

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 30914W of 2017

Mahadeb Chandra Paul

-Versus-

Union of India & Ors.

For the Petitioner : Mr. Arup Kumar Lahiri, Adv.,

Mr. Udayan Datta, Adv.

For the Respondent : Mr. Kumar Jyoti Tewari, Adv.

Heard on: : 11.04.2023

Judgment on. : 18.04.2023

PARTHA SARATHI SEN, J. : -

1. By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioner has prayed for quashing of the order of removal dated September 6, 2016 as issued by the office of the Commandant-167, CRPF, 47, Stand Road, Calcutta, West Bengal and as approved by the Appellate Authority vide its order dated October 27 , 2016 and by the Reviewing Authority by its order dated March 9, 2017. On perusal of the entire materials as placed before this Court it reveals that the present writ petitioner was charged with guilt of misconduct on two scores namely:-

- i. That the writ petitioner joined CRPF on the basis of a discharge certificate issued by the Army in which his date of discharge has been written as 20.02.1993 whereas it reveals

during enquiry that he was actually discharged from the Army on 20.02.1991;

- ii. At the time of joining in CRPF he had changed the date of joining in the Army to 14.08.1986 and the date of discharge from the army on 20.02.1993 whereas in course of enquiry it reveals that the writ petitioner joined the Army on 14.08.1984 and discharged from Army on 20.02.1991.

2. It reveals that during disciplinary proceeding both the aforementioned two charges have been duly proved as against the present writ petitioner and accordingly by an order dated September 6, 2016 he was awarded punishment of removal from service along with other allied punishments.

3. The writ petitioner thereafter preferred an appeal before the Appellate Authority but the Appellate Authority by its order dated October 27, 2016 dismissed the said appeal which was also affirmed by the Reviewing Authority by its order dated March 9, 2017.

4. Mr. A.K Lahiri, learned advocate for the writ petitioner at the very outset draws attention of this court to the charges as framed against the writ petitioner. Attention of this Court is also drawn to the enquiry report as submitted by the respondents/authorities as against the writ petitioner. Mr. Lahiri also draws attention of this Court to the three impugned orders as passed respondent/authorities against the writ petitioner.

5. It is submitted by Mr. Lahiri that from the findings of the disciplinary authority it would reveal that the said disciplinary authority has assigned no reason whatsoever as to how the charges have been proved against the

present writ petitioner. It is further argued that the disciplinary authority being a quasi-judicial authority is bound to disclose in clear terms as to how it has arrived at a decision as against the present writ petitioner and in not doing so the principles of natural justice has been violated.

6. Mr. Lahiri further contended that in absence of any cogent material, the disciplinary authority is not supposed to come to a finding that the charges as framed against the writ petitioner have been proved. It is argued further that after putting 22 years of service in CRPF, the respondents/authorities be debarred from raising the issue that the entry of the writ petitioner in CRPF was not valid. It is further argued by Mr. Lahiri that on account of long silence on the part of the respondents/authorities over the alleged misconduct of the present writ petitioner, if there be any, it can be presumed that the respondents /authorities had knowledge of the alleged misconduct of the present writ petitioner and since no disciplinary proceeding has been initiated immediately after getting knowledge of such misconduct it can be safely be presumed that the respondents/authorities has actually acquiesced to the alleged misconduct, of the present writ petitioner.

7. It is further argued by Mr. Lahiri, learned advocate for the present writ petitioner that it is a fit case for allowing the instant writ petition quashing the findings of the disciplinary authority dated September 6, 2016, findings of the Appellate Authority dated October 27, 2016 and the decision of the Reviewing Authority dated March 9, 2017.

8. Mr. Lahiri in course of his argument places his reliance upon the following reported decisions:-

1. ***Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors*** reported in ***AIR 2012 SC 1339***;
2. ***P.D Agarwal vs. State Bank of India and Ors*** reported in ***(2006) 5 SCC715***;
3. ***Anil Kumar vs, Presiding Officer and Ors.*** reported in ***(1985) 3 SCC 378***;
4. ***The Nayagarh Co-Operative vs. Narayan Rath And Anr.*** Reported in ***AIR 1977 Supreme Court 112***; and
5. ***Joint Collector Ranga Reddu District and Anr. Vs. D. Narsing Rao and Ors.*** reported in ***(2015) 3 SCC 695***.

9. Per contra, Mr. Kumar Jyoti Tewari, learned advocate for the respondent/State at the very outset draws attention of this Court to the Annexure P8 to the writ petition i.e. the finding of the Reviewing Authority dated March 9, 2017. It is argued by Mr. Tewari that from the materials as placed before this Court it would reveal that the present writ petitioner was recruited in CRPF in ex-service men quota and one of the prime conditions for his appointment was that his reappointment shall have to be within 24 months from the date of discharge from Army service.

10. It is submitted by Mr. Tewari that in course of disciplinary proceeding, it reveals that the present writ petitioner could not come under the consideration zone for his recruitment in CRPF since he was actually discharged from the Army on February 20, 1991 whereas he was recruited in the CRPF in ex-service men quota on 02.09.1994 which is beyond two years. It is submitted by Mr. Tewari that in course of enquiry it reveals that the present writ petitioner joined Indian Army on 14.08.1984 and was discharged

from the Indian Army on 20.02.1991 as evident from his discharge book as issued by the Indian Army while in the discharge certificate as submitted by the writ petitioner during his induction in CRPF the date of joining of the writ petitioner in the Army has been written as 14.08.1986 and his date of discharge from the Indian Army was written as 20.02.1993

11. It is argued by Mr. Tewari that the writ petitioner for the reason best known to him suppressed his actual date of joining and date of discharge in/from the Indian Army and the same was detected when the present writ petitioner after completing 22 years of service in CRPF made an application for going on VRS for getting VQS of his service to be done in the Head Office 167 Battalion . It is thus argued by Mr. Tewari that since the very entry of the present writ petitioner in the CRPF was based on fraud, misrepresentation and malafidness on the part of the present writ petitioner the disciplinary authority , the Appellate Authority as well as the Reviewing Authority are justified in imposing the punishment upon the present writ petitioner. It is further argued by Mr. Tewari that as soon as the misconduct of the present writ petitioner was detected, appropriate departmental action has been taken by the respondents/authorities and therefore under no stretch of imagination it can be said that there was acquiescence on the part of the respondents/authorities to the misconduct of the present writ petitioner. It is further argued by Mr. Tewari that it is a fit case for dismissal of the instant writ petition. In course of his argument Mr. Tewari places his reliance upon the following reported decisions namely; ***Ram Saran vs. I.G of Police CRPF*** reported in ***(2006) 2 SCC 541***.

12. Before entering into the merit of the instant writ petition I propose to look to the law of the land with regard to the power and authority of the Writ Court while exercising jurisdiction under Article 226 of the Constitution of India in interfering with the decision of the departmental authorities. In the reported decision of ***High Court of Judicature at Bombay vs. Shaskikant S. Patil and Anr.*** reported in ***(2000)1 SCC 416*** the Hon'ble Apex Court expressed the following view:-

“16.....

Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under [Article 226](#) of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under [Article 226](#) of the Constitution..”

13. It thus reveals to this Court that a Writ Court while dealing with a case under Article 226 of the Constitution of India seeking interference with the decisions of the disciplinary authorities ought to have kept into mind that the role of a Writ Court is not that of a Court of Appeal and therefore a Writ Court

while exercising its jurisdiction under Article 226 of the Constitution of India is not permitted to scan the evidence like an Appellate Court however interference to the decision of the Disciplinary Authority is permitted only when it is found that in course of disciplinary proceeding there occurred gross violation of principle of natural justice or Disciplinary Authority acted in such a manner which is impermissible in the eye of law or that the delinquent had not given an opportunity of hearing or that the Disciplinary Authority acted in an arbitrary manner which is apparent on the face of the record.

14. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties it appears to this Court that from the service book of the present writ petitioner it would reveal that the date of joining of the writ petitioner in the Army was 14.09.1984 and the date of discharge from the Army was 20.02.1991 and since he joined in CRPF in ex-service man quota on 02.09.1993 which is beyond two years, he could not have come under the consideration zone unless he filed the incorrect certificate of discharge from where it appears that his date of joining has been written as 14.09.1986 and date of discharge has been written as 20.02.1991 and such discrepancy was detected when the writ petitioner had applied for VRS after serving in CRPF for 22 years.

15. Being a member of disciplined force it is expected that the present writ petitioner must know his actual date of joining and date of discharge from the Army and therefore it is expected that he was duty bound to bring to the notice of the discrepancy of his date of joining in the Army and date of

discharge from the Army as mentioned in the certificate as issued to him and in not doing so, in considered view of this Court he had deliberately violated the discipline of the CRPF and inspite of getting opportunity he failed to discharge his onus to explain the irregularity in the certificate as produced by him during his entry in CRPF.

16. This Court considers that since the very entry of the writ petitioner in the CRPF is illegal and since before this Writ Court nothing could be placed by the writ petitioner to show that violation of principles of natural justice or violation of statutory regulations regarding the mode of enquiry as held against him has occurred, this Court finds no reason to interfere with the order of removal of the present writ petitioner from CRPF.

17. In this regard reliance can be placed upon the reported decision of **Ram Saran (supra)** as cited from the side of the respondents wherein the Hon'ble Apex Court expressed the following views:-

“8. The Courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in (CA) Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: [1947] 2 All ER 680(CA) commonly known as Wednesbury's case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (See: V. Ramana v. A.P. SRTC and Ors., [2005] 7 SCC 338).

9. In R. Vishwanatha Pillai v. State of Kerala and Ors., [2004] 2 SCC 105 it was observed as follows:

It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

Though the case related to a false caste certificate, the logic indicated clearly applies to the present case."

18. In considered view of this Court the cited decisions from the side of the writ petitioner are of no use since those reported decisions have been delivered in a completely different circumstances.

19. On perusal of the entire materials as placed before this Court, this Court finds no inordinate delay in initiating the departmental proceeding against the writ petitioner at the instance of the respondents/authorities.

20. This court also finds no acquiescence on the part of the respondents/authorities to the misconduct of the present writ petitioner.

21. This court thus finds no merit in the instant writ petition and accordingly the instant writ petition is dismissed.

22. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)