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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1577/2006
Ex-Ct./GD DALIP SINGH Petitioner
Through: Mr. S.K. Das, Advocate

versus

UOI & ORS. Respondents
Through: Ms. Barkha Babbar &
Ms. Dipanjali Tyagi, Advocates
with Mr. L.N. Mishra,
Commandant and Mr. S.S. Sejwal,
Law Officer, CRPF

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER
15.03.2016

1. The petitioner, who was working on the post of a Constable (GD) with the respondent- CRPF has filed the present petition being aggrieved by the order dated 7th October, 2004, passed by the Disciplinary Authority holding *inter alia* that the three Articles of Charge levelled against him stood fully proved and inflicting upon him the penalty of removal from service; the order dated 7th January, 2005, passed by the Appellate Authority upholding the order of the disciplinary authority and the order dated 15th July, 2005, rejecting the petitioner's revision petition.
2. Stating precisely, the incident in question which had resulted in issuance of the Memorandum dated 23rd June, 2004, to the petitioner, relates to 15th April, 2004, a time when he was posted at Ranchi,

Jharkhand, which is a naxal infected area. The three Articles of Charge framed against the petitioner are reproduced hereinbelow for ready reference:-

DETAILS

ARTICLE-I

That No. 991340268 CT/GD DILIP SINGH D/121 BN has committed an offence under Section 9(b) and 10 (j) of CRPF Act-1949 in the capacity of CT/GD in that he assaulted his colleague No. 941172651 CT/GD Chinaiya Naidu of on 16/04/2004 under influence of liquor, which is pre-judice to the good order and discipline of the Force.

ARTICLE-II

That during above period and working in D/121 Bn No.991340268 CT/GD DILIP SINGH D/121 BN has committed an offence of misconduct as a member of the Force under Section- 11 (1) of CRPF Act-1949, in that he consumed unauthorized liquor on 15/4/2004 which is pre-judice to the good order and discipline of the Force.

ARTICLE-III

That during above period and working in D/121 Bn No.991340268 CT/GD DILIP SINGH D/121 BN has committed an offence of misconduct as a member of the Force under Section- 11 (1) of CRPF Act-1949, in that he

found absent from Camp (Bn HQ Dhurva Ranchi) on 27/4/2004 without prior permission of Competent authority which is pre-judice to the good order and discipline of the Force.

3. On 16th April, 2004, the Officer Commanding D/121 Batallion, CRPF, Burmu, Ranchi, lodged a complaint against the petitioner. On receipt of the said complaint, a preliminary inquiry was ordered in respect of the charges framed against the petitioner. On 23rd June, 2004, a Departmental Inquiry was ordered against the petitioner in terms of Section 11 (1) of the CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955 (*in short 'the Act and the Rules'*). Vide order dated 12th July, 2004, an officer was appointed who conducted the inquiry and he submitted a report dated 10th September, 2004 wherein it was recorded that the petitioner did not plead guilty in respect of Articles I & II, but he had pleaded guilty in respect of Article III. The respondent produced thirteen prosecution witnesses, who were examined in the presence of the petitioner and though was afforded an opportunity to cross-examine the said witnesses, he did not do so. The petitioner's statement was recorded on 17th August, 2008. He did not produce any defence witness or document though an opportunity was given for the said purpose. The Inquiry Officer concluded the inquiry by holding that all the three Articles of Charge were proved against the petitioner.

4. In a reply to the Inquiry Report, the petitioner was called upon to give his representation, but he declined to do so and instead, he submitted a letter dated 5th October, 2004 stating *inter alia* that he did not have

anything to state against the Inquiry Officer. Based upon the report of the Inquiry Officer, the order dated 17th October, 2004 was passed by the Disciplinary Authority recording *inter alia* that the charges levelled against the petitioner in Articles I, II & III were fully proved. It was noted that he had admitted to the guilt of making an attempt to kill a member of the Force by using criminal force, had consumed unauthorized liquor and had remained absent without the permission of the competent authority, which were serious offences and against the good image and discipline of the Force. It was also recorded that prior to the occurrence of incident in question, in the year 2003, a departmental inquiry was conducted against the petitioner for remaining absent from Check Roll Call, without permission of the competent authority, consuming unauthorized liquor, eve teasing in an intoxicated condition and using unparliamentary language with senior officers and he was awarded the penalty of stoppage of two increments for two years and was warned to be careful in the future. Keeping in mind the petitioner's previous conduct and the seriousness of the offences, which were the subject matter of the departmental inquiry, the Disciplinary Authority had inflicted on him the punishment of removal from service.

5. The aforesaid order was upheld by the Appellate Authority vide order dated 7th January, 2005 and the Review Petition filed by the petitioner against the order of the Appellate Authority, was rejected vide order dated 17th May, 2005.

6. The respondents' version of the incident that had resulted in charges being framed against the petitioner is that on 15th April, 2004, at 8:30 p.m., the petitioner had consumed a large quantity of liquor, attacked

his colleague, Constable Chinaya Naidu with an iron picket and as a result thereof, the said Constable had sustained a head injury.

7. Mr. S.K. Das, learned counsel for the petitioner, has raised four grounds to assail the impugned order. Firstly, that the principles of natural justice were disregarded in the present case as the documents and the statements of the prosecution witnesses, which have been relied upon by the Inquiry Officer and form the basis of the impugned order of removal from service, were not made available to the petitioner. Secondly, that the petitioner was served with a minor penalty charge-sheet under Section 11(1) of the Act whereas removal from service is a major penalty that has been inflicted upon the petitioner. Thirdly, that while passing the impugned order, the respondents have taken into consideration the petitioner's past record, which is not a part of the charge-sheet served upon him and is impermissible and lastly, that though the grounds taken in the petition have assailed the impugned charge-sheet as being vague and ambiguous, Article-I of the charges levelled against the petitioner refer to violation of Section 9 (b) and 10 (j) of the CRPF Act, whereas Section 9 (b) of the Act do not have any application to the facts of the present case.

8. Coming to the first ground taken by learned counsel for the petitioner to assail the impugned order, we have perused the records produced by the respondents so as to satisfy ourselves as to whether the petitioner was furnished the documents and copies of the statements of the prosecution witnesses. The said record reveals that in acknowledgment of receiving copies of the evidence recorded during the Inquiry the petitioner had affixed his signatures on the evidence recorded

in respect of each of the prosecution witnesses. As for the documents that the petitioner claims he was denied copies of, the impugned order dated 7th January, 2005 passed by the Appellate Authority reveals that during the course of the Departmental Inquiry, while recording the petitioner's statement on 26th July, 2004, in reply to one of the questions put by the Inquiry Officer, he had admitted to having received a copy of the documents 1 to 4 along with the charge-sheet. It was also noted that the statement of the witnesses was recorded in the presence of the petitioner and a copy thereof, was furnished to him. Further, with the counter affidavit, the respondents have filed a letter dated 5th October, 2004 (Annexure R-3), which is in the hand of the petitioner, wherein he had stated that he does not want to state anything against the Inquiry Officer, nor does he want to take any action against him. The above document clearly demonstrates that the procedure followed by the Inquiry Officer while conducting the inquiry was in order and therefore, the submission made by learned counsel for the petitioner that principles of natural justice were not followed in the course of conducting the inquiry proceedings is found to be untenable and is turned down.

9. Coming next to the second argument advanced by learned counsel for the petitioner that the petitioner was served with a minor penalty charge-sheet under Section 11(1) of the Act whereas at the end of the Inquiry, a major penalty of removal from service was inflicted upon him, the said issue is no longer *res integra*, as in identical facts in the case of Union of India Vs. Ghulam Mohd. Bhat, (2005) 13 SCC 228 where the order of removal from service were passed by the CRPF against the respondent therein under Section 11 (1) of the Act, read with Rule 27 of

the Rules, and a challenge was laid by the Union of India to the decision of the Jammu and Kashmir High Court that the order of the respondent's removal from service passed was without justification, the Supreme Court had examined the scope and ambit of Section 11 of the Act and Rule 27 of the Rules and had observed in paragraphs No. 7 & 8 as follows:-

7. *It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.*

8. *It is fairly well settled position in law that removal is a form of dismissal. This Court in Dr. Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.) v. Municipal Corporation of Greater Bombay (AIR 1992 SC 786) explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the*

case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.” (emphasis added)

10. After concluding that Section 11 of the Act may be dealing with minor punishments, the Supreme Court had held that the punishment of dismissal from service can still be awarded under the said provision even if the delinquent is not prosecuted for an offence contemplated under Sections 9 & 10 of the Act, the appeal filed by the Union of India was allowed. In view of the aforesaid decision, that applies on all fours to the present case, the submission made by learned counsel for the petitioner that the punishment of removal from service inflicted upon the petitioner is a major penalty and could not have been imposed, as he was served with a minor penalty charge-sheet, is found to be devoid of merit and is rejected.

11. The third argument advanced by learned counsel for the petitioner is that the respondents could not have taken the petitioner's past record into consideration, as it was not a part of the charge-sheet served upon him, learned counsel for the respondents has rightly relied on a decision

of the Supreme Court in the case of Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775, wherein after taking note of a conspectus of decisions on the scope of judicial review, the Supreme Court had concluded in the following words:-

*“14. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. **The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.**” (emphasis added)*

12. Even in the present case, at the time of passing the impugned order dated 7th October, 2004, the petitioner’s past conduct was taken note of by the Disciplinary Authority and he had recorded as follows:-

“Before this also, in the year 2003 a Departmental Enquiry was conducted against the accused after suspending him for remaining absent from check Roll Call, without permission of the Competent Authority, consuming unauthorized liquor, eve teasing in intoxicated condition and in the offence using un-parliamentary language with senior officers and after departmental enquiry he was awarded a penalty of stoppage of two increments for two years and was warned to be careful. But despite of this, the accused did not bring any improvement in his behavior, and repeated the act of indiscipline which is against the good discipline of the Force. Such member is not desirable to be kept in a disciplined Force, because this will lead bad impression to other members of the Force. Therefore, I the undersigned in terms of vested powers of Sec. 9(b) 10(j) and 11 (1) of the CRPF Act 1949 read with Rule 27 of CRPF Rules 1955, pass the order of following penalties:”

13. It is also pertinent to note that at the time of submitting his reply to the Articles of Charge issued to the petitioner, he had admitted that the fault was at his end and he was mentally disturbed on the fateful day when he went out without information and he had tendered his apology for the said act. A similar statement was made by the petitioner in the course of the inquiry, when he was called upon to give his statement (Annexure R-5).

14. Coming to the last argument of the learned counsel for the

petitioner that Section 9 (b) does not have any application to the facts of the present case unless the petitioner had used criminal force or assaulted his superior officer but the victim in the present case of an equal and same rank, we may note the rule position. Sub-Sections (b) & (j) of Section 9 of the Act that deals with the offences and punishment for more heinous offences, states as below:-

“9. Every member of the force who-

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having or having reason to believe him to be such; or

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(j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to campo or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or”

15. Sub-Section (j) of Section 10 of the Act deals with less heinous offences and states as below:-

“10. Every member of the force who-

(j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person;

16. Even if it is assumed that the provision of Section 9 (b) of the Act could not have been invoked by the respondents against the petitioners,

Section 10 (j) would still apply. The punishment prescribed for an officer under Section 10 is of imprisonment for a term which may extend to one year or with fine, which may extend to three months pay, or with both. Having regard to the provisions of Section 12 of the Act, which contemplates that every person sentenced under this Act to imprisonment may be dismissed from the force and he shall further be liable to forfeiture of pay, allowance and any other moneys due to him, as well as of any medals and decorations received by him, even if the arguments of the learned counsel for the petitioner as noted above is upheld, no useful purpose would be served for the reason that admittedly, he had committed an offence contemplated under Section 10 (j) of the Act, which would have resulted in inflicting on him a punishment for a term that could extend to one year or with fine. The said punishment would certainly stand on a higher footing than the punishment of removal from service that was imposed upon him in the present case.

17. Given the aforesaid facts and circumstances, we are of the opinion that learned counsel for the petitioner has neither been able to point out any arbitrariness, illegality or perversity in the impugned order for seeking interference nor is the punishment imposed upon the petitioner disproportionate to the misconduct alleged against him. We may emphasise that ordinarily, in exercise of the powers of the judicial review, the Court does not interfere with the punishment imposed upon the delinquent by the Disciplinary Authority, neither can it sit in appeal nor can it reappreciate evidence, as such powers are vested with the Disciplinary Authority. Only in cases where the punishment imposed upon the delinquent is highly excessive or shakes the very conscious of

the Court, should the same be interfered with. We do not propose to do so here.

18. In the facts and circumstances of the present case, we are not inclined to hold that the punishment of removal from service awarded to the petitioner is disproportionate to the offence committed by him. In the light of the records produced by the respondents, we are of the opinion that the punishment inflicted upon the petitioner is legal and just and does not deserve any interference.

19. The petition is accordingly dismissed, while leaving the parties to bear their own costs.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 15, 2016

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