

S/L 77
21.12.2023
Court. No. 29
Sourav

WPA 15557 of 2021

Nawsad Ali @ Naushad Ali
Vs.
Union of India & Ors.

Mr. Sk. Mujibar Rahman
Mr. Shayak Mitra

...for the petitioner.

Mr. S. Bera

...for the Union of India.

1. Both the writ petitioner and the respondent/Union of India are represented by their respective learned advocates.
2. The instant writ petition is now taken up for hearing.
3. Heard learned advocate for the writ petitioner and learned advocate for the respondent/Union of India at length.
4. The present writ petition is now taken up for passing appropriate order.
5. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for cancellation of the office order dated 20.06.2020 as passed by the respondent no. 5 directing removal of service of the writ petitioner from CRPF.
6. From the materials as placed before this Court, it reveals that on 06.02.2019, the present writ petitioner was sent to Anantnag, Jammu & Kashmir in discharge of his duty. It reveals further that during his stay at Anantnag, Jammu & Kashmir one of his colleagues Constable/GD Misao Rao became ill and he applied for leave to go to his

native place for domestic treatment. However, for some reason or other, the leave of Mr. Rao has not been granted and on 27.07.2017, the said Misao Rao died. From the articles of charges as framed against the petitioner, it reveals that following the death of the said Misao Rao, the present petitioner along with other members of the armed forces posted at Anantnag, Jammu & Kashmir attacked in a group on a gazetted/coy officer and mercilessly beaten him.

7. Over the said incident, departmental proceeding was initiated based on four charges. In the said departmental enquiry, an enquiry officer as well as presenting officer were appointed by the respondent authority. It reveals further that the charged employees including the present writ petitioner were read over and explained the charges imposed against them and the said charged employees including the present writ petitioner pleaded their innocence and claimed to be tried.
8. From the materials placed before this Court, it further reveals that in course of such departmental enquiry, the present writ petitioner along with other charged employees were given full opportunity to cross-examine the prosecution witnesses which they did not avail and they have also not adduced any evidence either oral or documentary on their behalf though such opportunity was given in the said in-house proceeding.
9. On conclusion of such departmental enquiry, the penalty of removal of service has been imposed upon the writ petitioner which has been assailed before the appellate

authority but the appellate authority also upheld the order of the enquiry officer.

10. Drawing attention to page no. 68 of the instant writ petition being Annexure P-6, it is submitted that challenging the order of the enquiry authority as well as disciplinary authority a Petition for Revision under Rule 29 of the CRPF Rule, 1955 cum Mercy Petition has been preferred but the same has not yet been disposed of.
11. Learned advocate for the writ petitioner further submits before this Court that since the writ petitioner has already completed his qualifying service which entails him to apply for Voluntary Retirement Scheme both the enquiry authority as well as the appellate authority ought to have taken a lenient view while coming to a conclusion and while passing the order of punishment which is excessively harsh.
12. *Per contra*, learned advocate for the Union of India at the very outset submits before this Court that since the revisional authority has not yet disposed of a Petition for Revision under Rule 29 of the CRPF Rule, 1955 cum Mercy Petition as filed by the writ petitioner as yet the instant writ petition is not maintainable. It is further argued by him that considering the charges as levelled against the present writ petitioner and the materials as placed before the enquiry officer, there cannot be any justification to alter such concurrent findings of the enquiry authority as well as appellate authority by a writ court.

13. On perusal of the entire materials as placed before this Court, this Court considers that since the Petition for Revision cum Mercy Petition dated 31.03.2021 is still pending before the revisional authority being respondent no. 3 herein, justice would be sub-served if this Court directs the respondent no. 3 to come to a logical conclusion in respect of the Petition for Revision cum Mercy Petition dated 31.03.2021 as submitted by the present writ petitioner within a time framed after giving an opportunity of being heard to the writ petitioner.
14. In view of such, this Court in exercise of its plenary power directs the respondent no. 3 i.e., Special Director General of Police, CRPF, Central Zone, HC Block, Sector III, Salt Lake City, Kolkata – 700 106 to dispose of the revision petition cum mercy petition dated 31.03.2021 as filed under Rule 29 of the CRPF Rules, 1955 within a period of three months from the date of communication of this order after giving an opportunity of being heard to the present writ petitioner and to come to a logical finding in writing within the period as mentioned above.
15. It is further directed that the finding of the respondent no. 3 shall have to be communicated to the present writ petitioner within two weeks from the date of passing of such order while disposing such revision petition cum mercy petition under Speed Post with A/D.
16. With the aforementioned observation, the instant writ petition being **WPA 15557 of 2021** is disposed of.

17. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.
18. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)