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

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Date of Decision : February 09, 2015

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W.P.(C) 3197/2014

ANJNA CHAUDHRY

..... Petitioner

Represented by: Mr.S.Rao, Advocate

versus

DIRECTOR GENERAL, INDO TIBETAN
BORDER POLICE FORCE & ORS

..... Respondents

Represented by: Ms.Saroj Bidawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. In the months of July and August, 2012 recruitment was made in the Central Armed Police Forces to the post of Constable (GD). The empanelled candidates had to be subjected to a medical evaluation. A medical board of three officers of Indo Tibetan Border Police was constituted, one of whom was Dr.Sarabjit Singh. A candidate named Manoj Kumar who was declared medically fit revealed that he had paid a bribe of ₹70,000/- to secure employment. Matter was investigated and as per ITBP, the petitioner who was working as a Chief Medical Officer had tried to influence the medical board and in respect of which it was alleged that certain SMS's were sent by the petitioner to Dr.Sarabjit Singh.

2. The Competent Authority directed Record of Evidence to be drawn up at which various witnesses were examined in the presence of the writ petitioner who was given an opportunity to cross-examine them.

3. Considering the Record of Evidence, a charge memo was issued listing three charges against the petitioner. In a nut shell the allegations on which the charges were founded was that the petitioner tried to influence the medical evaluation.

4. The petitioner denied the charge, and considering the response in view of the fact that the SMS's sent by the petitioner to Dr.Sarabjit Singh were not disputed, but the meaning ascribed thereto was the bone of contention, vide order dated September 27, 2013 a penalty of severe reprimand was inflicted upon the petitioner after she was brought before the IG Northern Frontier who disposed of the proceedings concerning the charge memo in a summary manner by imposing the penalty of severe reprimand.

5. Exercising power under Section 59 of the ITBP Force Act, 1992, being the power of review, the DG ITBP formed an opinion that the penalty levied was inadequate keeping in view the gravity of the offence and thus on November 18, 2013 a show cause notice was served upon the petitioner, referring to Section 58(1)(a) of the ITBP Force Act, 1992, calling upon the petitioner to show cause as to why the penalty be not enhanced.

6. Petitioner submitted a reply to the show cause notice and considering the same vide impugned order dated January 31, 2014 the DG ITBP levied penalty of forfeiture of seniority in the rank of Chief Medical Officer for a period of one year.

7. The legal issue which arises for consideration is whether a penalty levied in a summary proceedings is capable of being enhanced to a penalty of a kind envisaged under Clause (h) of Section 51(1) of the ITBP Force Act, 1992.

8. Clause (h) of Section 51(1) of the ITBP Force Act, 1992 reads as under:-

“ 51. Punishment awardable by Force Courts.- (1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Force Courts according to the scale following, that is to say,---

(a) to (g)

(h) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;

(i) to (k)”

9. Minor punishments and the procedure for imposition thereof is laid down in Section 56(1) of the ITBP Force Act, 1992, which reads as under:-

*“56. **Minor punishments.-** (1) Subject to the provisions of section 57, a commanding officer of and above the rank of Commandant may, in the prescribed manner, proceed against a person subject to this Act, other than an officer or a subordinate officer, who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,---*

(a) imprisonment in Force custody up to twenty-eight days;

(b) detention up to twenty-eight days;

(c) confinement to the lines up to twenty-eight days;

(d) extra guards or duties;

(e) deprivation of any special position or special emoluments or any acting rank;

(f) severe reprimand or reprimand;

(g) fine up to fourteen days pay in anyone month;

(h) deductions from his pay and allowances of any sum required to make good any loss or damage occasioned by the offence for which he is punished.”

10. Clause (a) of Sub-Section 1 of Section 58 of the ITBP Force Act, 1992 reads as under:-

*“58. **Punishment of persons of or below the rank of Commandant by Inspectors- General and others.-***

(l) An officer not below the rank of Inspector-General may, in the prescribed manner, proceed against an officer of or below the rank of Commandant who is charged with an offence under this Act and award one or more of the following punishments, that is to say,---

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding one year, but subject to the right of the accused previous to the award to elect to be tried by a Force Court;

(b) severe reprimand or reprimand;

(c) deduction from pay and allowances of any sum required to make good any proved loss or damage occasioned by the offence of which he is convicted."

11. A perusal of sub-Section 1 of Section 51 of the ITBP Force Act, 1992 ex-facie reveals that the punishments prescribed in clauses (a) to (k) thereof are capable of being inflicted if the person subject to the Act is convicted by a Force Court. Vide Clause (h), the penalty of forfeiture of seniority of rank or any part of service for purpose of promotion can be levied on being convicted by a Force Court.

12. The reason is apparent. At a trial before a Force Court the departmental witnesses would be subjected to a cross-examination. The penalties prescribed under the various sub-clause of Section 1 of Section 51 are major penalties.

13. Minor penalties prescribed under sub-Section 1 of Section 56 may be levied in a summary manner by simply issuing a charge memorandum and considering the response. The penalties leviable under various clauses of sub-Section 1 of Section 56 are minor in nature.

14. The position would be akin to levy of minor and major penalties

under the CCS (CCA) Rules, 1965.

15. A perusal of clause (a) of sub-Section 1 of Section 58 would evince that it is permissible for the Reviewing Authority to levy the penalty of forfeiture of seniority for purposes of promotion for a period not exceeding one year in a summary manner, akin to the procedure contemplated for levy of minor penalties under the CCS (CCA) Rules, 1965 by simply issuing a show cause notice and considering the reply, but exercise of said power is expressly subject to the right of the accused previous to the award to elect to be tried by a Force Court.

16. Thus, the penalty leviable under Section 58(1)(a) is not the absolute power of the Reviewing Authority. The member of the force has a right to elect whether she would opt to be tried by a Force Court.

17. The reason is obvious. Penalty prescribed vide clause (h) of sub-Section 1 of Section 51 finds a mention as the penalty capable of being prescribed under Section 58(1)(a).

18. Whilst it may be true that when the show cause notice dated November 18, 2013 was issued to the petitioner, while submitting her reply thereto, she did not elect to be tried before a Force Court, but meaningfully read, in her reply she did bring out the undesirability of the penalty to be levied as contemplated by Section 58(1)(a) in a summary manner.

19. In our opinion, for the petitioner to take a decision and before she could be fastened with not having chosen to elect as per the option available to her under Section 58(1)(a) her attention ought to have been drawn in the show cause notice that she could opt for a trial.

20. Under the circumstances we dispose of the petition quashing the impugned order dated January 31, 2014 issued by the Reviewing Authority, leaving it open to the Competent Authority of ITBP to try the petitioner before a Force Court, and for which we take on record the stand of the

petitioner through her counsel that if the Competent Authority is of the opinion that the penalty of severe reprimand is inadequate and is of the opinion that the penalty of forfeiture of seniority in the rank of CMO for a period of one year has to be levied, she opts for a trial before the Force Court.

21. Needless to state if the Competent Authority takes a decision not to proceed ahead, the penalty of severe reprimand levied upon the petitioner shall be maintained for the reason, whatever may be assigned through the SMS's sent by the petitioner to Dr.Sarabjit Singh, they were sent during a period when the selection process was on and would warrant, in the least, severe reprimand to be levied.

22. No costs.

CM No.6653/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 09, 2015
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