

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20111 of 2014

=====

1. Nawal Kishore Choudhary Son of Sri Bimal Choudhary, Resident of Village - Goaun Bhagwanpur, P.O. - Poudmoll, P.S. - Kurhani, District - Muzaffarpur

.... Petitioner/s

Versus

1. The Union of India through Director General, Central Reserve Police Force, New Delhi
 2. Inspector General, Bihar Sector, Central Reserve Police Force, Patna-25, Bihar
 3. Deputy Inspector General P, Group Centre, Central Reserve Police Force, Range HQR, Jhapha, Muzaffarpur, Bihar
 4. Commandant, Group Centre, Central Reserve Police Force, Muzaffarpur
 5. Enquiry Officer-cum-Assistant Commandant, Group Centre, Central Reserve Police Force, Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha

For the Respondent/s : Mr. Sanjay Kumar(Asg)

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

5 10-12-2015 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the Union of India.

The petitioner was appointed as Constable in Central Reserve Police Force. He is aggrieved by the order of compulsory retirement dated 23.11.2013 passed by the Commandant, Group Centre, Central Reserve Police Force, Muzaffarpur which was affirmed in appeal by the DIGP, Group Centre, CRPF, Muzaffarpur as well as Inspector General, CRPF, BS, Patna vide orders dated 31.1.2014 and 7.5.2014 respectively.

2. Before I examine the grounds on which the petitioner has assailed the impugned order, it would be apt to notice the facts of the case in brief:-

(i) In the evening of 8.6.2013, the petitioner was entrusted with the job of carrying service book from Muzaffarpur Centre of CRPF to the Durgapur Centre. The petitioner reached Durgapur Centre on 9.6.2013 at about 11.30 AM, after changing train at Asansol. He was seen lying on a cot near a tea stall in front of Durgapur Unit. He was not in a position to stand with stability. He could regain his senses late in the evening only about 6 PM. He was permitted to enter the camp and hand over all the Dak to the concerned authorities;

(ii) For his alleged misconduct and indiscipline, he was proceeded departmentally for two charges. As per charge No.1, the petitioner in his capacity as a member of the Force, acted with neglect of duty under section 11(1) of CRPF Act, 1949 while carrying government Dak on 8.6.2014 for taking it to Group Centre, Durgapur, where he was found in the state of intoxication near the Group Centre at about 11.30 A.M. Charge No.2 stated that the petitioner was accustomed to drinking and breaking discipline of the Force;

(iii) In course of enquiry, the Inquiry Officer examined six



witnesses including three witnesses of Durgapur Group Centre, namely, Sentry, Guard Commander, Duty NCO, RP of GC Durgapur. On conclusion of enquiry, he held the petitioner guilty of the charges. After giving an opportunity of filing show cause to the findings recorded in the enquiry report, the disciplinary authority (respondent No.4) vide its order dated 23.11.2013 awarded punishment of compulsory retirement from service. The period of suspension from 14.6.2013 to 10.9.2013 was regularized. The appeal and revision filed by the petitioner were rejected by respondent No.3, Deputy Inspector General P, and IG, Bihar Sector, CRPF, Patna on 31.1.2014 and 28.3.2014 respectively.

3. The petitioner has challenged the proceeding and the impugned order on a number of grounds. He submits that respondents erred in drawing proceeding under section 11(1) instead of section 10 of the CRPF Act, which deals with less heinous offences, like being under influence of liquor while performing duty. He submits that no medical test was conducted to come to a positive conclusion that he was in a state of intoxication. In support of his submission, the petitioner relied upon a decision in the case of *Munna Lal vs Union of India, reported in (2010) 15 SCC 399*. He submits that as he had undertaken a long journey from Muzaffarpur to Asansol without reservation, he was tired and

feeling giddy and as such rested on a cot nearby CRPF unit. There is no allegation that he misplaced any DAK or he misbehaved with any individual, much less with employee or official of the CRPF.

4. Mr. Sanjay Kumar, learned Assistant Solicitor General appearing for the Union of India submits that in past the petitioner was already punished on more than nine occasions, including one for being in a state of intoxication. He submits that the petitioner arrived at the Durgapur Centre at about 11.30 AM in a state of intoxication. He was not able to stand properly and fumbled as he got himself to stand. It was only around 5.30 PM to 6 PM that he managed to walk and permitted to handover the DAK in the CRPF Unit. He submits that punishment of compulsory retirement in case the person is in a state of intoxication, while on his duty, cannot be said to be excessive. In support of his submission, he has relied upon a decision of the Apex Court in the case of *Government of Tamil Nadu vs S.Vel Raj,, reported in (1997)2 SCC 708*.

5. I have heard learned counsel for the parties.

6. Pursuant to the order of this Court the learned Assistant Solicitor General has produced the records of the proceedings. I find that the Inquiry Officer examined as many as six witnesses including Sentry, Guard Commander, Duty NCO, RP of GC



Durgapur. All of them unequivocally stated that the petitioner in drunken state, arrived at Group Centre at 11.30 AM on 9.6.2013. He was not able to stand with stability and even failed to prove his identity. He fumbled whenever he tried to rise on his feet. Only after rest of 6 hours, he was able to walk and handover the Dak. The petitioner did not choose to cross-examine most of the witnesses.

7. I do not find any material to doubt the evidence of the impartial witnesses that the petitioner reached the Durgapur CRPF units in a state of intoxication. The case of Munna Lal (supra) relied upon by the petitioner would not be much of help to him, as in that case the person had reached office in normal way but was suspected of taking alcohol as his mouth smelt. On suspicion he was taken to nearby Airport dispensary, from where he was referred to Safdarjung Hospital, where the delinquent was never taken. In such circumstances, the Apex Court observed that oral testimony of the Doctor of the dispensary would not be a conclusive proof of the delinquent having come to the office in drunken state. In the instant case, the petitioner did not reach the Unit in normal manner, as was the situation in Munna Lal case. The statement of the witnesses fully establish beyond all reasonable doubt that the petitioner was in a state of intoxication

and not a mere suspect. As such, the submission of the petitioner that he was not in a state of intoxication and the reasons for lying on a cot was fatigue, occasioned on account of long journey undertaken from Muzaffapur to Durgapur centre without reservation, is without merit and rejected.

8. The petitioner next argued that the proceeding initiated against him was not in accordance with law as he should have been proceeded under section 10 instead of section 11(1) of the CRPF Act, 1949. I find substance in the submission of the petitioner. Section 10 deals with less heinous offences and the offence of intoxication while on duty is one of such offences under section 10(a) of the Act, which reads as follows:

“10(a)- is in a state of intoxication where on, or after having been warned for, any duty or on parade or on the line of march”.

9. Section 10 which also contains penalty clause states that a person found guilty for any of the offences, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay or with both. On the other hand, section 11 deals with minor punishments. It states that subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal anyone or more of the following punishments to any member of the Force whom he

considers 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, could be awarded punishments mentioned therein.

10. In my view, as the petitioner was charged for offence under section 10(a) of the CRPF Act, the punishment ought to have been accorded in terms of the said provisions itself. As the punishment has been accorded in terms of section 11(1) of the Act, the same is not tenable in law and is accordingly set aside. The impugned order passed by respondent nos. 2, 3 and 4 is set aside and the matter is remitted to respondent no.4 for passing a fresh order on the quantum of punishment.

11. In the result this writ application is allowed to the extent indicated above. I.A No.3052 of 2015 stands disposed of.

(Samarendra Pratap Singh, J)

KHAN/-

U			
---	--	--	--