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

+ **W.P.(C) 3731/2013**

BUG SURESH KUMAR

..... Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ajay Diupal, CGSC alongwith
Mr. S.S. Sejwal, Law Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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24.11.2015

The petitioner is aggrieved by the order dated 8.12.2010 by which he was given penalty of dismissal from service of the Central Reserve Police Force (CRPF). The impugned order was preceded by a departmental enquiry, which took place pursuant to the charge-sheet dated 20.07.2010. The enquiry officer held that the charges levelled were established; the disciplinary and appellate authority accepted the findings and rejected the petitioner's pleas.

The relevant facts necessary to decide this case are that the petitioner was enrolled as a Constable/Bugler in 1993. He was serving in that capacity when on 20.07.2010 he was served with Articles of Charge giving rise to disciplinary proceedings against his objectionable conduct which had occurred on 24.06.2010. The

charge-sheet issued against the petitioner alleged that he violated Section 11 (1) of the Central Reserve Police Force Act 1949, since he quarrelled with Constable/GD Thomas B issued a threat to kill him and that thereafter he reported late to the Check Roll-Call on 24.06.2010 alongwith his personal weapon which he tried to cock in the presence of the entire company. The charge-sheet also stated that rifle could not be cocked due to its safety cap being in the safe mode.

In the course of the enquiry proceedings, CRPF examined 7 witnesses. This included the complainant Thomas who deposed that on 24.06.2010, the petitioner entered his barrack in the evening and started abusing him. He was asked to leave the premises which he did. He repeated this behaviour later at 9 pm with the same result. Subsequently, the petitioner was missing in Roll Call and apparently reported late with a rifle which he tried to cock and fire at the complainant. Fortunately for the latter, the rifle was in safety mode and could not therefore cause any harm. The complainant was cross-examined. Likewise, the other witnesses Satinder Singh and Kedar Nath confirmed the complainant's version about the petitioner's behaviour at Roll Call. Kedar Nath also mentioned about the abusive behaviour of the petitioner towards the complainant Thomas.

Learned counsel urges that the complainant's version with respect to the cocking of the rifle cannot be accepted at face value because he did not see that incident because concededly he left the assembly for allegedly writing a complaint. Such being a case, it could not be said that the complainant saw or witnessed the petitioner's attempt to fire with the rifle. It was next urged that the enquiry

proceedings were vitiated because Section 11(1) which the charge sheet invoked deals with minor penalty whereas the petitioner was ultimately imposed with a major penalty of dismissal. It was next urged that even if the findings during the enquiry were to be upheld, the punishment imposed in the circumstances of the case is disproportionate. Lastly, counsel urged that the petitioner had 17 years meritorious service to his credit and that the penalty of dismissal would divest him of the opportunity to earning pension therefore requested that this Court should in the event of rejection of petitioner's main claim, nevertheless direct the authorities to consider his case for compassionate pension under Rule 41 of the CCS Pension Rules.

The material before the enquiry officer, which the enquiry officer considered, included the written complaint of Thomas B and the oral testimony of all the witnesses. The petitioner concededly participated in the proceedings and cross-examined only two of the witnesses. This included the complainant. This Court finds the petitioner's argument about Section 11(1) as dealing with minor penalties to be misconceived. In the case of ***Karam Singh Vs. Union of India***, W.P.(C) No. 7869/2011, an identical plea was taken i.e. 11(1) pertains to imposition of minor penalty and therefore major penalty of dismissal could not be awarded to the petitioner. It will be sufficient to quote the decision of the co-ordinate bench, which relies also upon ***Ram Bihari Shukla Vs. Union of India***, W.P.(C). No. 3920/1999 and ***D.D. Yadav Vs. DIG, CRPF, 1974 LAB (IC) 929***.

21. The next plea raised on behalf of the petitioner by learned counsel is that Section 11 of CRPF Act deals with

minor punishment and, therefore, the punishment of dismissal could not be awarded to the petitioner, as he was charged only with Section 11. This plea is also not tenable since on perusing Section 11 of the said Act it is apparent that it empowers the concerned authorities to award punishment of suspension or dismissal to the members of the force who are found guilty and in addition to or in lieu thereof punishment as stipulated under Clause (a) to (e) can also be imposed. In the circumstances, heading of Section 11 stating "minor punishment" is only a misnomer and does not restrict the language of Section 11 of the said Act nor can it be contended that under the Section 11 only minor punishment as stipulated under Section (a) to (e) can be awarded. In Ram Bihari Shukla (supra) the Court after considering Sections 9 to 11 of the CRPF Act had held that a delinquent can be punished with dismissal even if he has not been prosecuted for offence under Section 9 & 10 of the Act...."

As in the above cases, the plea of the petitioner that he could not be dismissed and could be awarded only 'minor' punishment in 11(a) to (e) cannot be accepted.

As far as the factual matrix is concerned, the Court notices that the complainant and the two other witnesses-Kedar Nath and Satinder Singh corroborated each other with respect to the crucial elements i.e. quarrel and abusive language used by the petitioner against Thomas; his initial absence from the Roll Call; his later joining the Roll Call with a rifle and his attempt to fire at the complainant. The only difference between the version of the complainant, Thomas and the other witnesses is that Thomas appears to have turned around and adjusted his position, did not actually see the petitioner cocking his weapon whereas the other two witnesses did so. But the complainant

Thomas categorically stated that he heard a rifle being cocked. He also withstood the cross-examination by the petitioner. In these circumstances, the Court is of the opinion that there is no infirmity in the findings of the enquiry initiated against the petitioner.

The question of proportionality is to be seen not just from the point of view of the employee who is sought to be disciplined but also in the context of misconduct alleged and the circumstances of the case. Here, the petitioner went repeatedly to the complainant's barrack and abused him. Later during Roll Call, he was initially missing and he reported there with a weapon. Significantly, the petitioner was seen last by the complainant in his barrack at 9 pm on the day of the incident. The Roll Call took place later. The petitioner was not armed as he saw the complainant earlier at 9 pm. This meant that he went back to his barrack or the place where he kept the weapon, took it out and went to the place where Roll Call was held with a view to harm the complainant or at least threaten him. The unanimous version of the two independent witnesses who were present at the Roll Call establishes beyond any doubt that the petitioner sought to fire at the complainant providentially for him, for later the safety cap was on which prevented any mishap. These facts show grave and serious misconduct. Whilst the Court or individuals might be of a different opinion as to the kind of the penalty that is imposed, that *ipso facto* cannot be conclusive for a finding that the penalty was in the circumstance was "shockingly disproportionate" - the only circumstances which authorises the Court sitting in judicial review jurisdiction to set aside the penalty. Having regard to all these factors,

this Court hereby rejects the submission that the penalty imposed was disproportionate under the circumstances of the case.

So far as the last submission with respect to a direction for compassionate allowance goes, the Court hereby is of the opinion that since the petitioner did have a meritorious record for 17 years and was dismissed from the services three years short of the 20 years eligibility criteria required for the employee as a pre-qualification for pension, this is an appropriate case where the CRPF should consider the plea for compassionate allowance. The petitioner was also recipient of cash rewards for diligent performance of his duties on various occasions. The CRPF shall consider the petitioner's case for compassionate allowance and pass an appropriate order in that regard within six weeks from today. The order shall be communicated directly to the petitioner.

The writ petition is apparently allowed to the extent of the direction to consider the claim for compassionate allowance however the Court holds that there is no infirmity in the findings recorded after the conclusion of the enquiry or in the penalty imposed. In these circumstances, there shall be no order as to costs.

Order *dasti*.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 24, 2015

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