

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18535 of 2014

Kamlesh Bhai Kanti Bhai Parmar son of Kanti Bhai, resident of village-Dumroul, Police Station- Nadiad, District-Khida Gujarat.

... .. Petitioner/s

Versus

1. The Union of India
2. The Director General, C.R.P.F., C.G.O. Complex, Lodhi Road, New Delhi
3. The Office of the Special D.G., Central Zone, C.R.P.F., Salt Lake, Sector-3, Kolkatta-700106.
4. The Inspector General, Bihar Sector, C.R.P.F., Patna, Bihar.
5. The D.I.G. Administration, Range Muzaffarpur C.R.P.C., Bihar.
6. The Commandant, 159 Battalion, C.R.P.F., Gaya, Bihar.
7. Inquiry Officer-cum-Assistant Commandant, 159 Battalion, C.R.P.F. Gaya, Bihar.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Girish Chandra Jha, Advocate
For the Respondent/s : Mr. Awadhesh Kr. Pandey, Sr.C.G.C.
Mr. R.K. Sharma, C.G.C.
Mr. Lokesh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 02-08-2023

1. The present writ petition has been filed for quashing the order dated 26.04.2011 passed by the Commandant, 159 Battalion CRPF, Gaya i.e. the respondent no. 6, whereby and whereunder the petitioner has been inflicted the punishment of removal from service as also for setting aside the order dated 01.04.2013 passed by the respondent



no. 4, whereby the appeal filed by the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as Sepoy/GD for general work in the Central Reserve Police Force on 11.03.2004. A show cause notice was issued to the petitioner vide letter dated 24.08.2010, asking him to furnish explanation regarding his gross misconduct in performance of his duties on the allegation that on 11.01.2010 at about 7:00 P.M., before going for operation duty, he had consumed liquor and had also threatened his colleagues that he would kill them. Thereafter, a departmental proceeding was initiated against the petitioner and an Enquiry Officer was appointed wherein the petitioner had appeared, accepted the charges levelled against him and had pleaded guilty but had said that he had not given any threat of killing his colleagues. Thereafter, the enquiry report was submitted and a second show cause notice was issued to the petitioner vide memo dated 03.02.2011, enclosing a copy of the



enquiry report with an observation that the petitioner can submit his reply to the same within a period of 15 days but the petitioner filed his explanation dated 25.02.2011, admitting his guilt. The disciplinary authority had then considered the enquiry report and the explanation furnished by the petitioner and had come to the conclusion that such type of behavior by the petitioner is gross misconduct and creates adverse effect on the members of the disciplined force, hence an order inflicting punishment of removal from service was passed by the respondent no. 6 on 26.04.2011. The petitioner had then challenged the same by filing an appeal, however, the same has also stood rejected by an order dated 01.04.2013, passed by the respondent no. 4.

3. The Ld. Counsel for the petitioner has raised only one issue i.e. regarding the punishment of removal from service being shockingly disproportionate to the gravity of charges levelled against the petitioner, hence it is submitted that the impugned orders be set aside and the matter



be remanded back to the disciplinary authorities for taking a fresh decision with regard to the quantum of punishment.

4. Per contra, the Ld. Counsel for the respondents has submitted that while the petitioner was posted at F/159 Bn., two platoons were to proceed for operation duty on 11.01.2010 and during the course of checking, the petitioner was found unprepared & was not wearing B.P. Jacket, however, on being asked by the CHM as to why he was not wearing BP Jacket, he replied that he had problems in wearing B.P. jacket and the CHM could report it to anyone, if he so desired, thus harshness & arrogance was very clear in his tone. Nonetheless, the CHM had asked the petitioner not to speak in a rude manner but the petitioner had continued with his misbehavior & had threatened to kill him, in presence of the whole platoon troops, whereafter, the other Jawans present there had also requested the petitioner to stop being arrogant with the CHM, however, it was revealed that the petitioner had consumed alcohol



& he was in an inebriated state. Accordingly, the petitioner was sent to the Primary Health Centre, Navinagar & upon medical examination, it was confirmed that the petitioner was in a state of intoxication having consumed liquor. Consequently, a charge sheet was framed against the petitioner vide memo dt. 24.8.2010, with a direction to him to submit his explanation within 15 days but the petitioner did not submit any reply.

5. Thereafter, an enquiry officer was appointed vide order dated 26.10.2010, for conducting the departmental enquiry with regard to the charges levelled against the petitioner. The enquiry Officer had then conducted the departmental enquiry and had found the charge levelled against the petitioner to have been proved, whereupon, a copy of the enquiry report was handed over to the petitioner along with the second show cause notice dated 03.02.2011 and he was asked to submit his representation/ reply, if any, within 15 days. In reply, the petitioner had submitted a representation, accepting his guilt. After



considering the enquiry report, the reply of the petitioner and upon application of mind, the Commandant, 159 Battalion CRPF, Gaya i.e. the respondent no. 6 had passed the impugned order dated 26.04.2011, inflicting the punishment of removal from service, upon the petitioner. The petitioner had then preferred an appeal before the DIGP, CRPF Ranchi Range, inter-alia praying therein for reinstatement in service, however, the appeal filed by the petitioner was rejected by the DIGP, CRPF, Ranchi Range vide order dt. 12.11.2011. Thereafter, a revision petition was filed before the DG, CRPF which was sent to the IGP, BS, Patna for necessary action, which upon in depth examination was found to be devoid of any merit, hence was rejected vide order dt. 01.4.2013.

6. The Ld. Counsel for the respondent-State has further submitted that there is no irregularity in the procedure adopted by the respondents in conducting the departmental proceedings, hence this Court would not interfere with the order of punishment dated 26.04.2011, especially since the



petitioner has himself pleaded guilty of the charges levelled against him. As regards the quantum of punishment, it is submitted that the offences committed by the petitioner being serious in nature, he deserves severe punishment. It is also submitted that the charges, regarding the petitioner having misbehaved with his senior & being in an inebriated condition has stood proved during the course of the departmental enquiry, on the basis of exhibits and statements of PWs., hence no sympathy can be shown towards the petitioner, more so, since CRPF force is a disciplined force and any indiscipline can cause fratricide. Thus, it is contended that since punishments are required to instill an essence of deterrence against such acts of indiscipline, the punishment of removal from service, imposed upon the petitioner by the disciplinary authority is absolutely commensurate with the gravity of offence committed by him.

7. I have heard the Ld. Counsel for the parties and gone through the materials on record, from



which this Court finds that there is no procedural error in conduct of the departmental proceeding qua the petitioner herein and the petitioner has rightly not challenged the order of punishment of removal from service dated 26.04.2011, on merits.

8. As far as the contention of the learned counsel for the petitioner, to the effect that the punishment of dismissal from service is harsh, this Court finds that the petitioner is a member of a Disciplined Force, hence, he was not only expected to follow the rules, but also should have had control over his actions and any abrasion and deviation in discharge of his duties would definitely entail a punishment of dismissal and the same cannot be stated to be shocking to the conscience of the Court, hence, there is no scope of interference as far as the quantum of punishment is concerned. In this regard, this Court would refer to a judgment, rendered by the Hon'ble Apex Court in the case of Union of India & Others vs. Diler Singh, reported in (2016) 13 SCC 71, paragraphs no. 22 to 27 whereof are reproduced herein below:-



“22. The aforesaid analysis reveals that the Division Bench has clearly held that the delinquent employee, being a member of the Force, could not have left the camp without prior permission. It has also opined that when a personnel is posted in a camp, he is not free to move as per his choice even during the period when he is not on duty. However, as is manifest, the Division Bench has opined that the imposition of dismissal as a punishment, which is a major one, could not have been imposed by the disciplinary authority. The said opinion has been expressed without referring to the position of law that has been clearly laid down in Ghulam Mohd. Bhat [(2005) 13 SCC 228]. Thus, the basic premise is erroneous.

23. In the impugned order, the writ court has, after reproducing the passage from Akhilesh Kumar [(2007) 6 SLR 438], opined that the controversy is covered by the judgment rendered by the High Court of Calcutta. It is extremely significant to note that the learned Single Judge has not even made an effort to appreciate the decision in Ghulam Mohd. Bhat [(2005) 13 SCC 228] though the same was relied upon by the learned first appellate Judge. Thrust of reasoning of the first appellate court was that



a major punishment of dismissal could be imposed in law. It is quite unfortunate that the High Court has dislodged the finding without any analysis but reproducing a passage from the Calcutta High Court which had not referred to the ratio laid down by a two-Judge Bench of this Court in Ghulam Mohd. Bhat case [(2005) 13 SCC 228]. Thus, the conclusion arrived at by the High Court is wholly unsustainable.

24. The learned counsel for the respondent has submitted that even if the charges have been proven, the punishment of dismissal in the obtaining factual matrix is absolutely harsh and shocking to the conscience. It is his submission that the punishment is disproportionate. The respondent was a part of the disciplined force. He has left the campus without prior permission, proceeded to the market, consumed liquor & quarrelled with the civilians. It has been established that he had consumed liquor at the market place, and it has been also proven that he had picked up quarrel with the civilians. It is not expected of a member of the disciplined force to behave in this manner. The submission, as has been noted earlier, is that the punishment is absolutely disproportionate. The test of proportionality has been explained



by this Court in Om Kumar v. Union of India [(2001) 2 SCC 386], Union of India v. G. Ganayutham [(1997) 7 SCC 463] and Union of India v. Dwarka Prasad Tiwari [(2006) 10 SCC 388] .

25. In Dwarka Prasad Tiwari, it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.

26. We are inclined to think so as a member of the disciplined force, the respondent was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in fancy. It is not a mild deviation which human nature would grant some kind of lenience. It is a conduct in public which has compelled the authority to think and, rightly so, that the behaviour is totally undisciplined. The respondent, if we allow ourselves to say



so, has given indecent burial to self-control, diligence and strength of will power. A disciplined man is expected, to quote a few lines from Mathew Arnold:

*“We cannot kindle when we will
The fire which in the heart resides,
The spirit bloweth and is still,
In mystery our soul abides:
But tasks in hours of insight will'd
Can be through hours of gloom
fulfill'd.”*

Though the context is slightly different, yet we have felt, it is worth reproducing.

27. Consequently, the appeal is allowed, the judgment and decree [Diler Singh v. Union of India, 2012 SCC OnLine P&H 19043] passed by the High Court is set aside and that of the first appellate court is restored and the suit instituted by the respondent-plaintiff stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.”

9. Consequently, this Court finds that in the present case, the charges levelled against the petitioner are grave, as can be culled out from the preceding paragraphs, which have also stood proved, hence such indiscipline cannot be viewed lightly, thus, this Court finds that the punishment



inflicted upon the petitioner is not disproportionate to the gravity of the charges levelled against him, hence this aspect of the matter is answered against the petitioner.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.09.2023
Transmission Date	N/A

