

\$~17

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

%

Date of Decision: January 14, 2015

+

W.P.(C) 9064/2008

DILIP KUMAR PANDEY Petitioner

Represented by: Mr.Prakash Kumar, Advocate

versus

UOI Respondent

Represented by: Mr.Ankur Chhibber, Advocate with
Mr.Vijay Kumar Rout, Pairvi Officer

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The petitioner has impugned the order dated September 09, 2006 passed by the Disciplinary Authority levying penalty of dismissal from service upon the petitioner and the order dated August 07, 2008 passed by the Appellate Authority rejecting the appeal.
2. The only question raised by the petitioner in the writ petition for consideration of this Court is whether the Disciplinary Authority passed the impugned order dated September 09, 2006 after due consideration of the evidence led at the inquiry keeping in view the response of the petitioner to the report of the Inquiry Officer, and whether the Appellate Authority has acted without applying its mind.
3. The factual matrix of the instant matter would reveal that the Petitioner was enlisted in CRPF as Constable/GD on April 12, 1993.

Thereafter, he reported to 167th Bn. CRPF on transfer from the 81st Bn. on August 02, 2004.

4. On March 08, 2006, the petitioner was detailed for sentry duties from 20:00 hrs to 22:00 hrs at Dett.167th Bn. Hqrs, S.N.Sinha College, Jahanabad, Bihar. It was alleged against the petitioner that during the aforesaid duty hours he consumed alcohol and without being relieved of his duty by the next sentry he left his post twice without any intimation or prior permission from the Guard Commander. Furthermore, on the same day i.e. on March 08, 2006 in a state of intoxication he trespassed into the barracks where S.I./GD Balbir Singh resided and without any provocation pointed his Insas Rifle at S.I./GD Balbir Singh and tried to cock the same thereby threatening to kill S.I./GD Balbir Singh.

5. Vide memorandum dated May 16, 2006, the following two charges were framed against the petitioner:-

“Head-One

While working as Constable/G.D. Dilip Kumar Pandey E/167 Battalion, C.R.P.D. Dait Headquater, S.B. Sinha College, Jahanabad, Bihar and had indulged into misconduct on dated 08.03.2006 during his posting ignoring the orders while performing his duty in the capacity of the member of the Force under section 11 (1) of the Central Reserve Police Force Act, 1949, in which during his duty hours 2000 to 2200 Hours on dated 08.03.2006 in Dait Headquater E/167th Bn, C.R.P.F., S.N. Sinha College, Jahanabad he came on his duty in the Morcha in drunkard condition and had gone in the Line leaving his Morcha twice before replacing him by the next Guard.

Head-Two

While working as Constable/G.D. Dilip Kumar Pandey E/167 Battalion, C.R.P.D. Dait Headquater, S.B. Sinha College,

Jahanabad, Bihar and had indulged into misconduct on dated 08.03.2006 during his posting at about 2200 Hours he entered into the residence of subordinate office Force No. 680472611 S.I./G.D. Blabir Singh Bisht and pointed at him Insas Rifle bearing Butt No. 113, Body No. 16545464 given to him for duty and tried to cock the same and extended threat to eliminate him.”

6. Sh.Dheeraj Kumar, the 2-IC of the 167th Bn., CRPF was appointed as the Inquiry Officer vide order dated June 06, 2006 and from the record produced before us it is revealed that the petitioner was duly served with the notice of the first date when the Inquiry Officer proposed to hold the first hearing. The petitioner duly appeared on said date as also on the other dates and exercised the right to cross-examine the witnesses as also make a statement in defence. The departmental inquiry was duly conducted in accordance with the procedure laid down by the rules in vogue and the Inquiry Officer, based on the material evidence and statements recorded by him of the witnesses held the aforesaid two charges to be fully proved against the petitioner vide report dated August 03, 2006 which was supplied to the petitioner under cover of a letter dated September 02, 2006 calling upon the petitioner to submit a representation, if any, against the report of the Inquiry Officer within 15 days from the receipt of the report of the Inquiry Officer and the petitioner submitted a representation against the report of the Inquiry Officer on September 08, 2006 which was considered by the Disciplinary Authority and being found to be devoid of merits, agreeing with the findings returned by the Inquiry Officer a penalty of dismissal from service was inflicted upon the petitioner vide order dated September 09, 2006 against which the appeal filed has been rejected on August 07, 2008.

7. Learned counsel for the petitioner concedes that there is no procedural error or any error of law committed by the Inquiry Officer, but would urge that it is a case of no evidence and alleges that said aspect was overlooked by the Disciplinary Authority and the Appellate Authority.

8. The law in regard to evidence led during a Disciplinary Inquiry is well settled. In a plethora of decisions it has been held that a Court, while exercising writ jurisdiction, will not reverse a finding returned by the Inquiry Officer on the ground that the evidence adduced before it was insufficient. If there is some evidence to reasonably support the conclusion of the Inquiry Officer, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The Inquiry Officer is the sole judge of the facts, so long as there is some legal evidence to substantiate the finding; the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings. The decisions reported as (1999) 8 SCC 90 R.S. Saini vs. State of Punjab; (1995) 6 SCC 749 B.C. Chaturvedi v. Union of India; and (2003) 3 SCC 583 Lalit Popli vs. Canara Bank may be referred to.

9. The record of the Disciplinary Inquiry against the petitioner would evince that on the first date of the inquiry before the Inquiry Officer when the two charges were put to him, the petitioner admitted that he had consumed alcohol before he commenced duty on March 08, 2006, but denied the remainder. It is further relevant to note that even the doctor who examined the petitioner on March 08, 2006 had in the medical report opined that “..*alcoholic breath was coming out from his mouth...*”. Furthermore, the statements recorded of the witnesses; namely : IS/D Balbir Singh, IS/GD Shivram Singh Meena 167 Bn, Hav/Lakhan Singh F/167 Bn, Hav/GD Ram

Prakash Singh E/167Bn and Nursing Assistant P.N.Rai have corroborated the fact that the petitioner was in an inebriated condition on March 08, 2006. The statement of Hav/GD Lakhan Singh establishes that the petitioner left his duty post twice without intimating or obtaining the prior permission of the Guard Commander.

10. With regard to the second charge, S.I./G.D. Balbir Singh Bisht in his statement has clearly stated that the petitioner had entered into the residence of Subordinate Officer along with his rifle, pointed it at him and tried to cock the same. The veracity of this statement is confirmed by the statements of two other witnesses; namely : S.I./G.D. Sivram Singh Meena and Nursing Assistant P.N.Rai.

11. The arguments advanced concerning the testimony of said witnesses is by pointing out minor discrepancies, such as somebody saying that the barrel of the gun was pointed towards SI G.D. Balbir Singh Bisht and some deposing that the barrel was pointed upwards and some deposing that the barrel was pointed downwards. Such kind of discrepancies are trivial and have to be ignored. What is relevant is that all have deposed in sync that the petitioner entered the barrack and cocked his Insas Rifle.

12. Learned counsel for the petitioner does not dispute that a force personnel is not supposed to cock his rifle unless there is a fear of an imminent danger warranting the force personnel to be in combat position. The very act of cocking the Insas Rifle after entering the residential quarters in the room where SI G.D. Balbir Singh Bisht resided is a serious offence. The testimony of the witnesses would evince that had they not acted immediately to disarm the petitioner, God knows anything could have happened.

13. It is trite that where the Disciplinary Authority agrees with the findings returned by the Inquiry Officer, the reasons can be brief by incorporating the reasons given by the Inquiry Officer. We note that before the Disciplinary Authority, responding to the report of the Inquiry Officer, the petitioner was picking on the alleged discrepancies in the statements of the witnesses concerning where was the barrel of his Insas Rifle pointing at and these very contentions were advanced in appeal.

14. Last contention urged is that the penalty is grossly disproportionate.

15. It is settled law that unless the penalty shocks the judicial conscious the Court would not interfere with a penalty levied because quantum of penalty to be levied is within the jurisdiction of the Disciplinary Authority.

16. In our opinion the act of entering a residential quarter of a superior officer while carrying arms and cocking the Insas Rifle and pointing the same towards the superior officer is a serious act of indiscipline and thus the penalty levied cannot be said to be shockingly discriminatory.

17. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 14, 2015

mamta