

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 7772 of 1998
Date of decision: 27.09.2016

Harender KumarPetitioner

Versus

Union of India and othersRespondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajeev Anand, Advocate, for the petitioner.

Mr. Namit Kumar, Advocate and
Mr. Alankrit Bhardwaj, Advocate, for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the disciplinary authority order dated 05.07.1997 by which the petitioner has been dismissed from the service.

The petitioner was in the cadre of Constable/Driver in the 83 Battalion. On 05.11.1996 he was charge sheeted by framing three charges. The charges are as under:-

“That No. 910830068 Ct/Dvr Harender Kumar Singh of Hq/83 Bn CRPF while functioning as Ct/Dvr has committed an offence of disobedience of orders in his capacity as a member of the force under section 11 (1) of CRPF Act, 1949, in that, he disregarded the lawful orders of his superiors and got himself seated in the KF of the special train instead of the earmarked GS Coach with malafied intention while the unit was under move from New Guwahati railway station to Ludhiana.

That No. 91080068 Ct/Dvr Harender Kumar Singh of Hq/83 Bn, CRPF while functioning at CT/DVR has committed an act of misconduct in his capacity as a member of the force under Section 11 (1) of the CRPF Act, 1949 in that, he detrained from the special train enroute at Nayagoan on 27.6.96 at 0540 Hrs, left on his own and remained absent for 8 days unauthorisedly while under suspension without information/permission of the competent authority.

That No. 910830068 Ct/Dvr Harender Kumar Singh of

HQ/83 Bn, CRPF while functioning as Ct/Dvr in HQ/83 has committed an offence of grave misconduct in his capacity as a member of the force under Section 11 (1) of CRPF Act, 1949 in that, while on sentry duty on 3.10.96 at about 2250 Hrs he was found stealing petrol from vehicle No. OSX-5940 at MT garage of Hq/83 Bn, CRPF Ludhiana which was in the charge of No. 8813131136 Ct/Dvr H.N. Dass and was caught red handed by the latter.”

The inquiry officer has held that charges levelled against the petitioner were proved. Consequently, the disciplinary authority passed order of dismissal on 05.07.1997. The petitioner is stated to have submitted appeal and revision before the appellate authority and the revisional authority, which were rejected on 13.10.1997 and 08.02.1998. In the present petition, the petitioner has challenged only disciplinary authority order dated 05.07.1997.

The learned counsel for the petitioner submitted that in so far as the first charge that he got himself seated in KF (reserved for vehicle transportation in the train) without authority/permission of the competent authority, thus he has violated the orders of the superior is concerned, he being Constable/Driver, the vehicles were kept in Care Section and even other drivers were also in the Care Section of the train, therefore, there is no infirmity. That apart no specific briefing was given to sit in a particular section or boggy. Whereas the petitioner constable, who is a passenger was suppose to sit in GS coach. The learned counsel for the petitioner submitted that it may not be a serious charge so as to initiate inquiry.

Learned counsel for the petitioner further submitted that while sitting in care coach when the train reached Nayagaon in Bihar he got down for nature call. In the meanwhile train left Nayagaon

railway station. Therefore, the petitioner could not continue his journey to Ludhiana. Thus, he remained in between Bihar and Ludhiana till 04.07.1996. Consequently it was beyond his control thus, second charge relating to remaining absent be condoned for the reasons that it was not intentional one. Third charge is relating to theft of petrol from vehicle No. OSX-5940 at MT garage of Hq/83 Battallion, CRPF Ludhiana. The petitioner has no say or denial of this charge for the reasons that evidence adduced in the inquiry it has come on record that he has admitted with reference to statements of witnesses PW No. 4 and 5. It was further submitted that the petitioner has cited three civilian witnesses which were not permitted by the inquiring officer for want of addresses. On the contrary learned counsel for the petitioner submitted that addresses of those three witnesses (civilian) were given despite that inquiring officer fail to permit the petitioner to adduce evidence of those witnesses. Therefore, the inquiring officer has not given ample opportunity to adduce evidence in the inquiry. Thus, the inquiring Officer's finding is without giving opportunity. Consequently, the penalty imposed by the disciplinary authority is liable to be set aside.

Per contra learned counsel for the respondents submitted that the witnesses who have adduced evidence before the inquiring officer supports the charges therefore, there is no infirmity in the inquiring officer's finding. Consequently the disciplinary authority has imposed the major penalty, which is in order having regard to the serious charges framed against the petitioner.

Heard learned counsel for the parties.

The contention of learned counsel for the petitioner relating to appreciation of the evidence is impermissible under Article 226. Even assuming that charges No. 1 and 2 are not so serious to impose the penalty of dismissal from service, however, charge relating to theft of petrol is a very serious charge. The petitioner being a Constable in CRPF should not have resorted to such misdeed. That apart perusal of the evidence of PW-4 and PW-5 in the inquiry it is evident that the petitioner has admitted the charge No. 3 relating to theft of petrol. The petitioner's contention that he was not allowed to bring three civilian witnesses to deny charges in respect of 2nd charge. Even charge No. 2 is held to be not proved, still charge No. 3 theft of petrol is sufficient to impose penalty of dismissal. Court can appreciate where it is a case of no evidence or perverse evidence and any legal ground. In the present case petitioner has not urged any other grounds. Thus, the petitioner has not made out a case so as to interfere with the order of the disciplinary authority. It is also to be noted that the petitioner has failed to challenge the validity of the order passed by the appellate authority and revisional authority in which disciplinary authority's order is merged. On this ground also the petition is liable to be rejected.

Accordingly, the writ petition stands dismissed.

27.09.2016

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(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No