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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 9565/2018 & CM 37208/2018 (stay)**

AJAY KUMAR SINGH

..... Petitioner

Through: Mr Sushant Mukund and Mr Vikash
Kumar, Advocate.

versus

INDO-TIBETAN BORDER POLICE

..... Respondent

Through: Mr Manish Mohan, CGSC with Mr
Sumit Rajput and Ms Manisha Saroho
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER
06.11.2019

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1. The Petitioner, who joined the Indo-Tibetan Border Police ('ITBP') in 2001 as a Constable, and is presently working as Head Constable ('HC') with the 16th Battalion at Leh has, in the present writ petition, challenged an order dated 1st July 2016, passed by the Deputy Inspector General (Admn.) ('DIG'). By the said order it was held that while performing the duties of a Dealing Assistant ('DA') of the 24th Battalion between 28th August, 2014 and 18th January 2015, the Petitioner had not monitored the recovery of transport allowance and SDA, but kept the matter pending with him, in one instance for one month and nine days and in another, for four months and 22 days, thereby violating the good order and discipline of the force.

2. The Petitioner also challenges the consequential order dated 1st July, 2016 of the DIG (Admn.), awarding the Petitioner the punishment of reprimand for the aforementioned misconduct. By an Office Order dated 31st March, 2017 the Respondents intimated the approved C-List of the Combatant Ministerial ('CM') Cadre, in which the Petitioner's name was not included. His name was instead mentioned in separate table consisting of persons not included in the C-List with the remarks "awarded severe reprimand on 22nd June, 2016". The Petitioner sought a stay of the said C-List as well.

3. Pursuant to the notice issued in the present petition on 12th September, 2018, a counter affidavit has been filed by the Respondent, where, *inter alia*, it is stated that with effect from April 2014, the Petitioner was posted as a DA in the Pay Section-I of the 24th Battalion. He was responsible for preparing pay and allowances, making recoveries, preparing arrear bills and other related matters.

4. The Respondent acknowledged that the Petitioner was during this period away for a UN Mission between 12th and 26th July, 2014. He also attended a General Establishment & Accounts Mandatory Promotional Course from 28th July, 2014 to 25th September, 2014. He proceeded on earned leave, between 20th October and 16th November, 2014. He joined on 17th November, 2014, on expiry of the earned leave. In other words, during the period in question, there were only 56 working days.

5. The Respondent acknowledged that the Petitioner had offered an explanation for the delay in effecting recoveries in the two cases. According to the Respondent, the Disciplinary Authority ('DA') followed the due

process of law and awarded the Petitioner the least of the minor punishments, viz., reprimand.

6. The Petitioner's explanation that the Special FO No.62 of 2014, which was signed on 7th October, 2014 by the Commandant, and was received in the Central Record Office ('CRO'), Delhi only on 29th October, 2014, is not disputed by the Respondent in its counter affidavit. On the contrary, it is admitted that this instruction was received by him, only when he reported duty on 17th November, 2014 at the end of his leave. However, the charge against which he was found guilty is that he kept the letter pending with him from 28th August, 2014 to 18th January, 2015. Clearly, therefore, there was a factually erroneous basis as far as the said charge is concerned. The Petitioner states that if the period is correctly computed, the delay would be two months and twenty days.

7. The explanation offered by the Petitioner appears to be a plausible one. Having heard learned counsel for the parties and having examined the documents on record, in light of the explanation offered by the Petitioner, the Court is of the view that the punishment of 'reprimand', which has had the effect of depriving the Petitioner of his name being included in the 'C-List' was disproportionate. This is particularly since there is no previous instance of any misconduct by the Petitioner, during his 17 years of service. In response to an averment to that effect in para 4 (f) of the writ petition, there is no specific denial by the Respondent in the counter affidavit.

8. The Court therefore is of the view that the punishment awarded to the

Petitioner should be modified to one of a 'non-recordable caution', asking the Petitioner to be careful in future. This will not have the effect of denying the Petitioner the promotions due to him. It will also mean that the Petitioner's name should be included in the C-List.

9. Consequently, the impugned orders dated 22nd June, 2016 and 1st July, 2016 are modified accordingly. The writ petition is disposed of in the above terms. The pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 06 2019

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