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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 16.02.2022***+ **W.P.(C) 9119/2020****MANOJ KUMAR**

..... Petitioner

Through **Mr.K.K.Sharma, Adv.**

versus

UNION OF INDIA & ORS.

..... Respondents

Through **Mr.D.S.Mahendru, Sr. Panel
counsel for UOI.****CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner praying for setting aside of the order dated 28.10.2019 passed by the Commandant 27 Bn Central Reserve Police Force (hereinafter referred to as 'CRPF'), dismissing the petitioner from services, as also the order dated 04.02.2020 passed by the Deputy Inspector General, Range, Imphal and order dated 19.09.2020 passed by the Inspector General, Manipur & Nagaland Sector, dismissing the appeal and revision petition of the petitioner respectively.

2. The petitioner further prays for issuance of writ of mandamus directing the respondents to reinstate the petitioner in service with all



consequential benefits, including seniority, fixation of pay, promotions, etc.

3. It is the case of the petitioner that he joined the CRPF as Constable/Bigular on 07.10.2005. He got married on 27.11.2007 and out of the wedlock has been blessed with two children born on 05.09.2009 and 23.04.2016.

4. The petitioner was sanctioned leave from 07.09.2018 to 21.09.2018 as his wife was seriously ill. The petitioner rejoined his duty on 22.09.2018, however, again requested for leave, which was sanctioned for the period from 24.09.2018 to 03.10.2018. After his duty hours on 22.09.2018, 23.09.2018, being a Sunday, the petitioner left for his home at Sonapat, Haryana.

5. The petitioner further contends that on 22.09.2018 at about 9:30 PM, the petitioner's wife committed suicide by hanging herself from a ceiling fan. In the intervening night of 22nd and 23rd September, 2018, the brother of the petitioner's wife got registered an FIR bearing No.491/2018 under Section 302 of the Indian Penal Code, 1860 against the petitioner at Police Station Ganaur, District Sonapat and the petitioner was taken into custody by the police and kept at Rajlugarhi, District Sonapat. The petitioner was totally shell shocked as he had not only lost his wife but also had been falsely implicated in her death. The petitioner also had two minor children to look after.

6. The petitioner claims that on 24.09.2018, one friend of the petitioner, namely Rajeev, who was posted at F/27 Bn along with the petitioner, called the petitioner on his mobile, which was answered by the sister of the petitioner who narrated the entire incident to him



about the tragedy which had occurred with the petitioner. Thereafter, on the same day, CHM, that is, the Cy. Hawaldar Major, Shri Kanti Lal also called on the mobile of the petitioner and petitioner's sister told him about the entire incident as well. One of the petitioner's relative, Punjab Singh, Assistant Commandant 212 Bn had also informed Subedar Major P.P.Yadav telephonically through the Control Room about the incident.

7. The petitioner asserts that he was sent to judicial custody at Sonapat Jail, Haryana on 25.09.2018 and was released on bail only on 18.12.2019.

8. In the meantime, the respondents addressed letters dated 11.10.2018 and 20.10.2018, sent at the residential address of the petitioner, complaining about his absence from duty. The petitioner became aware of these letters only when his brother met him in jail and showed the said letters to the petitioner. The petitioner immediately, through his brother, got sent a written intimation of his arrest vide letter dated 26.10.2018. The petitioner sent further letters dated 05.07.2019, 09.08.2019, 13.08.2019, 09.09.2019, 24.09.2019 and 18.10.2019, informing the respondents of his arrest and the criminal case pending against him.

9. The petitioner asserts that in spite of the above intimations, the Commandant, 27 Bn, CRPF passed the Impugned Order dated 28.10.2019 dismissing the petitioner from service under Rule 27A of the CRPF Rules, 1955 on the ground that the petitioner had failed to immediately report to the authorities of his arrest.



10. Feeling aggrieved, the petitioner filed an appeal from jail itself, which was, however, dismissed by the Deputy Inspector General, Range, Imphal vide Impugned Order dated 04.02.2020.

11. The petitioner filed a Revision Petition against the said order, however, the same was also dismissed by the Inspector General, Manipur and Nagaland Sector vide impugned order dated 19.09.2020.

12. The petitioner asserts that in the meantime, he was acquitted of all charges by the learned Additional Sessions Judge at Sonapat vide order dated 09.03.2020. Though this fact was brought to the notice of the learned Revisional Authority, the Revision Petition of the petitioner was still dismissed.

13. The learned counsel for the petitioner submits that the charge against the petitioner of not informing the respondents of his arrest is totally unfounded as not only was this information 'promptly' conveyed to the respondent in the telephone calls referred to hereinabove but also by way of a written communication dated 26.10.2018. He submits that in the facts of the case, wherein the petitioner's wife had committed suicide; the petitioner had immediately been taken into custody; and that the petitioner had two minor children to look after, it cannot be said that the petitioner intentionally delayed informing the authorities of his arrest or had any *mala fide* intent of concealing the said fact from the authorities.

14. The learned counsel for the petitioner further submits that in any case, it was also incumbent upon the police authorities to inform the respondents of the arrest of the petitioner.



15. On the other hand, the learned counsel for the respondents submits that the letter dated 26.10.2018, addressed by the brother of the petitioner was received by the respondent only on 01.11.2018. On verification of the factum of arrest of the petitioner, a preliminary enquiry was ordered vide order dated 29.01.2019. The Enquiry officer submitted his report giving the following conclusion:

“The case of No.051500141 CT/Bug Manoj Kumar is under consideration in the Criminal Court Sonapat and he could be remained suspended till decision/outcome of the case given by the Criminal Court and further action may be taken as per the rules of court.”

16. Based on the report, Memorandum of Charges was served upon the petitioner through the Superintendent of Police, District Jail Sonapat, Haryana vide letter dated 19.04.2019. Thereafter, Departmental Enquiry was ordered vide Office Order dated 08.06.2019. On 05.08.2019, Superintendent of Police, District Jail, Sonapat was asked whether the petitioner had requested to inform 27 Bn about his judicial custody. In response, the Superintendent of Police informed that the petitioner never made any such request to him. Thereafter, 15 days' time was granted to the petitioner for submission of his statement of defence and the name of his Defence Assistant. A letter was also issued to the Superintendent of Police District Jail, Sonapat, Haryana with request to grant permission on 23.08.2019 to record statement of the petitioner in the Departmental Enquiry. The petitioner submitted a letter dated 23.08.2019 to the Enquiry officer narrating the above facts. Based on the report of the



Enquiry Officer, vide the impugned order dated 28.10.2019, the petitioner was rightfully dismissed from service. He submits that the appeal and the revision filed by the petitioner were also rightly rejected.

17. The learned counsel for the respondents contends that as per Chapter 3 - Rule 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as 'CCS (CCA) Rules'], if a government servant who may be arrested for any reason fails to inform the fact of his arrest and the circumstances connected thereto to his official superior 'promptly', it shall be regarded as suppression of material information and will make him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him. He submits that the petitioner has been proceeded against on his failure to 'promptly' report of his arrest to the competent authority.

18. We have considered the submissions made by the learned counsels for the parties.

19. The Articles of Charge on which the petitioner has been proceeded against are reproduced hereinbelow:

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ARTICLE-I

That the said No.051500141 CT/Bug Manoj Kumar of F/27 Bn, CRPF while functioning as Constable (Bug) committed an act of Gross Misconduct in his capacity as member of force under section 11 (1) of CRPF, Act, 1949 in which he did not informed to this office regarding Judicial custody of himself in Sonepat jail with effect from 25/09/2018 under the case No.491/18 dated 23/09/2018 logged in police Station, Gannore, District-Sonepat,



Haryana regarding murder of his wife Savita under section 302B/34 of Indian Penal Code. Which is against the good order and discipline of the force and criminal offense under Section 11(A) of CRPF Act-1949.

ARTICLE -II

That the said No.051500141 CT/Bug Manoj Kumar of F/27 Bn, CRPF while functioning as Constable (GD) committed an act of Gross Misconduct in his capacity as member of force under section 11 (1) of CRPF, Act, 1949. No.051500141 CT/Bug Manoj Kumar of F/27 Bn, CRPF has been taken into Judicial custody w.e.f25/09/2018 at District-Jail, Sonapat, Haryana under the case No. 491/18 dated 23/09/2018 logged in police Station, Gannore, District- Sonapat, Haryana for the murder of his wife Savita under section 302B/34 of Indian Penal Code. Being a member of a disciplined force, No. 051500141 CT/Bug Manoj Kumar of F/27 Bn, CRPF has not yet been informed so far to this office nor any progress made on the matter with regard to judicial custody. This is against the good order and discipline of the force member and is a punishable offense under Section 11(1) of CRPF Act-1949."

20. A few facts which remain undisputed are that the wife of the petitioner died on the night of 22.09.2018; the petitioner was immediately arrested and was thereafter remanded to judicial custody on 25.09.2018; the petitioner remained in custody till 18.12.2019; and the petitioner had two minor children aged around 9 years and 2 years. The petitioner had informed the authorities of his arrest through the letter dated 26.10.2018 addressed by his brother.



21. O.M. No.30/59/54-Ests. (A) dated 25.02.1955, which was referred to by the learned counsel for the respondent as Rule 3 of the CCS (CCA) Rules reads as under:

“(3) Report of arrest to superiors by Government servants.—It shall be the duty of a Government servant who may be arrested for any reasons to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though he might have subsequently been released on bail. On receipt of the information from the person concerned or from any other source, the departmental authorities should decide whether the fact and circumstances leading to the arrest of the person call for his suspension. Failure on the part of any Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the Police case against him.

[G.I., M.H.A., O.M. No.30/59/54-Ests. (A), dated the 25th February, 1955.]”

(Emphasis Supplied)

22. A reading of the above would show that it is the obligation of the Government servant to inform his superior about his arrest and the circumstances connected therewith ‘promptly’. The word ‘promptly’ suggests without delay. The House of Lords in ***R (on the application of Burkett and another) v Hammersmith and Fulham London Borough Council*** (2002) 3 All.E.R 97 has observed as under:

“LORD STEYN.

...Secondly, there is at the very least doubt whether the obligation to apply ‘promptly’ is sufficiently certain to comply with European



Community law and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the Human Rights Act 1998). It is a matter for consideration whether the requirement of promptitude, read with the three-months' limit, is not productive of unnecessary uncertainty and practical difficulty."

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"LORD HOPE OF CRAIGHEAD.

[60] The principle of legality, which covers not only statute but also unwritten law, requires that any law or rule which restricts convention rights must be formulated with sufficient clarity to enable the citizen to regulate his conduct (see Sunday Times v. UK (1979) 2 EHRR 245 at 270-271 (paras 47, 49)). He must be able, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The problem is that the word 'promptly' is imprecise and the rule makes no reference to any criteria by reference to which the question whether that test is satisfied is to be judged."

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" [66] There is clearly much force in the point which my noble and learned friend makes that the obligation to apply 'promptly' is, without more, too uncertain to satisfy the requirements of convention law. But in my opinion the factors which are relevant to a plea of mora, acquiescence and taciturnity in Scottish practice provide an appropriate context for the taking of decisions on this point. They provide a sufficiently clear workable rule for the avoidance of undue delay in the bringing of these applications, as experience of the operation of judicial review



in Scotland has shown. I do not think that it would be incompatible with his convention rights for an applicant who must be taken to have acquiesced in the decision which he seeks to bring under review, or whose delay has been such that another interested party may be prejudiced, to be told that his application cannot proceed because he has delayed too long in bringing it.”

23. The above principle can be summarized as the obligation to report ‘promptly’ is too uncertain from the point of view of a fixed time within which the government servant must report to his superior authority of his arrest. The time within which such report must be made, therefore, has to be considered in the facts and circumstances of each case.

24. In the present case, we find from a reading of the Impugned Orders dated 28.10.2019, 04.02.2020 and 19.09.2020 that the authorities have not considered as to whether in the peculiar facts of the case that have been stated hereinabove, the petitioner can be held guilty of not reporting the factum of his arrest and the circumstances of the case to the superior officer ‘promptly’. They, in fact, have proceeded on the basis that there was active attempt on part of the petitioner to conceal the factum of his arrest. We find absolutely no basis for the authorities to reach this conclusion. Merely because the petitioner did not make any request to the Jail Superintendent to inform his unit of his arrest, cannot lead to the assumption that he tried to conceal the factum of his arrest from the authorities. We, in fact, find that in the facts of the present case, the petitioner cannot be held guilty of suppressing information of his arrest from the authorities and



no *mala fide* could have been attributed to the petitioner. The petitioner was arrested immediately after the death of his wife. From custody only he intimated the factum of his arrest to the authorities, albeit, after 32 days of his arrest. It does not appear that the petitioner was intentionally trying to conceal the factum of his arrest from the authorities.

25. We are conscious of the limitation on the scope of power of judicial review in cases of departmental inquiry, however, as recently held by the Supreme Court in ***United Bank of India v. Biswanath Bhattacharjee*, 2022 SCC OnLine SC 108**, where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are *mala fide*, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted.

26. We even otherwise find the punishment of dismissal from service to be wholly disproportionate to the facts of the present case.

27. In view of the above, the Impugned Orders dated 28.10.2019, 04.02.2020 and 19.09.2020 cannot be sustained and are accordingly set aside.

28. On the final relief to be granted to the petitioner, the learned counsel for the petitioner fairly submits that the petitioner shall not claim any pay or allowances for the period between his dismissal from service and reinstatement to be granted pursuant to the present order.



29. Accordingly, the present petition is allowed. The Impugned Orders dated 28.10.2019, 04.02.2020 and 19.09.2020 are set aside. The respondents are directed to reinstate petitioner in service within two weeks of receipt of this order, granting him notional seniority and other service benefits considering him to be in service throughout the period between his dismissal and the reinstatement. However, the petitioner shall not be entitled to grant of any pay and other emoluments/allowances for the period between the date of dismissal from service to the date of his reinstatement. It is ordered accordingly. There shall be no orders as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 16, 2022/RN/U