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

Decided on : 29.07.2015

+ W.P.(C) 6411/2012

SAHAB SINGH

..... Petitioner

Through: Mr D.K. Thakur, Adv.

versus

DIRECTOR GENERAL & ORS.

..... Respondents

Through: Mr Rajan Sabharwal, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner challenges the order dismissing him from service on the ground of misconduct. He was issued a charge-sheet dated 12.01.2011 under Rule 153 of Railway Protection Force (RPF) Rules.

2. The brief facts of the case are that the petitioner was recruited in the RPF as a Constable on 01.08.1994. He was posted at Shahdara Post, Delhi in 2006. On the basis of the allegations of commission of offence punishable under Sections 363 and 366 IPC, a First Information Report (FIR) was lodged on 13.03.2007 at Bahari Police Station, District Muzaffarnagar, Uttar Pradesh. Apparently, the charge of committing the offence of rape, punishable under Section 376 was also included in the FIR. The petitioner, his brother and his father were named as the accused in the said FIR. The petitioner's brother was the alleged offender, whereas the allegation against the petitioner was that he assisted and abetted him

in the crime. The Sessions Court issued summons some time in 2010 to the petitioner. The charges were framed on 08.08.2010 against the petitioner. Due to his non-appearance, non-bailable warrants were issued and he was taken into judicial custody on 29.11.2010. He was, however, subsequently, released on bail on 01.01.2011. In these circumstances, respondent/authority served a charge-sheet to the petitioner on 12.01.2011, alleging that he had concealed the facts pertaining to his involvement in the criminal case and had also not intimated his arrest and detention which was required of him under the CCS Conduct Rules. The Disciplinary Authority, which considered the petitioner's defence, took note of the relevant facts as well as the material on record. The petitioner's principal defence was that he asked his relatives to intimate the respondent-RPF about his detention, but had not informed so in writing.

3. However, apparently there was no substantial evidence as to why he omitted to mention the accusation of his having been accused of committing of a crime at the earliest opportunity after he was named as an accused in the FIR. On the basis of the Inquiry Officer's report, the petitioner was served with an order, dismissing him from service on 24.06.2011. He preferred an appeal on 12.04.2012; this too was met with no success and was consequently rejected. He subsequently, preferred a revision petition on 05.12.2011, questioning the sentence of dismissal. The revisional authority declined to interfere with the punishment.

4. The petitioner submits that the order of dismissal about his detention is unwarranted. It is also stated that subsequently by judgment and order dated 16.11.2013, he was acquitted of the charges as were the other accused. It is submitted that having rendered 18 years of service, the punishment of dismissal is, in the circumstances, disproportionate and excessive. Counsel for the respondent relies upon the averments in the counter-affidavit and states that at no stage did

the petitioner intimate the authorities about the pendency of the criminal case against him. He was aware of the fact that not only was he an accused, but that also he may subsequently face charges. He concealed these circumstances. Furthermore, he also did not communicate the fact that he was kept in judicial custody.

5. This Court has considered the submissions. The petitioner has been asked to answer two charges—the first of which is his omission to disclose the material facts of his involvement in the criminal case. This is a material circumstance because in such an event, the employer has the choice of either initiating disciplinary proceedings or placing the employee under suspension to await the decision of the criminal offence. It is not his case that he was unaware of the criminal proceedings; he was arrayed as an accused in the FIR against serious for the alleged commission of offences, punishable under Section 363 and 366. Ultimately, he was also charged of the said offences by the Sessions Court. The second charge is that he did not intimate—at the first available opportunity about his detention. No doubt, at that point of time the petitioner was detained and he could not have intimated the authorities, but having regard to the fact that he was under prolonged judicial custody for nearly a month, he ought to have at least intimated in writing about these circumstances.

6. In order to satisfy ourselves, we looked into the judgment of the Criminal Court to consider whether the nature of the charges were such that an entirely false case had been made out against the petitioner. Apparently, the Sessions Court, which tried the petitioner and his other family members was persuaded by certain technical considerations such as lack of map, etc.. We do not wish to comment on the correctness of the judgment because that is not the subject matter of the present petition. Our consideration is only to see whether having regard to

the nature of the accusation and the materials presented before the Sessions Court, the petitioner was falsely implicated in the circumstances. Having considered the materials at our disposal, we are satisfied that the charges framed against him were not the result of a situation, whereby the petitioner was accused with the intention of falsely implicating him.

7. Having regard to the above discussion, we are of the opinion that this is not an appropriate case to grant any relief under Article 226 of the Constitution.

The writ petition is accordingly dismissed.

JULY 29, 2015
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S. RAVINDRA BHAT
(JUDGE)

V.K. SHALI
(JUDGE)