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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12.10.2015

\+ W.P.(C) 9646/2015 & C.M.No.22974/2015

I U KHAN ..... Petitioner

Through: Ms.Ankita Patnaik and Ms.Punam Singh, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Dev P.Bhardwaj, CGSC for UOI Mr.B.K.Rout, Pairvi Officer, CRPF Mr.S.S.Sejwal, Law Officer, CRPFs

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (OPEN COURT)

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1. By the present writ petition, the petitioner has challenged the order dated 10.08.2015 of respondent No.2, imposing the penalty of withholding of 30% of monthly pension for a period of five years. He also seeks the quashing of an Enquiry Report dated 12.06.2013 and Disagreement Note dated 29.10.2013.

2. The brief facts of the case are that between 17.03.2008-31.03.2008, the petitioner was posted as Deputy Commandant of Group Centre, Siliguri as Member-1 of Recruitment Board for recruitment of Constable Tradesman in 171 Battalion. By office order dated 12.05.2010, a preliminary enquiry was initiated against him by Inspector General, CRPF, Salt Lake, Kolkata on two complaints received from Rakesh Kumar and Guddu Kumar, candidates in the said recruitment process, alleging that the petitioner had demanded a bribe of Rs.1,50,000/- from each one of them for securing their recruitment, which was paid to him. The petitioner was finally superannuated as 2IC on 31.08.2010. A memorandum of charge dated 13.02.2012 was served upon the petitioner on 04.03.2012 alleging that he committed an act of misconduct by indulging in the malpractice of influencing a candidate seeking recruitment to pay him a bribe while he was a member of the recruitment board. The petitioner submitted his reply and fully participated in the enquiry proceedings. Five prosecution witnesses out of the seven listed prosecution witnesses and 11 additional prosecution witnesses were examined and 9 Prosecution Exhibits and 8 additional Prosecution Exhibits were

recorded during the proceedings. The petitioner also produced nine Defence Exhibits, but inspite of opportunity being granted refused to produce any defence witness. On conclusion of the proceedings, the Enquiry Officer opined that the Charge was partially proved. The Disciplinary Authority, however, by its order dated 29.10.2013 disagreed with the report of the Enquiry Officer and held the charge as proved. The petitioner also submitted his representation dated 09.12.2013. The respondent No. 2 sought advice of the U.P.S.C. under Article 320 of the Constitution and on receiving the advice dated 17.10.2014, holding the petitioner guilty of charge, forwarded it to the petitioner by letter dated 23.12.2014 and after considering the representation of the petitioner dated 26.02.2015, passed the impugned order.

3. The petitioner has challenged his conviction on the ground of lack of evidence on record to prove the charge. Primarily, his objections rely on the finding of the Enquiry Officer, who had opined the charge as partially proved, and urged that the findings of the Disciplinary Authority is based on an incorrect appreciation of the evidence. The petitioner contends that the Disciplinary Authority

failed to take into account the contradictions in the testimony of the complainant Guddu Kumar and the fact that another complainant Rakesh Kumar had categorically stated that he made no complaint. The petitioner contends that the respondents had acted with a mala fide intention against him. During his entire service, his record was clean and he had been awarded 3 medals and 12 commendation entries/cash rewards. He had always earned 'Good', 'Very Good' and 'Excellent' ACRs and his retirement service certificate also states his service to be exemplary. The enquiry is also unduly delayed as it has been started after four years of the alleged incident. Moreover, he could not have committed the said offence for the reason that during the recruitment process, the board members were required to stay within the premises and were not allowed to have any interaction with anybody else except with members of the board and, therefore, he could not have had any interaction with Guddu Kumar. It is also argued that his defence that he had been regularly receiving deposits in his account, deposited by his relatives, earned from his land and other properties, was not given due credence.

4. We have heard the arguments and perused the file. The main contention of the petitioner is that the Enquiry Officer as well as the Disciplinary Authority have failed to consider the contradictions in the testimony of the complainant Guddu Kumar and the fact that he had been regularly receiving the money in his account, from other sources like income from property, etc. and were deposited by his relatives.

5. The petitioner has been charged with the following charge:-

> *"Article-I*
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> *That, the said Shri I.U. Khan, Dy. Comdt. (Now Retired 21/C), (IRLA-4586), of GC/Siliguri, which posted as Dy. Commandant in GC, CRPF, Siliguri, and functioning as Member-I of the Recruitment Board for recruitment of CT (Tech-Tradesman) during the period from 17/3/08 to 31/3/08 held at 171 Bn., CRPF headquarter location at Kharagpur, Distt. Midnapur (West Bengal) committed an act of misconduct in that he indulged in malpractice in his capacity as a member of recruitment board by influencing Shri Guddu Kumar, S/o Shri Srinivas Singh, Vill. & P.O. Ghongsha, PS Halsi, Distt-Lakhisasrai (Bihar) to pay him Rs.1,50,000/- as bribe in lieu of his selection in CRPF for the post of Ct/Ftr. Thus, the said Shri I.U. Khan, Dy. Comdt, (Now Retd. 21/C) failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant, thereby violated the provisions contained in Rule—3 (1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964."*

6. During the enquiry proceedings, the complainant Guddu Kumar was examined and he deposed that he was asked to pay a bribe of

Rs.1,50,000/- by the petitioner as consideration for his selection to the post of Constable (Tradesman) and was also given the account number of the petitioner and his son. Accordingly, Rs.50,000/- were deposited in the account of the petitioner another Rs.50,000/- were deposited in the account of his son and the remaining Rs.50,000/- were paid to the relative of the petitioner. However, during enquiry, the fact that Rs.50,000/- were paid to the relative of the petitioner could not be proved. The Enquiry Officer as well as the Disciplinary Authority on the basis of oral testimonies and documentary evidence reached the conclusion that the oral testimony of Guddu Kumar stands corroborated by documentary evidence, i.e., the bank statement of the petitioner as well as his son showing the deposit of the said money, in their accounts and the failure of petitioner to give any satisfactory explanation for these deposits and failure to substantiate the defence that the money, in fact, was deposited by his brother-in-law.

7. Proceedings show that all the contentions of the petitioner were duly considered by the Disciplinary Authority in realm of evidences on record and the contention of the petitioner that the money was deposited by his relative in his account and in the account of his son,

which he had earned from other sources was found unbelievable for the reason that the petitioner had not, in compliance of CCS Rules governing him, disclosed on record any other source of his income. The Disciplinary Authority also for the reasons discussed as under found the plea unjustifiable:

> *"Statement of complainant (PW-1) is supported by the Prosecution Exhibit -1,2,6,7,9,12&13 and the mentioned amount was deposited during recruitment process from the home district of the complainant who is also deposed as PW-1, whereas the C.O. failed to produce any documentary evidence/defence witness to justify the defence statement. In addition as per Prosecution Exhibit—6&7 regarding the bank statements of Shri I.U. Khan and his son also show that Rs.50,000/- was deposited on a same day i.e. 28/3/2008 from SBI, Barahiya Branch (Code-2916), Distt: Lakhisarai, Bihar in the Account No.30270378547 at Charbagh, Lucknow of Shri I.U. Khan, (C.O.) and Rs.50,000/- in the SBI Bank Account No. 10478364540 at P.D. Market, Bhubneshwar (PW-2) of Shri Imran Khan S/o Shri I.U. Khan, (C.O. from outside the home state which has never occurred in the past."*

8. The Disciplinary Authority has also observed in its impugned order as under:-

> *"Vide which prosecution has successfully established that such an amount was deposited into the bank account of the C.O. and his son, who was detailed in recruitment duty, from a place near to a candidate's (i.e. PW-1) home town. Further, the C.O. has not given any intimation*

regarding deposit of such huge amount to department as per provision of Rule 18(3) of CCS (Conduct) Rules."

9. The Disciplinary Authority has also observed as under:-

"The statement of PW-1 has been corroborated by Pro. Exhibit—9 (i.e. Provisionally Selected list for recruitment of CT/Tradesman issued vide DIG, CRPF, Durgapur ltr. No.R.II.5/08-EC-II dated 9/9/08) as his name featured in the list of selected candidates."

10. Indisputably, the petitioner, although he was given a chance, has not produced any defence evidence to substantiate his contention that the amount was deposited in his account by his relative. It is an established principle of law that in a departmental enquiry, the standard of proof of the facts is that of preponderance of probabilities and not beyond reasonable doubt, unlike in criminal cases. Minor contradictions or discrepancies in the depositions of the witnesses, which are irreconcilable in nature, do not vitiate the departmental enquiry. Only those contradictions, which go to the very root of the case and have the capacity to destroy the substratum of the case, can be said to be of relevance. The contradictions pointed out by petitioner in the writ petition are of inconsequential nature and fail to create doubt as to the truthfulness of the allegations that the petitioner had demanded Rs.1,50,000/- from Guddu Kumar for his recruitment. The

testimony of Guddu Kumar stands duly corroborated by the documentary evidence which are in the nature of the bank account of the petitioner and that of his son, showing deposits of Rs.50,000/- in each of the accounts—for which the petitioner had failed to give any justifiable explanation. It is, therefore, not a case of no evidence.

11. The jurisdiction of this Court under Article 226 is very limited. The Court under Article 226 does not sit as an Appellate Court. Under Article 226, it is not the decision of the authority, but the process of decision making which is open to challenge. The only exceptions that allow the challenge of the decision itself are when the said decision is either based on no evidence on record or is tainted with bias or is violative of any express provision of law or procedure or is contrary to the principles of natural justice. The impugned decision in the case of the petitioner is based on evidence on record. No mala fides, arbitrariness or violation of any express provision of law or procedure has been pointed out by the petitioner. We also do not find any contraventions of the principles of natural justice.

12. For the above reasons, there exists no ground to interfere with

the impugned orders.

The writ petition along with the pending application is dismissed with no order as to costs.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

OCTOBER 12, 2015
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