



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

% *Date of decision: March 11, 2024*

+ W.P.(C) 3138/2024 & CM.APPL. 12845/2024

(2) DUPTI SINGH Petitioner

Through: Mr. J. K. Bhelloriya, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ranbir Singh, SPC for UOI with
Mr. R. N. Pareek, Pairivi
Officer(CRPF)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. The petitioner joined the Central Reserve Police Force¹ in 2004 and after completion of his normal tenure at GC II Ajmer in 2019, he was transferred to 61 CRPF vide HQ Rajasthan Sector Signal dated 04.04.2019. The petitioner sought voluntary retirement vide application dated 10.06.2019 on the ground that he is being transferred to Sri Nagar and since it is difficult for him to perform duties in cold regions due to his knee injury sustained in 2015, which was 'rejected' as being conditional vide order dated 14.06.2019. As such the petitioner was then relieved from GC II Ajmer vide movement

¹Hereinafter referred to as 'CRPF'



order dated 08.07.2019 with 30 days earned leave. Though he was due to report in 61 CRPF on 07.08.2019, he never joined there. In an appeal thereagainst, the respondents after consideration instead transferred him to 212 CRPF vide signal dated 16.04.2020 where, once again, the petitioner failed to join 212 CRPF as well.

2. As such, vide memorandum dated 24.05.2021, a Departmental Enquiry² was conducted against the petitioner on the following charges :-

Item One

"That the Force No.041574759 Ct/GD DupitiSingh, while serving as Ct/GD in 212 CRPF, in his capacity as a member of the Force under Section 11 (1) of the Central Reserve Police Force Act, 1949, Disobedience, neglect of duty and misconduct, in which he was relieved from Group Center 2 Ajmer on 08 July 19 for 61 CR along with 30 days earned leave, but after availing 30 days earned leave, he also did not report to 61 CRPF. Later, on the basis of the appeal of the said personnel, the Inspector General, Rajasthan Sector, vide his wireless number T909/20, dated 16 April 20, transferred him to 212 CRPF Instead of 61CRPF. The employee was informed about this on mobile number9461672132 on 23 April 20 and he was told to report to 212 CRPF after the end of the lockdown, but even after 11 months, the personnel did notreport to 212 CRPF. And he is remaining absent from leave, which is against the good conduct and discipline of the force and is punishableunder Act 11 (1) of the CRPF Rules, 1955.

Item Two

"That Constable/GD DupitiSingh, Force No.041574759, while serving as Ct/GD in 212 CRPF, has disobeyed orders in his capacity as a member of the Force under Section 11(1) of the Central Reserve Police Force Act, 1949. He has shown laxity/other misconduct in the

²Hereinafter referred to as 'DE'



discharge of his duty, in which he was directed to report for duty immediately under this office's letter No. G2 01/21 212 UR, dated 24 March 21, but he did not appear on duty. This act of the personnel is against the good conduct and discipline of the force and is punishable under Rule 27 of CRPF Rules 1955."

3. The petitioner was forwarded a copy of the Memorandum of Charge and was also directed to participate in the DE. However, since he failed to appear for the DE, he was proceeded ex-parte. Thereafter, vide order dated 03.11.2021, the Disciplinary Authority i.e., Commandant 212 CRPF, observing that the petitioner had remained absent from duty from 08.08.2019 till 01.11.2021 (819 days) without any justification for the same, awarded him the punishment of 'Removal from Service'. Aggrieved therefrom, the petitioner preferred an appeal dated 06.12.2022 which was rejected by the DIG Ajmer Range vide order dated 30.01.2023. The petitioner then filed a revision petition dated 30.01.2023, which was also rejected by the IG, Rajasthan Sector on 20.02.2023.

4. The petitioner vide a petition dated 28.02.2023 to the Head Quarters, requested reinstatement in service on the grounds that his absenteeism was due to his knee injury for which he had to undergo knee surgery in 2015 as also due to the ill health of his father; and further due to the imposition of lockdown. It was because of the above that the petitioner could not respond to the communications of the Department. The Competent Authority rejected the aforesaid petition holding that the DE was held in a fair manner and in accordance with the prescribed procedure and also that the petitioner had



failed to justify his absence from service and thus the punishment of removal of service was commensurate to the charges against him.

5. The petitioner then filed an online complaint dated 12.01.2024 to the respondent no.1 seeking retirement and pension benefits, to which no response was received.

6. Hence, the petitioner has now filed the present petition under Article 226 of The Constitution of India seeking quashing and setting aside of the impugned order dated 03.11.2021 and directing the respondents to grant him retirement benefits as also pension as per his length of service.

7. Learned counsel for the petitioner submits that the impugned order is liable to be set aside as the respondents have failed to consider that the petitioner had suffered a major knee injury in 2015 while performing the task of unloading rice bags, which injury was attributable to service and that due to the said injury, the petitioner was unable to carry on normal day to day tasks as also that despite seeking voluntary retirement due to his knee injury, the respondents arbitrarily rejected his request by wrongly holding that the petitioner was seeking conditional retirement as he was being transferred to 61 CRPF and then he was dismissed from service. He was, thus, unfairly deprived of his retirement pensionary benefits.

8. Learned counsel further submits that he was unable to communicate with the respondents due to the ill health of his father as also the imposition of lockdown and that his absence was justified.

9. Learned Senior Panel Counsel for the respondents on the other hand appearing on advance notice, supports the impugned order dated 03.11.2021



and submits that since the passing of the same, the petitioner has repeatedly faced rejections time and again, which have not been disclosed before us.

10. We have heard and deliberated upon the rival contentions of the learned counsels appearing for all the parties and have also gone through the documents on record.

11. The facts herein reveal that indeed much water has flown since the passing of the impugned order under challenge, inasmuch as, not only the appeal by the petitioner against the said impugned order has been dismissed by the DIG, Ajmer Range vide order dated 30.01.2023, the revision petition filed by him thereagainst has also been rejected by the IG, Rajasthan Sector on 20.02.2023 and lastly even his petition to the Headquarters requesting reinstatement in service has since been rejected. So much so, the online complaint of the petitioner dated 12.01.2024 to the Union of India-respondent no.1 seeking retirement and pensionary benefits is pending.

12. We find that surprisingly, the petitioner has not challenged any of the subsequent orders of rejection passed by the respondents after the impugned order dated 03.11.2021. In fact, much to the dismay of this Court, the petitioner has not approached this Court with clean hands as he has withheld material information qua each of the aforesaid subsequent orders of rejection faced by him as they are nowhere pleaded by him. The same, in itself, is sufficient ground for rejection of the present petition without dwelling into the merits involved.

13. In any event, since the petitioner was, *admittedly*, absent from service duty from 08.08.2019 till 01.11.2021, i.e. for a prolonged period of 819 days,



without any intimation to that effect or justification or cause from his side, and which absence under the facts and circumstances involved herein could have been longer, had the DE not been conducted, and as also since the petitioner has withheld the aforesaid subsequent developments qua orders of rejection, which have taken place after passing of the impugned order under challenge from time to time are, once again, themselves sufficient grounds for us to dismiss the present petition. The petitioner, could not have forgotten that belonging to the Armed Forces and from the day he dawned the uniform, he had a sense of responsibility and duty upon his shoulders to, not only be there in the line of duty if and when called for, but otherwise also surely intimate if he was going on leave well before and since it was not available to him as a matter of right. Having not done so, the petitioner rather outstretched himself by being more than casual in his approach, for which he can neither expect any leniency from us nor expect us to rescue and pardon him.

14. Be that as it may, since the punishment imposed by the disciplinary authority vide impugned order dated 03.11.2021 has later been fortified not only by the subsequent order of rejection dated 30.01.2023 passed by the DIG, Ajmer Range as also by the order of rejection dated 20.02.2023 passed by the IG Rajasthan Sector and lastly by the order of rejection passed by the Head Quarters as well, the impugned order coupled with the aforesaid subsequent orders being well-founded, balanced and reasoned, the impugned order does not merit any interfere by us at this belated stage.



15. Needless to say, the scope of interference is minimal as while dealing with the present petition under Article 226 of The Constitution of India we are neither sitting in appeal nor in revision over the decision/ opinion rendered by the respondents. Further, this Court is neither here to re-appreciate the evidence which was before the respondents nor to re-adjudicate or deliberate upon the correctness of the finding(s) rendered by the respondents, more so, when under normal circumstances it is not, *per se*, not permissible, no interference by us is called for now.

16. Moreover, that there are no allegations of mala fide, bias, arbitrariness or like by the petitioner on the part of the respondents as also when the procedure followed by them has not been questioned by the petitioner coupled with the factum that we also find no fault therewith, there is near nominal, rather negligible, scope for us to grant the reliefs sought by the petitioner in the present petition.

17. In fact, the Hon'ble Supreme Court in ***Chairman cum Managing Director, Coal India Limited & Anr. vs. Mukul Kumar Choudhuri & Ors.***(2009) 15 SCC 620, while dealing with similar issues like the aforesaid, has held as under:-

“13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Inquiry Officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.”



18. Similarly, apropos that also the Hon'ble Supreme Court in ***Union of India & Ors. vs. P. Gunasekaran*** (2015) 2 SCC 610, while dealing with similar issues like the aforesaid, has once again held as under:-

"12.....The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/ 227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*



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(vii) go into the proportionality of punishment unless it shocks its conscience.”

19. In view of the factual position involved coupled with the settled position of law as enumerated in the aforesaid reasons hereinabove, this Court finds no ground for judicial intervention to quash the impugned order dated 03.11.2021 and/ or the subsequent orders of rejection.

20. Needless to say, the respondent No.1 is free to decide the online complaint dated 12.01.2024 of the petitioner, wherein she has sought the retirement and pensionary benefits and which is pending, within a period of four weeks in accordance with law.

21. Accordingly, the present petition along with the pending application therein, is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 11, 2024/rr