good order and discipline.

16. The Enquiry Officer after conducting the enquiry found the aforesaid two charges proved and accordingly submitted its report. Thereafter, the departmental authorities awarded "removal from service" w.e.f. 30.03.2015 against the petitioner.

17. As regards the **Article 1** Charge, it appears that the petitioner was charged for being in a state of intoxication at the Fatehpur Railway Station,

which is a public place as per the allegation contained in the FIR in the Case No 38/2014. Pertinent that the allegation contained in the said FIR was to the effect that the petitioner along with co-accused had assaulted the brother of the informant. However, the said charges were not proved in the enquiry. It is well settled law that FIR in itself is not evidence without actual proof of facts stated therein. Reference is made to the decision of the Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank and others** reported in **(2009) 2 SCC 570**. Paragraph 14 of the aforesaid judgment is reproduced hereunder for ready reference-

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

18. Pertinent that the criminal trial relating to the said FIR in the matter ultimately resulted in acquittal of the petitioner. That being so, section 10(n) read with section 11(1) of the Act of 1949, cannot be invoked to remove the petitioner from the service.

19. Reference is to the decision of the Apex Court in the case of **Nar Singh Pal vs. Union of India** and others reported in **(2000) 3 SCC 588**. Paragraph

12 of the aforesaid judgment is reproduced hereunder for ready reference-

“12. The fact that the appellant was involved in a criminal case is not disputed by the appellant. What is contended by him is that he was ultimately acquitted by the Court of Chief Judicial Magistrate, Agra and, therefore, involvement of the appellant in criminal case could not have been made the basis for terminating his services. Since the appellant was acquitted, and it was a clean acquittal, the stigma attached to him of having been prosecuted in a criminal case should have been treated to have disappeared and no argument can be allowed to be raised for justifying the order of dismissal on the ground of the appellant’s involvement in a criminal case.”

20. The **Article 1** Charge being levelled on the basis of the petitioner’s involvement in a criminal case, the Criminal Court having acquitted him with a clean acquittal, the said allegations ceases to exist and therefore the said **Article 1** Charge fails.

21. As far as the Second **Article 2** Charge is concerned which is allegedly for not informing the respondent as regards his arrest by the GRP Fatehpur pursuant to the subject FIR of Case No.38/2014, the same is not a listed offence.

22. Though Mrs. A. Gayan, learned CGC tried to convince this Court that the said allegations contained in **Article 2** Charge shall fall under Sub-Section (n) of Section 10 of the Act of 1949, this Court finds it difficult to accept the same inasmuch as, in order for an act to constitute an offence under Sub-Section (n) of Section 10, it has to be shown that the Act of 1949, is prejudicial to good order and discipline. It further appears that the petitioner during the enquiry has produced evidence where the GRP Fatehpur has informed in writing that they had informed the respondent about the arrest of the accused/petitioner by

asking the phone number of the control room of 48 Battalion from the petitioner. That being so, no offence whatsoever can be said to be made out under **Article 2** Charge also. Be that as it may, both the charges being related to the involvement of the petitioner in a criminal case, the Criminal Court having acquitted the petitioner in the subject criminal case, the impugned penalty of removal from service awarded to the petitioner is totally unreasonable and cannot be sustainable in law.

23. Thus, it appears that the disciplinary authority have awarded the punishment of removal from service to the petitioner, on the basis of allegations alleged in the subject FIR, which after trial, the Criminal Court ultimately acquitted the petitioner against the offence and therefore, the stigma attached to him of having being prosecuted in a criminal case should have been treated to have disappeared and therefore the punishment of removal awarded by the disciplinary authority is not justified.

24. Therefore, the impugned order of the Enquiry Officer and the impugned punishment order of the disciplinary authority are totally perverse, illegal and erroneous.

25. Hence, this writ petition succeeds.

26. Resultantly the Enquiry Report dated 02.03.2015 and the order dated 30.03.2014 passed by the Commandant 48 Battalion, Central Reserve Police Force are set aside and quashed.

27. Accordingly, the respondents are directed to reinstate the petitioner in his service with all consequential benefits in accordance with law.

28. As such, the writ petition stands disposed of.

29. It is needless to clarify that the respondent shall do the needful within a period of 2 (two) months from the date of receipt of the certified copy of this order.

JUDGE

Comparing Assistant