

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on :March 19, 2015*  
*Judgment Delivered on :March 23, 2015*

+ **WP(C) No. 1142/2012**

GAYA PRASAD ..... Petitioner

Represented by: Ms.Meenu Mainee, Advocate

versus

UNION OF INDIA & ORS. .... Respondents

Represented by: Mr.Jitendra Kumar Singh, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRADEEP NANDRAJOG, J.**

1. Gaya Prasad is aggrieved because the Department has bid him a departure : penalizing him for a wrong done by way of an order of compulsory retirement.

2. He was charged for a serious misconduct and grave carelessness in terms of confidential letters dated July 13, 2009, July 20, 2009, July 22, 2009, July 24, 2009, July 26, 2009 and July 31, 2009 sent by the Assistant Security Commissioner (RPF) Aligarh informing that while working as an Assistant Sub-Inspector at Khurja, on July 13, 2009 the petitioner did not confiscate 15 bags of rice at the site in accordance with the rules because though available at the spot he did not make Sh.P.K.Sharma a witness and further did not record the time when he confiscated the 15 bags of rice. Further, having found 65 bags of wheat, rather than confiscating the same, he removed the

same and when this was detected he falsely stated that he did so under instructions from the higher authorities.

3. The statement of imputation in support of the charge brought out that on July 13, 2009, 65 bags of wheat and 15 bags of rice were found abandoned at Dabor Railway Station and the petitioner along with the staff reached the spot. He showed recovered of 15 bags of rice without mentioning the time of seizure in the seizure memo nor obtaining signatures of a witness in spite of Sh.P.K.Sharma being available. 65 bags of wheat were removed and not confiscated. These bags of wheat disappeared subsequently. The information was conveyed as per the various letters referred to in the charge sent by the Assistant Security Commissioner.

4. In the list of documents through which the charge was intended to be proved, the 6 letters dated July 13, 2009; July 20, 2009; July 22, 2009; July 24, 2009; July 26, 2009; and July 31, 2009 were listed as serial No.1 to 6 in the list of documents. 11 witnesses were named through whose testimony the charge was intended to be proved.

5. The name of the Assistant Security Commissioner who wrote the 6 letters was not mentioned in the list of witnesses.

6. The petitioner wrote a letter to the Inquiry Officer requesting that the Assistant Security Commissioner as also one HC Hari Om Sharma should be made a witness. As per the petitioner the reason being that 6 letters sent by the Assistant Security Commissioner were intended to be proved.

7. The department proceeded to examine the witnesses and proved the documents which were relied upon.

8. On March 21, 2010 the petitioner gave a written statement of defence in which he claimed that he did not show the recovery of 65 bags of wheat on the instructions of the superior officers and for which he referred to certain

admissions made by the witnesses of the prosecution that the superior officers spoke to him on his mobile phone No.9411412698. He claimed that 65 bags of wheat when an Inspector of the Railway Protection Force did so on July 22, 2009.

9. The Inquiry Officer submitted a report in which after noting the testimony of the 12 witnesses examined by the department and HC Hari Om Sharma examined by the petitioner in defence, the Inquiry Officer held that the first charge of not drawing up the seizure memo pertaining to 15 bags of rice was proved and as regards the second he opined that the limb of the charge that the petitioner did not show recovery of 65 bags of wheat was proved but that the petitioner made false allegations that he did so under the instructions of the superior officers was not proved. ‘

10. Furnishing the report of the Inquiry Officer to the petitioner and considering his response the Disciplinary Authority passed an order on July 28, 2010 levying penalty of compulsory retirement with full pensionary benefits upon the petitioner and in respect of the said penalty order we need to note that the Disciplinary Authority opined that even if the petitioner did what he did under instructions of superior officers, he ought not to have done so because he had to perform his duties as per law and if any superior officer pressurized him he could have reported the same to the senior officers, which admittedly the petitioner did not do.

11. As against the Inquiry Officer opining that it was not proved that the petitioner made a false allegation that he did not seize the 65 bags of wheat under directions of the superior officers, the Disciplinary Authority has recorded that the two charges were fully proved.

12. The appeal filed by the petitioner against the penalty levied has been rejected by the Appellate Authority.

13. The instant writ petition has been filed challenging the penalty levied and for which two arguments were advanced.

14. The first argument advanced was that the six letters dated July 13, 2009; July 20, 2009; July 22, 2009; July 24, 2009; July 26, 2009; and July 31, 2009 could only be proved by the Assistant Security Commissioner who wrote the same and therefore not examining him was fatal. The second was that the Inquiry Officer held a part of charge No.2 not proved i.e. the limb of the charge that the petitioner made false allegations against superior officers to not seize the 65 bags of wheat. The Disciplinary Authority held that even charge No.2 was established. No note of disagreement containing tentative reasons to disagree with the report of the Inquiry Officer qua the second limb of charge No.2 was sent to the petitioner and thus the law declared by the Supreme Court in AIR 1998 SC 2713 Punjab National Bank & Ors. Vs. Kunj Bihari Mishra and AIR 1999 SC 3734 Yoginath D.Bagde Vs. State of Maharashtra & Anr. was violated.

15. In the order dated June 28, 2010 under which penalty has been levied upon the petitioner, while dealing with the second charge the Disciplinary Authority has referred to the petitioner's stand that regarding removal of 65 bags of wheat he had acted under the instructions of the Senior Officers and had obeyed their command, the Disciplinary Authority has reasoned that said defence accepts the charge of removal of 65 bags of wheat. Discussing further on the assumption that the petitioner did act under the instructions of the superior officers, the Disciplinary Authority has opined:-

*“It is once again clarified over here that even if some officers sitting far away might have given some orders to the charged officer to do something against his duty but in such circumstance the charged officer, who is the member of the Force, should keep his mental balance, should have performed his duties in accordance with Rules. If there was high pressure*

*upon him, he should have referred the matter to the senior officers but he has not done this and has acted in violation of the Rules and was careless and, therefore, he is fully responsible for the charge.”*

16. In the next paragraph the Disciplinary Authority has concluded that the charged officer was guilty of the charges.

17. From a perusal of the order passed by the Disciplinary Authority it is crystal clear that the Disciplinary Authority only considered that what was proved against the petitioner was that he was negligent while drawing up the seizure memo under which he seized the 15 bags of rice and on the assumption that he acted under orders of the senior officers by not seizing the 55 bags of wheat and removing the same, the offence was serious because as an officer of the force the petitioner knew what was right and wrong and he knew that unlawful orders have not to be obeyed. If he was being pressurized by some senior officer he could have reported the matter to a superior and senior officer above. The Disciplinary Authority has just not considered whether the view taken by the Inquiry Officer that it was not proved that the petitioner made a false allegation against a superior officer was right or wrong. Meaning thereby, the Disciplinary Authority has not disagreed with any finding returned by the Inquiry Officer. It is a slip of the pen while recording that the two charges were fully proved. It is trite that it is the substance of an order which matters and not the form thereof. That apart, as per the law declared in Kunj Bihari Mishra's case (supra) and Yoginath D.Bagde's case (supra) if prejudice is shown to have been caused by not conveying to the charged officer that the Disciplinary Authority intends not to agree with the findings or part findings returned by the Inquiry Officer, simultaneously giving tentative reasons for the disagreement, alone then can the order inflicting punishment premised on entire indictment being proved

can be faulted. In the instant case the slip of the pen has caused no prejudice, and indeed none has been pleaded.

18. With respect to the argument that the Assistant Security Commissioner was not cited as a witness concerning the six letters dated July 13, 2009, July 20, 2009, July 22, 2009, July 24, 2009, July 26, 2009 and July 31, 2009, the argument overlooks the fact that neither the report of the Inquiry Officer nor the order levying penalty passed by the Disciplinary Authority has relied upon the said letters for the purposes of the indictment.

19. The documents not having been used in evidence, nothing turns on not examining the author of the documents.

20. The testimony of the witnesses of the prosecution who were present at the spot on July 13, 2009 would evince that the petitioner did speak to some superior officer and thereafter showed recovery of only 15 bags of rice; simultaneously confiscating the same and removed the 55 bags of wheat to a place of safety and concealment; without seizing the same or making an entry of the same lying at Dabor Railway Station. But truth could not be hidden (probably the word spread of what had happened) and the 55 bags of wheat were later on seized.

21. It was lastly urged that the Inquiry Officer as also the Disciplinary Authority have accepted the fact that the petitioner acted under the instructions of a superior officer. Thus it was urged that the penalty of compulsory retirement is disproportionate.

22. From the reasoning of the Disciplinary Authority it is apparent that the Disciplinary Authority has acted on the supposition that the petitioner, as claimed by him, acted under the directions of a superior officer. But held that as a senior officer, holding the rank of an Assistant Sub-Inspector, the petitioner ought to have known the difference between a lawful command

and an illegal/unlawful command. He ought not to have acted pursuant to an illegal/unlawful command. If there was one as a matter of fact, the petitioner ought to have informed an officer superior in rank to the one who gave the unlawful command to him. It is in this context that the issue of proportionality of the penalty imposed has to be considered.

23. Not to show the recovery of 55 bags of wheat would obviously lead to the inference that the petitioner had an evil desire to appropriate the 55 bags of wheat. As a Sub-Inspector in the Railway Protection Force, the petitioner ought to have known that this was a serious offence. That the penalty levied is tempered with mercy is proved from the fact that the Disciplinary Authority has taken note of the long pensionable service rendered by the petitioner.

24. It is trite that the holder of a public post is given an assurance by the Government that he would be permitted to serve as a matter of right till he attains qualifying pensionable service and beyond that the right to continue to serve must be earned by honesty and probity while discharging the duties of the office. It is in this context that the quantum of the punishment needs to be viewed.

25. Unless a penalty is so shockingly disproportionate to the gravity of the wrong which shakes the judicial conscience.

26. We find no merit in the writ petition which is dismissed but without any order as to costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(PRATIBHA RANI)**  
**JUDGE**

**MARCH 23, 2015/mamta**