



W.P.No.5596 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5596 of 2019

M.Sekar

... Petitioner

Vs.

1. The Union of India
rep. By the Secretary,
Ministry of Home Affairs,
Govt., of India, North Block,
Central Secretariat,
New Delhi – 110 001
2. The Director General of Police,
Directorate General, CRPF
CGO Complex, Lodhi Road,
New Delhi – 110 003
3. The Inspector General of Police,
Manipur & Nagaland Sector,
CRPF, Langjing, Imphal,
Manipur – 795 113
4. The Deputy Inspector General of Police,
Imphal Range, CRPF,
Imphal, Manipur – 795 113
5. The Deputy Inspector General of Police,
Range Hqr, GC, CRPF, Avadi
Chennai – 600 065



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6. The Commandant,
32, Battalion, CRPF
Komkeirap, Loktak,
Churachandpur
Manipur – 795 124

...Respondents

Writ Petition has been filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 5th respondent herein made in proceedings no.P.VIII.7/2014.32.EC.2 dated 29.10.2014 imposing punishment of compulsory retirement from service and consequential order dated 02.01.2015 of 4th respondent in proceedings no.R.XII.32/2015-EC-1 and order dated 24.04.2015 of the 3rd respondent in proceedings no.R.XIII-12/2015-M&N-Admn-II and quash the same and direct the respondents to reinstate the petitioner into service with all monetary benefits and backwages.

For Petitioner : M/s.R.Meenakshi

For Respondents : Mr.V.Chandrasekaran
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of



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Certiorarified Mandamus calling for the records pertaining to the order of the 5th respondent herein made in proceedings no.P.VIII.7/2014.32.EC.2 dated 29.10.2014 imposing punishment of compulsory retirement from service and consequential order dated 02.01.2015 of 4th respondent in proceedings no.R.XII.32/2015-EC-1 and order dated 24.04.2015 of the 3rd respondent in proceedings no.R.XIII-12/2015-M&N-Admn-II and quash the same and direct the respondents to reinstate the petitioner into service with all monetary benefits and backwages.

2. The brief facts of the case is as follows:-

(i) The petitioner joined the Central Reserve Police Force as Constable / General Duty, during the year 1992. After his basic training, he had served in various units deployed at different places in our country. At last, he was posted in 32 Battalion, CRPF, Manipur. While so, the petitioner proceeded on 15 days causal leave including holidays from 02.12.2013 to 19.12.2013. After availing leave, the petitioner reported at Transit camp at Kolkata at 0830 hours on 20.12.2013 for availing Air Courier Service from Kolkata to Imphal and on 22.12.2013, the petitioner was informed that his air courier seat was confirmed on 23.12.2013 and the



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same was cancelled on 23.12.2013. Since the petitioner was in sick and affected by psychosis, the petitioner could not realise, what had happened on 23.12.2013. The battalion Havildar Major of 167 Bn with few other personnel came to Ors line and beaten the petitioner seriously without any valid reasons and sent out of the Transit camp.

(ii) Subsequently, on 24.12.2013 at about 2030 hrs, the Government Railway Police of Howrah Railway Station apprehended the petitioner under Section 354 IPC and a FIR was also lodged against him. After attending the court, he reached his Battalion Hqr by air courier along with other personnel. On reporting Battalion at Manipur, the petitioner was admitted in hospital at Manipur from 09.01.2014 to 01.02.2014. During the said period the petitioner was referred to Regional Insitute of Medical science Hospital (Department of Psychiatry), Lamphel, Imphal. As per medical OPD Card dated 10.01.2014, 17.01.2014, 24.01.214, 31.01.2014 issued by the Regional Institute of Medical Science Hospital, Lamphel, Imphal, the petitioner has been diagnosed as:

*"Fearfulness
Seeing some people coming to attack him
Suspiciousness
Hearing of unusual voices*



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Patient is conscious, cooperative oriented to time, place and person
Idea of persecution
Perception – Auditory & Visual hallucination
Psychosis
Sleeping disorder”

(iii) Further, the petitioner have also been placed under medical category S2 and P2. This fact was not taken into account while concluding the petitioner's case. Since the CRPF personnel are performing the combat duty, CRPF introduced medical category SHAPE-I for the purpose of their promotion vide standing order no.04/2008. As per this standing order, Medical categorization of the SHAPE system with employment limitation to High altitude areas as well as difficult and stressful areas. The definition of different factor under Shape System is as under:-

- “a) S - Psychological*
- b) H – Hearing*
- c) A – Appendages*
- d) P – Physical capacity*
- e) E- Eye Sight*

and general evaluation of these numerals is as under:-

Shape -I : Fit for all duties anywhere

Shape-2 : Fit for all duties may have limitation as to type of duties and areas of employment depending on whether the duties involve severe stress or demand acuity of hearing /



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vision of both ears/ eyes.

Shape – 3 : Excepting 'S' factor, fit for routine or sedentary duties but may have limitation of employability at high altitude extreme cold areas / hilly terrain and for long stressful and difficult assignments

Shape – 4 – Temporary unfit for CRPF duties on account of hospitalization / sick leave

Shape – 5 – Permanently unfit for CRPF duties.”

(iv) The petitioner was served with memorandum for instituting departmental enquiry for the four alleged article of charges on the basis of the above said incident vide., order dated 21.03.2014. The enquiry officer completed the enquiry and partially proved the charges in articles-I-IV and the same are extracted below:-

“Article – I

1) That he had reported from leave at T/C Kolkata on 20.12.2013 and after consuming alcohol, he created nuisance and refused to avail courier service on 23.12.2013 for performing journey from Kolkata to this unit, which is prejudicial to good orders and discipline of the force.

Article – II

2) That he has been arrested by GRP Howrah on 24.12.2013 u/s 354-A IPC subsequently to case no.159/13 dated 24.12.2013 registered against him and further forwarded



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to CJM Court, Howrah on 25.12.2013, which is prejudicial to good orders and discipline of the force.

Article – III

3) That he has been arrested by GRP Howrah on 24.12.2013 u/s 354-A IPC subsequently to case no.159/13 dated 24.12.2013 registered against him and further produced in CJM court Howrah. On his release on 25.12.2013, he neither informed T/C Kolkata nor this unit about his arrest by GRP Howrah, thus he concealed the fact regarding his apprehension to the department, which is prejudicial to good order and discipline of the force.

Article IV

4. That on his release from CJM Court Howrah on 08.01.2014 in case no.159/13 u/s 354-A-IPC filed by GRP Howrah he reported at T/C Kolkata and while he was produced before Commandant – 167 Bn, he misbehaved with the commandant, which is prejudicial to good and discipline of the Force.”

(v) On the basis of the enquiry report, the disciplinary authority imposed punishment of compulsory retirement upon him with effect from 28.10.2014. The petitioner preferred an appeal dated 20.11.2014 to the 4th respondent requesting to re-instate him into service and the appeal was rejected by the appellate authority (i.e., 4th respondent) vide order dated 02.01.2015. The petitioner preferred revision petition dated 21.02.2015 to



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the revisional authority and the said authority also rejected the revision petition without proper examination vide order dated 24.04.2015. Left with no other option, the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that the Disciplinary authority failed to realise that due to the ill health of the petitioner, he was admitted in Composite hospital, and in this hospital, the petitioner was diagnosed as 'Ads Psychosis' and the prosecution witness 6 (Dr.Motilal Singh SMP) had deposed in his statement during the course enquiry that the authority has taken disciplinary action against the psychitatric patient.

4. The learned counsel for the petitioner would also contend that the 5th respondent failed to note that as per standing order no.4 of 2011, the department should make all efforts to take care of its disabled personnel due to psychiatric diseases without compromising overall efficiency of the combatant force. After the sick injured person has received full medical treatment and the medical officer incharge is of the opinion that there are no signs / indication of improvement that the individual is not fit for normal

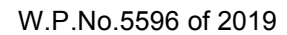


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active duty, the case of the individual should be referred to the Departmental Rehabilitation Board by the institution concerned.

5. The learned counsel for the petitioner further submits that the authority considered the petitioner's case as burden for the institution and decided to send out the petitioner from the institution in a short cut method by way of disciplinary proceedings. The authority failed to take right course of action in the petitioner's case and thereby violated the instructions given in above standing order and also violated the principles of natural justice. In fact, the authority also failed to examine the enquiry report properly in accordance with the instructions, thereby pleaded to allow the present petition.

6. Per contra by way of a detailed counter affidavit, the learned counsel for the respondents submitted that the plea of the petitioner that 'what was happened on the day of 23.12.2013, he could not realise', is not acceptable, because the petitioner has not produced any evidence of his sickness. Further, on 24.12.2023, the petitioner was arrested by Government Railway Police, Howrah and charged under Section 354-A IPC, subsequently, case no. 159/13 dated 24.12.2013 registered against



7. The learned counsel appearing for the respondents also contended since the petitioner misbehaved with commandant, 167 Bn CRPF, the influence of liquor, he was sent to 3 signal Bn for medical examination where the medical officer found that the petitioner had consumed liquor, hence the enquiry officer, by considering documentary evidence of medical officer rightly given his report. That apart, the petitioner is a habitual offender and he was awarded petty punishments 14 times for his misconducts, thus ample opportunity given to him to mend his ways and improve himself, but the petitioner by committing serious offence again, proved that he has not changed his attitude.

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petitioner's medical category was categorised as S2P2 as contended by him and Low Medical Categorization of the petitioner can be upgraded as SHAPE-I Category, if he recovered fully from illness. Though the petitioner was placed under Low Medical Category, he was subjected to examine in a departmental enquiry by the enquiry officer, as per laid down procedure.

9. Lastly, the learned counsel for the respondents contended that on 09.01.2014, the petitioner reported at 32 Bn CRPF location, Manipur by Air Courier Service and his arrival was intimated by 32 Bn CRPF to DIGP CRPF Range Imphal vide signal no.P.VIII-1/14-32-EC-II dated 10.01.2014 under intimation to 167 Bn CRPF with a request to send preliminary enquiry report. The said report was received by 32 Bn CRPF on 18.01.2014 from 167 Bn CRPF vide his letter no.P.VIII.1/2014-EC-II-167 dated 16.01.2014 and the same was forwarded to DIGP, Range CRPF Imphal vide letter No.P.VIII.1/2014-32-EC-II dated 24.01.2014. In turn, the DIGP, CRPF Imphal range had forwarded the report to IGP Manipur & Nagaland sector vide his letter no.P.VIII-32/2014-EC-I dated 14.02.2014 directed Commandant-32 Bn CRPF to take suitable action against the petitioner as commandant is competent authority. Accordingly, a departmental enquiry



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was initiated against the petitioner and as a result of departmental enquiry, the petitioner was awarded with 'compulsory retirement' with full pension and retirement gratuity vide 32 Bn Office Order no.P.VIII.7/2014.32.EC.II dated 29.10.2014. Aggrieved by the orders of the Disciplinary authority, the petitioner had preferred an appeal dated 20.11.2014 before the Appellate Authority which was rejected by the appellate authority being devoid of merit vide order no.R.XIII-32/2015-EC-I dated 02.01.2015. As against the orders of the Appellate authority, the petitioner had preferred a Revision Petition dated 21.02.2015 before the Revision authority. Since the petitioner has not brought out any new facts for consideration and that there is no cogent reason to interfere with the orders of the Disciplinary authority / Appellate authority, the Revision Petition preferred by the petitioner was also rejected vide order no.R.XIII-12/2015-M&N-Admn-II dated 24.04.2015. Therefore, pleaded to dismiss the petition.

10. Heard the learned counsel on either side and perused the documents placed on record.

11. On going through the averments in the petition and the typed set



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of papers filed along with petition and the counter affidavit filed by the respondents along with the documents, it would prove that the petitioner was employed as constable and put in many years of service and while he was travelling to Kolkata, he was under intoxication and the same was proved by the authorities. Further, the petitioner's contention that the co-constable had stated that the petitioner has not consumed any liquor has been negated, as he was staying 200 meter away from where the petitioner was staying. Thus, while the petitioner was in intoxication, he came with an irritable manner and created nuisance at transit camp, therefore, CRPF, Kolkata, incharge, T/C Kolkata CRPF was compelled to transfer him by train to his unit, ie., 32Bn CRPF located at Manipur, but the petitioner did not proceed to his unit and remained there and on the next day, 24.12.2013, the petitioner was arrested by GRP, Howrah and charged under Section 354-A IPC based on the complaint that he misbehaved with the wife of a civilian, namely, Shri Sanjay Sharma, as it is a serious crime, he was arrested and the petitioner cannot say that he was not under intoxication. Further, when the petitioner was taken to the authority and when he was reported for duty and during the enquiry also, the authority was only giving advice and the petitioner was not other treated otherwise, is



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the contention of the respondents.

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12. It is to be further seen that action of the petitioner attributes serious misconduct, i.e., created nuisance, subsequently, concealed all the happenings from the department, misbehaved with commandant-167 Bn and more importantantly, his past antecedents, wherein he was awarded with minor punishments 14 times, hence the petitioner cannot be taken into account of reinstatement into the forces and this being a duty 24X7, the petitioner is not a fit person and accordingly, the enquiry officer was of the view that the petitioner deserves stringent punishment, however, considering his future and family back ground and the long service rendered by him, the petitioner was awarded penalty of compulsorily retirement with all consequential benefits.

13. It is also further seen that when a criminal case is registered against the petitioner, there are no other material available to prove that the petitioner is innocent and only on material evidence, the petitioner is being charged and petitioner cases has been considered by the authorities concerned and accordingly they have awarded a punishment, which is also



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been confirmed by the Appellate and Revisional authorities. Though the petitioner was involved in various crimes, the authorities have taken a lenient view and the petitioner is not a fit person to be reinstated into the post and this Court does not find any reason to interfere with the orders passed by the respondents.

In view of the above, the present Writ Petition is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

To

1. The Union of India
rep. By the Secretary,
Ministry of Home Affairs,
Govt., of India, North Block,
Central Secretariat,
New Delhi – 110 001
2. The Director General of Police,
Directorate General, CRPF

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3. The Inspector General of Police,
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V.BHAVANI SUBBAROYAN, J.,

ssd



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