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

+ **W.P.(C) 5844/2015**

DALBIR SINGH

..... Petitioner

Through: Mr. Kaushal Yadav with Ms. Shweta
Yadav & Ms. Ankita Agarwal,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Amrita Prakash, CGSC with
Mr. Hari Shankar Sharma, Advocate
for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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11.04.2019

1. The Petitioner who was serving in the Central Reserved Police Force ('CRPF') as Constable General Duty ('Ct/GD') is aggrieved by the dismissal order dated 24th May 2014 passed by the Disciplinary Authority ('DA') i.e. the Commandant, 36th Battalion CRPF (Respondent No.2), the order dated 9th October 2014 passed by the of the Appellate Authority (AA) i.e. Deputy Inspector General of Police ('DIGP') Range CRPF Khatkhati, District Karbi Anglong, Assam (Respondent No.3) dismissing his appeal and the order dated 13th February 2015 passed by the Revisional Authority (RA) i.e. the Inspector General of Police ('IGP') North East Sector (Respondent No.4) dismissing his revision petition.

2. The background facts are that the Petitioner was enlisted as Ct/GD in CRPF on 19th April 1988. While posted with the 36th Battalion at Fatehabad, District Amritsar, Punjab, on 11th April 1993, he was alleged to have fired from his service rifle upon Head Constable ('HC')/GD Harish Chander and Deputy Commandant (DC) Hari Singh of the same Unit. This resulted in the death of HC GD Harish Chander and injury to DC Hari Singh. Arising out of this incident an FIR was lodged against the Petitioner in Police Station Govindwal Sahib, Amritsar, Punjab under Sections 302, 307 IPC read with Section 27 of Arms Act.

3. The Petitioner was placed under suspension with effect from 11th April 1993 by an order passed by Respondent No.2. The Petitioner was arrested and a criminal case was initiated in the District and Sessions Court, Amritsar. Subsequently, by an order dated 21st December 1996 passed by the DA under Section 12 (1) of Central Reserve Police Force Act, 1949 ('CRPF Act'), the Petitioner was dismissed from service.

4. Aggrieved by his conviction and sentencing by the Sessions Court the Petitioner filed Crl. Appeal No.250 of 1996 in the High Court of Punjab and Haryana at Chandigarh. By judgment dated 27th July 2005, the High Court set aside the Trial Court's judgment dated 11th March 1996 and acquitted the Petitioner.

5. The State of Punjab filed Crl. Appeal No. 117 of 2006 in the Supreme Court challenging the aforementioned order passed by the High Court.

After hearing the parties, the Supreme Court, by its order dated 1st February 2012, dismissed the appeal thereby affirming the judgment of the High Court acquitting the Petitioner.

6. Thereafter, the Petitioner made a representation dated 14th February 2012 to the DG, CRPF seeking reinstatement in service with all consequential benefits. When there was no response forthcoming the Petitioner filed WP (C) 3065 of 2012 in this Court. By an order dated 28th May 2012 the Division Bench (DB) of this Court directed:

“the Respondents to decide the representation of the undersigned within four weeks and observed that in case the undersigned was entitled to be reinstated he should be reinstated in service with consequential benefits including arrears of pay and allowances and promotion etc. The above said petition was directed to be listed again on 25.07.2012.”

7. The petition was again listed on 25th July 2012. Meanwhile, in terms of the above direction issued by this Court, the DIG CRPF Patna passed an order dated 20th July 2012 on the Petitioner’s representation to the following effect:

“i) The punishment of dismissal from service awarded to No.880957136 CT/GD Dalbir Singh of 36BN, CRPF by disciplinary authority i.e. Commandant 36BN vide order No.1-X-2/93-EC-II dated 21.12.1996 is hereby set aside.

ii) The appellant No.880957136 CT/GD Dalbir Singh of 36BN, CRPF is reinstated in to service immediate effect (i.e. from the date of reporting in 36BN).

(iii) Since the appellant i.e. Ex. CT/GD Dalbir Singh has been acquitted by criminal court, he shall not be punished

departmentally on the same charge or similar charge upon the evidence cited in the criminal case Rule 27 (ccc) of CRPF Rules, 1955. If some other misconduct on other ground is made out then it is up to disciplinary authority to decide whether any Departmental Enquiry is called for or not under Rule GOI decisions No.5 below Rule 19 of CCS (CCA) 1965.”

8. Thereafter, another charge-sheet was issued by the DA which contained almost the same charges for which he was tried by the Court of Session. This led to the Petitioner filing another WP(C) 6354 of 2012 which came to be disposed of by this Court by order dated 21st November 2012. After referring to the order dated 28th May 2012 of the DB of this Court in WP(C) 3065 of 2012, the DB which passed the order on 21st November 2012 in WP(C) 6354 of 2012 observed as under:

“10. In respect of the direction issued by the Division Bench we would only note that language appears to be mandatory i.e. as if the direction has been issued to reinstate the petitioner in service with back wages, but meaningfully read it would simply mean that the respondents have to consider the issue pertaining to the period interregnum petitioner being dismissed from service till he was reinstated in light of FR 54 & 54A.

11. We would expect the respondents to do so as per law.

12. The respondents have now issued a charge-sheet to the petitioner which has been challenged in the instant writ petition on the plea that the charge-sheet lists the same charge for which the writ petitioner was tried by the Court of Sessions.”

9. The DB of this Court then took note of the fact that a decision has been taken by the Respondents to withdraw the charge-sheet:

“for the reason it would not be permissible for the respondents to charge the petitioner and hold a departmental inquiry with

reference to the death of Battalion Havaldar Major Harish Chander as also injuries caused to the Deputy Commandant.”

10. The DB further noted as under:

“The offending charge-sheet which has been challenged in the writ petition has been withdrawn by the respondents and therefore the writ petition is disposed of as infructuous observing that it would be permissible for the respondents to issue a charge-sheet but not in relation to the death of Battalion Havaldar Major Harish Chander and the injuries caused to Dy. Comdt. Hari Singh. The respondents would be entitled to hold an inquiry with respect to the arm and ammunitions issued to the writ petitioner on day of incident and seek petitioner's accountability in relation thereto.”

11. On 25th February 2013 a fresh charge-sheet was issued to the Petitioner where the two articles of charge read as under:

“ARTICLE-1

That during his posting at Amritsar Punjab No.880957136 CT/GD Dalbir Singh of 36, BN, CRPF, on 11.04.1993 without having the order from Competent Officer fired from his service rifle (SLR Butt No.417 Body No.150410-59), issued for his Govt. Duties and hence misused the Government weapon and ammunition and committed remissness of duties. The abovesaid misconduct is a serious offence U/s 11(1) of CRPF Act read with Rule 27 of CRPF Rules. Therefore, the constable while being the member of the force has misused his service rifle and ammunition without having the order of competent officer which is a serious offence and misconduct and the same is also against the discipline and management of the force and is also a punishable offence.

ARTICLE-2

That during his posting at Amritsar Punjab No.880957136 CT/GD Dalbir Singh of 36, BN, CRPF, on 11.04.1993 without

having the instructions from Competent Officer fired from his service rifle (SLR But No.417 Body No.150410-59), issued for his Govt. Duties and hence misused the Government weapon and ammunition and committed remissness of his duties. Thereafter, vide order dated 11.04.1993 of this office No.1-10-2/1993/EC-1 the delinquent was suspended. Therefore, the act of misconduct committed by the delinquent is a serious and punishable offence being a member of force under section 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules and is also against smooth functioning and discipline of force.”

12. One of the key questions that arise from the defence raised by the Petitioner is whether in fact he had been issued the service rifle on the crucial date i.e. 11th April 1993. It must be recalled at this stage that to begin with on 27th June 1993 an office order was issued proposing to hold a departmental enquiry against the Petitioner. The articles of charge in that enquiry read as under:

“ARTICLE-I

On 11.04.1993, No.880957136 Ct. Dalbir Singh who had returned to unit HQ Fatehabad after availing 60 days E/L on 10.04.1993 was detailed for fatigue duty by No.650171017 BHM Harish Chander Singh but CT. Dalbir Singh instead of performing fatigue duty sat in tailor shop. On asking reasons for non compliance of orders and disobedience he arrogantly behaved with BHM and SIA, Kewal Singh. Thus he committed an offence of misconduct/disobedience or order in his capacity as a member of the force U/s 11 (i) of CRPF Act, 1949.”

13. The above article of charge substantiates the case of the Petitioner that he was in fact not on duty on 11th April 1993. According to the Respondents, he was slated to perform ‘fatigue duty’ but sat ‘in a tailor shop’. This contradicts what he was charged with on 25th February 2013 viz., that while on duty he misused the ‘government weapon’ i.e. the service revolver issued

to him. This presupposes his having been on duty and not on 'fatigue duty' and in the premises rather than in a tailor shop. The question of misuse of the weapon would not arise if the Petitioner was in fact not present and was not issued any weapon from the armoury.

14. While it is possible that notwithstanding the pendency of a criminal case there could be disciplinary proceedings on the same issue, in the present case it is seen that Respondents are confused on facts. On the one hand, they charge-sheeted the Petitioner on 27th June 1993 for not performing his fatigue duty but instead sitting at a tailor's shop, while nearly two decades later on 25th February 2013 they have charged him with misusing the service weapon issued to him. This contradiction in the stand of the Respondents is fatal to the disciplinary proceedings. The charge that he misused the weapon issued to him falls flat if he was in fact not even present at the place of duty. This was a case based on no evidence. The Respondents had to prove that the weapon which was issued to the Petitioner was misused by him. This it has failed to do by credible evidence.

15. Consequently, the Court is unable to sustain the enquiry report, the order of the DA, and the orders of the AA and the RA confirming the punishment of dismissal from service awarded to the Petitioner. The report and the said orders are accordingly hereby set aside.

16. The Petitioner is directed to be reinstated in service forthwith in any event not later than 1st May 2019. He is entitled to the arrears of pay from date of dismissal of service and till the date he actually joins duty. The

arrears shall be paid within a period of 12 weeks from today failing which the Respondents will pay simple interest @ 6% per annum on the said sum of arrears for the period of delay. The Petitioner will also be entitled to all other consequential benefits including seniority, fixation of pay, promotion etc. and appropriate orders in that regard will also be issued in the same period of 12 weeks. The petition is allowed in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2019

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