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

+ **W.P.(C) 4689/2013**

Reserved on : 21.03.2016

Pronounced on : 18.05.2016

IN THE MATTER OF:

CONSTABLE MANI RAM GAJRAJ

..... Petitioner

Through: Ms. Archana Ramesh, Advocate

versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC, with
Mr. Prashant Ghai and
Ms. Srishti Banerjee, Advocates with
Mr. S.S. Sejwal, Law Officer

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J.

1. The petitioner is aggrieved by the dismissal order dated 30th July, 1979, issued by the Commandant, Group Centre, CRPF, Jharoda Kalan, New Delhi; the order dated 29th August, 1979, passed by the DIG, CRPF rejecting the statutory appeal filed by him under Rule 28 of the Central Reserves Police Force Rules, 1955 and the order dated 5th November, 1979, passed by the IG, CRPF, dismissing his revision petition.

2. The foundational facts of the case are as follows: -

(a) On 22nd June, 1979 at about 2130 hours, some of the members of the Force (about 1700 in number), held an illegal meeting in the CRPF Camp, Jharoda Kalan, New Delhi and took out an unauthorized procession. In the meeting, they decided to abstain from work and paralyse the normal functioning of the Group Centre by systematic disobedience of orders and non-performance of various lawful duties assigned to them. They also made unauthorized collection of funds from the Force personnel.

(b) On 23rd June, 1979, acts of insubordination and misconduct took place in the morning parade. The revolting members of the Force also abstained from discharging their normal duties despite definite orders directing them to report. Subsequently, they came in a mob, went to the main entrance of the Group Centre raising abusive anti-government slogans. They locked the signal shift bus at the gate after members of the Force travelling in the said bus were forcibly pulled down and threatened them with dire consequences if they tried to move to their place of duty. The mob then rushed to the Signal Centre building, disrupted the system of communication and the staff working on the wireless sets were forced to join the mob and desert their lawful duties. The mob proceeded to the GC

office and forced the ministerial staff as well as the superior officers to close the offices in the face of fatal intimidation. The mob then indulged in physical violence against loyal members of the Force and caused injuries to them.

(c) On the next day i.e. 24th June, 1979, the aforesaid members of the Force continued to abstain from their duties, became grossly insubordinate and insolent towards the superior officers and compelled the Commandant of the 1st Signal to come out of his residence after office hours and address the mob.

(d) During the period from 22nd June to 24th June, 1979, the mob kept the main gate of the Group Centre locked and did not allow any other member of the Force or superior officer to come in or go out in discharge of their duties.

(e) On 25th June, 1979, pursuant to the decision of the higher authorities, the Army Units accompanied by the First Class Magistrate, reached the Group Centre in the early hours. The Magistrate announced that the said mob of members of the Force were an unlawful assembly and they should disperse immediately and hand over their weapons and ammunitions to the Army. However, the agitators refused to hand over their weapons or to

disperse and instead, they adopted a violent posture of confrontation with the Army and fired upon them. In the said milieu, the Army resorted to use of force and forced the mob to surrender their arms and ammunitions. In the process, three members of the Force were killed and eight others were injured.

3. In view of the aforesaid incident, a complaint under Sections 9 and 10 of the CRPF Act was registered against the agitators in the court of the Commandant, Group Centre-cum-Magistrate, New Delhi.

4. Ms. Ramesh, learned counsel for the petitioner had submitted that based on the aforesaid incident, the respondents had issued a common order where the petitioner's name was added in paras No.5, 8 and 9, and he was dismissed from service. She stated that the petitioner, who was working as a Constable in the CRPF, was not involved in the incidence of violence and insubordination as he was on leave between 18th April to 18th June, 1979 and was on Quarter Guard duty on 19th and 20th June, 1979. On 21st June, 1979, the petitioner was given a 'C' certificate (sick in quarters) by the CRPF and was advised total rest in the unit lines.

5. It was contended by counsel for the petitioner that the respondents were under an obligation to conduct a departmental inquiry before

dismissing or removing the petitioner from service and assuming that a departmental inquiry could be waived of as an exception, then at least a notice ought to have been issued to the petitioner. She stated that the criminal complaint dated 30th June, 1979, that was made before the court of the Commandant, Group Centre-cum-Magistrate, did not mention the petitioner's name and therefore, he could not have been indicted on the basis of the said complaint.

6. As for the inordinate delay in filing the present petition, the only explanation offered by learned counsel for the petitioner was that the incident in question relates to the year 1979 and the petitioner had approached an advocate after about a decade, in the year 1989, for drafting a suit. Before instituting the present petition, when he had approached the present counsel to verify the status of the said case from the Tis Hazari Courts, it had transpired that no such petition had ever been filed by the previous counsel engaged by the petitioner.

7. *Per contra*, Mr. Ahluwalia, learned counsel for the respondents had submitted that the explanation sought to be offered by the petitioner for his absence between 19th June to 21st June, 1979, is without any basis and a clear attempt to improve upon his case as was set out in the statutory appeal

dated 11th August, 1979 submitted to the DIG, CRPF and the mercy appeal dated 3rd October, 1979 forwarded to the DG, CRPF, against his dismissal order. He submitted that in both the appeals, the only ground taken by the petitioner was that he had been discharging his duties to the satisfaction of the superior authorities and the dismissal order had inflicted a grave hardship on him and his family members and lastly, that he ought to have been offered an opportunity to put forth his defence before the dismissal order was inflicted upon him. Learned counsel also drew our attention to the order dated 29th August, 1979, passed by the Appellate Authority, wherein it was recorded that the petitioner was one of the most active participants in the agitation and he had been nominated as a member of the Agitation Council. The said order records the fact that the petitioner's behaviour was reported to be insolent and he had assaulted loyal workers and forcibly collected money.

8. Learned counsel for the respondents urged that the incident in question was of collective insubordination, indiscipline and dereliction of duty where the mob, including the petitioner herein, had indulged in extending threats, violence, bodily harm and extending criminal intimidation towards loyal members of the Force and given the said circumstances, the

Disciplinary Authority was justified in making the following observations:-

“(i) It would be highly prejudicial to the general interest and discipline of the Force.

(ii) The aforesaid member of the Force individually and collectively would not cooperate or associate themselves with the enquiry proceedings and there is reasonable apprehension of their whereabouts not being ascertainable.

(iii) It is apprehended that the said members of the Force would create various difficulties and impediments to the holding of enquiry leading to situation jeopardizing the life and security of loyal members of the Force in general and the Enquiry Officer and the witnesses in particular.

(iv) It would generate further unrest leading to uncontrollable situation.

(v) It would constitute an irritant and reminder of the unpleasant events to those who are on duty and also would retard the process or normalization in the disciplined Force.”

9. It was submitted on behalf of the respondent that given the facts and circumstances of the case, the provisions of Rule 27cc (ii) of the CRPF Rules, 1955 had been appropriately invoked and the petitioner was rightly dismissed from service.

10. Lastly, learned counsel for the respondents had relied on the decision dated 13.3.1980 of the Constitution Bench of the Supreme Court in **W.P.(C) No.2475/1980** entitled ‘Hanuman Singh vs. Inspector of Police, CRPF’, which relates to the very same incident, wherein the Supreme Court had expressed its satisfaction that under the circumstances noted above, it would not have been reasonably practical to hold any inquiry against the petitioner

in the said case and he was rightly dismissed from the Force.

11. Coming first to the submission made by learned counsel for the petitioner that the petitioner was on leave between 18th April to 18th June, 1979 and on Quarter Guard duty on 19th to 20th June, 1979, and on 21st June, 1979 he was given a 'C' certificate by the CRPF and advised rest in the unit lines, it may be noted that no document has been filed by the petitioner to evidence that he was issued a 'C' certificate or advised bed rest. Furthermore, if the plea of the petitioner is that he had been advised rest in the unit lines and resultantly, could not have been a party to the agitation that had taken place on 21.6.1979, then it would have been expected that he would have mentioned the said position at the time of submitting a Statutory Appeal under Rule 28 of the CRPF Act. However, there is not a whisper made on the said lines in the appeal, a copy whereof has been enclosed with the petition and marked as Annexure P-3. The only plea taken by the petitioner in the said statutory appeal is that the dismissal order would deprive him and his family members of livelihood and that he had been discharging his duties to the satisfaction of his superior authorities, which is neither here nor there.

12. As for the argument that a departmental inquiry ought to have been

conducted by the respondents before dismissing or removing the petitioner from service, facts of the case, as noted above, demonstrate that it was a case where a large number of CRPF Jawans had virtually revolted in the year 1979 and 1773 CRPF Jawans were dismissed from service after dispensing with an inquiry, whereafter 1524 Jawans were reinstated in service for the reason that they had only participated in slogan shouting, but had not resorted to any violence, nor were they the ring leaders of the mob. The records further reveal that the petitioner herein was one of the active participants in the agitation and had been nominated as a member of the Agitation Council. The said fact emerges from a perusal of the order dated 29.8.1979, passed by the Appellant Authority on the appeal dated 11.8.1979, preferred by the petitioner.

13. During the course of hearing, the above fact was pointed out to learned counsel for the petitioner, who was unable to offer any satisfactory explanation for the same. The submission made by her that the complaint dated 30.6.1979 made before the Court of the Commandant, Group Centre-cum-Magistrate did not mention the petitioner's name, is also unacceptable for the reason that while filing a copy of the said complaint as Annexure P-1, the petitioner has failed to place the opening sheet on record, which

would have mentioned the names of all the accused. The title of the document only states, “*Head Constable Vikram Singh and Others*”, but it does not throw any light on who were the others and so, it cannot be asserted that the petitioner was not part of the said complaint, or was not impleaded as an accused.

14. The grievance of the petitioner that a departmental inquiry ought to have been held before dismissing him from service, stands answered by the Disciplinary Authority while passing the dismissal order dated 30.7.1979, the relevant extract whereof has been reproduced in para 8 above. The facts mentioned in the said order clearly reveal the circumstances where the Army had to be called upon to quell the agitation that had become widespread and violent, where threats of bodily harm and criminal intimidation were extended to the loyal members of the Force and their superior officers. In the given background, the Disciplinary Authority was justified in invoking the provisions of Rule 27 cc (ii) of the CRPF Rules, 1955, which prescribes the procedure for awarding punishments and mandates that where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the Rules, the Inspector General or other authority

competent to impose the penalty of dismissal from service on all such members of the Force, may make an order directing that disciplinary action against all of them may be taken by a common procedure.

15. Given the background in which the impugned order was passed, we are of the opinion that it was a fit case where the respondents had every reason to dispense with the departmental inquiry and dismiss the petitioner and other delinquent members of the force straight away, by adopting a common procedure.

16. Our view is fortified by the decision of the Supreme Court in the case of Hanuman Singh (supra), where the petitioner therein was also a member of the CRPF Force personnel, who had indulged in grave acts of indiscipline in respect of same incident that had occurred in 1979 and had challenged his dismissal before the Supreme Court by filing a writ petition. Taking note of the fact that the petitioner therein had indulged in grave acts of indiscipline and insubordination, virtually amounting to an armed rebellion which had threatened to engulf the entire force and the atmosphere generated by the gross breach of discipline on the part of the petitioner therein and his collaborators had created a situation where it would have been impossible to hold a formal inquiry into their conduct, the Supreme Court has opined that

it was not reasonably practical to hold an inquiry before dismissing him from the Force.

17. The aforesaid observations would squarely apply to the facts of the present case as well. It is also a matter of record that several other petitions filed on the same lines, were dismissed in view of the decision of the Supreme Court in the case of Hanuman Singh (supra).

18. We may add here that counsel for the petitioner has not been able to explain the inordinate delay in filing the present petition. Her submission that a plaint was drafted at the instance of the petitioner in the year 1989, but it transpired several years down the line that no such suit had ever been filed by the previous counsel engaged by him, is rather hard to accept. We have perused a copy of the draft plaint filed with the petition and marked as Annexure P-7, but it does not bear the name of the advocate, who had drafted the same, nor do the averments made in para 2 of the said petition, shed any light on the said fact. The present petition has been filed by the petitioner in July, 2013, i.e., after a lapse of 34 years reckoned from the date of occurrence of the incident. There is no explanation in the writ petition as to what steps were taken by the petitioner to pursue the suit which, he claimed he was under an impression, has been filed by his counsel in the Tis

Hazari Courts in the year 1989 and the steps, if any, taken by him later on, to keep himself posted about its status and remain in touch with his counsel to verify its progress. Even if it is assumed that the petitioner had taken any legal steps in 1989, then it remained his duty to diligently pursue the matter with his counsel and keep himself apprised of its status which he obviously failed to do. The petition is woefully lacking in a satisfactory explanation for the enormous delay in filing the present petition and what has been sought to be offered as an explanation, is too perfunctory for us to accept.

19. Given the aforesaid facts and circumstances, we are of the opinion that counsel for the petitioner has not been able to demonstrate any facts that would deserve interference in judicial review. We therefore decline to set aside the dismissal order passed against the petitioner. Accordingly, the writ petition is dismissed not only on the ground of delay and laches, but also on merits.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

MAY 18, 2016
s/sk/rkb/ap