

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 21257 of 2011

**Raju Dhar
Vs.
Union of India & Ors.**

For the petitioner	:	Sk. Mujibar Rahman Mr. Mehboob Rahman
For the Union of India	:	Ms. Chandreyi Alam Mr. Dilip Kumar Chatterjee
Heard on	:	14.03.2023,17.03.2023.
Judgment on	:	17.03.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the order of dismissal dated 12th January 2010 passed by the Commandant, 38 Bn., C.R.P.F., the orders passed by the Appellate as also the Revisional Authority. It is the petitioner's case that the petitioner had enrolled himself in the Central Reserve Police Force (in short C.R.P.F.), on 29th April 2000. In course of his service tenure, he was posted at Samba (Jammu & Kashmir). The petitioner says that while being posted at Samba (Jammu & Kashmir), he was issued a memorandum of charge dated 9th June 2009 issued by the Commandant-38 Bn. CRPF,

along with statement of imputation of misconduct or misbehavior alleging misconduct under Section 11 of the Central Reserve Police Force Act, 1949, (hereinafter referred to as the said Act), read with Rule 27 of the CRPF Rules 1955 (in short the said Rules).

2. Following the aforesaid, an enquiry officer was appointed. The petitioner says that the disciplinary authority by office order dated 12th January 2010, awarded the petitioner a punishment of dismissal from service. The petitioner had preferred an appeal from the aforesaid order before the appellate authority being the Deputy Inspector General of Police, CRPF, Durgapur, District-Burdwan. Unfortunately, the said appeal was rejected by an order dated 22nd July 2010. The petitioner claims to have preferred a revisional application under Rule 29 of the said Rules, before the Inspector General of Police, Eastern Sector, CRPF, Salt Lake, Kolkata. By office order dated 31st January 2011, the said revisional application was also rejected. Being aggrieved, the present writ application has been filed.
3. Mr. Rahman learned advocate appearing for the petitioner by drawing attention of this Court to page 34 of the writ application submits that the petitioner was served with a copy of the memorandum of charge along with the statement of articles of charges framed against the petitioner. No show cause notice was issued prior to issuance of the aforesaid charge sheet. Despite the fact, the petitioner had prayed for change of the enquiry

officer, such prayer was turned down and the enquiry was conducted by one K.G.S. Rathaur. He, however, clarifies that although in the writ application the petitioner has claimed that Shri Farooq Ahmed was appointed as the enquiry officer, such assertion by the petitioner is incorrect as the same relates to a separate enquiry proceeding.

4. He says that the enquiry proceeded without adhering to his request for change of enquiry officer. He says that the petitioner thereafter did not participate before the said enquiry officer. No proper enquiry was held. No report of such enquiry was served on the petitioner. No second show cause notice was issued on the petitioner prior to awarding punishment on the petitioner.
5. He says that the aforesaid order passed by the disciplinary authority would shock the conscience of this Court and the same cannot be sustained and should be set aside. He says both the appellate authority as well as the revisional authority mechanically dismissed the appeal and revisional application without application of mind.
6. *Per contra*, Ms. Alam, learned advocate appearing for the respondents submits that after the petitioner was appointed as a constable on 29th April 2000. Subsequently, in course of employment, for committing an act of gross misconduct, he was served with the memorandum of charges. Consequent upon service of the memorandum of charges an enquiry was

conducted, the petitioner did not participate in the enquiry. He only prayed for change of enquiry officer. Since the petitioner, could not substantiate reasons for such change, his request was not adhered to. Ms. Alam submits that despite the fact the enquiry officer had directed the petitioner to appear in the enquiry, the petitioner refused to attend the enquiry proceedings and claimed to be sick. Although the petitioner was declared fit by the Government Hospital Jammu, he did not attend the enquiry and refused to accept the notice of enquiry. Despite repeated notices, the petitioner did not participate in the enquiry. The petitioner had in fact deserted the campus illegally.

7. The enquiry was, accordingly, conducted ex-parte against the petitioner and after the enquiry proceedings were held, the petitioner was served with an enquiry report at his home address.
8. Subsequently, the disciplinary authority passed the Final Order dated 12th January, 2010. By drawing attention of this Court to the appeal filed by the petitioner, which is at page 51 of the writ application, she says that the petitioner while referring to the report of the enquiry officer, had questioned the finding of the enquiry officer in the said appeal. The appellate authority after taking into consideration all aspects of the matter, had confirmed the order of dismissal, and had rejected the appeal filed by the petitioner. The revisional application filed by the petitioner also failed. She says that there are sufficient grounds to hold the

petitioner guilty of the charges. Admittedly, the petitioner was appointed as a constable of a disciplined force. The petitioner overstayed his leave and even refused to attend his duties despite instruction. The aforesaid order, in the given facts, cannot be said to be either shocking or disproportionate to the charges leveled against the petitioner. The writ application is misconceived, the same should be dismissed with costs.

9. I have heard the learned advocates appearing for the respective parties and have considered the materials on record. I find that the petitioner was served with the memorandum of charges. It would be apparent from the memorandum of charges that the petitioner did not report for duty despite expiry of 60 days of earned leave, which was due from 12th November 2008 to 10th January 2009, with permission to avail Sunday on 11th January 2009 sanctioned to him and remained absent from duty with effect from 12th January 2009 to 18th May 2009, a total of 127 days, without prior permission of the competent authority or sufficient cause. The petitioner had also been charged for not adhering to the directions of the authority, for not reporting back to duty as also for staying at hotel Shankar, Jammu, after overstaying his leave, without informing the competent authority and involving himself in an incident on 13th November 2008 which tarnished the image of the unit and is prejudicial to the good order and discipline of the force. The charges levelled against the petitioner

have been detailed in the memorandum of charges dated 9th June 2009 and along with the same, list of documents and list of witnesses were also forwarded to the petitioner

10. From the records of the proceedings, it would appear that the petitioner had not participated in the enquiry proceedings. He even refused to accept notices. It would be apparent from the records that the petitioner was given an opportunity to participate in the enquiry. He was also given opportunity to defend which he did not avail.
11. Although, the petitioner, at one stage had claimed for change of the enquiry officer, his request for change of enquiry officer was turned down and the said fact was also conveyed to him. From a perusal of the enquiry report, it would be apparent and clear that in course of the enquiry, the charges leveled against the petitioner had been proved.
12. Since the petitioner himself had avoided the enquiry, it cannot be said that there had been denial of natural justice. The records reveal, in course of enquiry the charges were proved. The disciplinary authority while agreeing with the findings of the enquiry officer and taking note of the gravity of the charges awarded punishment of dismissal from service. The appeal preferred by the petitioner was duly considered by the appellate authority. The appellate authority after considering the matter concluded that during the course of the departmental

proceedings, the charges against the petitioner were proved. Since the petitioner committed a grave misconduct in his capacity as member of the force, he was awarded a punishment of dismissal from service and the same commensurate with the gravity of the offence committed by the petitioner and consequentially rejected the appeal. I find that the petitioner had also preferred a revisional application under rule 29 of the said rules. The revisional authority after examining the petitioner's application also refused to interfere with the punishment awarded to the petitioner.

13. Once the petitioner stayed away from the enquiry, it is no longer open to the petitioner to question, the findings of the enquiry authority on the ground of denial of natural justice. As such the petitioner can no longer question why show cause notice was not served on the petitioner prior to service of the charge sheet.

14. Ordinarily, the Court does not interfere with the punishment inflicted by the disciplinary authority unless the same is found to be shockingly disproportionate to the charges levelled. In the given facts, when the petitioner had been appointed as a constable and was posted in a sensitive area, the failure on the part of the petitioner to adhere to the directives issued by the authorities cannot be taken to be lightly. The petitioner did not participate in the enquiry proceedings. Having

not participated in the enquiry proceedings, the petitioner cannot claim that there had been violation of the principles of natural justice. The disciplinary authority taking into consideration the charges levelled against the petitioner, the nature of charges and upon proof of such charges, by deliberating on the attending circumstances including sensitivity of the posting has taken a decision and has inflicted the punishment.

15. The punishment also does not appear to be disproportionate to the charges leveled against him. I find no reasons to interfere with the punishment awarded to the petitioner. I also do not find that there has been any jurisdictional error committed either on the part of the enquiry officer in conducting the enquiry or on the part of the disciplinary authority, in agreeing with the enquiry officer and in awarding punishment on the petitioner. No case for interfering with the order of the appellate authority or the revisional authority has also been made out.

16. Accordingly, the writ application being WPA 21257 of 2011 stands ***dismissed***.

17. There shall be no order as to costs.

18. The office is directed to return the original records of the proceedings to the learned advocate appearing for the respondents against a proper receipt.

19. Urgent photostat certified copy of this judgment, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)