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

Reserved on: 12th December, 2019

Decided on: 24th December, 2019

W.P.(C) 1525/2019

PRAKASH KUMAR DIXIT

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Ashish Rai, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The Petitioner who is a Deputy Commandant in the Central Reserve Police Force ('CRPF') has filed this petition seeking the quashing of an order dated 16th October, 2018 removing him from service.
2. The background facts are that the Petitioner was appointed as an Assistant Commandant in the CRPF on 15th August, 1986. On completion of his Specialised Training under the Research Analysis Wing, he re-joined his Battalion in March, 1988.
3. On 6th September, 1989 the Respondents issued a charge sheet in which

two Articles of Charge were framed against the Petitioner, which read as under:

i) While functioning as Officer Commanding-B of the 30th Battalion, CRPF and deployed in a sensitive area of Punjab between November, 1987 to 7th April, 1988, he handed over charge to Inspector Harbans Lal on 7th April, 1988 without approval from the competent authority and left the camp. Thus, he violated Rule 3(1) (ii) and (iii) of the CCS (Conduct) Rules, 1964.

ii) He wilfully remained absent without proper leave from 7th April, 1988 (AN) to 9th June, 1989 i.e. 428 days, thereby violating Rule 3 (1) (ii) and (iii) of the CCS (Conduct) Rules, 1964.

4. The Petitioner submitted a reply on 24th September, 1989 denying both the charges. The Inquiry Officer ('IO'), who was an Additional DIGP, CRPF held the charges proved by his report which was communicated to the Petitioner on 5th July, 1993. The Petitioner submitted his representation against the report on 18th July, 1993.

5. The Union Public Services Commission ('UPSC') was approached for its advice on the penalty to be imposed on the Petitioner. By a letter dated 15th March, 1995, the UPSC suggested imposing the penalty of "removal from service" on him. Subsequently, by an order dated 10th July, 1995 the penalty of removal from service was awarded to the Petitioner by the Disciplinary Authority ('DA').

6. On 8th September, 1995 the Petitioner submitted an appeal under Rule 27 of the CCS (Classification, Control and Appeal) Rules, 1965 [‘CCS (CCA) Rules] for the consideration of the Appellate Authority (‘AA’). By an order dated 17th April, 1996 the representation was rejected.

7. The Petitioner challenged his removal and the summary rejection of the above appeal in W.P.(C) No. 947/1996 in the Indore Bench of the High Court of Madhya Pradesh. By a judgment dated 16th February, 2000, the said writ petition was allowed with a direction to the Respondents to re-consider the Petitioner’s appeal under Rule 27 of the CCS (CCA) Rules, 1965 and pass a reasoned order in accordance with law.

8. For the second time on 12th June, 2000 the Petitioner’s appeal came to be rejected, leading him to file W.P. (C) No. 1950/2000. This time the Indore Bench dismissed the said writ petition by an order dated 9th October, 2000. The Petitioner’s appeal against the said judgment being LPA No. 13/2000 came to be allowed by the Division Bench (DB) of the High Court of Madhya Pradesh by an order dated 31st August, 2001. The DB remanded the writ petition to the learned Single Judge to decide it afresh.

9. On the matter being remanded, the Respondents contended before the learned Single Judge that since the order of dismissal from service had been passed “under the name of the President”, the bar under Rule 22 would be attracted and accordingly, Rule 29 and not Rule 27 would be applicable to the Petitioner. It was argued that as per Rule 29, the Petitioner was only entitled to a revision and that accordingly, his appeal was considered as a

review. The learned Single Judge by a judgment dated 1st August, 2006, rejected this submission and set aside the order dated 12th June, 2000 in the following terms:

“8. Since direction of this court was to consider the appeal as per Rule 27 of the Rules, therefore it cannot be said that since the order was in the name of, the President, therefore, as per Rule 22 of the Rules, appeal was not maintainable. The direction of this Court was biparte order and in the circumstances the case of the petitioner was required to be considered as per Rule 27 of the Rules. In view of this, petition stands allowed.”

10. Against the aforesaid order of the learned Single Judge, the Respondents filed Writ Appeal No. 195/2007, which was allowed by the DB on 15th June 2009 on the basis that the case at hand was “not a fit case even in the first instance where the appellate authority should have been called upon to decide the departmental appeal” as the order of removal had the approval of the President. The DB took the view that the matter should have been “tried in the writ itself in the first instance on merits by the writ court” and accordingly, remanded the case to the writ court for deciding the legality of the termination order.

11. On 5th July, 2011 the learned Single Judge after re-hearing the entire matter was of the opinion that the DA had merely reproduced the charges levelled against the Petitioner and imposed a major penalty on the Petitioner, without recording any reasons whatsoever for imposing such penalty. Accordingly, the learned Single Judge remanded the matter back to the DA for passing a fresh order upon affording the Petitioner an opportunity to

make a representation “in respect of the enquiry report and after allowing fifteen days time in this regard to the Petitioner, shall decide the matter afresh, in accordance with Rule 15 of the CCS (CCA) Rules.” The learned Single Judge further directed as under:

“The disciplinary authority while considering the representation of the Petitioner shall also consider whether because of non supply of documents, any prejudice was caused and if in the opinion of the authority any prejudice was caused, he shall be within his own rights to direct the enquiry officer to supply the documents and thereafter the enquiry shall be directed to proceed in the matter. However, even during the aforesaid period the petitioner shall not be entitled to join the duties and shall await the verdict from the disciplinary authority. The disciplinary authority shall decide the matter in accordance with law, as directed hereinabove, expeditiously as far as possible within a period of ninety days from the date of communication of this order”

12. However, since the learned Single Judge did not direct reinstatement of the Petitioner, he filed Writ Appeal No. 506/2011 which came to be allowed by the DB on 30th November, 2012 directing his reinstatement. The DB relying on the decision of the Supreme Court in ***Managing Director, ECIL, Hyderabad v. B. Karunakar AIR 1994 SC 1074***, held that the learned Single Judge had erred in not directing the Petitioner’s reinstatement even though the order of the DA had been set aside. The Respondents were, however, given the liberty to “take suitable action in accordance with law.” SLP (C) No. 24890/2013 filed by the Respondents against the said judgment was dismissed by the Supreme Court on 8th August, 2014.

13. Pursuant to the DB’s order dated 30th November 2012, the Respondents

by an order dated 12th August, 2015 reinstated the Petitioner in service with effect from 10th July, 1995. For the purpose of completing the departmental proceedings, the above order specified that the Petitioner would be under deemed suspension with effect from 10th July, 1995 until further orders. He was asked to join at the Group Centre, Neemuch in Madhya Pradesh. By this time, two decades had elapsed since the initial order removing the Petitioner from service had been passed.

14. Since the Petitioner's mother was undergoing treatment for cancer at Apollo Hospital, New Delhi he requested the Director General (DG), CRPF to change his declared Headquarters from Neemuch to Greater Noida. This was accepted by an order dated 24th August, 2015. On 5th October, 2015 the Petitioner reported at GC, CRPF, Greater Noida and then submitted a detailed representation on that date to the DIGP (CR & Vigilance). In the said representation, the Petitioner requested to be provided complete copies of as many as 16 documents, including a copy of the preliminary inquiry report and defence material that had hitherto not been supplied to him. He also set out a detailed reply to each of the charges against him. It is stated that despite this representation the Respondents did not proceed with the enquiry in line with the judgment of the DB of the Madhya Pradesh High Court and continued to keep the Petitioner under suspension.

15. On 22nd May, 2017, the Petitioner filed an application under the Right to Information Act, 2005 ('RTI Act') requesting the Respondents for information on the status of his representation. Aggrieved that there was no response to his RTI application, the Petitioner approached the Central

Information Commission ('CIC'). Pursuant to the directions given by the CIC on 27th March, 2018, the Respondents sent a reply dated 16th April, 2018 to the Petitioner informing that the Disciplinary Authority ('DA'), had decided to impose a minor penalty on the Petitioner, but that the file had been referred to the Department of Personnel and Training ('DoPT') for advice.

16. At that stage, Petitioner filed W.P.(C) No. 4967/2018 in this Court. By an order dated 23rd May, 2018, this Court directed the Respondents to produce the order of the DA imposing a minor penalty on the Petitioner. On 20th September 2018, the Court directed that "in the event a decision was taken by the Competent Authority a copy thereof should be placed on record". On 14th January, 2019, the following order came to be passed, disposing of the petition:

"1. Learned counsel for the Petitioner states that since the last date of hearing, he has been sent an order dated 16th October, 2018 of removal from service which he would like to challenge in a separate substantive petition. He, accordingly, seeks leave to withdraw this petition.

2. The petition along with the pending application is dismissed as withdrawn with liberty as prayed for."

17. In the interregnum, the Petitioner filed another RTI application dated 11th September, 2018 seeking the following information:

- i) File noting of the DoPT, as sent to the Prime Minister's Office (PMO).
- ii) Complete file noting of the PMO sent to the DoPT in the Petitioner's case.

18. The above information was provided to the Petitioner by a letter dated 10th October, 2018. Thereafter, the impugned order dated 16th October, 2018 was passed removing the Petitioner from service for the second time. By this time 23 years had elapsed since the Petitioner was first removed from service.

19. This Court has heard the submissions of Mr. Ankur Chhibber, learned counsel appearing for the Petitioner and Mr. Arun Bhardwaj, learned Central Government Standing Counsel for the Respondents.

20. Upon the Petitioner's writ petition being remanded to the learned Single Judge for a second time by the DB of the Madhya Pradesh High Court by an order dated 15th June, 2009 for considering the legality of the order of the DA itself, the learned Single Judge set aside the order of the DA and directed that the matter would be examined afresh after giving the Petitioner a chance to make a representation. The Petitioner challenged the aforesaid order of the Single Judge by way of writ appeal in which the DB of the Madhya Pradesh High Court by the order dated 30th November 2012 directed the reinstatement of the Petitioner, after setting aside the order of the DA. The SLP of the Union of India against the above order was dismissed on 8th August, 2014. With the Petitioner's reinstatement being ordered, the penalty of removal from service did not survive. In effect, therefore, the advice given earlier by the Union Public Service Commission ('UPSC') by its letter dated 15th March 1995, which had been obtained for such penalty, also did not survive.

21. Pursuant to the above orders, the Respondents issued an order dated 12th August 2015, reinstating the Petitioner, with effect from 10th July, 1995, which is the date on which he was removed from service. Nearly two decades had passed in the process. However, on the same day, the Petitioner was placed under 'deemed suspension'. Despite the Petitioner's representation against his 'deemed suspension' on 5th October 2015, the Respondents did not take further steps in the disciplinary proceedings, along the lines of the judgments dated 5th July, 2011 of the learned Single Judge, and 30th November, 2012, of the DB of the High Court of Madhya Pradesh.

22. The Petitioner has obtained through RTI the file notings, from which it is seen that the DG, CRPF had opined that the penalty of 'removal from service', imposed on the Petitioner, "appears to be harsh, as his leave case was not handled properly". It was noted that as regards Article-1 of the charge, the Petitioner "properly handed over the charge of COI to Inspector Harbans Lal, on his return from leave, on the verbal direction of the Commandant". As regards the Article-2 of Charge, it was noted that the statement of the prime witness i.e. Commandant of the Unit, who had ordered for handing over of the charge, and proceeding on leave, "was not recorded". Further, the Petitioner "had submitted medical documents from time to time, in support of his overstaying on leave". It was further noted that the Petitioner "has undergone financial hardships and that his career prospects have adversely been affected, as a result of the outcome of the said enquiry".

23. The recommendations of the DG, CRPF were then forwarded to the Union Home Minister i.e. DA for approval. The file notings show that the recommendations of the DG, CRPF, for imposition of a 'minor penalty' on the Petitioner was considered and the DA tentatively approved it.

24. This was then referred to the UPSC on 18th April, 2016, for seeking its advice. The advice of the UPSC, which was tendered by a letter dated 1st September, 2016, was that since no new fact had come to light, or had been brought on record "further consultation with the Commission is not necessary at this stage". The DA was advised "to accept the Commission's advice or take an independent view". It is further noted that since the DA "has already proposed to impose another penalty, it is not appropriate to comment further in the matter".

25. It appears that the DA noted the advice of the UPSC as contained in the above letter dated 1st September, 2016 and reiterated that a minor penalty of reduction to a lower stage in the scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and adversely affecting pension, would be imposed.

26. An error appears to have crept in thereafter in the process. The Under Secretary (Pers-II Desk), MHA prepared a note dated 4th May 2017 stating that the view of the UPSC was in "disagreement" with that of the DA's. The UPSC had in fact declined to provide an opinion. It stated that it was for the DA to either accept the UPSC's advice, "or take an independent view". With the DA, in fact, taking an independent view, there was no question of

‘disagreement’ with the UPSC.

27. The note of the Under Secretary dated 4th May, 2017 was referred to the DoPT, which by a letter dated 21st December, 2017 to the Under Secretary requested the MHA to consider the penalty imposed on the Petitioner again “in the light of the facts of the case and in the light of the UPSC’s reasoning in the matter and convey a considered decision”. Thereafter, by a note dated 5th January, 2018, the advice of the Ministry of Law & Justice (‘MoLJ’) was sought. Pursuant thereto, the DoLA, MoLJ upon examining the matter noted as under:

“We have perused the matter. The views expressed by the administrative Ministry i.e. MHA appears to be correct in the facts and circumstances of the present case”.

28. Needlessly, the matter was again referred to the DoPT, which characterized the matter as one of “disagreement” between the UPSC and the DA. On this premise, the DoPT in its noting, invoked Entry 39 (2) of the Third Schedule to the Transaction of Business Rules and the matter was directed to be placed before the Prime Minister.

29. The Under Secretary (Pers-II), MHA prepared a note dated 30th July, 2018, stating that as per the note of the DoPT dated 26th July, 2018, the matter had been placed before the Prime Minister and it had been decided to “resolve the disagreement” between the UPSC and the DA by “agreeing with the advice of the UPSC for imposing the penalty of “Removal from Service””. By the same note, the matter was forwarded again to the Union Home Minister for his approval as well as for making available to the

Petitioner a copy of the note of the DoPT as well as the advice of the UPSC dated 1st September 2016, so as to enable him to submit a representation within 15 days.

30. It appears from a subsequent noting of 3rd October, 2018, that the Petitioner had submitted a representation on 6th September, 2018. The noting stated that his representation had been considered by the DG, CRPF, who was of the view that the Petitioner had failed to put up any new facts. It is also mentioned therein that the approval of the Union Home Minister “was obtained”. Thereafter, the impugned order dated 16th October, 2018 came to be passed by the Directorate General, CRPF, by which the penalty of removal of service was imposed on the Petitioner with immediate effect.

31. Having perused the file notings and the correspondence placed on record, the Court is of the view that there has been a serious error in the manner in which the Petitioner’s case has been dealt with. The UPSC had, by its letter dated 1st September, 2016, made it clear that it had nothing to add and that it was open to the DA to take an independent view in the matter. To recapitulate, the advice of the UPSC was sought, after the DA decided to impose a minor penalty. The UPSC did not disagree with this. It simply stated that it was not even required to be consulted and that it was open to the DA to take an independent view. The Court is not able to view the above sequence of events as representing a “disagreement” between the UPSC on the one hand, and the DA on the other.

32. The Under Secretary, who had earlier initiated an erroneous noting dated 4th May 2017, despite the decision of the DA, needlessly persisted in placing

the matter again for the opinion of the DoPT. After receiving the advice of the MoLJ and the DoPT, the Under Secretary once again referred the file to the DoPT, which reiterated that there is “no denying that the DA can take his independent decision on the quantum of penalty irrespective of the advice of the UPSC”. Despite noting thus, the DoPT proceeded on the premise that the case was one of “disagreement”, and forwarded the file to the PMO. At the PMO, without giving any reasons, a decision was taken to impose the penalty of removal from service, which was considered to be the advice of the UPSC, when in fact that was not the advice of the UPSC in its letter dated 1st September, 2016. By that letter the UPSC declined to give advice on the basis that “no new material had come to light”. It limited itself to advising that the DA could take an independent view, and further, that since the DA had already proposed to impose “another penalty”, it was not “appropriate to comment further in the matter”.

33. The above sequence of events points clearly to an erroneous procedure having being adopted by the Respondents in dealing with the case of the Petitioner. This primarily was owed to the erroneous note of the Under Secretary in the MHA that there was a ‘disagreement’ between the DA and the UPSC, when there was none. The matter ought not to have been placed before the PM, who, as far as the Petitioner was concerned, was not the DA. The impugned order dated 16th October 2018, removing the Petitioner from service, has come about as a result of the above erroneous procedure, which was entirely unnecessary considering that the DA was at liberty to take a decision independent of the UPSC and did take such a decision, imposing a minor penalty.

34. For all of the aforementioned reasons, the order dated 16th October, 2018, passed by the DIG (CR&VIG) in the Directorate General, CRPF, imposing the penalty of removal from service on the Petitioner, is hereby set aside. The minor penalty as decided by the DA viz., “reduction to a lower stage in the scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and adversely affecting pension” will be the penalty in the Petitioner’s case.

35. Consequently, the Petitioner is directed to be forthwith reinstated in service, with all consequential benefits, but without any back wages. The date of reinstatement will relate back to the date of his having been originally removed from service i.e. 10th July 1995, for the purposes of pay fixation, seniority and all other consequential benefits including promotions. The consequential orders by way of implementation of this judgment be issued not later than 8 weeks from today.

36. The writ petition is allowed in the above terms. The pending application is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 24, 2019

mw/rd