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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 14th December, 2017.
Date of Decision: 05th January, 2018.

+ W.P.(C) 3810/2016
SUNIL KUMAR Petitioner
Through: Mr. Ankur Chhibber, Advocate.
versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Amrit Pal Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The petitioner, a Sub-Inspector in the CRPF, has prayed for issuance of a writ of certiorari, for quashing the order dated 29.01.2015 passed by the respondent no.4/ Deputy Inspector General of Police, CRPF, whereby a penalty of stoppage of one increment for one year has been imposed on him. He has also prayed for quashing of the appellate order dated 01.05.2015 and the revisional order dated 12.03.2016 whereby his statutory appeal and revision petition have both been dismissed by the respondents. The petitioner has also prayed for restoration of his withheld increments.

2. The petitioner, who had initially joined the CRPF as an ASI/Clerk on 16.08.1990, was thereafter selected as a SI/Steno on 20.06.1991 by way of a Limited Departmental Competitive Exam,

whereupon he was allotted a new force number, different from the force number which was already allotted to him upon his initially joining the CRPF as an ASI/Clerk. It appears that due to the allotment of two different force numbers to him, two separate GPF accounts in respect of the petitioner were being maintained even though as per the rules, only one GPF account ought to have been maintained.

3. In October 2005, the petitioner applied for part withdrawal of a sum of Rs. 6 lacs from his GPF account and the same was duly passed by the auditor based on the balance available in his GPF account, but while booking this casualty of withdrawing Rs.6 lacs for the quarter ending December 2005, the Pay and Accounts Office (herein after referred to as PAO) of the respondents/CRPF inadvertently debited only a sum of Rs. 60,000/- instead of Rs. 6 lacs from the petitioner's GPF account.

4. While the petitioner submits that he was unaware of this error that had crept in the entry, it is the stand of the respondents that immediately upon receipt of the GPF account slip for the year 2005-06, the petitioner ought to have brought these facts to the knowledge of all concerned and thereby allege that he had deliberately concealed this information.

5. In January 2008, the petitioner again applied for part withdrawal of a sum of Rs. 8,50,000/- from his GPF account and the same was approved by the concerned auditor at the PAO of the respondents/CRPF. In June 2011, when the petitioner once again applied for withdrawal of a further sum of Rs.3,90,000/-, the auditor

at the PAO got suspicious about the veracity of balance in the petitioner's GPF account. Upon verification, it was found that an excess amount has been drawn from the petitioner's account, as according to the GPF ledger, there was less amount in his account.

6. Upon discovery of the above facts, the respondent no.4/DIG, Group Centre, CRPF issued an office memorandum dated 13.12.2011, recommending that stern action needed to be initiated against the petitioner and the concerned officials of the PAO, who were identified as Sub-Inspector (Ministerial) Sanjay Kumar and Sub-Inspector (Ministerial) Rakesh Singh, for their acts of omission and commission which had caused a huge loss to the exchequer. Respondent no.4 also directed that the recovery of the excess amount so overpaid to the petitioner, be made alongwith interest as well as penal interest. We are informed that the said amount, totaling to a sum of Rs. 4,06,055/- stands recovered from the petitioner's salary.

7. On 21.10.2013, after having ordered recovery from the petitioner, the respondents issued a memorandum, charging him of deliberately drawing an excess amount to the tune of Rs. 4,26,860/- from his account and proposing to hold a Departmental Inquiry against him. The petitioner submitted his reply dated 23.10.2013, which was not found satisfactory and on 13.01.2014 inquiry proceedings were initiated against him.

8. It is the case of the petitioner that the Inquiry Officer vide his report dated 27.10.2014, while holding the charge against him as 'Not Proved', came to the conclusion that the lapse had occurred only due

to the negligence of the staff of PAO and it could have been avoided if a correct GPF account had been issued to him.

9. When the aforesaid Inquiry Report was submitted to the Disciplinary Authority i.e. the respondent no.4, vide his letter dated 18.12.2014, returned the inquiry proceedings to the Inquiry Officer by referring to certain shortcomings in the proceedings and directed him to rectify the same and resubmit the proceedings within 7 days. The Inquiry Officer accordingly reconsidered the matter and submitted his report once again reiterating the findings given by him in his report dated 27.10.2014, whereby he had given a categorical finding that the charge against the petitioner was 'Not Proved'.

10. On 03.01.2015, the petitioner was served with a disagreement note asking him to submit his reply within 15 days. As it is with respect to this disagreement note that Mr. Chhibber, learned counsel for the petitioner has confined his arguments, we deem it appropriate to reproduce hereinbelow the relevant portion thereof:-

“After taking into account all pros and cons of the whole spectrum, I am of the opinion that the charged official has made excess part withdrawal from his GPF account advertently and he cannot be acquitted from the charge leveled against him. Therefore, a copy of inquiry report along with disagreement note is hereby served to you with direction to submit your reply within 15 days from the date of receipt of this letter. If you fail to submit your reply within given time limit, final orders will be issued ex-parte.”

11. The petitioner submitted his detailed reply to the disagreement note wherein, while stating that the Inquiry Report was fair, lawful

and correct, he reiterated that there was no evidence to hold him guilty and prayed that he be absolved from the charge.

12. Vide order dated 29.01.2015, which has been impugned in the present petition, the respondents rejected the petitioner's representation and while holding him guilty of having knowingly made excess withdrawal from his GPF account, imposed on him a penalty of stoppage of one increment for one year with cumulative effect.

13. Arguing for the petitioner learned counsel has confined his challenge to the disagreement note and the penalty order by contending that a bare perusal of the disagreement note clearly shows that the same was conclusive in nature. He submits that while issuing the said note, the Disciplinary Authority had already made up his mind and held the petitioner guilty. He, therefore, submits that the procedure adopted by the Disciplinary Authority is contrary to the procedure elucidated by the Supreme court in the cases of **Punjab National Bank and Others v. Kunj Behari Mishra** reported as **(1998) 7 SCC 84** and **Yoginath D. Bagde v. State of Maharashtra and Anrs** reported as **(1999) 7 SCC 739**. Reliance has also been placed on a decision of this Court in the case of **Rajpal Singh v. UOI & Ors.** bearing **W.P.(C) No.19696/2005**.

14. Mr. Amrit Pal Singh, learned counsel for the respondents is unable to refute the aforesaid legal position. He, however, submits that the petitioner had intentionally made a false withdrawal from his GPF account whereas he ought to have informed the department of the excess amount credited into his GPF account, which he had

concealed knowingly. He therefore prays for dismissal of the writ petition.

15. A bare perusal of the disagreement note dated 03.01.2015, as reproduced hereinabove, clearly shows that after examining the inquiry proceedings the disciplinary authority had not only disagreed with the Inquiry Report, but had conclusively opined that the petitioner had made excess withdrawals from his GPF account and he could not be acquitted from the charge leveled against him.

16. The aforesaid categorical findings of the Disciplinary Authority clearly shows that instead of taking a tentative view while issuing a disagreement note, the Disciplinary Authority had taken a final decision that the charge against the petitioner stood proved. In fact, the Disciplinary Authority has gone to the extent of holding that the petitioner could not be acquitted from the charge leveled against him. In these circumstances, we have no hesitation in holding that the disagreement note was merely an eyewash as the Disciplinary Authority had already made up its mind to hold the petitioner guilty.

17. In our aforesaid conclusion, we are fortified by the decision of the Supreme Court in the cases of **Punjab National Bank (supra)** & **Yoginath D. Bagde (supra)** and by the decision of this Court in the case of **Rajpal Singh (supra)**, on which reliance has been placed by the learned counsel for the petitioner. In the case of **Yoginath D. Bagde(supra)**, the Supreme Court had, while dealing with similar facts held as under:-

“37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the

learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (1998 7 SCC 84) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.” (emphasis added)

18. For the aforesaid reasons, the impugned order dated 29.01.2015 imposing the penalty on the petitioner stands vitiated and is accordingly quashed and set aside. As a consequence thereof, the order passed by the appellate authority and revisional authority are also quashed as the same do not deal with the aforesaid vital aspect of the matter.

19. While quashing the impugned penalty orders and the disagreement note, the matter is remanded back to the Disciplinary Authority for issuance of a fresh disagreement note if so advised, after following the legal principles laid down in the aforesaid decisions of the Supreme Court. It is however made clear that we have not dealt with merits of the charge leveled against the petitioner

and after issuing a fresh disagreement, if so advised, the respondents would be free to take appropriate action as per law. In case the petitioner feels aggrieved by the decision taken, he will be at liberty to take legal recourse, as available to him.

20. The writ petition is disposed of in the above terms, with no order as to cost.

REKHA PALLI, J

HIMA KOHLI, J

JANUARY 05th, 2018

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