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

+ **W.P.(C) 11051/2017**

EX. CT. (CRPF) PREM KUMAR SINGH Petitioner

Through: Mr. Himanshu Gautam, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajesh Kumar, Advocate with
Ms. Santwana, Advocate.
Mr. Vivek Kumar Singh, Law Officer
CRPF.

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

ORDER
12.03.2019

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Dr. S. Muralidhar, J.:

1. The Petitioner, who joined the CRPF as Constable (GD) on 17th April 2001 has challenged the impugned order dated 30th June 2012 passed by the Commandant-22 Battalion, CRPF, Hazaribagh, Jharkhand dismissing him from service. The Petitioner has also challenged an order dated 4th July 2016 passed by the Deputy Inspector General, CRPF Range Patna, Bihar (Respondent No.5) rejecting his appeal under Rule 28 of the CRPF Rules, 1955; an order dated 18th December 2016 passed by the Inspector General CRPF, Patna Bihar rejecting his revision petition, as well as the signal dated 14th November 2017 whereby he was informed that his representation under Rule 30 of the CRPF Rules, 1955 had been rejected.

Earlier order

2. It must be mentioned at the outset that after the aforementioned statutory petition under Rule 30 of the CRPF Rules was filed in January 2017 and not disposed of, the Petitioner approached this Court by filing W.P.(C) 9721/2017. The said writ petition was disposed of by the Division Bench of this Court on 23rd November 2017 by the following order:

“1. On the last date of hearing, learned counsel for the respondents had sought time to obtain instructions from the CRPF with regard to the status of the statutory petition filed by the petitioner against his dismissal order, as long back as in January, 2017.

2. Today, learned counsel for the respondents hands over a copy of the Signal dated 14.11.2017, that states inter alia that the statutory petition filed By the petitioner has been rejected.

3. A copy of the aforesaid Signal is handed over to the learned counsel for the petitioner, who states that the present petition may be disposed of with liberty to the petitioner to seek legal recourse against the Signal dated 14.11.2017. The aforesaid Signal is taken on record.

4. The petition is disposed of with liberty granted to the petitioner, as prayed for.”

3. Pursuant to the liberty granted to the Petitioner by the aforementioned order, he filed the present petition.

Preliminary objection

4. There is a preliminary objection raised by the Respondents as to the maintainability of this petition on the ground of territorial jurisdiction. It is

contended that all the impugned orders that the Petitioner has challenged have been passed in Bihar.

5. The Court notes that the earlier W.P.(C) 9721/2017 was entertained by this Court. It does not appear that the aforementioned preliminary objection was raised then. In fact on 3rd November 2017, an order was passed in the said petition granting the Respondents time to obtain instructions with regard to the statutory petition filed by the Petitioner against his dismissal order in January 2017 under Rule 30 of the CRPF Rules. It is only at the next hearing on 23rd November 2017 that the Respondents produced before this Court the Signal dated 14th November 2017 stating that his statutory petition had been rejected.

6. In any event, a perusal of the said Signal reveals that it has been issued from the Directorate General of the CRPF, CR and Vigilance wing which is located in Delhi. Since the said Signal is also under challenge in the present petition, the Court is of the view that a part of the cause of action has arisen within the territorial jurisdiction of this Court. The Court accordingly negatives the preliminary objection raised by the Respondents.

Background facts

7. The background facts are that while serving as Constable GD in the CRPF, the Petitioner was posted in the Commandant 22 Battalion CRPF at Hazaribagh, Jharkhand ('Group Centre'). The Petitioner's version is that on 6th September 2011 he was called by one Mr. Nilesh Kumar Singh who had earlier been his landlord to come out of his Group Centre to collect money

that he had borrowed from the Petitioner. The money was urgently required by the Petitioner for the operation of his wife who had suffered paralysis.

8. The Petitioner claims that he had orally informed an Inspector at the 22nd Battalion before leaving the Group Centre. On coming out of the Group Centre, the said Mr. Nilesh Singh asked the Petitioner to accompany him till the ATM centre on his motorbike. According to the Petitioner, the bike developed some snag and while he was waiting at a service centre to get the motorbike repaired, the local police arrived there and arrested both him and Mr. Nilesh Singh. The police charged them with having stolen the said motorbike. The Petitioner learnt that an FIR had been registered at the instance of one Mr. Rajendra Prasad Mehta on 16th August 2011 in that regard.

9. The Petitioner was arrested and taken to the Police Station (PS). Meanwhile, when Inspector Ajeet Kumar Singh of the 22nd Battalion reached the Police Station at 2:30 pm. He was then informed by the Station House Officer ('SHO') that the Petitioner had been arrested on the basis of the aforementioned FIR which was pending further investigation.

10. The Petitioner was then sent to the Central Jail, Hazaribagh, Jharkhand on 7th September 2011. On 8th September 2011 an order was issued by the Chief Coordinator, 22nd Battalion, Patna placing the Petitioner under suspension with effect from 6th September 2011 on the ground that a criminal case registered against the Petitioner was pending investigation.

11. On 3rd October 2011, even while he was in judicial custody, a memorandum of charge was issued proposing to hold an inquiry against the Petitioner under Rule 27 of the CRPF Rules. The single article of charge was that without permission of the Competent Authority the Petitioner had gone outside the Group Centre on 6th September 2011 at around 1300 hrs; he had later been apprehended in a theft case and that the said acts tarnished the image of the CRPF. The Petitioner was charged with having committed misconduct punishable under Section 11(1) of the CRPF Act read with Rule 27 of the CRPF Rules.

The dismissal order

12. The inquiry was conducted while the Petitioner was still in jail. The Petitioner was released on bail only on 1st February 2012. By that time, after recording the statements of the prosecution witnesses (PWs), an inquiry report was prepared and a copy thereof was provided to the Petitioner on 18th February 2012. In other words, the inquiry was concluded without any opportunity to cross-examine the PWs or lead evidence in defence.

13. The Petitioner furnished a reply on 22nd February 2012 stating that he had been falsely implicated and that he had, in fact, taken permission for leaving the Group Centre from the concerned officer orally. The suspension order of the Petitioner was revoked and he was reinstated on 12th April 2012.

14. However, on the basis of the inquiry report the Commandant, 22nd battalion i.e. Respondent No.6 proceeded to pass the impugned order dated

30th June 2012 dismissing the Petitioner from service.

15. The appellate order confirming the above dismissal order has not been enclosed with the present petition. However, the Revisional Authority's order dated 18th December 2016 virtually re-iterates the initial dismissal order.

Acquittal by the criminal court

16. An important development subsequent to the passing of the dismissal order, was the order passed on 19th December 2014 by the Chief Judicial Magistrate, Hazaribagh ('CJM') acquitting the Petitioner and the co-accused Nilesh Kumar Singh of the charge of theft. A translated copy of the said judgment has been enclosed with the petition. The conclusion reached by the learned CJM was that the two accused were being acquitted "due to lack of sufficient and solid evidence". However, this development appears to have made no difference as far as the dismissal order was concerned. The Revisional Authority apparently proceeded on the basis that the acquittal of the Petitioner in the criminal case was on technical grounds and, therefore, did not affect the dismissal order.

Stand of the Respondents

17. In the counter affidavit, the stand taken by the Respondents is that "the acquittal in criminal case does not vindicate the Petitioner from the consequences of his grave misconduct/indiscipline of deserting the CRPF Campus without prior intimation/permission/sanction of the Competent Authority and after that his involvement in a criminal case". A reference is

made to the decision of the Supreme Court in *Union of India v. Diler Singh* (2016) 7 SCC 41 which in turn refers to an earlier decision in *Union of India v. Ghulam Md. Bhat* (2005) 9 SCC 212. A reference is also made to the decision in *Commissioner of Police v. Meher Singh* (2013) 7 SCC 685 about persons with criminal antecedents not being fit to be in a disciplined police force. The Respondents have referred to the decision in *Deputy Inspector General of Police v. S. Samuthiram* (2013) 1 SCC 598 where it was held that if the acquittal was not honourable but because the witnesses turned hostile, it would not make any difference to the outcome of the disciplinary proceedings. A reference is also made to the decisions in *Depot Manager AP State Road Transport Corporation v. Md. Yusuf Miyan* (1997) 2SCC 699 and *Capt. M Paul Anthony v. Bharat Gold Mines Ltd.* (1999) 3SCC 679.

Analysis and reasons

18. The short question that arises for consideration in the present case is whether the Petitioner was rightly held guilty of the charge of desertion and having tarnished the image of the CRPF for being involved in a theft case in that context, whether his acquittal by the criminal Court was not an honourable one but on technical grounds?

19. What is not in dispute in the present case is that the Petitioner stepped out of the Group Centre in Hazaribagh on 6th September 2011 without written permission from the Competent Authority, although he claims he orally informed his superior. What is also not in dispute is that on that very date, within a few hours of his leaving the Group Centre, he was arrested by

the local police on the charge of theft of a motorcycle. It is nobody's case that if there had been no such arrest of the Petitioner, he would not have returned to the Group Centre. In other words, he remained outside the campus beyond 6th September 2011 only because of his arrest in the above criminal case.

20. A perusal of the judgment of CJM reveals that in order to prove its case, the prosecution had examined four witnesses. The complainant was himself not an eyewitness to the theft. The complainant, i.e. Prosecution Witness (PW) No.3 in the criminal case, stated that he did not himself see who had stolen his motorcycle. The CJM noted that "there is no eyewitness in this case". PW-2 and PW-4 turned hostile. PW-2, was purportedly the person in whose presence the motorcycle was purportedly recovered. However, the CJM noted that PW-2 was not an independent witness. PW-1 did support the prosecution but the analysis of the evidence reveals that he too was not an eye witness. Another eyewitness, Pooja Kumari, was not named as a witness in the charge sheet filed by the prosecution.

21. It is in the above context that the CJM after having perused all the available documents and the statements of the PWs, concluded that the prosecution had been unable to prove the case against the accused. A perusal of the judgment of the CJM as a whole reveals that although two of the PWs turned hostile, they were not the eyewitnesses and, therefore, it could not be said that the acquittal was solely on that ground. The fact of the matter was that the Petitioner and the co-accused were acquitted for lack of sufficient evidence. It was, therefore, an acquittal on merits and not on technical

grounds. It was not solely on the ground of the PWs having turned hostile.

22.1 In *Union of India v. Diler Singh* (*supra*), the Respondent was a Constable in the CRPF, who had already served nearly 14 years. The charge against him was that on 22 June, 2001 he left the campus without permission; went to the *bazaar*, consumed liquor and quarrelled with some civilians. On the advice of the Competent Authority, a medical examination was conducted. The medical report confirmed that the Respondent had consumed liquor. It was on the above charges that an inquiry was held and the Respondent was held guilty.

22.2 The Respondent questioned his dismissal in a civil suit, which was decreed ordering his reinstatement. This was reversed by the Appellate Court by holding that the trial Court had no jurisdiction to entertain the suit. The Respondent then challenged the judgment of the first Appellate Court in the Calcutta High Court. A learned Single Judge of the High Court reversed the first Appellate Court and restored the decree of the trial Court. The Union of India then preferred an appeal before the Supreme Court.

22.3 It will, therefore, be seen that the issue in the Supreme Court was not whether the acquittal of the delinquent officer on the same charges by a criminal Court was a clean acquittal or on technical grounds and further whether that impacted the outcome of the disciplinary proceedings.

22.4 As regards the proportionality of the punishment for desertion, the facts in *Union of India v. Diler Singh* (*supra*) were clearly different. While in

that case also, the Respondent left the campus without prior permission, the similarity with the present case ended there. The Respondent there proceeded to the market, consumed liquor and quarrelled with civilians. It was this behaviour that the Supreme Court commented upon as being unacceptable. It was observed “when a member of the disciplined Force deviates to such an extent from the discipline and behaves in an untoward manner which is not concealed of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.”

22.5 The facts here are different. There is no allegation that having left the Group Centre, the Petitioner misbehaved with any civilian. The charge that the Petitioner indulged in the theft of a motorcycle has been held to be false with his acquittal by the trial Court. Therefore, the decision in ***Diler Singh*** (*supra*) cannot apply to the facts in the present case.

23.1 Turning next to the decision in ***Commissioner of Police v. Meher Singh*** (*supra*), the Court finds that it was in the context of an appointment to the Delhi Police. The question was whether the past involvement of a person in a criminal case is a “disqualification for appointment”. It was in that context that the Court observed that the Screening Committee was within its rights to cancel the candidature of a candidate “if it finds that the acquittal is based on some serious law in that conduct of a prosecution case or is the result of the material witnesses turning hostile.” It was observed “the Screening Committee will have to consider the nature in extent of the person’s involvement in the crime and his propensity of becoming a cause

for worsening the law and order situation rather than maintaining it.”

23.2 The context in which a person’s criminal antecedents are viewed, notwithstanding his acquittal, for the purposes of appointment is entirely different from a context where a member of a paramilitary force who has had no history of criminal misconduct is sought to be removed from service notwithstanding that he has been acquitted, not on technical grounds but after a full-fledged trial, by a criminal Court. Consequently, the decision in ***Commissioner of Police v. Meher Singh*** (*supra*) is also, therefore, distinguishable on facts.

24. As far as the observation in ***Deputy Inspector General of Police v. Samuthiram*** (*supra*) is concerned, the acquittal in the criminal case there was solely on account of the witnesses turning hostile. As far as the present case is concerned, the acquittal did not turn only on the PWs turning hostile. It will be recalled that the PWs in the present case were themselves not eyewitnesses. The complainant, who too was not an eyewitness, did not turn hostile. There was no other supporting evidence, which could bring home the guilt of the Petitioner. It was in that context that the CJM held that there was insufficient evidence to find the Petitioner and his co-accused guilty.

25. The following observations in ***Capt M. Paul Anthony v. Bharat Gold Mines*** (*supra*) relied on by the Respondents in fact supports the case of the Petitioner:

“....there is yet another reason for discarding the whole of the case of the Respondents. As pointed out earlier, the criminal case

as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

26. In *George v. Commissioner of Police 2011 (183) DLT 226 (DB)* the Division Bench of this Court was considering a similar issue as to the effect of acquittal in a criminal trial on the same charges on which the departmental proceedings were initiated. There the discussion was in the context of Rule 12 of the Delhi Police (Punishment and Appeal), Rules 1980 which expressly contemplated action following 'judicial acquittal' where

inter alia the charge failed in the criminal case ‘on technical grounds’. In that context, this Court observed:

“12. The acquittal on account of prosecution failing to prove its case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. ... If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal on technical ground. The acquittal resulting on account of prosecution not leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "failing to prove beyond reasonable doubt" would be superfluous.”

27. In the present case too, the acquittal was not on technical grounds. In fact the present case stands on an even stronger footing from the point of view of the Petitioner. It is seen that there is no provision in the CRPF Rules which is in *pari materia* with Rule 12 of the Delhi Police Rules which permits departmental punishment of a delinquent officer on the same charge as in a criminal case where the criminal charge fails on technical grounds. On the other hand Rule 27 (ccc) of the CRPF Rules, 1955 specifies that when a member of the force has been tried and acquitted by a criminal

Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, without the prior approval of the Inspector General. Here even without waiting for the outcome of the criminal trial, the Petitioner was dismissed from service.

28. The Court finds that the article of charge on which the Petitioner was proceeded against departmentally is a combination of two alleged acts of misconduct. One part of it concerns his having left the campus without permission for a day and the other pertains to the charge of theft of a motorcycle. As far as the latter part is concerned, with the Petitioner having been acquitted by the trial Court honourably and not on technical grounds, the finding of guilt of the Petitioner for that charge in the department enquiry is clearly unsustainable in law. Rule 27 (ccc) of the CRPF Rules further supports this conclusion.

29. As regards the charge of the Petitioner having left the campus without permission, the Petitioner's case is that he had informed his superior orally. However, the serious flaw in the procedure adopted in the inquiry is that it was concluded even while the Petitioner remained in jail. As a result, the Petitioner was given no opportunity whatsoever to examine the PWs or to lead any evidence in his defence. Clearly, therefore, the inquiry itself was in gross violation of the principles of natural justice. On that ground alone, the finding of guilt of the Petitioner even on the charge of leaving the campus without permission, particularly when the Petitioner claims to have informed his superior orally and whom he could have examined if he had an

opportunity, cannot be sustained in law.

Conclusion

30. For the aforementioned grounds, this Court sets aside the impugned order dated 30th June 2012 passed by the Respondent No.6 dismissing the Petitioner from service as well as the Appellate order, the Revisional Order and the decision communicated by the signal dated 14th November 2017 whereby the aforementioned dismissal was affirmed by the Respondents.

31. The Petitioner will now be reinstated in service forthwith with all consequential benefits including seniority, fixation of pay, promotions etc. However, the Petitioner would not be entitled to any arrears of pay for the period during which he was not in service.

32. The petition is accordingly allowed, but in these circumstances, no order as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 12, 2019
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