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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 26.08.2015

+ W.P.(C) 1256/2013

RAM NARESH SHARMA

..... Petitioner

Through: Ms. Rekha Palli, Sr. Advocate with
Ms. Ankita Patnaik and Ms. Shruti Munjal,
Advocates.

versus

UNION OF INDIA THROUGH: ITS SECRETARY AND ORS

... Respondents

Through: Mr. Ankur Chhibber with Mr. Prashant
Sivarajan, Advocates.
Mr. B.K. Raut, Pairvi Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (OPEN COURT)

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1. The petitioner joined the CRPF as Constable in the year 1991 and subsequently promoted to the post of Head Constable. He was posted on the duties of Guard Commander at SAF Headquarters, New Delhi with effect from 14.04.2011. On 28.06.2011, he was performing Guard Commander duty at SAF Headquarter from 2000 hours till 0800 hours and during this period, he left the said post without permission of the Competent Authority. Also on 07.07.2011, he sought personal interview of the DIGP, Cobra Headquarters, New Delhi, without proper intimation/permission of his Unit

Commandant. A chargesheet dated 10.08.2011 was issued to him for violation of Section 9(i) and Section 10(n) of CRPF Act, 1949. An Enquiry Officer was appointed and an enquiry was duly conducted. The petitioner had participated in the enquiry proceedings. The prescribed procedure of rule and law was duly followed and the petitioner was heard and given opportunity to defend his case. The petitioner had duly cross-examined the witnesses. He was also given opportunity to produce defence witnesses. The proceedings of the enquiry report was also sent at the home address of the petitioner vide letter dated 04.02.2012 in terms of para 7(A) GOI Instructions of Rule 15 of CCS (CCA) Rules, 1965 . The petitioner was also afforded an opportunity to make any representation or produce any witness or any documentary proof in his defence or to appear in person before the Disciplinary Authority. Necessity to send the enquiry report by post arose since the petitioner, during the pendency of the enquiry, had allegedly on 05.01.2012 at about 20.25 hours, while performing duties at the Second Guard Commander at Unit Quarter Guard, indiscriminately fired few rounds from his service weapon from the roof top of Quarter Guard under the influence of illicit liquor for which he was placed under suspension with effect from 05.01.2012 and an FIR No.11/2012 dated 05.01.2012 was also

registered at PS Narela, Delhi. The petitioner, thereafter, was dismissed from service vide order dated 23.02.2012. The petitioner submitted an appeal to the DIG, Range Office, CRPF Imphal (Manipur) being Appellate Authority. The said appeal was dismissed vide order dated 27.06.2012. The petitioner also preferred a Revision Petition and the said Revision Petition was also dismissed vide order dated 15.12.2012. The petitioner in the enquiry had pleaded guilty to the charge of directly seeking interview without seeking permission/intimation of Commandant (violation of Section 10(n) of CRPF Act) and as regard the charge of remaining absence from duty was concerned, he had admitted during enquiry that he had gone to his house for 1 ½ hours.

2. The petitioner's case is that the penalty of dismissal from service is disproportionate to the misconduct. It is further submitted that his unblemished meritorious record of 21 years of service was not considered. He had earned about 25 awards and medals during his tenure of 21 years of service. It is further submitted that he was not given the proper opportunity to explain the circumstances under which he had to leave the post.

3. The contention of the respondents is that the petitioner had pleaded guilty of the charges framed against him. It is further argued that it is not

that the petitioner had only left the sensitive platoon post of SAF Headquarters, New Delhi, unattended, but had also failed to follow the chain of command which is considered gross indiscipline and such type of act on the part of personnel of the disciplined force requires to be dealt sternly.

4. In the present case, given the statement of witnesses during enquiry and admission of guilt by the petitioner, the charges stand duly proved. However, where the Authority is conferred wide discretion in choice of the punishments, such a choice is open to judicial review. Where, on considering the other relevant factors, it appears that penalty is unduly harsh and unwarranted, can be interfered with. The Courts can only question the proportionality of punishment, if under the given circumstances of the case, it can be said that the penalty is disproportionate to the proved charges.

5. It goes without saying that penalty should be commensurate to the nature of the offence, and there should be some rationale for the choice by the disciplinary authority. At times, the penalty, seen in the background of the misconduct, conveys the logic or rationale for its imposition. In the present case, the misconduct alleged was absence from duty for about 2 hours. Given the arguments of the respondents, it seems that the penalty of dismissal from service has been awarded with the sole object of maintaining

discipline of the Force. Where the charges stand proved, there is little scope for the Courts to interfere with such a finding. The Court does not act as Court of Appeal. Power of review is confined only to the decision making process and where due procedure has been followed, the Court refrains itself from interfering with such findings.

6. In the present case, the petitioner had 21 years of service and thus has earned his pension. Not only this, he had during his tenure of 21 years earned 20 cash awards and medals and had also worked as NSG Commando from 2006-2011. There is no denial that his service of 21 years had been meritorious. The petitioner has also urged that he has three school going children, taking education and depended old parents. Given these circumstances, the extreme penalty of dismissal was plainly unreasonable and disproportionate. Concededly, there was no enquiry with the allegations of firing which took place on 05.01.2012. The chargesheet leading to his dismissal related to his absence on 28.06.2011. The CRPF could not—without any enquiry or hearing—taken into account the firing incident which occurred much later, i.e. on 05.01.2012 to justify the petitioner's dismissal. Doing so would be unfair, because what was proved was absence without leave; what was never subject to any enquiry was the firing incident.

7. In view of the totality of the facts and circumstances, nature of misconduct, and meritorious antecedents of petitioner, we are of the opinion that the penalty of dismissal from service is irrational and defies logic. The said penalty is modified to one of compulsory retirement. The respondent CRPF shall pass appropriate consequential orders in this regard treating the penalty of dismissal w.e.f. 23.02.2012 as an order of compulsory retirement from the same date. The petitioner's terminal benefits and pension depending on the number of qualifying years he has served shall be taken into account and pension benefits made available to him. All consequential benefits in this regard admissible to the petitioner on the basis of such modified penalty of compulsory retirement shall be released to him within ten weeks from today.

The writ petition is partly allowed in these terms.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

AUGUST 26, 2015
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