

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: January 12, 2023**

Pronounced on: March 15, 2023

+ **W.P.(C) 4839/2018**

JAGANNATH NAIK

..... Petitioner

Through: Mr.Himanshu Gautam, Mrs.Rani
Chhabra & Ms.Riya Sethi,
Advocates

Versus

INSPECTOR GENERAL OF POLICE AND ORS. ...Respondents

Through: Mr.Vijay Joshi & Mr.Gurjas Singh
Narula, Advocates with
Mr.Saurabh Bhushan, DC (LAW)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed by the petitioner seeking quashing of order dated 08.02.2017 to the extent respondents have imposed major penalty of stoppage of three increments with cumulative effect w.e.f. 31.01.2006 to 19.02.2017, which period has been directed to be treated as *dies non*. A direction is sought to the respondents to convert the major penalty of stoppage of three increments with cumulative effect with minor penalty proportionate to his offence and further grant him all

consequential benefits regularizing his period from 31.1.2006 to 19.2.2017.

2. The petitioner- Jagannath Naik claims to have been enrolled in Central Reserve Police Force (CRPF) on 10.04.1991 as Constable (GD) and served in various units/ battalions with unblemished record. The petitioner further claims to have received a telephonic call from his brother on 19.02.2005 in respect of his mother's deteriorating mental health and the fact of bringing her to Ranchi for treatment. The petitioner claims to have brought this fact to the notice of his immediate superior and obtained verbal permission to go Ranchi. For this reason, petitioner could not be present during the *fall-in* at 14.30 hours and also for the evening Roll Call on the said day. Before petitioner could report back to his duty after visiting Ranchi on 19.2.2005, he was illegally apprehended by the Police of Excise Department, Jamshedpur at 20.40 hours at the Highway of Ranchi-Jamshedpur near Kali Mandir, Jamshedpur with alleged 9 cartoons of illicit foreign liquor costing about Rs.56,000/-. Petitioner was sent to judicial custody on 19.2.2005 and a criminal case under Section 47(a) of the Excise Act was registered against him. Thereby, petitioner could not report back and present in the unit on 19.02.2005 till 20.09.2005. During this period, the respondents placed the petitioner under suspension and a departmental enquiry was held against him.

3. Pursuant to his release on bail, the petitioner claims to have reported to the Unit and participated in the domestic enquiry. On finalization of the enquiry, the Commandant, 106 Bn., RAF vide order

dated 31.1.2006 imposed the major penalty of 'dismissal from service' w.e.f. 30.1.2006 upon the petitioner.

4. Aggrieved against his dismissal from service, petitioner preferred an appeal under Rule 28 of the CRPF Rules before the DIG, RAF, New Delhi, which was dismissed vide order dated 07.06.2006. The petitioner claims to have challenged the orders dated 31.1.2006 passed by the Commandant as well as order dated 07.6.2006 passed by the Appellate Authority by invoking writ jurisdiction of the High Court of Jharkhand at Ranchi. The said writ petition being W.P.(S) No. 6244/2006 was dismissed on 21.11.2006, with liberty to the petitioner to seek a revision before the Inspector General under Rule 29 of the CRPF Rules. The said revision was dismissed on 28.08.2007.

5. According to petitioner, during the period from 19.02.2005 till 20.09.2005 he was in judicial custody. The First Class Judicial Magistrate after appreciating the evidence placed on record, vide order and judgment dated 29.07.2009, acquitted the petitioner holding that prosecution had failed to establish the charges framed against him. Thereafter, petitioner once again invoked the writ jurisdiction of the High Court of Jharkhand by filing W.P.(S) No. 4876/2009 seeking reinstatement in service with all consequent benefits; thereby, seeking quashing of his dismissal order dated 31.1.2006 issued by the Commandant and order dated 07.6.2006, whereby his appeal was rejected. The said writ petition was withdrawn by the petitioner and the High Court of Jharkhand vide order dated 25.4.2016 gave liberty to the petitioner to file afresh revision petition under Rule 29 of CRPF Rule, 1955 before the competent authority.

6. Subsequently, petitioner preferred a revision petition under Rule 29 of the CRPF Rules before the Inspector General of Police on the ground that he has been acquitted from the criminal case No. 38 of 2005 under Section 47(a) of the Excise Act. Since no order on his revision was passed by the competent authority, petitioner again approached the High Court of Jharkhand at Ranchi by filing Writ Petition No. 5361 of 2016, which was disposed of vide order dated 05.12.2016 with direction to the respondents to consider and decide petitioner's representation within twelve weeks. The competent authority vide order dated 08.02.2017, set aside the order of 'dismissal from service' on compassionate grounds, however, punishment of stoppage of three increments with cumulative effect was imposed upon the petitioner. The Inspector General also regularized the period of 19.2.2005 to 20.9.2005 and directed that petition be treated on duty and paid all consequential benefits. However, respondent No.1 treated the period from 31.1.2006 to 17.2.2017 as *dies non*, which amounts to service break and hence, petitioner is unable to get his past service benefits. The petitioner claims to have sent a Legal Notice dated 21.08.2017 and reminder dated 08.11.2017 to the Inspector General of Police, which was answered vide order dated 29.11.2017 holding that since petitioner remained away from duty from 31.1.2006 to 19.2.2017 therefore, the said period cannot be regularized. Hence, the present petition has been filed.

7. During the course of hearing, learned counsel for the petitioner submitted that petitioner could not join his duties from 31.1.2006 to 19.2.2017 due to dismissal order passed by the respondents. The petitioner

was under trial from 19.02.2004 till 29.07.2009 and since he has been acquitted of the offences charged with, the petitioner deserves to get all consequential benefits. It was submitted that petitioner was willing to perform his duties but had to remain away due to illegal dismissal from service. Reliance was placed upon decision in ***Union of India and others Versus K. V. Janakiraman*** 1991(4) SCC 109 in support of above submissions. Learned counsel submitted that by treating the period from 31.1.2006 to 19.02.2017 as *dies non*, the break in service shall always come in the career prospects of the petitioner.

8. Reliance was also placed upon another decision of Supreme Court in ***Vijay Singh Vs. State of U.P. and Ors.*** (2012) 5 SCC 242 and decision of Jammu and Kashmir High Court in ***Ajay Shnakar Pandey Vs. Union of India & Ors.*** 2010 (27) S.C.T. 811 [SWP No. 1877/2009, dated 07.07.2010] in support of petitioner's case.

9. Reliance was next placed upon decision of Supreme Court in ***Jagdamba Praasad Shukla Vs. State of U.P & Ors.*** (2000) 7 SCC 90 wherein it was held that subsistence allowance under the Rules is not bounty but a right and denial of opportunity to defend in the enquiry proceedings, is bad in law.

10. With regard punishment of stoppage of three increments, reliance was placed upon a decision of this Court in Writ Petition (C) No. 8439 of 2015 titled as ***CT/GD Jai Karan Bohre versus Union of India and others*** wherein somewhat similar case, this Court had held that petitioner was entitled to subsistence allowance for the intervening period and his claim for promotion to the post of Head Constable/GD was also directed to be

considered as per Rules.

11. It was submitted that pursuant to petitioner's legal notice dated 21.06.2016 to respondents praying for consideration of his quantum of punishment in view of his acquittal in the criminal case, the order dated 08.02.2017 was passed by the respondents whereby the petitioner was reinstated in service, but penalty of stoppage of three increments with cumulative effect was imposed upon him. Also the period from 31.01.2006 to 17.02.2017 was directed to be treated as *dies non*. Aggrieved against the order dated 08.02.2017, petitioner again made a representation to the respondents, which was rejected by respondents on the ground that since he remained away from duty from 31.01.2006 till 19.02.2017, the said period cannot be regularized. Lastly, learned counsel for petitioner submitted that the present petition deserves to be allowed in view of above facts and circumstances.

12. To the contrary, learned counsel appearing on behalf of respondents submitted that during posting of the petitioner in 106 Battallion, he was assigned duties of security aid alongwith normal general duties. On 19.02.2005, he was found absent from fall in at 1430 Hrs. and night roll-call. Efforts were made to search him and since the petitioner was permitted to live outside along with his family, upon enquiry his wife informed that petitioner had left home in uniform in the morning and she was not aware as to where he had gone. Thereafter, petitioner was searched at Railway station, bus stand, local market etc. but was not found anywhere. On the next day i.e. 20.02.2005 respondents got to know through a news in News Paper that a Constable in CRPF (petitioner) was

apprehended by the Excise Department on 19.02.2005 with 19 cartoons of illicit liquor. Accordingly, the petitioner was suspended w.e.f. 19.02.2005. Thereafter, a departmental inquiry was conducted and in the Inquiry Report dated 14.12.2005 it was held that charges leveled against the petitioner stood proved. The petitioner was also granted opportunity; and he had represented against the said Inquiry Report vide his representation dated 15.12.2005, which was rejected. Even petitioner's appeal and revision also stood dismissed by the competent authority.

13. Learned counsel for respondents placed reliance upon decision in ***SK Akbar Ali Vs. State of Odisha and Others*** 2022 SCC OnLine Ori 857 to submit that an order of acquittal, which does not fully and completely exonerates the delinquent from a criminal charge, would not entitle him to claim that the disciplinary proceeding should be dropped or the punishment imposed be set aside. However, if for various reasons, such as, lack of evidence, benefit of doubt, prosecution witnesses turns hostile or star witness resiles during trial, it would only result in an acquittal but not an acquittal honourably. There is no tenebrosity in the settled principles of law that if there is acquittal on certain grounds like benefit of doubt etc. from the charge of an offence involving moral turpitude, it would not automatically entitle exoneration from the disciplinary action. It was submitted that in the present case petitioner has been acquitted by the trial court by giving benefit of doubt.

14. Learned counsel submitted that considering the long sufferings of the petitioner, on his representation dated 21.06.2016, the order of 'dismissal from service' dated 31.01.2006 has been set aside and he has

been reinstated in service. The period from 19.02.2005 till 20.09.2005 i.e. the period when petitioner was in custody, has been regularized as spent on duty. However, the period from 31.01.2006 to 17.02.2017 i.e. when petitioner was ‘dismissed from service’ and did not perform his duty, has rightly been declared as *dies non* on the principal of *No Work No Pay*. Thus, the present petition is devoid of merit and deserves to be dismissed.

15. In rebuttal, learned counsel for petitioner submitted that the petitioner had left the Unit to go to Ranchi and was to come back in the evening on the very same day but could not be present due to his arrest, wherein he has been acquitted after a long trial and so, petitioner deserves to get full benefits for his employment under the CRPF.

16. The submissions advanced by counsel representing both sides were heard at length and the material placed on record as well as decisions cited have been perused by this Court.

17. Petitioner has placed reliance upon Supreme Court’s decision in ***Union of India and Others Vs. K.V.Jankaraman (Supra)***. In the said case, the Supreme Court primarily dealt with the issue of ‘sealed cover procedure’ in the case of grant of promotion of an employee against whom disciplinary/criminal proceedings were pending. On the aspect of *No Work No Pay*, the Supreme Court observed that though the normal rule is that ‘*No Work No Pay*’ but it is not applicable in cases where the employee is willing to work but is kept away by the authorities. The Supreme Court also observed that “*when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be*

deprived of any benefits including the salary of the promotional post”. We find that the facts of the said case are different than the one in hand. In the said case, the issue was ‘promotion’ of an employee amidst pendency of departmental/criminal proceedings, whereas the present case pertains to ‘dismissal from service’ due to pendency of departmental/criminal proceedings. Also, the petitioner in the present case has not been given complete clean chit but has been held guilty of leaving his duty without permission of the competent authorities.

18. Next reliance was placed by petitioner upon decision in ***Jagdamba Prasad Shukla (Supra)***. In the said case, the appellant, a Sub Inspector, who was imposed punishment of ‘removal from service’, had challenged non payment of subsistence allowance and denial of reasonable opportunity to hear in the departmental enquiry. The Supreme Court observed that *“the payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right.”* Since the appellant therein had pleaded that due to medical problems, he could not appear in the inquiry proceedings and could not engage counsel for want of funds on account of non-payment of subsistence allowance, it was held that it was breach of principles of natural justice. In the present case, though the petitioner has raised grievance that proper opportunity to put forth his case was not given to him, however, we find that his representations have time to time been considered. After the departmental inquiry, he was handed over copy of Inquiry Report and his appeal and revision were duly considered by the competent authorities. Pursuant to directions of this Court vide order dated 05.12.2016 in W.P.(C)

5361/2016, the case of petitioner was reconsidered and he was reinstated in service with lesser punishment. Vide letter dated 22.02.2005, the petitioner in the present case has been directed to be given subsistence allowance by the respondent as admissible in law. Hence, the facts of the said case are different from the present case. Even his services for the period of 19.2.2005 to 20.9.2005 were regularized and he has been treated on duty and paid all consequential benefits. The petitioner herein, therefore, cannot dispute that he has not been given subsistence allowance or his requests have not been considered by the department.

19. Also reliance was placed upon another decision of Supreme Court in *Vijay Singh (Supra)* but the facts of the said cases are different and are not applicable to the present case.

20. Upon perusal of material placed before this Court and the decisions cited, we find that subsequent upon petitioner's acquittal in criminal case No. 38 of 2005, under Section 47A of the Excise Act, vide order dated 29.07.2009 by the First Class Judicial Magistrate and consequent upon directions of High Court of Jharkhand vide order dated 05.12.2016 in Writ Petition No. 5361 of 2016, the competent authority of respondent set aside the order of 'dismissal from service'. Though petitioner was directed to be reinstated in service but punishment of stoppage of three increments with cumulative effect was imposed upon him vide order dated 08.02.2017 and the period from 31.01.2006 to 17.02.2017 has been declared as *dies non*.

21. The petitioner has raised the grievance that though vide order dated 08.02.2017 the competent authority has directed that the period from

19.2.2005 to 20.9.2005, during which he was in judicial custody for allegedly committing offence under the Excise Act, be treated as his being on duty and he is paid all consequential benefits, however, respondent No.1 has treated the period from 31.1.2006 to 17.2.2017 as *dies non*, i.e. period he has remained away from duty due to his 'dismissal from service' vide order dated 30.01.2006, which has led to his service break. Also, major punishment of withheld of three increments with cumulative effect has been imposed. The aforesaid order dated 08.02.2017 reads as under:-

**“OFFICE OF THE
INSPECTOR GENERAL OF
POLICE
Rapid Action Force, R.K. Puram, New
Delhi – 66**

*No.J.II.L/Notice-2016-RAF-LEGAL
Dated, the 8th February, 2017*

ORDER

WHEREAS, No. 913272682 Ex, CT/GD Jagannath Nail was enlisted in CRPF on 10.04.1991 at 127 Bn and reported to 106 BN RAF on 29.12.2002 on his transfer from 72 Bn . While he was posted in 106 Bn RAF at Jamshedpur, he committed an offence U/S II (I) of CRPF Act, 1949 wherein he was found absent from the fall-in at 1430 HRs and also the evening Roll Call on 19.02.2005 without prior permission of his seniors or competent authority. Besides, he was also involved in a criminal offence in which he was caught red handed by "Excise Deptt" Police, Jamshedpur on same day i.e. on 19.02.2005 at 2040 HRs with 19 cartons

of illicit foreign liquor costing about Rs, 56,000/- at the High-way of Ranchi Jamshedpur near Kali Mandir, Jamshedpur, of Accordingly, he was taken on judicial custody on 19.02.2005 and a Criminal Case U/S 27 of Excise Act was Lodged by the concerned civil police.

2. AND WHEREAS, a Departmental Enquiry was conducted against No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn, RAF, CRPF vide Commandant 106 Bn RAF, CRPF Memorandum No. P.VIII-03/05-106-EC-II dated 29.04.2005 on the following Article of Charge:-

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***NOW THEREFORE,** in compliance of Court Order dated 05.12.2016 pronounced by the Hon'ble High Court of Jharkhand at Ranchi and directions issued by the DIG (Law) Dte, vide signal dated 02.01.2017, the undersigned examined the representation of No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF In depth and under the authority of Rule 29 (a) of CRPF Rules 1955, pass the following orders:*

i) WHEREAS No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF was dismissed from service with effect from 30.01.2006 (AN) on the ground of two charges [1] Absent from the fall-in at 1430 HRs and also the evening Roll Call on 19/02/2005 without prior permission on his seniors or competent authority. [2]

His involvement in carrying 19 cases of liquor amounting to Rs. 56,000/- and subsequently arrested by Excise Department on 19.02.2005 at 2040 hrs, at Kali Mandir on Ranchi Jamshedpur Road under Section 47(1) of Excise Act, led to his conviction on criminal charges.

ii) AND WHEREAS the said conviction i.e. charge No. 2 has been set aside by the Hon'ble Court of Judicial Magistrate, 1st Class, Jamshedpur (Jharkhand) and No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF has been acquitted of the charge No. 2 i.e. His involvement in carrying 19 cases of liquor amounting to Rs. 56,000/-, on the basis of benefit of reasonable doubt.

iii) Though No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF has been acquitted from the criminal case on the basis of benefit of reasonable doubt but charge No. 1 i.e. absent from the fall-in at 1430 HRs and also the evening Roll call on 19/02/2005 without prior permission of his seniors or competent authority still stand and also has been proved beyond doubt during Departmental Enquiry and also accepted by him in his representation dated 21.06.2016. He left the camp without prior permission, resulting to his arrest by "Excise Deptt" Police, Jamshedpur in criminal case. Thus he committed the act of misconduct and misbehaviour being a member of the Force because of which the Image of the Force got tarnished. Hence by such act of the petitioner, the discipline and orderliness has been affected adversely and the dignity/image of the Force has been

gravely hurt.

iv) No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF submitted in his representation dated 21.02.2016 that punishment saddled upon him may be reconsidered and any other lighter punishment may be prescribed. Hence considering his long service and sufferings, the undersigned hereby sets aside the order of dismissal from service issued by the Commandant-106 Bn CRPF vide Order No. P-VII-3/06-106-EC-II dated 31/01/2006 on compassionate grounds and the punishment of stoppage of 3 increments with cumulative effect is imposed on No. 913272682 Ex CT/GD Jagannath Naik of 106 Bn RAF. He is to be reinstated into service from the date of his reporting in 106 Bn RAF.

v) Period under Police/Judicial custody/ Suspension period from 19.02.2005 to 20.09.2005 (Total 214 days) is hereby regularized as a period spent on duty for all purposes and he would be entitled full pay and allowances as the petitioner has been acquitted from criminal case U/S 27 of Excise Act by the Hon'ble Court of Judicial Magistrate, 1st Class, Jamshedpur (Jharkhand).

vi) Intervening period after the date of his dismissal from service i.e. 31/06/2006 to the preceding date of his reinstatement into Govt. Service is hereby regularized as "Dies Non". However, this will neither count as service nor construed as break in service and he will not be entitled to any financial benefits on principal of "No Work No Pay".

22. In a somewhat similar case in the Hon'ble Supreme Court in *Sukdarshan Singh Vs. State of Punjab and Others* 2022 SCC OnLine SC 255, the appellant therein was appointed a Clerk in State Transport Department in the year 1979; was suspended in the year 1986 for the alleged acts of embezzlement; charge-sheeted in the year 1988 and was removed from service on 13.03.2003; acquitted by the trial court in the year 2006; the High Court sustained his conviction but reduced the sentence to the period already undergone. The appellant preferred an appeal against the order dated 13.03.2003 removing him from service and the competent authority vide order dated 29.01.2009, keeping a sympathetic view, set aside the termination order but the suspension period was considered as *dies non* and nothing was given for the said period. Against the said order, the appellant therein preferred a civil suit and sought mandatory injunction to release the pay denied to him. The said suit was decreed to the effect that the orders passed by the competent authority were arbitrary, against the rules and though he was entitled to get salary but not for the period he had undergone sentence. In the facts of the said case, the Court observed and held as under:-

“18. The question would arise as to what is to be done with regard to the period when the appellant was kept out of service as a result of the proceedings against him. This, in turn, must be broadly divided into two periods. An employee may be kept out of service initially by way of an order of suspension. The disciplinary proceedings may culminate in an order of removal or dismissal or compulsory retirement. The order of suspension would then come to an end and it would merge in the order of removal inter alia. After the order of removal inter

alia till the order of reinstatement based on relief granted to the employee, the appellant would be out of service.....

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21. If we take up Rule 7.3-B relied upon by the learned Advocate General, it gives us the impression that its intent is to deal with cases where a person is placed under suspension but thereafter reinstated. 'Conspicuous by its absence' in Rule 7.3B are expressions indicating that apart from suspension, the matter progressed to a stage where the employee came to be visited with any penalties. In other words, there can be cases where a person may be placed under suspension and without the matter progressing further, the authority in its discretion and power decides to revoke the suspension and he is reinstated. Rule 7.3, on the other hand, deals squarely with the situation where the employee whose services are terminated succeeds in an appeal or other remedy and there is an order of reinstatement and a question arises as to how the period prior to his dismissal is to be reckoned. The orders which can be passed are expressly provided for therein. In other words, the scheme of the Rules would appear to be that when an employee who has been proceeded against, succeeds before the higher forum, the question as to what is to be done for the period when he was kept out of service would have to be determined in the manner provided therein.

23. Rule 15(v)(f) indeed contemplates that when there is a dismissal, removal, compulsory retirement or reduction to a lower service inter alia and there is an order of reinstatement, the authority is to pass an order as to whether the period from the date of suspension or from the date of his dismissal, removal or compulsory retirement till the date of his

reinstatement, is to be treated as a period spent on duty for any purpose. This gives a clear indication that upon an order being passed by the appellate authority finding the termination of employee to be illegal and leaves it there, it would not ipso facto inevitably follow that the employee will become entitled to claim the salary for the entire period consequent upon his being found to be entitled to reinstatement. This is a matter for the authority to decide.

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25. Accordingly, we dispose of the appeals by setting aside the impugned judgment and modifying the judgment passed by the first appellate Court and set aside the decree passed by the trial Court directing payment of salary to the appellant for the period that he was kept out of service.

26. There will be a decree directing the second respondent to consider as to how the period till the appellant was reinstated is to be treated and consequential effect thereof. In other words, the question will be as regards the period from 13.03.2003 till 20.03.2009. This exercise will be undertaken and concluded within a period of three months from today.”

23. In ***Sukdarshan Singh (Supra)***, the Supreme Court has manifestly observed that if the termination of the employees is found illegal and is reinstated in service, this *ipso facto* will not entitle the employee to claim salary and other benefits for the entire period he has not worked and it is the competent authority who has to take a call on it.

24. In ***Ex. CT. (CRPF) Prem Kumar Singh Vs. Union of India and Others*** 2019 SCC OnLine Del 7563 this Court had dealt with a case

wherein a Constable GD in CRPF, after orally informing the Inspector in his Batallion, went out of the Group Centre on a bike. His bike developed some snag and while he was getting the motor bike repaired the local police arrived and arrested him for having stolen the said motor bike. An FIR was registered and he was sent to Jail and the competent authority of the CRPF placed him under suspension on the ground that a criminal case was registered against him and was pending investigation. Pursuant to a departmental inquiry, petitioner therein was dismissed from his service. However, the learned trial court acquitted the petitioner due to lack of sufficient and solid evidence. The petitioner sought reinstatement in service, however, his appeal and revision were turned down by the competent authorities. In the facts of the said case, this Court observed and held as under:-

“32. In the present case too, the acquittal was not on technical grounds. In fact the present case stands on an even stronger footing from the point of view of the Petitioner. It is seen that there is no provision in the CRPF Rules which is in pari materia with Rule 12 of the Delhi Police Rules which permits departmental punishment of a delinquent officer on the same charge as in a criminal case where the criminal charge fails on technical grounds. On the other hand Rule 27(ccc) of the CRPF Rules, 1955 specifies that when a member of the force has been tried and acquitted by a criminal Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, without the prior approval of the Inspector General. Here even without waiting for the outcome of the criminal trial, the Petitioner was

dismissed from service.

33. The Court finds that the article of charge on which the Petitioner was proceeded against departmentally is a combination of two alleged acts of misconduct. One part of it concerns his having left the campus without permission for a day and the other pertains to the charge of theft of a motorcycle. As far as the latter part is concerned, with the Petitioner having been acquitted by the trial Court honourably and not on technical grounds, the finding of guilt of the Petitioner for that charge in the department enquiry is clearly unsustainable in law. Rule 27(ccc) of the CRPF Rules further supports this conclusion.

34. As regards the charge of the Petitioner having left the campus without permission, the Petitioner's case is that he had informed his superior orally. However, the serious flaw in the procedure adopted in the inquiry is that it was concluded even while the Petitioner remained in jail. As a result, the Petitioner was given no opportunity whatsoever to examine the PWs or to lead any evidence in his defence. Clearly, therefore, the inquiry itself was in gross violation of the principles of natural justice. On that ground alone, the finding of guilt of the Petitioner even on the charge of leaving the campus without permission, particularly when the Petitioner claims to have informed his superior orally and whom he could have examined if he had an opportunity, cannot be sustained in law.

Conclusion

35. For the aforementioned grounds, this Court sets aside the impugned order dated 30th June 2012

passed by the Respondent No. 6 dismissing the Petitioner from service as well as the Appellate order, the Revisional Order and the decision communicated by the signal dated 14th November 2017 whereby the aforementioned dismissal was affirmed by the Respondents.

36. The Petitioner will now be reinstated in service forthwith with all consequential benefits including seniority, fixation of pay, promotions etc. However, the Petitioner would not be entitled to any arrears of pay for the period during which he was not in service.”

25. By the afore-noted decision in ***Ex. CT. (CRPF) Prem Kumar Singh (Supra)***, this Court directed reinstatement of the petitioner therein in somewhat similar circumstances as the case in hand, however, has held that petitioner therein would not be entitled to any arrears of pay for the period during which he was not in service.

26. The Supreme Court in ***Sukdarshan Singh (Supra)*** has held that it is the competent authority who has to take a call as to whether the period in which the personnel did not appear on duty has to be treated as ‘on duty’ or ‘away from duty’. In the considered opinion of this court, the competent authority while taking this call has to bear over all facts and circumstances of the case. Applying the dictum of Supreme Court in ***Sukdarshan Singh (Supra)*** to the facts of the present case and concurring with the decision of this Court rendered in ***Ex. CT. (CRPF) Prem Kumar Singh (Supra)***, we find that since petitioner on 19.02.2005 had left his duty to go Ranchi without informing the competent authority, he deserves to be punished for acting irresponsibly. Indisputably, on 19.02.2005

petitioner left the camp without prior permission of his seniors and so, it has rightly been held that he has committed act of misconduct and misbehaved being the member of the Force and therefore, punishment of stoppage of three increments with cumulative effect has been imposed upon him. In our considered opinion, for his misconduct, the petitioner deserves to be punished and he cannot seek exoneration of the charge of misconduct on the ground that he has been acquitted in the criminal case. What is required to be considered is as to whether the punishment of stoppage of three increments with cumulative effect is just and proper or is harsh in the facts of the present case.

27. On this aspect we find that petitioner had gone to Ranchi due to some family exigency but could not return for evening call due to his arrest in a case under the Excise Act. It is the case of respondents that since petitioner's whereabouts were not known, a search and look was conducted and on the next day, through news published in national News Papers, respondents got to know about arrest of a CRPF personnel in illicit liquor recovery case. No doubt when petitioner was arrested on 19.02.2005 for allegedly committing offence under the Excise Act, he could not inform the competent authority about his arrest while being in judicial custody. It was the duty of the authority which arrested the CRPF personnel to inform his office (CRPF) on his arrest. For the lapse of competent authority of Excise Department in not informing the respondents about arrest of CRPF personnel i.e. petitioner, he alone cannot be blamed. Very rightly the period from 19.2.2005 i.e. the day petitioner absented himself from call roll in the evening till 20.9.2005,

during which period petitioner was in judicial custody for allegedly committing offence under the Excise Act, has been directed to be treated as his being on duty and he is paid all consequential benefits. However, petitioner has been inflicted with the punishment of withheld of three increments with cumulative effect for the misconduct which he has committed by leaving the duty without permission from the competent authority.

28. On the aspect of infliction of punishment we find that Section 10 (m) of the CRPF Act, 1949 provides as under:-

“10. Less heinous offences – Every Member of the force who-

(m) absents himself without leave, or without sufficient cause overstays leave granted to him;”

29. Further, Section 11 of the Act provides for punishment to be inflicted in cases of ‘less heinous offences’, which is as under:-

“11. Minor punishments—

(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,—

(a) reduction in rank;

(b) fine of any amount not exceeding one month’s pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force.”

30. The CRPF Act, 1949 do not prescribe for punishment of stoppage of increments. However, subsequently, CRPF Act, 1955 came into force. Section 27 (a) of Chapter – VI DISCIPLINE, of the CRPF Act, 1955 provides for Procedure for Award of Punishments, whereunder punishment of ‘stoppage of increment’ has been mentioned but the words ‘with cumulative effect’ do not find any place. In our considered opinion, the punishment of ‘stoppage of three increments’ inflicted upon the petitioner is just and proper and as per law. However, ‘with cumulative effect’ is against the prescribed law and so, deserves to be and is, accordingly set aside.

31. Further, pursuant to petitioner’s acquittal in the criminal case by the trial court vide order dated 29.07.2009, taking a compassionate view, petitioner has been reinstated in service but since he did not perform his duties from 31.1.2006 till the date of his reinstatement on 17.2.2017, the respondents vide order dated 08.02.2017 held that the aforesaid period be treated as *dies non* and have further added that **“this will neither count as service nor construed as break in service and he will not be entitled to any financial benefit on the principal of “No Work No Pay”.**

32. On this aspect we find that for the period from 31.01.2006, that is a

day after petitioner was 'dismissed from service' till 17.02.2017, when he has been reinstated in service, he did not perform his duty and, therefore, he has rightly been denied financial benefits. However, the respondents have implied the condition that the said period shall not be counted as his continuation in service nor as break in service, we find that once petitioner has been reinstated in service vide order dated 17.02.2017 in view of the fact that he has been acquitted of the offences charged with and it is established that he has been kept away from duty due to his 'dismissal from service' and he was not 'willfully' away from duty, the period from 31.02.2006 till 17.02.2017 has to be considered as 'continuation on duty' and petitioner shall be entitled to get consequential benefits of fixation of pay, promotion, seniority etc. for the said period.

33. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 15, 2023

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