

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

+ **W.P.(C). 10004/2005**

Decided on: 02.02.2016

IN THE MATTER OF:

BANI SINGH Petitioner

Through: Mr. Jagdish Rajput, Advocate

versus

C.R.P.F. & ORS. Respondents

Through: Ms. Saahila Lamba, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

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HIMA KOHLI, J. (Oral)

1. The petitioner, who was working on the post of a Constable with the respondent-CRPF, seeks quashing of the order dated 15th November, 2003 passed by the Disciplinary Authority inflicting upon him the punishment of dismissal from service (*Annexure P-3*), upheld by the order dated Nil May, 2004 passed by the Appellate Authority (*Annexure P-2*) and confirmed in revision vide order dated 3rd March, 2005 passed by the respondent No.2 (*Annexure P-1*).

2. In brief, the facts of the case are that on 2nd June, 2003, the petitioner had received a telegram from his native place informing him that his wife was seriously ill. On the very next day, the petitioner applied for leave, which request was turned down. It is the petitioner's version that feeling frustrated and demoralized by

the said refusal, he consumed liquor on 3rd June, 2003 at 1900 hrs and could not report at the Quarter Guard Duty.

3. The records reveal that the petitioner was found lying unconscious in a drunken state outside the CRPF Camp at a STD Booth and was brought back to the Camp by Head Constable-Jitender Narain Singh and sent for a medical examination at the CRPF Hospital, Mokamaghat. As per the medical report, the petitioner had consumed excessive quantities of alcohol and was drunk. In these circumstances, the respondent No.4 placed the petitioner under suspension on 5th June, 2003, in terms of Rule 27-A of the CRPF Rules, 1955.

4. On 9th June, 2003, the respondent No.4 issued a Memorandum to the petitioner enclosing therewith a charge-sheet that contained the followings Articles of Charge: -

Article-I

That No.891142271 CT/GD Bani Singh, 147, BN. C.R.P.F., Mokamaghat, while on duty, being a member of the force, has done a misconduct and disobedience of duty under the rule 11 (1) of C.R.P.F. Rules, 1949, in which he absented himself from the Quarter guard duty on 03.06.2003 which is against the discipline of the force.

Sd/- 09.06.

(R.Ghai)
Commandant

Article - II

That No.891142271 CT/GD, Bani Singh, 147, BN. C.R.P.F., Mokamaghat, while on duty, being member of the force, has done a misconduct under rule 11 (1) of the C.R.P.F. Rules, 1949, in which he (delinquent) absented himself from the duty during the duty and drank the wine and went with ammunition outside the camp without permission in the condition of intoxication on 03.06.2003, which is against the discipline and system of the force.

Sd/- 09.06.

*(R.Ghai)
Commandant*

5. Thereafter, an Inquiry was conducted against the petitioner and as per the Inquiry Report, he had pleaded guilty in respect of both the charges. Despite the same, the Inquiry Officer conducted an inquiry and examined the statement of the petitioner and the documents produced by the prosecution and concluded that there were sufficient circumstances to hold that the petitioner was guilty of the act of misconduct and had disobeyed order in terms of charged Articles I & II, which were duly proven against him. Based on the Inquiry Report, vide impugned order dated 15th November, 2011, the Disciplinary Authority had inflicted the punishment of dismissal from service on the petitioner and held that nothing shall be payable to him except for the subsistence allowance already paid.

6. Aggrieved by the punishment inflicted, the petitioner had preferred an appeal, which was dismissed by the Appellate Authority vide order Nil May, 2004. The petitioner had then filed a revision petition before the respondent No.2. While the said revision petition was still pending, the petitioner filed a writ petition in this Court registered as W.P.(C) 42/2005, which was disposed of vide order dated 2nd February, 2005 while recording the statement of the learned counsel for the respondents that they shall consider and dispose of the pending revision petition by passing a speaking order in accordance with law. This was followed by the impugned order dated 3rd March, 2005 passed by the respondent No.2, upholding the order dated 15.11.2003 passed by the Disciplinary Authority.

7. Aggrieved by the aforesaid orders, the petitioner has filed the present petition. Though several grounds have been taken in the present petition to assail the impugned orders, however, in the course of argument, learned counsel for the petitioner confines the grievance of the petitioner to the plea that the punishment inflicted on the petitioner is disproportionate to the misconduct alleged against him.

8. Learned counsel for the petitioner submits that while passing the impugned order, the respondents did not take into consideration

the humane aspect, which is that his client was under extreme stress and anxiety due to a telegram received in respect of his ailing wife and though he had sought leave for a fortnight to visit his native place, the same was turned down, which caused further frustration and distress and resulted in the petitioner consuming alcohol. He states that having regard to the fact that there was no other incident of misdemeanor attributed to the petitioner prior to the incident in question and he had rendered thirteen years of unblemished service, the respondents should have shown some mercy by inflicting a minor punishment on him under Section 11 of the Central Reserve Police Force Act, 1949 (for short the CRPF Act). He adds that after the petitioner was dismissed from his service, his wife, who was continuing to suffer ill health, passed away within a couple of years.

9. Ms. Sahila Lamba, learned counsel for the respondents, opposes the present petition and submits that the petitioner had admittedly absented himself from Quarter Guard duty on 3rd June, 2003 at the CRPF Camp, which entails guarding of ammunition in the camp and while on duty, was found drunk with ammunition outside the camp without permission, which amounts to a heinous offence as prescribed under Section 9 (I) of the CRPF Act. She

argues that the petitioner had pleaded guilty in the course of the inquiry and in such circumstances, there is no justification for seeking judicial review. It is argued that once the petitioner had been medically examined and the medical report had opined that he was drunk and further, the petitioner had himself admitted to his guilty, there is no scope of interference in the impugned order. To substantiate her submission, she relies on a judgment dated 15th May, 2014 passed in W.P.(C) 6856/2000 entitled "*Dinesh Kumar Vs. Union of India & Anr.*" and judgment dated 14th January, 2015 passed in W.P.(C) 9064/2008 entitled "*Dilip Kumar Pandey Vs. Union of India*".

10. We have heard the arguments advanced by learned counsels for the parties and carefully examined the records. We have also perused the relevant provisions of the law and are of the opinion that, undoubtedly, the offence committed by the petitioner falls under Section 9 (I) of the CRPF Act as, while on active duty, he had quit his guard without being regularly relieved or without leave. Further, the petitioner was charged under Article I for being absent from Quarter Guard Duty on 3rd June, 2003, without any explanation, which is a fact that he had himself admitted. As for the other charges under Article II of absenting himself from duty, being

intoxicated during the course of duty and leaving the camp with ammunition, though Section 10 of the Act that deals with less heinous offences prescribes in sub-clause (a) that "*a member of the Force, who is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march shall be punishable for imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both*", the aforesaid offence committed by the petitioner would not fall under the category of less heinous offence for the simple reason that he was not only found intoxicated while on duty, but he had admittedly left the CRPF camp without permission while under intoxication and with his ammunition.

11. At the same time, we have taken note of the factual background of the instant case. The petitioner has explained his position of having received a telegram from his native place informing him that his wife was seriously ill and despite having applied to his superiors for leave, the same was turned down which had apparently resulted in anxiety, stress and depression. The said factual background distinguishes the fact position of this case from the cases of Dinesh Kumar (*supra*) and Dilip Kumar Pandey (*supra*) on which learned counsel for the respondents has relied on. It is an

undisputed position that prior to the date of the incident, the petitioner had served the respondent-CRPF for 13 years and his service record was blemishless.

12. Having regard to the aforesaid position, it is deemed appropriate to substitute the punishment of '*Dismissal from service*' with '*Removal from service*' in respect of the petitioner for the misconduct committed by him. As a result of the said substitution, the petitioner shall be entitled to approach the respondents for seeking compassionate allowance. We are however refraining from making any observation with regard to the fate of such an application, if submitted by the petitioner, which shall be entirely left to the discretion of the respondents. The present petition is disposed of while leaving the parties to bear their own costs.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

FEBRUARY 02, 2016
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