

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3019 OF 2010

Babarao s/o Daulatrao Dhandar,
aged about 42 years, Occ. Nil,
R/o C/o Anil Jadhav, Vijay Nagar,
Near Ekatmata Nagar, Near Jaitala,
Hingna Road, Nagpur.

PETITIONER

.....VERSUS.....

1. Director General of Police,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi.
2. The Inspector General of Police,
Central Reserve Police Force,
CGO Complex, Belapur, Navi Mumbai.
3. Dy. Inspector General of Police
Range C.R.P.F., CRPF Campus,
Hingna Road, Nagpur.
4. Commandant, 45 BN
Central Reserve Police Force 56 A.P.O.
Shree Nagar, Jammu Kashmir.

RESPONDENTS

Shri A.M. Sudame, Advocate for the petitioner.
Ms Meghna Munshi, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI JJ.

DATE : JUNE 8, 2023

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

The challenge raised in this Writ Petition filed under Article 226 of the Constitution of India is to the order of dismissal passed by the disciplinary authority on 19/4/2009 thereby dismissing the petitioner

from the post of Head Constable with the Central Reserve Police Force. Challenge is also raised to the order dated 5/8/2009 passed in an appeal by the Deputy Inspector General of Police, Central Reserve Police Force as well as the revisional order dated 20/11/2009 passed by the Inspector General, Western Sector, CRPF, Navi Mumbai.

2] During the course of service when the petitioner was serving under the Commandant at Srinagar, Jammu and Kashmir, he was served with a chargesheet dated 6/10/2008. The charges framed against him were that while conducting Bada Khana organized on 5/9/2008, the petitioner was negligent thus resulting in breach of provisions of Section 11(1) of The Central Reserve Police Force Act, 1949 (for short "the said Act"). On the same day, the petitioner had an altercation with the Company Commandant, his superior which amounted to serious indiscipline thus attracting penalty under Section 11(1) of the said Act. The third charge was that on 2/9/2008, he had sought to tamper with the accounts for an amount of Rs.500/-. The petitioner was thereafter subjected to a disciplinary enquiry and on conclusion of the same, the enquiry officer submitted his report stating therein that all three charges levelled against the petitioner had been proved on the basis of material on its record. Based on the aforesaid, the disciplinary authority on 19/4/2009 imposed penalty of dismissal from service after giving due

opportunity to the petitioner. The order of penalty was confirmed in appeal and thereafter in revision.

3] The learned Counsel for the petitioner submitted that insofar as charge Nos. 1 and 3 were concerned, it was a case of no evidence against the petitioner and hence the disciplinary authority erred in accepting the report of the enquiry officer and thereafter inflicting penalty of dismissal. According to him, none of the witnesses examined in support of the said charges had deposed that the quality of food served on 5/9/2008 was not good or that the items that were demanded to be prepared for the Bada Khana had not been so prepared. According to the learned Counsel, the enquiry report could be examined on the touchstone of perversity and if it was held by the enquiry officer that the charges have been proved without there being any evidence whatsoever, a case for interference would be made out. As regards charge No.3, it was submitted that the finding recorded by the enquiry officer was not in consonance with the charge as framed and hence the same could not have been taken into consideration while imposing penalty.

It was then submitted in alternate that the punishment of dismissal was shockingly disproportionate especially since the petitioner had put in service of 19 years 11 months and 15 days. Within a short

period, he would have completed the requisite service of 20 years and with a view to deprive him of such service, the enquiry was held and the penalty was imposed. It was urged that instead of punishment of dismissal, a direction to compulsorily retire the petitioner from service could be issued. In support of his submissions, the learned Counsel placed reliance on the decisions in i) *State of Punjab and Others Vs. Ram Singh Ex-Constable* [(1992) 4 SCC 54]; ii) *B.C. Chaturvedi Vs. Union of India and Others* [(1995) 6 SCC 749]; and iii) *Union of India and Another Vs. G. Ganayutham* [(1997) 7 SCC 463]. It was thus prayed that the petitioner be granted relief as sought for.

4] The learned Counsel for the respondents supported the penalty of dismissal. It was submitted that there was evidence on record to substantiate the charges framed and the enquiry officer was justified in recording a finding that all the charges had been proved. It was urged that if there was evidence on record to support the charges as framed, the Court would be slow in interfering with the conclusion of the enquiry officer. The aspect of sufficiency of evidence could not be urged by the petitioner. It was further submitted that charge No.2 which was duly proved was serious in nature and was unbecoming of a member of the disciplinary force. The petitioner had manhandled his superior officer and the witnesses had deposed in that regard. The learned Counsel submitted

that as charge Nos. 1 and 3 had been duly proved, no relief could be granted to the petitioner. Considering the gravity of charges that were duly proved, it could not be said that the punishment imposed was shockingly disproportionate.

5] On hearing the learned Counsel for the parties and on perusal of the enquiry report, we find that there is material on record to support the conclusion of the enquiry officer insofar as charge Nos. 1 and 2 are concerned. Though it was urged by the learned Counsel for the petitioner that it was a case of no evidence, we do not find that such is the case. It is well settled that if there is material on record to support the conclusion of the enquiry officer, the same would be sufficient to sustain that report. The aspect of sufficiency/ insufficiency of evidence on record to support the conclusion of the enquiry officer and accepted by the disciplinary authority cannot be examined in exercise of writ jurisdiction under Article 226 of the Constitution of India. It would be a different matter if there is total absence of material evidence thus permitting examination of the same on the ground of perversity. Same is not the case here. We find that the presenting officer has examined various witnesses in support of the charges levelled and the said witnesses have been cross-examined by the petitioner. We therefore do not find substance in the contention of the learned Counsel for the petitioner that without there

being any evidence on record, charge Nos. 1 and 2 have been held to be proved.

6] Insofar as charge No.3 is concerned, it states that on 2/9/2008, the petitioner had sought to furnish a forged bill of Rs.500/- thus resulting in tampering with the accounts of the unit. The enquiry officer while holding the said charge to be duly proved has observed that the petitioner had levelled a false allegation against his superior in the said matter which resulted in a false bill being placed on record. Though the observations of the enquiry officer are not in line with the charge as specifically framed, we do not find that this would make much difference in the punishment imposed by the disciplinary authority. As stated above, charge No.2 which is serious in nature and relates to manhandling of a superior officer, there is no serious challenge to the same in the light of the material on record. The petitioner being a member of the disciplinary force, he was required to act with responsibility and also obey the orders/directions of his superiors. It has been found that the petitioner not only sought to manhandle his superior officer but had also abused him in presence of the witnesses. We therefore find that the disciplinary authority did not commit any error when he accepted the conclusion of the enquiry officer insofar as charge Nos. 1 and 2 are concerned and thereafter proceeded to impose the penalty of dismissal from service.

7] Once it is found that charge Nos. 1 and 2 were duly proved and the said charges being of serious nature, there would be no scope to interfere with the punishment imposed since it cannot be said that the punishment of dismissal was shockingly disproportionate. As stated above, as a member of the disciplinary force, it was the duty and responsibility of the petitioner to maintain discipline and obey orders of his superiors. The petitioner has been found to have acted otherwise. We therefore do not find any basis to hold that the punishment of dismissal is shockingly disproportionate.

8] For the aforesaid reasons, we do not find any case made out to grant any discretionary relief to the petitioner under Article 226 of the Constitution of India. The Writ Petition is accordingly dismissed. Rule stands discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Sumit