

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVIL

WRIT PETITION No.11570 of 2002

ORDER

This writ petition is filed seeking the following relief:

“ To issue a writ of Mandamus or any other appropriate writ or order or direction in the nature of a writ declaring the order of the 2nd respondent in Memo.No.P.VIII-1/98 Estt.3(KW) dt.2.9.98 as confirmed by the order of the 2nd respondent in Memo.No.R.XIII 22/98 dt.23.3.2000 as highly illegal, irregular, arbitrary and made in gross violation of the principles of natural justice and in any event is being grossly disproportionate to the charge and to set aside the same and to further direct the respondents to reinstate the petitioner into service with all consequential benefits with full back wages and to pass such other or further orders or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

During the pendency of the writ petition, the petitioner filed WPMP.No.35495 of 2015 seeking amendment of the prayer to the following effect:

“.. to permit the petitioner herein to insert above 'para No.4 (a)' after para No.12 of the writ affidavit as para No.12(a) and to amend the prayer in the above writ petition by incorporating the words 'as without jurisdiction' after the words 'dt.23.03.2000' and before the words 'highly illegal' and to pass such other order or orders as are necessary in the interest of justice.”

The amendment application was ordered by this Court on 27.8.2015.

Heard Sri J.V.Prasad, learned counsel for the petitioner and Sri K.Lakshman learned Assistant Solicitor General for the respondents.

It has been contended by the petitioner that he was appointed as Sepoy on 20.7.1991 in the Central Reserve Police Force. While he was discharging his duties in Jammu and Kashmir, on 17.2.1997, he was instructed to go to Base Hospital-I C.R.P.F. New Delhi as an attendant to look after the injured patients and he reported at the Base Hospital-I on 18.2.1997 and thereafter he was sent back. It has been further contended by the petitioner that after discharging his duties as entrusted to him, he received a phone call from his residence that his pregnant wife was thrown out of the house and as his presence was necessary to attend to his wife, he went to his native place and reported to duty only on 5.9.1997. It is further contended by the petitioner that the respondents construed his act as misconduct and initiated disciplinary proceedings by issuing a charge sheet for the unauthorized absence from 20.2.1997 and after conducting a detailed departmental enquiry, he was dismissed from service vide proceedings dated 2.9.1998 of the Deputy Inspector General of Police-2nd respondent. Thereafter, the petitioner had preferred an appeal to the appellate authority and the appellate authority vide orders dated 20.9.1999 rejected the appeal. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that as per Rule 27 of the Central Reserve Police Force Rules, 1955, it is the Commandant who is the disciplinary authority. Instead of the disciplinary authority imposing the punishment of dismissal, a

superior officer i.e. D.I.G. had imposed the punishment of dismissal and, therefore, the orders passed by the Deputy Inspector General of Police I.G. are without jurisdiction. Learned counsel further contended that the punishment of dismissal from service is shockingly disproportionate to the charges leveled against the petitioner and, therefore, the punishment of dismissal from service is liable to be set aside.

Sri K.Lakshman, Assistant Solicitor General contends that the disciplinary authority had issued the charge sheet and the superior authority to the disciplinary authority had imposed the punishment and no irregularity had been committed by the respondents in imposing the punishment of dismissal on the petitioner and the appellate authority had considered the appeal of the petitioner and passed a speaking order rejecting the appeal and therefore, no interference is called and the writ petition is liable to be dismissed.

This Court having considered the submissions made by both the parties is of the considered view that it would be appropriate to extract Rule 27 of the CRPF Act, which is as follows:

“CHAPTER - VI - DISCIPLINE

6. Procedure for the Award of Punishments:

(a) The Punishments shown as items 1 to 11 in column 2 of the table below may be inflicted on non-Gazetted Officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7: ((GSR-631 dtd. 27/8/83)

2{TABLE

Sl.No	Punish-ment	Subedar (Inspector)	Sub Inspector	Others except Const & enrolled	Consts. & enrolled followers	Remarks
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				followers		
1	2	3	4	5	6	7
1	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry
2	Reduction to a lower time-scale of pay, grade, post or service.	DIGP	DIGP	Comdt.	Comdt.	-do-
3	Reduction to a lower stage in the time scale of pay for a specified period	DIGP	DIGP	Comdt.	Comdt.	-do-
4	Compulsory retirement	DIGP	DIGP	Comdt.	Comdt.	-do-
5	Fine of any amount not exceeding one month's pay and allowances	DIGP	DIGP	Comdt.	Comdt.	-do-
6	Confinement in the Quarter Guard exceeding seven days but not more than twenty-eight days with or without punishment drill or extra guard fatigue or other duty.	-	-	-	Comdt.	-do-
7	Stoppage of increment	DIGP	DIGP	Comdt.	Comdt.	
8	Removal from any office of special emolument in the Force	DIGP	DIGP	Comdt.	Comdt.	May be inflicted without a formal departmental enquiry
9	Censure	Comtd.	Comtd.	Asst.Co	A.Com-	

				mtd. or Coy Comtr.	td. Or Coy Comdr	
10	Confinement to Quarter Guard for not more than seven days with or without punishment or extra guard fatigue or other duty	-	-	-	Comtd.	
11	Confinement to quarters lines, camp, punishment drill, fatigue duties etc. for a term not exceeding one moth	-	-	-	Comtd.	

Note:1 When the post of Deputy Inspector General remains unfilled for a period of over one month at a time the Commandant shall exercise the powers of punishing the Subedar sand Sub Inspectors except the powers of ordering dismissal or removal from the force.

Note:-2 When the post of Commandant remains unfilled for a period of over one month at a time consequent on the incumbent proceeding on leave or otherwise, the Assistant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.' (sub rule (a) and table substituted vide GSR 47 dated 5.1.67. (GSR 75 dated 14.1.80 and (GSR 631 dated 10.8.83)

Explanation:- (a) Dismissal of member of the Force precludes him from being re-employed in Government service while removal of any such member from the Force shall not be disqualification for any future employment (other than an employment in the Central Reserve Police Force) under the Government.

(b) When non-gazetted officers or men of the various ranks are to be punished for any offence; a departmental enquiry, if necessary under clause(a) shall be held by the Commandant provided that when the charge is against an officer of the rank of Subedar(Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar(Inspector) or a Sub-Inspector considers that a punishment under items (1) to (5) and (7) of the Table is called for, he shall complete the departmental proceedings and forward the same to the Deputy Inspector General for orders.(GSR 631 dated 27.8.1983)

(c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the

accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If he accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty". he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so.

(7) **DELETED** vide GSR 75 dated 26.1.80

(cc) Notwithstanding anything contained in this rule:

(i) Where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge: or

(ii) Where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that is not reasonable practicable to hold an enquiry in the manner provided in these rules: or

(iii) Where the Director General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such order thereon as it deems fit.

1(ccc) When a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General. (Inserted vide SO 3117 dated 15.7.71)

(d)(1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General or any 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 in a common proceeding. (GSR 60 dated 20.10.71 and GSR 1056 dated 13.12.86)

Note- Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

(2) such order shall specify-

- (i) the authority which may function as the disciplinary for such a common proceeding;
- (ii) the penalties specified in the table of sub-rule (a) above which such disciplinary authority shall be competent to impose;
- (iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose; and, (iv) that the enquiry shall be held in accordance with the provisions of sub rule (a) and sub rule (c)".

It is clear from the above that when the post of Commandant remains unfilled for a period of over one month at a time consequent on the incumbent proceeding on leave or otherwise, the Assistant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force. Therefore, no illegality can be attributed if an officer who is superior to the disciplinary authority had passed the punishment order of dismissal from service.

Rule 27 of the Central Reserve Police Force Rules makes it clear that the disciplinary authority and over and above officers can impose the punishment of dismissal/removal from service but not lower authority than that of the disciplinary authority can

impose the punishment. The argument of the learned counsel that Deputy Inspector General of Police-2nd respondent is not competent authority is not available to the petitioner since superior authority to the disciplinary authority can impose the punishment. Further with regard to the contention that the punishment imposed is shockingly disproportionate to the proved misconduct, the unauthorized absence of the petitioner is a grave charge and since he is working in a disciplined force, he cannot remain absent unauthorizedly exceeding more than six months. Admittedly, in the instant case, the petitioner was absent for more than six months which is definitely a serious charge. Therefore, this Court finds that there are no merits in the writ petition and the punishment is commensurate to the charges leveled against the petitioner.

Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 21/08/2018

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