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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13713 OF 2019

Siddana S/o Shanthveer Gouda,
Age 47 Years, Occ. Nil,
R/o Kabbenur,
Taluka & Dist. Dharwad.....

PETITIONER

VERSUS

1. Union of India,
Ministry of Home Affairs,
Through Secretary,
New Delhi
2. The Commandant C.T.C.,
III, Mudkhed Railway Junction,
Dist. Nanded
3. The Principal/D.I.G.P
(TC-3, Training), C.R.PF
Mudkhed Railway Junction,
Dist. Nanded
4. Inspector General of Police,
(Training) Directorate General,
C.R.PF, East Block No.10,
Level – 7, R.K. Puram,
New Delhi

RESPONDENTS

Mr. Suresh M. Kulkarni, Advocate for petitioner;
Mr. Ramdas B. Bhosale, Standing Counsel for respondent nos.1 to 4

**C.O.R.A.M.: A.S. GADKARI
AND
S. G. MEHARE, J.J.**

DATE : 28th January, 2022

JUDGMENT (Per S.G. Mehare, J.)

1. Rule. Rule made returnable forthwith. By the consent of parties,
heard finally.
2. Petitioner has impugned the Order of his compulsory retirement

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from service, passed by respondent no. 2 on 02.07.2007, which was maintained in appeal and Revision.

3. This is the second round of litigation amongst the parties before this Court. In the earlier round of litigation, the petitioner (in Writ Petition No.2006/2008) had obtained the following directions from this Court:-

“If the Authority finds that the appeal is filed beyond the limitation, it should not be dismissed on that ground alone, and the opportunity should be given to the appellant to file an application for condonation of delay and decide the said application and only after such an application is decided, decide the appeal on merit.”

4. After the above Order, the petitioner had moved an application for condonation of delay and it was condoned by respondent no. 4 by Order dated 15.09.2009. His revision petition was also dismissed on 25.02.2010.

5. Petitioner had impugned the Order passed in the revision petition before the High Court of Karnataka Bench at Dharwad. His petition was registered as Writ Petition No. 65544/2010 [S-RES]. The learned Single Judge of the High Court of Karnataka, Bench at Dharwad, by its Order dated 7th January 2013, dismissed the petition holding that, it has no territorial jurisdiction. Thereafter, the present petition is preferred on 17.10.2019.

6. The first question that arises is, whether the delay explained by the petitioner is reasonable and acceptable. The learned counsel for

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the petitioner has submitted that it has been specifically pleaded in the petition that the petitioner had engaged Advocate Adkine. He had handed over all the papers to him and was continuously in his contact. He told the petitioner that a petition was filed and likely to be listed for hearing. In May 2019 he learnt that Advocate Adkine expired in the month of August 2017. Petitioner was shocked to know about the death of a young lawyer. His reference or appearance is seen in Revision and pleading in the Writ Petition before the Dharwad Bench of Karnataka High Court. Thereafter, having discussions and continuous persuasion with friends and relatives, the petitioner came to Aurangabad in July 2019 and confirmed that Advocate Adkine was no more. He then presented the present petition.

7. Respondent nos.1 to 4 have filed their joint affidavit in reply. They have contended that the contents of this para are not relevant for the respondents hence offer no comment.

8. The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation. In **G.C. Gupta Vs. N.K.Pandey (1988)1 SCC 316**, the Hon'ble Apex Court has held that inordinate delay is not merely a factor for a court to refuse appropriate relief but also a relevant consideration for not unsettling the settled things. It is also the settled law that the petitioner cannot get discretionary relief under Article 226 of the Constitution of India unless the petitioner satisfies the Court that the facts and circumstances of the case clearly justified the laches and undue delay

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on the part of the petitioner in approaching the Court for grant of such discretionary relief.

9. The learned counsel for the petitioner to explain the delay would argue that the petitioner went to his Lawyer and the Lawyer kept him informed that the petition was likely to be listed on the board. He relied on his Lawyer. The petitioner has no fault in not approaching the Court within a reasonable period. He should not suffer for the mistake of the Lawyer.

10. The fact that the Lawyer who the petitioner had engaged is no more is not disputed. The facts and circumstances are placed before the Court that soon after the rejection of the petition by the Dharwad Bench of Karnataka High Court, the petitioner contacted the Lawyer, but he gave him incorrect information appears probable. The possibility of ill advice to approach the Dharwad Bench of Karnataka High Court can not also be ruled out. The facts and circumstances brought on record by the petitioner appear probable. Hence, we are of the view that there seems no deliberate delay on the part of the petitioner in preferring the present petition. Accordingly, we condone the delay.

11. The learned counsel for the petitioner vehemently argued that the Inquiring Officer granted no opportunity to cross-examine the witnesses. The principle of natural justice has not been followed. The authorities have passed and confirmed the erroneous compulsory retirement order. The penalty imposed against the petitioner does not

commensurate with the alleged charges. As provided in section 11 of the Central Reserve Police Force Act 1949, in the worst case, a minor penalty would have been imposed. The Department has no case of such a grave nature to impose the penalty of compulsory retirement. To bolster his arguments, he relied on the case of **Tulsidas s/o Suraj Prakash vs, Union of India 2017 (3) MH LJ 929** and the judgement of the Madhya Pradesh High Court in the case of Ex. Sep/Dvr No.941352587 Santosh Kumar vs Union of India in W. P. no 927/2011 dated 15.02.2018. The facts of both the cases are different and therefore, the said case law would be of no help to the petitioner.

12. Per contra, the learned counsel for the respondents referring to the affidavit in reply would argue that the opportunity to cross-examine the witnesses was granted to the petitioner. He would further argue that the petitioner had a bad past and was doing indecent activities unsuitable for the Uniform Post. The charges proved against him are grave. The authority gave him a fair opportunity to produce his witness, however he declined. He was leaving the post without intimation or getting the permission of the Guard Commander. He had assaulted his colleague and damaged the public property. His conduct was unbecoming the Uniform Servant. None of the authorities has erred in the prescribed procedure to conduct the departmental inquiry. He relied on the pronouncement of the Hon'ble Apex Court in the case of Union of India and Ors vs Gulam Mohd Bhat, Appeal (civil) 4950 of 1999 dated 20.10.2005. Referring to the

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ratio in the said pronouncement, he would argue that the minor punishment as provided under section 11 of the C.R.PF Act has been interpreted by the Hon'ble Apex Court. Hence, the petitioner is not entitled to any punishment as provided therein. The orders passed by the Authorities are well within the four corners of law. Thus, the petition deserves to be dismissed.

13. The petitioner was charged for leaving the post without intimation/ permission of the Guard Commander. He was also charged that, while on duty at a Quarter Guard, he had left the post and by consuming liquor, intentionally knocked on the door of the quarters of a colleague, namely Shankar Giri and beat him and his spouse. He also damaged the door of his own quarters and caused the Government a loss of Rs.5890/-. He misbehaved with the day S.O., Day NCO. and other C.R.PF personnel who went to rescue and tried to assault them and created nuisance in family quarters.

14. The Inquiring Officer held that both the charges against the petitioner were proved. He submitted his Inquiry report to the Disciplinary Authority/ respondent no.2. Then the Inquiry report was served on the petitioner by respondent no.2. However, the petitioner did not submit any reply/ representation. After that, respondent no.2 accepted the report. Considering the facts and circumstances, he concluded that leaving the post without permission, consuming liquor, and indulging in unprovoked violence displays a serious misconduct unbecoming of a member of a disciplined force like C.R.PF where the

members are expected to show restrain and control and maintain a high standard of discipline and code of conduct even under adverse conditions. Further, the Act though isolated could have led to serious consequences had timely action to restrain and control him not been taken.

15. So far as the arguments of the learned counsel for the petitioner that minor punishment as provided under section 11 of the C.R.PF Act should have been imposed, the Hon'ble Apex Court, in the case of Gulam Mohd Bhat cited supra, interpreted section 11 in the following words:-

“A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity, as a member of the force. According to the High Court, the only punishment which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.”

“The use of words-'in lieu of, or in addition to, suspension or dismissal', appearing in sub-section (1) of section 11

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before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded.”

“It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.”

16. The Hon’ble Apex Court has clearly held in the above case that the punishment of dismissal can also be awarded under section 11 even if the delinquent is not prosecuted for an offence under section 9 or 10 of the said Act. Rule 27 of Central Reserve Police Force Rule 1955 (C.R.P.F. Rules for short) prescribes the procedure for the award of punishments. A table in the said rule provides various punishments, including compulsory retirement. In view of the law laid down by the

Hon'ble Apex Court in the above case, we do not find substance in the arguments of the learned counsel for the petitioner.

17. The Hon'ble Apex Court, in the case of Union of India and others vs P. Ganeshkarnan (2005) 2 SCC 616, has laid down the following broad parameters for the exercise of the jurisdiction of judicial review under Article 226 of the Constitution of India :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on charge I was accepted by the disciplinary authority and was also endorsed by the Central administrative tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of the first appeal. The High Court, in the exercise of its power under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether;

- a) the enquiry is held by competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is a violation of the principle of natural justice in conducting the proceedings;*
- d) the authorities have disabled themselves from reaching a fair conclusion by some consideration extraneous to the evidence and merits of the case;*
- e) the authorities have allowed themselves to be*

influenced by irrelevant or extraneous considerations;

f) the conclusion on the very face of it is wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g) the disciplinary authority has erroneously failed to admit the admissible and material evidence;

h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i) the finding of fact is based on no evidence.

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not;

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which finding can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the probe proportionality unless it shocks the conscience”

18. The burden is on the petitioner to satisfy the Court that the punishment awarded to him is disproportionate to the charges proved against him. The learned counsel for the petitioner has also argued that, though the findings have been recorded in the inquiry that the spouse of Shankar Giri was beaten. However, the Presenting Officer

has not examined her before the Inquiring Officer, therefore the petitioner did not get an opportunity to bring the material fact on record, and therefore it is against the principles of natural justice. Examination and non-examination of the witness is the discretion of the prosecution. If the allegations are otherwise proved against the delinquent, it may not be necessary to examine more witnesses on the same facts. The petitioner had an opportunity to call her his witness when he was called upon to produce his defence witness. However, he did not prefer to examine any witnesses. The report of Inquiring Officer also reveals that, during the questioning, the petitioner had pleaded 'Guilty'. This finding falsifies the arguments of the petitioner that no opportunity to examine or cross-examine the witness was given to him. The record further reveals that the hearing was given to the petitioner as prescribed under Rule 27 (1) (c) of C.R.P.F. Rules.

19. We have no doubt that, the punishment to be awarded to the delinquent shall commensurate with the gravity of the charges/allegations. Section 9 and 10 C.R.P.F. Act speaks about more and less heinous offences. Using criminal force to, or committing an assault on any person or destroying or damaging any property, disobeying the lawful command of the superior Officer are the acts of more heinous offences as provided in section 9. To be in a state of intoxication when on or after having been warned for, any duty is a less heinous offence as per section 10 of the C.R.P. F. Act.

20. Having regard to the material against the petitioner and examining the record, we find that, the inquiry was held as per the C.R.PF. Rules. There is no violation of the principles of natural justice in conducting the inquiry. The authorities have not disabled themselves from reaching a fair conclusion by any consideration extraneous to the evidence and merits of the case. The conclusion on the very face of inquiry is not arbitrary and capricious. We also do not find any perversity in the impugned Order and no disproportionate punishment is imposed on the petitioner. We do not see any substance in the petition.

21. In view of the above, the petition is dismissed and the rule is discharged.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

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