



2024:DHC:5971-DB



\$~6

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

Date of Decision: 09.08.2024

+ W.P.(C) 555/2008

SHYAMVIR SINGH TYAGI

.....Petitioner

Through: Ms. Avni Singh, Adv. along with the
petitioner in person.

versus

U.O.I & ORS

.....Respondents

Through: Mr. Ruchir Mishra & Ms.Reba Jena
Mishra, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

REKHA PALLI, J (ORAL)

1. The petitioner, who was working as a Head Constable (Driver) in the Central Reserve Police Force (CRPF), by way of present petition under Article 226 of the Constitution of India, has approached this Court assailing the order dated 12.10.2005 passed by the Commandant 55 Battalion, CRPF vide which he has been removed from service on the basis of a departmental inquiry. The petitioner also assails the order dated 07.08.2006 passed by Appellate Authority confirming the order of his removal from service. Additionally, he also challenges the subsequent order dated 25.10.2006 passed by the Revisional Authority whereby his revision was rejected as



2024:DHC:5971-DB



being devoid of merit.

2. Before dealing with the rival submissions of the parties, it would be apposite to note the factual matrix of the case as emerging from the record.

3. The petitioner was on 09.05.1988 enrolled as a Constable in the Central Reserve Police Force (CRPF) and was in January, 2004, promoted as a Head Constable. On 09.06.2005, he was placed under suspension in contemplation of a departmental inquiry, which was to be initiated against him in respect of a purported misconduct committed by him on 06.06.2005 in his capacity as a member of the Force.

4. On 11.06.2005, the petitioner was served with a charge-sheet wherein he was informed that a joint departmental inquiry was proposed to be held against him and Head Constable (HC) / Havaldar Umed Singh on the following three charges:-

“i. That on 06.06.2005, the Petitioner committed an act of misconduct and indulged in a fight with Umed Singh and thus committed an act of misconduct under Section 11(1) of Central Reserve Police Force, 1949.

ii. That on 06.06.2005, the Petitioner after consuming liquor violated instructions regarding the use of a weapon and fired four rounds negligently from his carbine Butt No. body no. 14210 near unit MT lines and lost two rounds of 9mm ammunition issued to him. Thus committed an act of misconduct and negligence under Section 11(1) of Central Reserve Police Force, 1949.

iii. That on 06.06.2005, Umed Singh used abusive language against the Petitioner and provoked him to respond violently.”

5. The petitioner submitted a reply denying the charges whereafter vide order dated 30.06.2005, Sh. Ratnakar, Deputy Commandant, 55th Battalion was appointed as Inquiry Officer to conduct the inquiry against the petitioner as also HC Umed Singh. On 14.07.2005, the petitioner submitted a representation to the Commandant for change of the Inquiry Officer with a



2024:DHC:5971-DB



grievance that the Inquiry Officer was threatening the witnesses to give false statements to implicate the petitioner. The said representation was rejected and the petitioner was asked to put forward his defence and appear before the Inquiry Officer on 26.08.2005.

6. As directed, the petitioner submitted his defence and also participated in the inquiry wherein 14 prosecution witnesses were examined. On 10.09.2005, the petitioner was served with copy of the Inquiry Report along with copies of statements of the witnesses examined in the inquiry and was directed to submit his representation against the inquiry report within 15 days. The petitioner accordingly submitted his representation on 25.09.2005, which was rejected and an order removing him from service was passed on 12.10.2005 by the Disciplinary Authority / Commandant, 55th Battalion. Based on the same inquiry, HC Umed Singh was awarded the penalty of reduction in rank, which penalty has attained finality. Being aggrieved, the petitioner preferred a statutory appeal, revision and a mercy petition to the Director General, CRPF, which were all rejected.

7. At this stage, on 16.09.2005, after the inquiry had already been completed, the respondents issued a circular emphasising on the need to appoint a defence assistant in every domestic inquiry. The relevant extracts of the said circular read as under:-

"3. Keeping in view the inherent problems likely to be faced by the administrative authority on account of requirement of a number of personnel to act as Defence Asstts in the large number of inquiries pending with the Deptt, on the one hand and at the same time the requirements of natural justice to be full filled in keeping with the observation of the Courts, it is hereby advised that in all Departmental Proceedings against NGOs in CRPF, the delinquent person may be represented/ assisted by a person from within the rank whose services the delinquent may be able to procure and who shall



2024:DHC:5971-DB



be called as "Defence Assistant".

4. Such provision would be on the pattern of provision titled 'Defending Officer and friend of accused' available in Rule 95 of Army Rules, 1954, Rules 122 of BSF Rule 1969, Rules 118 of NSG Rule 1987 and rule 123 of ITBP Rules 1994. The Defence Asstt shall have the same rights and duties as applicable to a counsel under the rules and shall be under the like obligations. "The Defence Assistant" may advice the delinquent on all points and suggest questions to be put to the witnesses but he shall not examine/ cross examine the prosecution witness or address the Enquiry Officer. This provision be made applicable only in respect of those charged officials who make specific demand for Defence Asstt. In cases where the delinquents do not wish to avail the provision of Defence Assistants mentioned above, the I.Os should duly record/mention the same in the order sheet to this effect."

8. Before us, the principal grievance of the petitioner is that the departmental inquiry, based on which the impugned penalty order was passed, was in itself vitiated as no defence assistant was provided to either the petitioner or to HC Umed Singh during the inquiry.

9. Ms. Avni Singh, learned counsel for the petitioner submits that both the petitioner and HC Umed Singh not only during the inquiry but even after the inquiry report was provided to them, repeatedly requested and made representations to the Inquiry Officer as also to the Disciplinary Authority for providing a defence assistant to them but their requests were not even accepted. In this regard, an application dated 24.08.2005 was submitted by HC Umed Singh specifically requesting for appointment of a defence assistant, the respondents, however, claim that this application was received by the Disciplinary Authority only on 10.09.2005.

10. She further submits that this grievance of the petitioner of not being provided with a defence assistant was raised even before the Appellate Authority, which refused to examine this plea by simply observing that the



2024:DHC:5971-DB



same was not borne out from the record. The Reviewing Authority, she contends, went a step further and held that there was no provision for providing any defence assistant as per rules. She submits that the right to engage a defence assistant of his choice in a departmental inquiry is a fundamental right of every employee facing an inquiry. Further, the respondents, being aware of this legal position, have themselves issued a circular on 16.09.2005 emphasising the need to provide a defence assistant to the charged employee but still, the petitioner's prayer for setting aside the inquiry proceedings on this ground has been rejected without appreciating the fact that petitioner is barely 10th pass and does not understand the nuances of law.

11. In support of her plea, she places reliance on the following decisions:-
- i. ***Vijendra Singh vs. Union of India in WP (C) no.182/2005***
 - ii. ***Balwan Singh vs. Union of India and Ors in W.P.(C) No.523/2012***
 - iii. ***Bhagat Ram vs. State of Himachal Pradesh & Ors, AIR 1983 SC 454***

12. Learned counsel for the petitioner contends that even though the findings of the Inquiry Officer have been assailed on merits as well as on the ground of bias on his part, once the very basic principles of natural justice were violated, by not providing the petitioner with a defence assistant, the inquiry report deserves to be set aside on this very ground alone. She, therefore, prays that the inquiry report and all consequential orders be set aside and petitioner be reinstated in the service with all due benefits.

13. On the other hand, Mr. Ruchir Mishra, learned counsel for the



2024:DHC:5971-DB



respondents seeks to defend the impugned orders. However, while not denying that neither any defence assistant was provided to the petitioner nor was he informed that he had a right to engage a defence assistant, he contends that during the course of the inquiry, the petitioner never made any written or verbal request to the Inquiry Officer for providing him with a defence assistant. The plea of the petitioner is merely an afterthought as he was given a reasonable opportunity to defend his case and put forth his version during the course of inquiry as per principles of natural justice.

14. Moreover, there is no provision for providing a defence assistant under Rule 27 of CRPF Rules, 1955, which prescribes for procedure for conduct of departmental inquiry of Non-Gazetted Officers in CRPF. He further submits that the guidelines for providing a defence assistant were issued only on 16.09.2005 and therefore, the inquiry which was concluded before 10.09.2005 could not be vitiated on this ground. Furthermore, the letter which the petitioner claims was submitted by HC Umed Singh on 24.08.2005 was in fact, antedated as the said letter was received by the Disciplinary Authority only on 10.09.2005, when the inquiry report had already been submitted. In any event, HC Umed Singh has neither assailed the findings of the Inquiry Officer nor the penalty of reduction in rank imposed on him and therefore, prays that the writ petition be dismissed.

15. Having considered the submissions of learned counsel for the parties and perused the original records, we find that the application dated 24.08.2005 addressed to the Inquiry Officer by HC Umed Singh with a prayer to provide him with a defence assistant is available in the records. Even if, we were to accept the respondents' plea that this letter was



2024:DHC:5971-DB



submitted to the Disciplinary Authority only on 10.09.2005, the fact remains that the inquiry proceedings were assailed on this ground well before passing of the impugned removal order which was based on this inquiry report. It is thus evident that it is the respondents' own case that this application submitted by the co-delinquent was available with the Disciplinary Authority before the removal order was passed on 12.10.2005.

16. What further emerges is that it is the respondents' own stand that on 16.09.2005, directions had been issued that every delinquent employee facing an inquiry would be entitled to ask for services of a defence assistant. The respondents have, however, urged that the inquiry had already been completed before the guidelines providing for defence assistant were issued on 16.09.2005. We, however, find no merit in this plea as we are of the view that once the Disciplinary Authority was made aware that the inquiry has been conducted without permitting the petitioner and HC Umed Singh to engage a defence assistant, appropriate orders for holding of *de-novo* inquiry ought to have been issued. Once a specific grievance regarding denial of the opportunity to engage a defence assistant had been raised before the penalty order of removal from service was passed, the respondents could not shy away from the duty cast on them vide circular dated 16.09.2005.

17. Further, we are of the considered opinion that irrespective of the guidelines issued on 16.09.2005, principles of natural justice require that a delinquent employee is informed of his right to take help of a defence assistant in an inquiry. This requirement would be more in cases like the present, where Force personnel face inquiries while serving in far off battalions where they do not have easy access to legal assistance. In this



2024:DHC:5971-DB



regard, it may be apposite to note the following extract from the decision of the Co-ordinate Bench in **Balwan Singh** (supra) as contained in paragraph 19 thereof.

“19. So far as the appointment of a defence assistant is concerned, it has been repeatedly held that the delinquent in disciplinary proceedings is required to be informed of his right to take help of another Government Servant before the commencement of the inquiry and a fair and reasonable opportunity to appoint one.”

18. In the light of the aforesaid, the inquiry proceedings are clearly vitiated and along with all consequential orders liable to be set aside on this ground alone. We, however, make it clear that we are not expressing any opinion regarding the petitioner’s plea that even before 16.09.2005, it was incumbent on the respondents to provide a defence assistant at the request of a delinquent employee in a departmental inquiry or on the merits of the findings of Inquiry Officer.

19. Having found the inquiry to be vitiated, what next? Normally, we would have, in such circumstances after setting aside the impugned orders, directed the petitioner’s reinstatement with liberty to the respondents to hold a *de-novo* inquiry against him. However, taking into account that more than 19 years have already elapsed since the petitioner was removed from service and is already about 58 years of age, it would not be, in the interest of justice, to direct his reinstatement with liberty to hold a fresh inquiry at this belated stage. We also find that the petitioner had already served for 17 years before he was removed from service. We are, therefore, of the considered view that it is a fit case where this Court should itself modify the penalty imposed on the petitioner by a suitable penalty so that he can at least receive pensionary benefits.



2024:DHC:5971-DB



20. In this regard, reference may be made to the following extracts from the decision of a Division Bench in ***Punjab National Bank vs. M.L. Bansal (2018) SCC Online Del 11385***, wherein the decision of the learned Single Judge in modifying the penalty was upheld:

“14. In the light of the aforesaid circumstances, when we examined the impugned judgment, we find that the learned Single Judge was fully conscious of the fact that the Court should in the ordinary course remit the matter back to the Disciplinary Authority for passing a fresh order of penalty but keeping in view the time period which had already elapsed since the respondent's removal from service and only with an aim to shorten litigation for a senior citizen who had served the Bank for almost 29 year, had taken upon him the task of modifying the penalty of removal from service to compulsory retirement. The only effect of the modified penalty in the evening of his life, would be to at least get some retiral benefits

15. We may now refer to the decisions relied upon by the learned counsel for the Appellant and find that in so far as the decision in Chief Executive Officer, Krishna District Co-operative Central Bank Ltd. v. K. Hanumantha Rao, 2017 (152) FLR 131 concerned, the same relates to case where the Apex Court after considering the nature of misconduct, had opined that in the facts of those cases, the penalty imposed by the Disciplinary Authority could not be held to be disproportionate and had, therefore, set aside the decisions of the High Court, allowing the writ petitions on the premise that the penalty was disproportionate.

16. In so far as the decision in the case of Life Insurance Corporation of India v. S.Vasanthi, (2014) 9 SCC 315 is concerned, on which heavy reliance has been placed by learned counsel for the appellant, we find that the said decision reiterates the well settled legal position that Court cannot assume the function of Disciplinary/Department Authorities to decide the quantum of punishment.

17. On the other hand, we find that the decision in the case of Allahabad Bank v. Krishna Narayan Tewari, 2017 (1) SCALE 89



2024:DHC:5971-DB



relied upon by the respondent, which deals with a case wherein the High Court, after finding that the inquiry and the order passed by the Disciplinary Authority as also by the Appellate Authority was vitiated, had exercised its power of judicial review in directing the release of the retiral benefits of the employee instead of remanding back the matter for a fresh inquiry. We find that the Apex Court, while dealing with the aforesaid situation had observed that there may be situations where because of a long time lag or such other supervening situations, where the writ Court considers it as unfair harassment or otherwise unnecessary to direct a fresh inquiry or fresh order by the Competent Authority, it may pass a considerable order itself. Thus we have no hesitation in rejecting the contention of the learned counsel for the appellant that in no circumstances should the Court substitute the penalty imposed on the employees.

18. At this stage, we may also note that in Jai Bhagwan v. Commr. of Police, 2013 (8) SCALE 392 and S.R. Tewari v. Union of India, 2013 (7) SCALE 417, the Apex Court had substituted the penalty imposed on the employees, keeping in view the long period of time which had elapsed from the date of imposition of penalty

19. In the light of the settled legal position and having considered the facts of the present case, we find absolutely no reason to defer with the course of action adopted by the learned Single Judge. In our view, in the light of the admitted position that the charge against the respondent related to procedural irregularities committed by him in the year 1994 and that too when he was only part of the hierarchy of officers, which was responsible for processing the loan proposal, the learned Single Judge was justified in modifying the penalty imposed on the respondent by taking into consideration respondent's 29 years of almost blemishless service as also the fact that the penalty order related to the year 2015, in no case can the Court interfere with the quantum of penalty. In our opinion, the justification to exercise of such a power by the High Court, cannot be put in a straight jacket formula and would necessarily depend upon the facts of each case.



2024:DHC:5971-DB



20. In our considered opinion, in the facts of the present case, the remand of the matter back to the appellant at this belated stage for re-consideration of the penalty to be imposed on the respondent when he is already in the evening of his life, is not at all warranted.”

21. Accordingly, in the peculiar facts of the present case, where remand of the matter to the respondents at this belated stage, when the petitioner has already suffered for the last 17 years without any source of income is likely to lead to further delay and will cause irreparable hardship to the petitioner, who, it is claimed, is without any source of income for the last many years and has therefore has been living at the mercy of his friends and relatives. We, therefore, set aside all the impugned orders and direct that the penalty of removal from service imposed on the petitioner be substituted by compulsory retirement along with all pensionary benefits. The petitioner, who is present in Court, submits that this course of action is acceptable to him.

22. The writ petition is accordingly disposed of by directing that the impugned penalty order dated 12.10.2005 will stand modified to this extent. Arrears in terms of this order be released in favour of the petitioner within a period of three months.

**(REKHA PALLI)
JUDGE**

**(SHALINDER KAUR)
JUDGE**

**AUGUST 09, 2024
Kk/ss**