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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 07th January, 2022***

+ W.P.(C) 295/2022 & CM No.837/2022

PULATE RAJESH SOPAN Petitioner
Through Ms.Neha Rai, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Ms.Nidhi Raman, CGSC with
Mr.Zubin Singh, Adv.

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

1. The hearing has been conducted through video conferencing.
2. This petition has been filed by the petitioner challenging the order dated 26.12.2020 passed by the respondent no.3 placing the petitioner under suspension and the order dated 15.03.2021 passed by the respondent no.3 finding the petitioner guilty of having consumed liquor on duty as well as disobedience to a superior officer and consequently, imposing a punishment of imprisonment of 21 days in force custody from 16.03.2021 to 04.04.2021 and deduction in his salary of three days under Section 56(1)(g) of the Indo Tibetan Border Police Force Act, 1992.



3. It is the case of the petitioner that he joined the Indo Tibetan Border Police Force (in short, 'ITBP') as a Constable/GD in the year 2011 and has had a spotless service record. In the year 2019, he was transferred to the 39th Battalion, Lakhnawali Camp, Greater Noida. During the month of December 2020, he was posted at the Rashtrapati Bhawan. During this period, he had made repeated complaints about the quality of food being served to the personnel, however, no fruitful result came out of such complaints. The petitioner claims that on 25.12.2020, during the shift briefing by the Shift Commander at the Rashtrapati Bhawan, the petitioner again raised the issue of unhealthy food served to them. The other personnel also made similar complaint. The Shift Commander, instead of answering the grievances, with the *mala fide* and vexatious motive, alleged that the petitioner is acting under influence of alcohol and on this pretext, the petitioner was taken for a medical checkup. No doctor was present at the medical centre and therefore, no test was conducted on the petitioner.

4. On 26.12.2020 the petitioner was made to appear before the Commandant, 39th Battalion ITBP; who passed an order to initiate disciplinary inquiry in summary disposal against the petitioner and also placed the petitioner under suspension with immediate effect. On 14.03.2021, the petitioner was intimated verbally that his suspension order dated 26.12.2020 was revoked, however, no written order to such an effect was supplied to the petitioner. On the next day, that is, 15.03.2021 the petitioner was sent to illegal confinement for a period



of 21 days. The petitioner alleges that during this force custody, one official visited the petitioner and forced him to sign certain documents without making him aware of the contents of said documents. The petitioner was thereafter informed about the impugned order dated 15.03.2021 finding him guilty on the charges of having consumed liquor while on duty and disobedience to a superior officer.

5. The learned counsel for the petitioner submits that the Record of Evidence (in short, 'RoE') prepared in the inquiry is totally illegal inasmuch as no witnesses were examined in the presence of the petitioner nor any opportunity to rebut and cross-examine the witnesses was given to the petitioner. She submits that the petitioner was forced to sign the deposition and other documents and therefore, the entire proceedings are in violation of principles of natural justice. She further submits that even the complete copy of the RoE has not been supplied to the petitioner till date.

6. The learned counsel for the petitioner has further drawn our attention to the medical report on the basis of which the disciplinary proceedings were initiated, to submit that the same does not bear the name, signature or the stamp of any doctor, and therefore is forged.

7. On the other hand, the learned counsel for the respondents, who appears on advance notice, submits that the entire RoE has been supplied to the petitioner as is also recorded in the reply dated 26.10.2021 to the legal notice dated 13.09.2021 sent on behalf of the petitioner. She has further drawn our attention to the RoE filed by the petitioner with the petition, which states that the petitioner had been



afforded an opportunity to cross-examine all the four witnesses, however, the petitioner refused to cross-examine the witnesses. She further states that the petitioner was also afforded an opportunity to lead evidence in his defence, which again the petitioner denied. She submits that the petitioner has in fact been dealt with leniently for otherwise the misdemeanour alleged against him, that is, intoxication on duty and disobedience to a superior officer, is very grave.

8. We have considered the submissions made by the learned counsels for the parties. A perusal of the documents filed by the petitioner alongwith the petition clearly reveals that the petitioner was afforded an opportunity to cross-examine the witnesses who were produced during the ROE. The petitioner, however, denied to cross-examine these witnesses. The petitioner therefore, cannot be heard to complain about violation of principles of natural justice.

9. The submission of the petitioner that he was forced to sign some papers, cannot be accepted. The petitioner in fact does not even name the officer who allegedly forced him to sign the documents nor has he impleaded any such officer in the present petition. In any case, these allegations cannot be considered in exercise of writ jurisdiction as they would require evidence to be recorded.

10. As far as the medical document on the basis of which the proceedings were initiated is concerned, the respondents in reply to the legal notice on 26.10.2021 had stated that the medical doctor was on leave so the medical examination was conducted by a medic of the Unit. In any case, the four witnesses produced by the respondents in



the proceedings have confirmed such examination and as noticed hereinabove, these witnesses were not cross-examined by the petitioner. Therefore, again this cannot be a ground to interfere with the impugned order in the present petition.

11. As far as the supply of copies of the RoE is concerned, the reply to the legal notice states that the same has been supplied to the petitioner. In any case, we direct that in case the petitioner makes a request for supply of another copy of the RoE, the same shall be supplied to the petitioner by the respondent no.3 without any delay.

12. In view of the above, we find no merit in the present petition. The same is accordingly dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 07, 2022/Arya/AB