

\$~3

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

+ **W.P.(C) 14701/2006**

EX.CONST. BRIJ MOHAN SHARMA Petitioner
Through: Mr. V.K. Garg, Senior Advocate with
Mr. C.M. Khan, Ms. Noopur Dubey
& Mr. Neeraj Sharma, Advocates.

versus

UOI & ORS. Respondents
Through: Dr. Ashwani Bharadwaj, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

% **ORDER**
22.04.2019

CM APPL. 43900/2018 (for restoration)

1. For the reasons stated in the application, the order dated 10th September 2018 is recalled and WP (C) 14701 of 2006 is restored to file. The application is disposed of.

W.P.(C) 14701/2006

2. Petitioner who was working as a Constable in the Central Reserve Police Force ('CRPF') has sought the quashing of the order dated 7th March 1998 passed by the Commandant 22 Battalion, CRPF (the Disciplinary Authority – 'DA') dismissing him from service, and also the orders dated 8th April

2006 passed by the Deputy Inspector General, Appellate Authority ('AA') – Respondent No.4 and the order dated 25th July 2006 passed by the Inspector General of Police (Revisional Authority – 'RA') – Respondent No.3 dismissing his appeal and revision against the afore-mentioned dismissal order.

3. The two Articles of charge on which the Petitioner faced the disciplinary proceedings read as under:

“Article -I

That the said No. 903036979 Ex-Ct/GD Brij Mohan Sharma of 22 Bn, CRPF while, functioning as Ct and undergoing Basic Armourer Course, SI.No. 20 at AWS-II, CRPF, Rampur has committed an offence of misconduct on 4/10/97 in his capacity as a member of the Force Under Section 11(1) of CRPF Act, 1949, in that he shouted on No 670214379 Insp/Arnr Sanwat Singh of AWS-II and misbehaved with him, which is prejudice to the good order and discipline of the Force.

Article - II

That on aforesaid date and while functioning as Ct in AWS-II, CRPF, Rampur the said No 903036979 Ex-Ct/GD Brij Mohan Sharma has Committed an offence of misconduct in his capacity as a member of the Force Under Section 11 (I) of CRPF Act 1949, in that on 4/10/97 he hit with his belt No 670214379 Insp/Armr Sanwant Singh of AWS-II CRPF, which is prejudice to the good order and discipline of the Force.”

4. On behalf of the prosecution, seven witnesses including Inspector Sanwant Singh were examined. On behalf of the Petitioner, two witnesses were examined. The Inquiry Officer (IO) submitted a report on 11th January 1998. As regards Article Iit was noted that while PWs-1, 3 and 5 supported

the case of the prosecution, PWs-2, 4 and 6 did not. PW-7 was not present at the spot and his evidence was based on hearsay. It was concluded by the IO as under:

“No solid evidence produced before the enquiry officer to support the charge No. 1 defence witnesses 1 & 2 has also declined the same. Hence, enquiry officer came to the conclusion that article No.1 in the charge sheet only proved partially.”

5. As regards Article II it was held that barring PW-4 all the other prosecution witnesses had supported the case of the prosecution. This Article of charge held to be proved. A show cause notice was issued to the Petitioner on 16th February 1998 by the DA proposing the punishment of dismissal from service. The Petitioner gave a representation on 3rd March 1998 which was considered by the DA and on 7th March 1998 the dismissal order was passed.

6. The statutory appeal of the Petitioner was dismissed by an order dated 6th November 1998 of the AA which was challenged before this Court by the Petitioner by filing WP (C) 3995 of 1998. By an order dated 3rd February 2006, this Court set aside the aforementioned appellate order dated 6th November 1998 and directed Respondent No.3 to pass a fresh reasoned order not later than 15th April 2006. Pursuant thereto on 8th April 2006 the AA passed a detailed order dealing with each of the grounds raised in the appeal and rejected the appeal.

7. Against the rejection of the above appeal, the Petitioner preferred a

revision petition which was dismissed by the RA (Respondent No.3) by detailed order dated 25th July 2006.

8. This Court has heard the submissions of Mr. V.K.Garg, learned Senior Counsel for the Petitioner and Dr. Ashwani Bharadwaj, learned counsel appearing for the Respondents.

9. Relying on the decision in *Union of India v. Ram Lakhan Sharma (2018) 7 SCC 670*, Mr. Garg submitted that the IO in this case virtually acted as a prosecutor in the manner in which he dealt with the PWs and the defence witnesses. In other words, it was submitted that since the inquiry itself was not free from arbitrariness and bias, the dismissal order passed on that basis was illegal and ought to be set aside by this Court.

10. It was submitted that the DA had in fact not concurred entirely with the findings of the IO as far as Article I of the charge is concerned. It was submitted that in such event the DA ought to have given a separate opportunity to the Petitioner to show cause why the Article 1 of the charge should be also not be held to be fully proved.

11. It was further submitted that the Petitioner was not provided any Defence Assistant and, therefore, could not effectively defend himself in the inquiry proceedings. Thirdly, it was submitted that the Petitioner was not supplied with copies of all the statements of all the witnesses along with show cause notice initially issued to him proposing the holding of the inquiry. It deprived the Petitioner of an effective opportunity to defend

himself adequately in the inquiry proceedings.

12. Mr. Garg also pointed out that while the DA was the Commandant CWS Rampur, the final dismissal order was passed by the Commandant 24 Bn who had no jurisdiction to pass such order. Lastly, it was submitted that the punishment awarded to the Petitioner was not commensurate with the proven misconduct.

13. As regards not being provided with a Defence Assistant, Mr. Garg was candid that this plea was not raised by the Petitioner at the first instance before the DA. The AA has dealt with this issue and noticed that due to the course of the inquiry the Petitioner was in fact afforded a full opportunity to defend his case by cross-examining the PWs and produce DWs. The procedure laid down in Rule 27 of the CRPF Rules, 1955 was meticulously followed by the IO and then the DA. Although the Petitioner produced 2 DWs during the inquiry he never actually made any request for a defence assistant. It is further noted that under Rule 27(c) of the CRPF Rules, 1955 if the disciplinary inquiry is against a member of the CRPF and was conducted within the CRPF, there was no requirement for providing a defence assistant.

14. The Court finds no illegality having been committed by the AA in coming to the above conclusion concerning the non-providing of the defence assistant. The Court has also noticed that at every stage an opportunity was afforded to the Petitioner to cross-examine the PWs. He chose to cross-examine some of them but did not cross-examine the others. In these

circumstances, it not possible for this court to accept the plea of the Petitioner that their failure to provide a defence assistant vitiated the entire proceedings.

15. Further, the Court finds that the impugned order of the DA does not express any disagreement with the findings in the inquiry report. No doubt the IO has as regards Article 1 of the charge held it to be only partly proved whereas the DA has proceeded on the basis that both Articles of charge stand proved. However, nothing much turns on this fact since the DA has proceeded to dismiss the Petitioner essentially on the basis of the gravity of Article II of the charge which was held to be proved by the IO and then concurred with by the DA.

16. The central attack on the report of the IO was that he cross-examined the PWs himself at length and sought to fill up the gaps by way of asking ‘searching questions.’

17. The Court has in this context examined the judgment of *Union of India v. Ram Lakhan Sharma* (*supra*). In the said decision a reference was made to the decision of the Division Bench (DB) of the Madhya Pradesh High Court in *Union of India v. Mohd. Naseem Siddiqui ILR 2004 MP 821* where the principles governing inquiry proceedings were summarised as under:

“16. We may summarise the principles thus:

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a

prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

(vi) Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

18. While the above principles are unexceptionable, there is nothing in the present case to show that the IO exceeded the limits of what would constitute a fair inquiry in putting questions to the PWs. A careful perusal of the record reveals that the questions were only for the purposes of eliciting the complete facts. The Court is, therefore, not at all agreeable with the contention on behalf of the Petitioner that the IO in the present case acted in a biased and arbitrary manner and exceeded his powers.

19. The grievance regarding the failure to be provided the documents also does not appear to have been brought to the attention of the DA. In any event, the Petitioner did have complete access to the entire record during the inquiry and even thereafter. The Petitioner has not been able to show how the non-availability of any witness statement caused any prejudice to the Petitioner in cross-examining those witnesses during the inquiry or even thereafter. It must be noticed that in the present case the Petitioner has had two rounds⁶ of challenge before the AO and, therefore, there was sufficient opportunity for him to question the findings of the IO.

20. As far as the punishment of dismissal from service is concerned the Court is unable to agree with learned Senior Counsel for the Petitioner that it is disproportionate in the facts and circumstances of the case. The Petitioner was part of a disciplined paramilitary force. Article II of the charge, which stood proved against the Petitioner, was that he had attacked his superior with a belt and that such attack was totally unwarranted. In the considered view of the Court this misconduct is serious enough to merit the punishment that has been awarded to the Petitioner.

21. Consequently, the Court finds no reason to interfere with the impugned order. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 22, 2019
tr