

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.907 of 2011

ABHAY KUMAR MISHRA

... .. Petitioner/s

Versus

THE UNION OF INDIA and ORS

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate
For the Union of India : Mr. Satyabir Bharit, Sr. Panel Counsel

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

11 20-07-2024 In the instant petition, petitioner has prayed for the following relief(s):-

“That this application for issuance of appropriate writ, order or direction to quash the order of dismissal passed by Additional D.I.G, C.R.P.F dated 12.09.2005 (Annexure-4) and to quash the order of D.I.G, C.R.P.F dated 08.12.2005 (Annexure-5) and to quash the order I.G, C.R.P.F dated 21.07.2005 (Annexure-6) and order of D.I.G. Of Police (Confidential Rules and Vigilance) dated 06.08.2009 (Annexure-7) and for grant of all consequential benefits.”

2. On the short issue in respect of quantum of penalty, matter was heard on 28.06.2023 and following order was passed:-

“Matter heard for sometime. The petitioner is stated to have been appointed/joined CRPF as a constable. He was on duty on 19.01.2005 to 20.01.2005 from 18 hours to 6 hours. The alleged allegation is that he had handed



over the weapon and ammunition to one Jahid Khan on the alleged fact that he was suffering from certain illness relating to stomach upset. Jahid Khan had pass on the weapon and ammunition to one of the civilian. On this allegation, he was subjected to departmental inquiry on 04.04.2005 and it was concluded in imposition of penalty of dismissal from service on 12.07.2005. It was subject matter of appeal, revision and memorial. In all the three proceedings the petitioner suffered. In other words, the penalty of dismissal from service has been confirmed by the superior authorities, hence, the present writ petition.

2. The petitioner is stated to have joined service in the year 1990. The allegation is relating to hand over weapon and ammunition to his colleague and handed over to some other civilian and the same was recovered without there being any further damage or any misuse of weapon and ammunition by any person. On this allegation, imposition of penalty of dismissal from service read with the service particulars of the petitioner to the effect that his services were engaged in the year 1990, it would be too harsh. Further, it is noticed that Jahid Khan was also subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service. Thereafter, in a certain proceedings Jahid Khan was taken back to duty or reinstated. On this issue, learned counsel for the respondents is hereby directed to apprise on the next date of hearing.

3. In the meanwhile, Director General, CRPF-respondent, is hereby directed to revisit the rejection of memorial and proceed to consider alternative penalty of dismissal from



service to that of compulsory retirement with reference to the fact that petitioner had joined service in the year 1990 and he has been dismissed from service on 12.09.2005. In this regard, respondent counsel is hereby directed to apprise the Office of Director General, CRPF and get instruction by next date of hearing.

4. Re-list this matter on 09.08.2023.”

3. There is no response from the office of Director General, CRPF – respondent and so also necessary instructions have not been provided to the learned counsel for the respondents.

4. Taking note of these facts and circumstances, I am of the opinion that imposition of penalty of dismissal from service is a shocking to the conscious of this Court. Having regard to the fact that there are no misappropriation and other allegations. On attending circumstances, petitioner had handed over the weapon and ammunition which was allotted to him to one *Mr. Zahid Khan*, only on that allegation imposition of dismissal from service would be too harsh. The same has been recorded on 28.06.2023 while giving an opportunity to the respondent – Director General, CRPF and having regard to the fact that there is no response and I have no other option except to proceed to pass an order to the effect that order of the dismissal dated 12.07.2005 stands modified to that of



compulsory retirement.

5. The concerned respondents are hereby directed to settle all monetary and service benefits as if the petitioner has been penalized with a penalty of compulsory retirement from the date of dismissal, i.e., 12.09.2005. In this regard, necessary monetary calculation shall be made and the same shall be disbursed in favour of the petitioner within a period of four months from the date of receipt of this order.

6. At this stage, learned counsel for the respondents *Mr. Satyabir Bharit* submitted that there was internal communication between the department and instructing counsel to the effect that competent authority has taken a decision to modify the penalty. However, till date the penalty has not been modified. Therefore, the aforementioned order holds good.

(P. B. Bajanthri, J)

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