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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: May 19, 2022***+ **W.P.(C) 7753/2022 & CM APPL.23697/2022**

ANIL GOSWAMI Petitioner
Through: Mr. Ankur Chhibber, Advocate

Versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Saroj Bidawat, Sr. Panel Counsel
for respondent No.1

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By virtue of instant petition, the petitioner seeks quashing of the Office Order No. P.VIII-1/2021-EC-II/39BN dated 24.02.2021 whereby he was dismissed from service by the respondents. Besides, quashing of subsequent Office Orders No. R.XIII-1/2021-EC-III dated 07.07.2021; Order No. R.XIII-8/2021-SS-ADM-7 dated 08.11.2021 and Office Order No. R.XIII- 20/2021-SZ-CRV-I dated 17.02.2022, is also sought.

2. Succinctly put, the brief facts leading to the filing of the instant case are as under:

2.1. The petitioner, after joining the Central Reserved Police Force (CRPF) on 21.03.2017 as a Constable/GD, was posted to 39 Bn,



CRPF with effect from 18.04.2018, lastly, in the State of Andhra Pradesh till his dismissal from service on 24.02.2021 by the respondents.

2.2. During his service with CRPF, in March 2020 he came in contact with an anonymous woman 'Poonam of Haryana' when he received a message on his facebook account from her. This proved to the beginning of a long and fruitful journey of the petitioner with the said anonymous woman. So deep was the feeling of the petitioner for the said anonymous woman that he went all out to make every possible effort to reach out and keep in touch with her in all possible ways as (i) they were conversing through facebook messages, (ii) through WhatsApp no. +919099321117 willingly shared by the petitioner with the said anonymous woman, (iii) through an alternate sim registered under number +918307088175 purchased by the petitioner for the said anonymous woman, (iv) through another alternate mobile number +919050645265 belonging to his relative, Rimpu and (v) through another alternate mobile number +919350311162 belonging to his friend, Binda and (vi) requesting the admin of the WhatsApp group of D/39 CRPF personnel to add the said anonymous woman and (vvi) thereafter, *admittedly*, himself became a member of the WhatsApp groups, viz 'Defence Staff Fitter Group' and 'Foji Jung' created by the said anonymous woman.

2.3. Not stopping there, during this time the petitioner was also guilty of sharing photographs of self alongwith his colleagues in uniform and weapons, park at coy location on 19.06.2020, photographs of guard, etc., taken after flag hoisting on 15.08.2020,



jungle training group photographs of twenty colleagues, rank ceremony of a Head Constable, recent transfer of force personnel received from the WhatsApp group of D/39 CRPF personnel.

2.4. Thereupon the respondents commenced appropriate proceedings which led to the passing of the Office Order No. P.VIII-1/2021-EC-II/39BN dated 24.02.2021 invoking Rule 27(cc)(ii) of CRPF Rule, 1955 read with Rule 19 (i) of CCS (CCA) Rules, 1965 and Article 311 (2) (b) of the Constitution of India whereby the petitioner was dismissed from service. The relevant extract therefrom reads as under:

“9. AND WHEREAS I, the undersigned am fully satisfied that, it is not reasonably practicable to hold a regular departmental enquiry as per procedure prescribed under Rule 27 of CRPF Rules 1955 for the reasons that:-.

i) Enquiry will take more than 3 months to be conducted as it will be difficult to call witnesses from other departments, but circumstances warranted his immediate expulsion.

ii) Since the misconduct committed by the individual is of grave in nature affecting the Security of the Nation, conducting an Enquiry and keeping him in service till completion of the Enquiry is not practically possible.

iii) He cannot be retained in service due to his contact and link with enemy agent and if kept unabated without taking prompt and timely action, he will continue to commit more heinous offences as he is connected with PIO through social media under the cover of Force which may lead to threat to the Nation.



iv) *It is apprehended that the said member of the Force, if continues, would create an adverse effect on the functioning, confidentiality as well as the security of Armed Forces and the Nation.*

v) *He has (was) found indulged in sharing pornography chat and photos with the enemy agent on being trapped and lured by the handler, which is against the instructions in vogue which jeopardized the security of the Armed Forces. Hence he cannot be retained in the service owing to have known his disloyalty/dispatriotism towards the Nation.*

vi) *Keeping his name on the roll of CRPF even after knowing his contact and links with enemy agent can tarnish the image of the prestigious Force. Further he is found with licentious and concocting attitude trying to justify his misconduct by taking alibi and misrepresenting the facts.*

vii) *Paying salary and allowance to the delinquent unnecessarily out of Public Exchequer till completion of a formal Departmental Enquiry will not be in the public interest.”*

2.5. Being aggrieved thereby, on 10.03.2021, the petitioner preferred an appeal before the Deputy Inspector General of Police, Range Headquarters, CRPF, Hyderabad (Telangana). The said appeal was dismissed vide a well-reasoned and detailed Office Order No. R.XIII-1/2021-EC-III dated 07.07.2021. Once again, being aggrieved, on 31.07.2021 the petitioner, this time preferred a revision petition before the Inspector General of Police, Southern Sector, HQ, CRPF, Hyderabad (Telangana), however, the same was dismissed vide Office Order No. R.XIII-8/2021-SS-ADM-7 dated 08.11.2021. It is noteworthy that in the interregnum and prior to the



passing of the aforesaid order, the petitioner also filed a separate application seeking personal audience before the same Inspector General of Police, Southern Sector, HQR, CRPF, Hyderabad (Telangana) and that was allowed by giving a hearing on 25.10.2021. Finally, the petitioner preferred an appeal before the Special DG, South Zone, CRPF, Hyderabad (Telangana), same was also dismissed vide Office Order No. R.XIII- 20/2021-SZ-CRV-I dated 17.02.2022.

3. It is in the aforesaid background that the petitioner has now approached this Court raising similar grounds.

4. During the course of arguments, the counsel for the petitioner has primarily contended that the respondents have arbitrarily passed the Office Order No. P.VIII-1/2021-EC-II/39BN dated 24.02.2021; Office Order No. R.XIII-1/2021-EC-III dated 07.07.2021; Office Order No. R.XIII-8/2021-SS-ADM-7 dated 08.11.2021; Office Order No. R.XIII- 20/2021-SZ-CRV-I dated 17.02.2022 and the Office Order No. P.VIII-1/2021-EC-II/39BN dated 24.02.2021 under Rule 27(cc)(ii) of the CRPF Rule, 1955 as the same has not been signed by the Special Director-General or Additional Director-General, South Zone or Director-General and rather by a Commandant.

5. In rebuttal, the learned counsel for the respondents appearing on advance notice contends that the petitioner is guilty of committing various and repeated grave acts of misconduct. Consequently, Office Order No. P.VIII-1/2021-EC-II/39BN dated 24.02.2021; Office Order No. R.XIII-1/2021-EC-III dated 07.07.2021; Office Order No. R.XIII-8/2021-SS-ADM-7 dated 08.11.2021 and Office Order No. R.XIII- 20/2021-SZ-CRV-I dated 17.02.2022, were passed by recording the reasons therein. Therefore, the present petition deserves to be dismissed.



6. On perusal of the orders under challenge, it is established that the petitioner was indeed guilty of unpardonable acts of utter carelessness repeatedly, as he freely repeatedly engaged in conversations with an anonymous woman which indeed casted a huge shadow of serious doubt over the petitioner. Thus, immediate steps were taken by the respondents as there was no occasion for the respondents to either conduct any enquiry or give another chance to the petitioner. More so, there were chances of the petitioner continuing to commit more heinous offences which would lead to an eminent danger to the safety and security of the Nation. While discussing similar like situations, the Hon'ble Supreme Court in ***Union of India Vs. Tulsiram Patel***, 1985 [3] SCC 398 has held as under:

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words use are “not reasonably practicable” and not ‘impracticable’. According to the Oxford English Dictionary ‘practicable’ means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster’s Third New International Dictionary defines the word ‘practicable’ inter alia as meaning “possible to practice or perform; capable of being put into practice, done or accomplished: feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster’s Third New International Dictionary defines the word ‘reasonably’ as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practice able to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is



that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

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The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

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The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.”

7. As argued by the learned counsel for the petitioner that the Office Order No. P.VIII-1/2021–EC-II/39BN dated 24.02.2021 is not sustainable as the same has been issued under Rule 27(cc)(ii) of CRPF Rule, 1955 under the signatures of a ‘Commandant’ instead of a special Director-General and/or the Additional Director-General heading Zone and/ or Director-General as required under Rule 27(cc)(iii) of CRPF Rule, 1955, however, we find no force in his submissions that it is categorically mentioned in the opening paragraph of the said Office Order No. P.VIII-1/2021–EC-II/39BN dated 24.02.2021 that “... ..the DIG(Adm), SS HQr CRPF vide letter No. P.VIII-1/2021-SS-Adm-7 dated 18/02/2021 has conveyed the information received



from the Joint Director, Intelligence Bureau (MHA), New Delhi”, meaning thereby the ‘Commandant’ was acting under appropriate instructions from the DIG (Adm) and thus the Office Order No. P.VIII-1/2021–EC-II/39BN dated 24.02.2021 fulfils all the requirements under Rule 27(cc)(iii) of CRPF Rule, 1955 and is not liable to be set aside.

8. In view of the above findings, we are of the considered opinion that the punishment imposed by the respondents is commensurate with the gravity of the charges and the same is not such which would shock the conscience of this Court. In acts of misconducts like those repeatedly committed by the petitioner, there cannot be any other lesser punishment than dismissal from service as, *rightly*, adopted by the respondents. The petitioner deserves no sympathy as the said acts of misconduct are opposed to public interest and were against the safety and security of the Nation. Acts like those committed by the petitioner should not be allowed to grow and ought to be eradicated from the root, especially in case wherein a public servant, i.e. an armed forces personnel like the petitioner is involved.

9. We find no merit in the instant petition and the same is accordingly dismissed. Pending applications are disposed of as infructuous.

10. No order as to costs.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 19, 2022

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