



W.P.No.13757 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 02.01.2024

Coram:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

W.P.No.13757 of 2021

G.Raghupathy,
Constable (No.031421015),
No.1241 – Type-I, Special, 'B' Block,
Group Centre, CRPF,
Avadi, Chennai – 600 065.

... Petitioner

/versus/

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi – 110 003.
2. The Inspector General of Police,
Western Sector, CRPF,
CGO Complex, CBD Belapur,
Navi Mumbai,
Maharashtra – 400 614.
3. The Deputy Inspector General of Police,
Range HQr., CRPF,
Gandhinagar,
Gujarat - 382 042.
4. The Deputy Inspector General of Police,
Group Centre, CRPF, Avadi, Chennai – 600 065.

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5. The Commandant,
111 Battalion CRPF,
DRP Line Karli,
Dantewada, Chhattisgarh.

...Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, pleaded to Writ of Certiorarified Mandamus calling for the records of appeal order dated 16.09.2017 proceeding No.R.XIII-111/2017-Estt-3 modifying the punishment of dismissal of the petitioner into stoppage of 02 annual increments with cumulative effect issued by the 3rd respondent and order dated 21.06.2018 of 2nd respondent in proceedings No. R.XIII.1/2018-WS-Adm-I rejecting his revision petition and refusing his promotion based on the above punishment by the 4th respondent in proceedings No.P.VII-4/2020-EC.I dated 07.10.2020 and quash the punishment so far as stoppage of 02 annual increments with cumulative effect concerned and consequently thereby, direct the respondents to release his promotion to the rank of Head Constable (General Duty) by assigning his seniority at appropriate place so as to not affecting his future career.

For Petitioner : Ms.R.Meenakshi

For Respondents : Ms.V.Sudha,
Central Government Standing Counsel



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ORDER

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This Writ Petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records of appeal order dated 16.09.2017 proceeding No.R.XIII-111/2017-Estt-3 modifying the punishment of dismissal of the petitioner into stoppage of 02 annual increments with cumulative effect issued by the 3rd respondent and order dated 21.06.2018 of 2nd respondent in proceedings No.R.XIII.1/2018-WS-Adm-I rejecting his revision petition and refusing his promotion based on the above punishment by the 4th respondent in proceedings No.P.VII-4/2020-EC.I dated 07.10.2020 and quash the punishment so far as stoppage of 02 annual increments with cumulative effect is concerned and consequently, direct the respondents to release his promotion to the rank of Head Constable (General Duty) by assigning his seniority at appropriate place so as to not affect his future career.

2. Ms.R.Meenakshi, learned counsel for the petitioner submitted that, the petitioner was working as a Constable in Central Reserve Police Force (C.R.P.F.). The 5th respondent/Commandant gave a charge memo dated 04.10.2016 to the petitioner for certain alleged lapses on his part. At the conclusion of the disciplinary proceedings, the petitioner was imposed with the punishment of



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removal from service. Subsequently, the petitioner filed an appeal before the Appellate Authority and in the appeal the punishment was modified to stoppage of two annual increments with cumulative effect.

3. The petitioner had also filed a revision before the Revisional Authority on 05.12.2017 and the same was rejected on 21.06.2018 by confirming the order of the Appellate Authority. Due to the currency of punishment, the petitioner's name was not included in the promotion panel.

4. The learned counsel for the petitioner submitted that the translated copy of the Appellate Authority's order dated 16.09.2017 would show that both the charges are not proved. The Appellate Authority has proceeded to modify the punishment, as though the charges were proved. The petitioner was not given with promotion citing the reason of punishment.

5. Ms.V.Sudha, learned Standing Counsel for the respondents submitted that the witnesses have spoken about the misconduct of the petitioner. He was enquired about his absence during debriefing at the time of Administrative



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movement and his misbehaviour towards his Superior Officer Shri.Kunwar Singh D/C (Adjutant). The Appellate Authority has taken a lenient view and he has reduced the punishment of removal from service to stoppage of two increments. The Appellate Authority had recorded in its order that the petitioner had some emotional hotheadedness against the senior officer and that again is not a good conduct of a disciplined force and for which, the petitioner was punished with stoppage of two annual increments. As per the rules for promotion, the petitioner's promotion can be considered only after the expiry of 5 years.

6. She further submitted that the petitioner was deployed to 111 Battalion of C.R.P.F., a Highly Naxal Infested area of Special Operational Zone (SOZ), where C.R.P.F. has suffered maximum casualties in the past. The administrative movement in this area is considered and planned as an operational movement and any lapse during the movement would invite great danger to the petitioner and the other personnel. The petitioner met his family without permission and with arms and ammunition and hence it is a grave misconduct. The *modus operandi* of the Naxal is to target and attack the armed personnel who are roaming alone with weapons. Hence, the punishment of stoppage of two annual increments with



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cumulative effect awarded by the 3rd respondent commensurates well with the proved misconduct of the petitioner. Hence, the petition should be dismissed.

7. During the course of petitioner's submission, it is stated that the petitioner was not given with translated copies of the orders of the Enquiry Officer, Appellate Authority and the statement of witnesses.

8. The Standing Counsel for the respondents has furnished a set of English translated version of the report and orders which are in Hindi and placed another copy before the Court also. Even though, the Enquiry Report states that the two charges levelled against the petitioner were proved, the Appellate Authority has taken a different view. In this regard, it is relevant to extract the translated version of the order of the Appellate Authority dated 16.09.2017, which reads as below:-

“5. The averments submitted by the appellant in his appeal dated 27.06.2017, Departmental Enquiry file, the deposition statement of prosecution witnesses and connected documents, the day today orders issued by the Commandant - 111 Battalion CRPF were thoroughly examined by the undersigned officer and come to



*conclusion that the departmental enquiry on article-I, the charge leveled against the official that "the official while performing the duty of administration /operational duty without prior permission of the party commander, he left the party with authorized arms and ammunitions by Govt. Motor Cycle. The enquiry officer in the question answer asked from the party commander No.861110684 ASI/GD Ganga Prasad Soni, E/111 Bn, the answer given by the party commander is that the delinquent No. 031424015 Ex. Constable /GD G. Raghupathy did not leave the party" hence, **the charge has been wrongly proved.***

*6. As regards the imputation of article -2, in the enquiry report submitted by the enquiry officer on the charge levelled against the official that " the official while debriefing time, in the presence of Sub-Inspector(Adjutant), B.H.M and other Force personnel used savage/unparliamentarily words against Shri Kunwar Singh, Deputy Commandant". In the prosecution witness statements, no one has mentioned the above facts in their deposition. **This has not been proved.** However, the prosecution witnesses mentioned in their deposition statement, the said official during the debriefing had emotion/hotheaded against the senior officer which is against the good orders and discipline of the force and under punishable offence."*



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9. So far as, the Charge No.1 is concerned, the Appellate Authority has recorded his opinion that, *“it has been wrongly proved”*, meaning to say that the charge No.1 has not been proved. As regards Charge No.2, the Appellate Authority had analysed the statement of witnesses and given an opinion that the *“2nd charge also not proved”*. Having distinctively recorded that both the charges were not proved, the Appellate Authority proceeded to record the following conclusion.

“However, the prosecution witnesses mentioned in their deposition statement, the said official during the debriefing had emotion/hottheadedness against the senior officer which is against the good orders and discipline of the force and under punishable offence.”

10. When there is a specific charge against the petitioner that he had misbehaved with the Superior Officer, the alleged misbehaviour ought to have been narrated in words. The Appellate Authority had chosen to use a common language and recorded that the petitioner had an emotion hotheadedness with his Senior Officer. From those diplomatic words, the factual position cannot be ascertained.

11. Having recorded that the two charges framed against the petitioner were



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not proved, the Appellate Authority has recorded his own opinion and that can be of no consequence. Once the Appellate Authority had arrived at a conclusion that both the charges were not proved, the consequent order would only to set aside the punishment and not to modify the punishment. In fact, the petitioner was facing enquiry only on the basis of the charges and the materials furnished to him. So, he cannot be put to surprise by the Appellate Authority with any new allegations, which did not form part of the charges already framed.

12. The charges should be specific about the facts contributing to a specific lapse and it can not be just a generalised assumption or presumption. On those type of charges, if any enquiry is conducted that will not serve the interest of justice. Anything leads from uncertainty would also end in uncertainty. The language adopted by the Appellate Authority in his order would show that, he had applied his mind by thoroughly perusing the statement of prosecution witnesses and recorded his conclusion in unequivocal terms that both the charges were not proved.

13. All the proceedings were recorded in Hindi. The enquiry report as well as the order of the disciplinary authority and the Appellate Authority are also in



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Hindi. The petitioner was not even given with any opportunity to know what was emanated from the statement of witnesses and how the enquiry officer had arrived at a conclusion that charges were proved.

14. At this juncture, the learned Standing Counsel for the respondents submitted that, it was the petitioner, who opted the proceedings to be in Hindi and now he cannot turn around and say that he wanted an English translation only. There is a little force in the submission of the learned Standing Counsel for the respondents, because the petitioner had preferred the language of enquiry in Hindi. The petitioner who was employed as a Constable has got no other better option except to choose between English or Hindi. The petitioner had not chosen English, because he was not conversant or fluent in English. The only alternate was Hindi and hence, he needed to opt the enquiry to be in Hindi. There is a lot of difference between a person's understanding of the spoken Hindi and written Hindi. So, the petitioner cannot have a thorough understanding of his statement of witnesses and the orders, which have been written in Hindi.

15. However, when he challenged the proceedings before this Court the



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petitioner could get the assistance of his counsel along with the English translated papers and hence, he was able to make his submissions effectively. Just because, the petitioner had chosen the medium of language for enquiry in Hindi, it cannot be presumed that the petitioner is aware of the contents of the written materials furnished to him and the evidence recorded during the enquiry proceedings. It is also worthwhile to mention that even those Hindi enquiry report or the statement of witnesses were not even given to him in full in order to enable him to make an effective representation. He was given with only a gist of the enquiry report.

16. Without any doubt, the petitioner being a part of the responsible force and that too of a Battalion which was deployed at a very sensitive Naxalite area ought to have behaved with due sensitivity, by strictly obeying the orders of his Superior Officers. But, the records of enquiry proceedings do not show that the petitioner had disobeyed any of the orders of his Superiors or he had misbehaved with them in any specific manner or abused them.

17. Taking into consideration of the opinion recorded by the Appellate Authority and also the omission to give a rightful opportunity to the petitioner by



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furnishing the entire translated copies of the proceedings to him, I feel the orders of the Appellate Authority should be set aside.

18. After having come to a conclusion that charges were not proved, it is not fair on the part of the Appellate Authority to impose any punishment, including any modified punishment. The petitioner's promotional possibilities have been blocked for 5 years only due to an undue punishment imposed on him. Hence the prayer of the petitioner deserves to be considered favourably.

19. In view of the above stated reasons, this Writ Petition is **allowed** and the order of the Appellate Authority dated 16.09.2017 is set aside to the extent of his following observation is set aside.

“However, the prosecution witnesses mentioned in their deposition statement, the said official during the debriefing had emotion/hotheadedness against the senior officer which is against the good orders and discipline of the force and under punishable offence and part of the order which imposes punishment of stoppage of 02 increments with cumulative effect and also the revisional authority order.”



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Consequently, the whole of the punishment imposed on the petitioner by the Disciplinary Authority / 5th respondent *vide* proceedings No.P.VIII-2/2016-Estt.2 dated 21.06.2017 and the modified punishment imposed by the Appellate Authority / 3rd respondent *vide* the impugned proceedings No.R.XIII-111/2017-Estt-3 dated 16.09.2017 are set aside and the 3rd respondent is directed to release the petitioner's promotion to the rank of Head Constable (General Duty) by assigning him due seniority on par with his juniors along with all other attendant benefits. So far as the monetary benefits for promotion is concerned, it shall be given from the date of promotion. Order in this regard shall be passed by the 3rd respondent within a period of 6 weeks from the date of receipt of the copy of this order. No costs.

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Index : Yes.
Internet : Yes.
Speaking Order / Non-Speaking Order
bsm

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R.N.MANJULA, J.

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