

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6398 OF 2004
WITH
CA/7916/2008 IN WP/6398/2004**

SANJAYKUMAR SATYANARAYAN NUNIWAL
VERSUS
UNION OF INDIA & OTHERS

...
Advocate for Petitioner : Mr. S B Talekar
Advocate for Respondents : Mr. B B Kulkarni

...
CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.
Dated: October 14, 2015

...
PER COURT :-

1. This petition is filed challenging the order dated 28.2.2003 dismissing the petitioner from service and further to quash the order dated 4.8.2003 dismissing the departmental appeal of the petitioner.

2. The petitioner was working as 'barber' in the office of the Principal, CTC III CRPF, Mudkhed Dist. Nanded. On 6.10.2002, after roll call, the petitioner left campus premises and went to Bazar. He was found lying on the road in drunken condition at about 07.00 p.m. He was physically lifted and brought to campus. Thereafter, departmental inquiry was initiated against him. The misconduct was proved on the basis of evidence that was given against the petitioner. The disciplinary authority, on the basis of findings recorded by inquiry officer, awarded penalty of termination from service to the petitioner. The petitioner then went before the Appellate Authority. In the appeal memo, the

petitioner made a statement that he deserved leniency because the incident in question was only one instance of misconduct. He otherwise had a clean record. The appellate authority found out from the record that earlier on nine occasions the petitioner was found guilty of misconduct. In view of this, the appeal of the petitioner was dismissed on 4.8.2003.

3. The question before us is whether the order of the Appellate Authority was erroneous because it took into account the extraneous circumstances such as antecedents of the appellant. The learned counsel for the petitioner strongly suggested that, looking into the antecedents of the petitioner at appellate stage was improper and because of such extraneous circumstances, the appellate authority got influenced and prejudiced against the petitioner. Had the antecedents been not looked into by the said authority, there were ample chances for the appellant to get lesser penalty than termination from service. Submission made at bar looks quite attractive. Indeed at inquiry stage, as well as at the time of awarding penalty by the disciplinary authority, there was no mention of antecedents of the petitioner on record. In a way, bringing antecedents at appellate stage on record was improper. Nonetheless, we are not inclined to use our discretion in favour of the petitioner. The facts of the case are quite grave. The appellant had put in about 11 years of service and, yet he behaved very irresponsibly. He was found lying on public road in intoxicated condition. This had brought a bad name to the force. We,

therefore, do not use our discretion in favour of the petitioner.

Writ petition thus fails.

4. Writ petition is hereby dismissed. Rule discharged. No costs.

5. In view of disposal of writ petition, pending civil application also stands disposed of.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

...

aaa/-