

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

% *Judgment Reserved on : January 08, 2015*
Judgment Pronounced on : January 14, 2015

+ **W.P.(C) 2679/2013**

V.K.PANDEYPetitioner
Represented by: Ms.Priyanka M.Bhardwaj, Advocate

versus

UOI & ORS.Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The instant writ petition seeks quashing of the memorandum of charge dated November 28, 2007, issued by the Directorate General, CRPF to the petitioner as also the order dated September 13, 2012, passed by the DIGP (CR & Vigilance), CRPF inflicting the penalty of reduction of pay by two stages for a period of three years with further directions that no increment would be earned by the petitioner during the period of reduction and that the reduction would have the effect of postponing the future increments.

2. The petitioner was appointed to the post of Sub-Inspector in CRPF and earned promotions to the rank of Assistant Commandant.

3. Posted with the G/94 Bn, CRPF, the petitioner assumed duties as the Officiating Commandant when the charge memo in question was served upon the petitioner initiating Departmental Enquiry proceedings under Rule 14 of CCS (CCA) Rules, 1965. Three Articles of Charge were listed against the petitioner which reads as under:

“Article-I

That the said Shri V K Pandey, Asstt. Commandant (IRLA-5540) while functioning as Officer Commanding G/94 Bn, CRPF during the year 2006, committed a serious act of misconduct, in that, while on move from Srinagar, J&K to Assam for Assembly Elections, he delayed sending confirmation about handing over Ops/adm charge to G/60, when reasons for the same was enquired, he entered into an altercation loudly with Shri Preet Mohan Singh, 2-I/C, Commandant (CCD) in front of personnel of the Unit thereby creating an unpleasant and unwarranted situation besides delaying the move of Dett/94 Bn. Thus, the said officer failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri V K Pandey, Asstt. Commandant committed an act of misconduct in that on 15.4.2006, when his company (G/94 Bn) was deployed in naxalite infested region under PS Salboni, West Midnapore District, West Bengal, he sent one HC (Mess Commander) and 3 other company personnel in civil dress in single vehicle without escort/protection to market, railway station and Dett/94 Bn in contravention of directions of Commandant (CCD), thus endangering the life of his men and Govt. property. Thus, the said officer has failed to maintain absolute devotion to duty

and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri V K Pandey, Asstt. Commandant committed an act of misconduct in that on 16/17.4.2006, when 5 sections of his company (G/94 Bn) deployed in West Mindapore District of West Bengal for Assembly election duties were detailed to perform road opening party (ROP) duty from Bhadutala to Perakata to enable safe movement of polling staff and directed to halt at D/94 Bn Bhadutala on the nights of 16.4.2006 and 17.4.2006, he on the pretext of lack of proper accommodation at D/94 Bn location, disobeyed the lawful orders of the Commandant (CCD), took his men to his company location far away where he reached in the early hours of 17.4.2006 and 18.4.2006 respectively thereby endangering the life of his men and their arms/ammunition. Thus, the said Officer has failed to maintain absolute devotion of duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964.”

4. The petitioner submitted a statement of defence dated September 24, 2008, denying the charges leveled against him. Considering the same and opining that evidence was required to be led, the disciplinary authority passed an order on November 07, 2008 appointing an Inquiry Officer.
5. During the enquiry proceedings, six witnesses were examined by the Department in order to substantiate the charges leveled against the petitioner. In his defence the petitioner produced three witnesses.

6. After considering the evidence adduced the enquiry officer was of the opinion that Article-I of the charge memorandum stood partially proved and Article-II and III were fully proved.

7. The report of the Inquiry officer was furnished to the petitioner who submitted a representation, strangely requesting that the Inquiry Officer be changed and alleged non-supply of requisite documents and pleaded that the same resulted in he not being able to make out a proper defence. He also claimed that since he was not given an opportunity to sign the statements of the defence witnesses which were examined by him, prejudice was caused to him.

8. Considering the representation submitted by the petitioner, considering the same as well as the report of the enquiry officer, the Disciplinary Authority came to the conclusion that that Article-I of the charge stood partially proved and Article-II and III were proved i.e. he concurred with the opinion arrived at by the Inquiry Officer in view of the evidence led.

9. The matter was thereafter referred to UPSC for its advice. UPSC tendered its advice vide letter dated June 12, 2012 agreeing with the findings of the disciplinary authority and recommended that the penalty of 'reduction of pay by two stages for a period of three years with further directions that he will not earn increment during the period of reduction and on expiry, the reduction will have the effect of postponing his future increments' be levied upon the petitioner.

10. Taking into account the advice of UPSC, the competent authority passed an order dated September 13, 2012, operative part whereof reads as under:

“ Now therefore, in the light of above and having regard to all aspects of the case, the President considers that the ends of justice will be met in this case, if the penalty of ‘Reduction of pay by two stages for a period of three years i.e. from Rs. 21,740/- plus 5400 (GP) to Rs. 19,920 plus 5400 (GP) wef 01/10/2012 to 30/09/2015 in the pay band of Rs. 15600 – 39,100 with grade pay Rs. 5400/- with further directions that he will not earn increment during the period of reduction and on expiry, the reduction will have the effect of postponing his future increments. ”

11. Aggrieved by the same, the petitioner has preferred the instant petition.

12. Notwithstanding various grounds urged in the writ petition, at the hearing of the writ petition only two contentions were advanced and we note the same.

13. Firstly, it was contended that this was a case of no evidence. It was urged that the punishment inflicted is unjustified inasmuch as the petitioner had taken the decisions as the controlling officer of the unit and in the best interest of the subordinate officers. Secondly, it was urged that the inquiry proceedings are liable to be set aside since the Inquiry Officer had conducted the enquiry in a biased and mala-fide manner and contrary to the extant rules. It was urged that certain documents were sought by the petitioner for his defense but the same were not provided to him and the Inquiry Officer had pressurized him to amend the letter requisitioning the said documents. It was pleaded that the petitioner was denied an opportunity to inspect the file containing the documents. It was alleged that statements of the defence witnesses were recorded behind the back of the petitioner and that his representation seeking stay of the inquiry proceedings as also change of the Inquiry Officer were rejected mechanically.

14. Per contra, it was contended by the respondents that the Inquiry Officer had conducted the inquiry proceedings in accordance with the rules in force and that the petitioner had been given reasonable opportunity to present his defence at every stage of the enquiry. The petitioner had participated in the disciplinary inquiry proceedings at each stage with the assistance of a defence assistant, except at the time of recording the statement of the defence witnesses even though he was given ample opportunity for availing a defence assistant facility even at that stage. It was also submitted that the representation for change of the Inquiry Officer was rejected as no specific instances demonstrating bias had been shown. As regards non-production of the file containing the prosecution evidence, it was submitted that the petitioner had been given ample opportunities during the course of the inquiry to examine the relevant portion of the file. The other non-relevant portion was not provided to him, but he had ample opportunity to access the entire file during the course of inquiry. As regards the signing of the statement of the defense witnesses, it was averred that the Inquiry Officer had given prior intimation to the petitioner about the date on which the proceedings were to be held. Though present, the petitioner refused to sign the statements.

15. As regards the plea of it being a case of no evidence, it was argued that there was ample evidence on record to substantiate the charges against the petitioner.

16. A perusal of the departmental inquiry proceedings, original record of which was produced at the hearing would reveal that the department examined six prosecution witnesses during the course of the enquiry, namely PW-1 2I/C Preet Mohan Singh, PW-2 AC Tarachand Bhatt, PW-3

Insp. Ram Chander, PW-4 HC Amar Singh, PW-5 HC S.H.Madar and PW-6 Ct.Sujit Kumar Pandey. In his defense, the petitioner examined four witnesses.

17. Pertaining to the first charge we note that PW-1 2I/C Preet Mohan Singh deposed that the 6th Coy of the 94th Bn were earmarked for assembly election in West Bengal and vide signal dated March 12, 2006 directions were issued to the sub-units to hand over charge to the relieving units of the 60th Bn. In this regard, he proved Ex. PW-1/1, being the Signal dated March 12, 2006 regarding the handing over of the charge. He also proved Ex.PW-1/2, being the Signal dated March 13, 2006 stating that the charge of only four sections of the Company had been handed over to the 60th Bn. and that the charge of two sections of the Company were as yet not handed over. He further deposed that after receiving the Signal dated March 13, 2006, he immediately sent another Signal on the same day stating that compliance be affected by 20:00 hrs so that the Company may be able to assemble on time. The same was proved as Ex.PW-1/3. He deposed that the next day all Companies had assembled at 06:00 hrs for briefing and all Coys except G/94 Coy confirmed that charge has been handed over. When the petitioner was asked the reason why the Coy was late, he started arguing with PW-1. He also proved Ex.PW-1/4 being the Signal dated March 14, 2006 regarding handing over of the charge to the 60th Bn.

18. PW-2, Asstt.Commdt.Tara Chand depose that all the six Coys reported for briefing at Hariniwas, Srinagar well in time and were briefed. When PW-1 enquired from the petitioner the reason for the delay in G/94 Bn reaching late for the briefing, the petitioner started arguing with the

Commandant, which caused the undue delay in the movement of all six Coys.

19. PW-3, Insp.Ram Chander depose that all the Coys were informed that the charge by the Battalion was to be handed over to the 60th Bn before March 14, 2006 and on the said date all the Coys were to report at 06:00 hrs at Hariniwas, Srinagar for briefing. The rest of the deposition of PW-3 regarding the argument that transpired was in line with that of PW-1 and PW-2.

20. PW-4, HC Amar Singh deposed in line with PW-1, 2 and 3 regarding the argument that took place on the morning of March 14, 2006 between the petitioner and PW-1. He added that, due to the argument started by the petitioner there was a delay of around 15-20 minutes in the movement of the Coy.

21. PW-5, HC S.H.Madar deposed that he was on leave on March 14, 2006 and therefore had no knowledge of the events that transpired.

22. PW-6, Ct.Sujit Kumar Pandey deposed in line with the other witnesses regarding the argument between the PW-1 and the petitioner. He added that after PW-1 made enquires, the petitioner prepared a signal on the spot regarding confirmation of handing over charge. At this point of time, all the other Coys had already boarded their respective vehicles and were ready for departure and it was only G-94 Coy that remained on the field. After preparing the Signal by hand, the petitioner submitted the same and thereafter G-94 Coy also proceeded for departure.

23. Pertaining to the second charge we note that PW-5, HC S.H.Madar deposed that all the Coys had been briefed by the Commandant as well as the Asstt.Commandant that no vehicle would be allowed outside the CRPF

precincts without proper escort/protection and the same would be allowed on movement after obtaining the requisite ROP. He further deposed that on the morning of April 15, 2006, he was summoned by the petitioner and directed to fetch the DAK as well as to purchase the vegetables/ration for the Coy from the Salboni market. He was also directed to drop one Kuldeep Kumar, a barber, at the railway station; who was proceeding on leave. He was accompanied by Sepoy Bahadur Singh and Safai Karamchari Dilip Kumar. The petitioner told him that ROP had been procured and that there was no threat and so they may proceed in a civilian vehicle in civil dress. He protested but the petitioner assured him that there was no threat. Thereafter, he along with the aforementioned persons left the precincts in a civilian vehicle and first proceeded to the railway station to drop Kuldeep Kumar. He then dropped Sepoy Bahadur Singh at Hq.Dat/94, which was located 8 KM away, to fetch the DAK and then he proceeded to the market. The movement was without any escort, all travelled in civil dress and in a civil vehicle. When he returned to Hq.Dat/94 to pick up Sepoy Bahadur Singh, the vehicle was stopped and 2I/C Preet Mohan Singh enquired the reason for being in a civil dress. His statement was then recorded and the vehicle was sent back to the Coy location after lay down of ROP and proper escort.

24. PW-1, 2I/C Preet Mohan Singh deposed that the said area was a naxalite infested region and ambushes and landmines would frequently be employed by the naxals to hinder the movement of troops. Due to the aforesaid reason, he along with DC S.S.Upadhyay visited all the units of the 94th Bn. and briefed all troops about the precautions to be taken for movement of vehicles and emphasized upon them that no movement of

vehicles or troops should be without ROP and proper protection. A Signal to said effect dated April 14, 2006, Exhibit PW-1/5 was issued. He also deposed that on April 15, 2006 while he was at Hq.Dat/94, he saw a civilian vehicle without any escort being driven by PW-5. On seeing the same, he immediately stopped the vehicle and enquired from PW-5 as to why the proper protocol was not followed. Thereafter, he sent a Signal dated April 15, 2006, proved as Exhibit PW-1/6 to the Coy Commander of G-94 as to why the proper safety protocol had not been followed. To this, he received a reply vide Signal dated April 16, 2006, proved as Exhibit PW-1/7 in which it was stated that the requisite permission had not been obtained as there was no mobile network. He deposed that same was incorrect since due to the ensuing election, force personnel were provided with mobile connections and there was no connectivity problem. He further deposed that as per the Signal dated April 16, 2006, G-94 was detailed for ROP Duty from 15:00 hrs. to 21:30 hrs only uptill Salguni and the location of HQ Dat/G-94 was at a distance of 10 KM from the Coy location and, even if the entire Coy detailed for the ROP duty the said distance could not have been covered in one day.

25. The fact about the prior intimation and briefing of the security procedure that was to be followed regarding escort and ROP, as deposed to by PW-1 were corroborated by PWs-2, 3, 4 and 6.

26. Concerning the third charge the relevant evidence would be the testimony of PW-1, 2I/C Preet Mohan Singh, that as per the District Deployment Plan, five Sections of G-94 were deployed on April 16, 2006 for ROP Duty from Bhadutola to Pirakata from 12:00 hrs till the Polling Staff passed through the said area. The same was finalized on April 15,

2006 at 21:00 hrs. Vide Signal dated April 16, 2006, Exhibit PW-1/9, he directed that the five sections would stay in the night of April 16, 2006 at the D-94 Coy location since they were to be re-deployed for ROP Duty again at 12:00 hrs on April 17, 2006. However, without any prior intimation, the petitioner withdrew his company section back to the earlier company location about 35 KM away, thereby endangering his men. He thereafter sent a Signal dated April 16, 2014 Ex.PW-1/8 calling on the petitioner to explain his actions which had put the troops at risk. Vide Signal dated April 17, 2006, Exhibit PW-1/10, the petitioner replied saying that the conditions were not suitable for accommodating the Coy and this was the reason why he withdrew his company section to the earlier location about 35 KM away.

27. PW-3, Insp Ram Chander deposed that sufficient space was made to accommodate the said five sections of G/94 by vacating a cycle stand in the Coy location, but despite the same, the five sections of G/94 Bn did not stay at the location on the night of April 16, 2006.

28. PW-4, HC Amar Singh deposed that on April 16, 2006 via wireless it was informed that they would be spending the night of April 16, 2006 at the D-94 company location and would thereafter proceed for ROP duty.

29. PW-6, Ct. Sujeet Kumar Pandey proved signal dated April 16, 2006, being Ex.PW-6/9 which detailed the movement of troops as given by PW-1 in his deposition. He also proved signal dated 17.4.2006, being exhibit PW-9/11A wherein it was stated that the 5 company section under the command of the Petitioner left for ROP duty at 1100 hrs on 17.4.2006.

30. Thus, the first argument advanced that it is a case of no evidence is sans any factual basis.

31. On the second argument we find from the record that the petitioner had the benefit of a defence assistant and save and except alleging bias and mala-fide against the Inquiry Officer, no worthwhile reason was stated to bring out the bias or the mala-fide. What were the wrongs committed by the Inquiry Officer were not brought out. What were the documents relevant to the defence and in which manner have not been brought out during arguments or in the representations made. The argument that the Inquiry Officer pressurized the petitioner to amend the letter requisitioning the documents is baseless and meaningless because the writ petitioner was represented through a defence assistant and it is unbelievable that the Inquiry Officer pressurized the petitioner to amend the letter requisitioning the documents. Petitioner's presence is shown when defence witnesses were examined and for reasons unknown petitioner refused to sign the proceedings.

32. There is no merit in either contention advanced, and reiterating once again that only these two contentions were advanced at the hearing of the writ petition notwithstanding many other contentions pleaded in the writ petition, we dismiss the writ petition but without any order as to costs

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 14, 2015
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