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

+ W.P.(C) 952/2016

SANDEEP SINGH

Through

..... Petitioner

Mr. Shanker Raju & Mr. Nilansh
Gaur, Advocates

versus

UNION OF INDIA & ANR.

Through

..... Respondents

Ms. Saroj Bidawat, Sr. Panel
Advocate

Mr. S.S.Sejwal, Law officer, CRPF

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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09.05.2017

The petitioner - Sandeep Singh, Constable (G.D.), with the Central Reserve Police Force (CRPF), was granted 13 days of casual leave from 24.5.2012 to 8.6.2012, on account of the death of his wife.

2. The petitioner on reaching his house was arrested on 24.5.2012/26.5.2012 in FIR No. 172/2012 registered at Police Station Jaitpur, New Delhi under Section 304B/498A/34 of the Indian Penal Code. He remained in judicial custody till 8.6.2014. The petitioner

acquitted by the Sessions Court vide judgment dated 13.5.2014. It is stated at the Bar that the State and the complainant have not preferred any appeal against the judgment of acquittal, which has become final

3. Departmental proceedings were initiated against the petitioner vide charge-sheet dated 13.8.2012, on the articles of charge :

“ARTICLE-I

That, said No.045183068 CT/GD Sandeep Singh of B/5 Bn CRPF while functioning as CT/GD has committed an act of misconduct in his capacity as a Member of the Force under section 11 (1) of CRPF Act, 1949 in that he was sanctioned 13 days Casual Leave w.e.f. 24/05/2012 to 08/06/2012 with permission to avail 27/05/2012 & 03/06/2012 being Sunday and 04/06/2012 being RH. He has to report for duty on 09/06/2012 (FN). But did not join duty, which is prejudicial to good order and discipline of the force.

ARTICLE-II

That, said No.045183068 CT/GD Sandeep Singh of B/5 Bn CRPF while functioning as CT/GD has committed an act of misconduct in his capacity as a Member of the Force under section 11 (1) of CRPF Act, 1949 in that he was sanctioned 13 days Casual Leave w.e.f. 24/05/2012 to 08/06/2012 with permission to avail 27/05/2012 & 03/06/2012 being Sunday and 04/06/2012 being RH and got involved in criminal case FIR No.172/2012, U/s 498A/304B IPC of Jait Pur, P.S., Delhi is registered against him and did not informed about his arrest to his superior offices of Unit/Department till date 04/08/2012 which is prejudicial to good order and discipline of the force.”

On the basis of the inquiry report dated 30.6.2013, the disciplinary authority held that the petitioner was granted casual leave of 13 days till 8.6.2012 from 24.5.2012 on account of sudden demise

of his wife. The petitioner had overstayed the sanctioned leave with effect from 9.6.2012 without prior sanction/permission of the competent authority and had suppressed his involvement in the criminal case and subsequent arrest by the Civil Police. The petitioner had therefore acted in a manner unbecoming of a Government servant, which was prejudicial to good order and discipline of the force. Consequently, the petitioner had committed serious misconduct. Penalty of dismissal from service with effect from date of order dated 30.6.2013 was imposed on the petitioner. Paragraphs 7 and 8 of the order dated 30.6.2013 passed by the Disciplinary Authority read :-

“7. After having carefully gone through the entire proceedings of Departmental Enquiry, I come to the conclusion that the delinquent No. 045183068 CT/GD Sandeep Singh of B/5, Bn, CRPF proceeded on 13 days Casual Leave w.e.f. 24.05.2012 to 08.06.2012 with permission to avail 27.05.2012 and 03.06.2012 being Sunday and 04.06.2012 being RH, due to sudden demise/death of his wife. He overstayed from sanctioned leave w.e.f. 09.06.2012 (FN) without prior sanction/permission of the competent authority and suppressed the facts of his involvement in a criminal case and subsequent arrest by Civil Police, South East District, Jaitpur Police Station, New Delhi on 24.05.2012 in Criminal Case FIR No. 172/2012 u/s 498-A/304-B IPC. Thus, the said Constable/GD acted in a manner of unbecoming of a Government servant. He committed a serious misconduct in his capacity as a Member of the Force, which is prejudicial to good order and discipline of the Force. The DE was held strictly as per the laid down

procedure. I fully agree with the report of the Enquiry Officer that No. 045183068 CT/GD Sandeep Singh of B/5 Bn, CRPF was overstaying from sanctioned leave without orders of competent authority and suppressed the fact of his involvement in a criminal case and subsequent arrest by civil police to the competent authority. He totally failed to submit either any authentic documentary evidence or any new facts for his defence.

8. I have minutely perused the DE proceedings and the exhibits produced by PWs. The articles of Charge I and II levelled against No. 045183068 CT/GD Sandeep Singh of B/5 Bn, CRPF stands proved beyond any doubt and he was pleaded "NOT GUILTY" at the preliminary hearing of the inquiry. This act of misconduct on his part in the capacity as a Member of the Force is a punishable offence under section 11 (1) of the CRPF Act, 1949. No. 045183068 CT/GD Sandeep Singh of B/5 Bn, CRPF has committed serious offence and tarnished the image of the Force does not deserve any lenient view and as such his further retention in service is detrimental to the good order and discipline of the Force. I, therefore, in exercise of powers vested upon me under section 11 (1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955, imposed upon No. 045183068 CT/GD Sandeep Singh of B/5 Bn, CRPF the penalty of "DISMISSAL FROM SERVICE" with effect from the date of issue of this order, i.e., 30.06.2012 (AN). The suspension period of No. 045183068 CT/GD Sandeep Singh of B/5 Bn, CRPF w.e.f. 26.05.2012 to 30.06.2013 total 401 days is ordered to be treated "AS SUCH" and he will not be entitled for any pay and allowances other than what he has already received as Subsistence Allowance. His 13 days C/L period w.e.f. 24.05.2012 to 08.06.2012 with permission to avail 27.05.2012 and 03.06.2012 being Sunday is hereby cancelled. He was arrested by Civil Police and placed under custody of Tihar Jail w.e.f. 26.05.2012, accordingly individual was deemed to have been placed under suspension w.e.f. 26.05.2012. His remaining C/L period of 02 days w.e.f. 24.05.2012 to 25.05.2012 is regularized as 2 days E/L."

4. The petitioner preferred an appeal, which was dismissed by the Appellate Authority vide order dated 8.10.2013. The Appellate

Authority held that the evidence and statements of witnesses showed that the petitioner had not informed his batallion about arrest. The letters sent to his permanent address were not delivered. The family members of the petitioner also did not disclose the facts pertaining to the detention and arrest of the petitioner to the postal department. On the other hand, the postal department had recorded that the addressee was not found to be present. The findings recorded by the Appellate

Authority in the order dated 8.10.2013, read :-

“The allegations levelled against bal No. 045183068 CT/GD Sandeep Singh are totally proved. In this respect statements of witnesses and evidences are available in the Departmental Enquiry. Bal No. 045183068 CT/GD Sandeep Singh did not inform 5B Battalion of Central Reserve Police Force which has been stated by bal No.045183068 CT/GD Sandeep Singh during Departmental Enquiry. Letters sent by 5B Battalion to his permanent address has not been taken from the Postal Department. His family members also did not disclose the facts to the Postal Department that he is in Tihar Jail now. Postal Department has given this remark to 5B Battalion that addressee is not there and his family members did not disclose that he is in jail. It is therefore, clear that bal No.045183068 CT/GD Sandeep Singh and his family members willingly hide that Bal NO. 045183068 CT/GD Sandeep Singh is in Jail on charges of murder. This defence of bal NO. 045183068 CT/GD Sandeep Singh is also not correct because he was preparing his appeal while staying in the Jail custody. The Administrative Office has gone through a letter written by his father-in-law and after thorough investigation, came to know that bal NO. 045183068 CT/GD Sandeep Singh is in Jail on charge of murder of his wife. The allegations of bal NO. 045183068 CT/GD Sandeep Singh are also wrong that during proceedings of Departmental Enquiry impartial view was

not considered because there was no proper documents in this regard has not been produced in respect of presence of Enquiry Officer in the Jail. Typewriter and witnesses were not taken during Departmental Enquiry.”

5. The aforesaid orders in the disciplinary proceedings were passed before the judgment of acquittal in the criminal case on 13.5.2014. The Disciplinary Authority and the Appellate Authority did not have the benefit of the judgment of acquittal dated 13.5.2014, which has attained finality.

6. The last order under challenge, however, was passed by the Revisional Authority in September, 2015 (the date of the order is not indicated/mentioned). This order was passed on the revision petition under Rule 29 of the Central Reserve Police Force Rules, 1955. The revisional authority condoned the delay in filing of the petition and proceeded to decide the same on merits, observing : -

“7. Now, at the stage of revision petition, he has not brought out any new facts, cogent reasons or material evidence worth consideration. The main submission of the petitioner is that he was falsely implicated in the Criminal case due to unfortunate death of his wife and due to his confinement in Jail, he could not join duty after termination of leave. As per GOI decision No.2 below Rule 3 of CCS (Conduct) Rules, 1964, “it shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though, he subsequently been released on bail. Failure on the part of any Government servant to so inform his official

superior will be regarded as suppression of material". In the instant case, the petitioner, however, was charge-sheeted for OSL and for concealing the fact about his Arrest/detention in Tihar Jail to the department. Though, he was acquitted by Hon'ble Court vide Judgment dated 13/05/2014, it shall not justify his failure in informing the fact of his arrest/detention to the department. It is immaterial whether he was falsely implicated in the criminal case or otherwise or acquitted by the Court of Law, but, it is his responsibility to intimate the factual position to the department immediately after his arrest/detention. Hence, the punishment of Dismissal from service imposed upon the petitioner by the disciplinary authority vide order dated 30/06/2013 and the order dated 08/10/2013 of the appellate authority upholding the same commensurate to the gravity of offence committed by the petitioner.

8. Therefore, by virtue of powers vested in me under Rule 29 of CRPF Rules, 1955, I find no cogent reasons to interfere with the Order No. P.VIII-5/2012-5-EC-2 dated 30/06/2013 of Commandant – 5 Bn and Order No. R. XIII – 12/2013-EC-3 dated 08/10/2013 of DIGP, CRPF, Hyderabad Range and confirm the action taken against No. 045183068 Ex-CT/GD Sandeep Singh of 5 Bn CRPF by the disciplinary as well as appellate authority and reject his revision petition being devoid of merit."

7. Counsel for the petitioner, assailing the aforesaid order, highlights that on 24.5.2012, he was accompanied with two officials of his Battalion and was arrested by the Civil Police in the presence of the said officials. In the given circumstances, the contention that the petitioner had not informed the officials about his arrest, was inconsequential and rather technical. Our attention was also drawn to question No.9, which, was put to the petitioner during his examination

in the disciplinary proceedings, which by itself, indicates that the petitioner had informed the Commandant through the police on duty. The petitioner had drawn our attention to the statement of Havaldar (G.D.) Hari Bhaskar, who in the departmental proceedings, had stated that on 27.6.2012 he had come to know through a wireless message that the petitioner was in Tihar Jail No.4.

8. Learned counsel for the respondent on his part relies upon Government of India decision No.2 below Rule 3 of the Central Civil Services (Conduct) Rules, 1964, which has been quoted in para 7 of the order passed by the Revisional Authority.

9. Having considered the factual matrix and the submissions, we find that this is a case of miscarriage of justice. On the question of wilful abstention from duty, the charge must fail. The reason is obvious. The petitioner was under detention upon arrest on 24th or 26th May, 2012 till 13th May, 2014, when he was acquitted. Abstention in this period cannot be treated as of wilful or deliberate abstention from duty. The petitioner was detained and therefore unable to attend and report for duty. Possibly, this charge was held as proved as the criminal prosecution was pending, when the

Disciplinary Authority had passed the order of punishment of dismissal on 30.6.2013 and the Appellate Authority had dismissed the appeal on 8.10.2013. On the second charge also, the reasons given by the authorities are perverse and unsustainable. No reasonable person would come to the conclusion reached. Question no.9 put to the petitioner in the course of examination, is as under :

“You informed your Commandant through police on duty but why you have not intimated your department that you are in Jail?”

The question itself indicates that the petitioner had informed the Commandant through police on duty. The petitioner in response had stated, as under :

“I have already told earlier that I was disturbed and secondly my mobile and the mobiles of my parents were in the Police custody so it was impossible for me to intimate through any media.”

Havaldar (G.D.) Hari Bhaskar during the inquiry proceedings, had stated that on 27.6.2012, he came to know through wireless message that the petitioner was in Tihar Jail No. 4. Thus, there is clear admission by the respondents that they were aware and had knowledge that with effect from 27.6.2012, the petitioner was in Tihar Jail. The aforesaid facts indicate and reflect that the respondents had information and knowledge of the petitioner's arrest. In fact the

petitioner has pleaded that he was taken into custody on 24.5.2012 in the presence of officers of his battalion, though the formal arrest is shown on 26.5.2012. There is some dispute on the said aspect and as to the date on which the petitioner was actually arrested by the Civil Police, but in given factual matrix it is apparent that the respondents were aware and had knowledge of the arrest.

10. The petitioner was arrested. Obviously, the petitioner was under tremendous mental stress and agony on the said account and also on account of death of his wife.

11. The petitioner cannot be held responsible and made liable for what was communicated and stated by his family members to the postal authorities or what was recorded by the postman on two letters sent by the respondents dated 13.6.2012 and 26.6.2012. The statements of the postman or the family members were not recorded in the disciplinary proceedings. Notably, the second letter dated 26.6.2012 was posted one day before the information dated 27.6.2012 regarding the arrest of the petitioner was received and recorded by Havaldar (G.D.) Hari Bhaskar.

12. In these circumstances, we are not inclined to accept the

contention/submissions of the respondents to the contrary. Even otherwise, we find that the aforesaid punishment of dismissal from service deserves to be struck down, as it suffers from extreme disproportionality, which shocks one's conscience. We do also not deem it appropriate to remit the matter for fresh consideration in view of the factual matrix of the case, which is quite clear and beyond doubt. The fact that the petitioner even after acquittal, has had to fight this litigation for reinstatement is a punishment and cause for financial loss.

13. Accordingly, we allow the present writ petition and set aside the order of punishment of dismissal from service dated 30.6.2013 passed by the Disciplinary Authority affirmed by the Appellate Authority vide order dated 8.10.2013; and, the Revisional Authority's order passed in September, 2015. The petitioner would be reinstated in service within one month from the date of receipt of a copy of this order.

14. The respondents would pass consequential order under applicable rules with regard to the treatment of the period from the date of arrest/abstention from duty till the date of re-joining. The

said consequential order would be passed within a period of two months from the date of receipt of copy of this order. In case, the petitioner is aggrieved by the said order, he would be entitled to challenge the same in accordance with law. We hope and trust that the Authorities would take into consideration the relevant facts while passing the order.

15. The writ petition is disposed of, with no order as to costs.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

MAY 09, 2017/rc