



2024:DHC:7025-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 11.09.2024***

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W.P.(C) 3577/2020**SIKANDAR KUMAR VERMA****.....Petitioner**

Through: Mr. Ankur Chhibber, Mr. Pranjal Marwah, Mr. Anshuman Mehrotra and Mr. Nikunj Arora, Advs.

versus**UNION OF INDIA AND ORS****.....Respondents**

Through: Mr. Jivesh Kumar Tiwai, Adv. with Mr. Ajay Pal, Asstt. Cmdt. (Law), CRPF.

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 serving as a Constable (GD) in the Central Reserve Police Force (CRPF) since 17.03.2013 and was dismissed from service on 06.09.2017, has approached this Court under Article 226 of the Constitution of India, seeking setting aside of the Charge Memorandum dated 27.04.2017, the inquiry proceedings held pursuant thereto as also the dismissal order dated 06.09.2017 vide which he was dismissed from service. The petitioner also assails the orders dated 23.05.2018 and 22.01.2020 whereby his statutory appeal and revision petition have also been dismissed.



2. At the outset, we may note the brief factual matrix as emerging from the record.
3. The petitioner joined the CRPF as a Constable (GD) on 17.03.2013. Due to a liver ailment suffered by him, he applied for leave from 05.11.2016 to 25.11.2016 to get himself treated in Vellore and was therefore, on expiry of the 20 days' leave required to report back for duty on 27.11.2016. However, as his wife went missing on 24.11.2016, the petitioner submitted an application seeking 30 days extension of leave. On 27.11.2016 itself the dead body of the petitioner's wife was recovered from a well located in his village. Due to the suspicious circumstances under which the petitioner's wife had expired, an FIR under Sections 302/201/34 of the Indian Penal Code, 1860 (IPC) was registered against him. It is the petitioner's claim that in view of the allegations leveled against him, he, of his own volition, surrendered before the Sessions Court in Giridih, Jharkhand and was taken into custody, whereafter he remained in custody till the 29.11.2017.
4. While the petitioner was in custody, the respondents initiated a departmental inquiry against him by issuing a Charge Memorandum dated 27.04.2017 on two counts. As the petitioner was in custody the Charge Memorandum was never served on him and consequently, an *ex-parte* inquiry was conducted wherein he was held guilty of both the charges. Based on the inquiry report, the petitioner was, vide order dated 06.09.2017, dismissed from service. Being aggrieved with the order of dismissal, the petitioner preferred a statutory appeal through his brother which came to be rejected by the respondents vide their order dated 23.05.2018.
5. On 24.07.2019, the petitioner was acquitted in the criminal case



initiated against him in the incident involving the unnatural death of his wife. Upon being acquitted, the petitioner preferred a revision petition before the respondents, wherein he explained that since he was in custody till 29.11.2017, he had not been served either with any notice regarding the inquiry or with any copy of the inquiry report and therefore, prayed that he be reinstated in service and granted an opportunity to defend himself in a *de-novo* inquiry. The revision petition was, however, rejected by the respondents vide their order dated 22.01.2020, leading to the filing of the present petition.

6. In support of the petition, the learned counsel for the petitioner submits that the impugned dismissal order having been passed on the basis of an *ex-parte* inquiry conducted against the petitioner while he was still in custody, is liable to be set aside on this ground alone. The principles of natural justice were clearly violated as neither the Chargesheet nor any of the notices nor a copy of the inquiry report was served on the petitioner. He contends that as per the CRPF rules, before conducting an *ex-parte* inquiry, it is incumbent upon the respondents to ensure that the Chargesheet and all notices regarding the inquiry are served on the charged employees and in case, they are not traceable, an apprehension roll is executed against him as per law.

7. In the present case, when it is admitted position that none of these documents as also the inquiry report were ever served on the petitioner, the proceedings of the *ex-parte* inquiry as also the consequential dismissal order are liable to be set aside. He, therefore, prays that the writ petition be allowed and the respondents be directed to reinstate the petitioner in service



with all due benefits.

8. *Per contra*, learned counsel for respondents seeks dismissal of the writ petition by urging that once respondents had taken all appropriate steps as per the laid down procedure to serve the petitioner with the Chargesheet, Show Cause Notice and the inquiry report through registered post at his last known address, he cannot be allowed to complain that principles of natural justice were violated. Furthermore, during the period when the petitioner claims to have been in custody, two leave applications as also an appeal against the impugned dismissal order were received from him, wherein it was never disclosed that he was in custody. The respondents, therefore, had no reason to even suspect that the petitioner was in custody during that period.

9. In support of his plea, learned counsel for the respondents has produced the original record in the Court. Having perused the same, we find that there is nothing on record to show that the apprehension roll was even served on the local police much less to say that the Show Cause notice or the Chargesheet were served on the petitioner.

10. Having considered the rival submissions of the parties and perused the original record which was produced by the respondents before us, we find that except for the bald statement of the respondents that the Chargesheet and the notices regarding the inquiry were served on the petitioner through registered post, there is no material available on the record to show that the notices were ever served at the petitioner's last known address. In fact, it emerges that even the apprehension roll which was issued against the petitioner remained unexecuted. In our view, if the respondents had taken



steps to get the apprehension roll executed through the SHO of the area where the petitioner was residing, they would have learnt at that stage itself that he was in custody. It is, therefore, evident that not only was the *ex-parte* inquiry conducted against the petitioner without following the principles of natural justice but even a copy of the inquiry report was never served on him.

11. In these circumstances, when the impugned order of dismissal is based on an *ex-parte* inquiry conducted without the petitioner being served as per law, we have no other option except to set aside the impugned inquiry proceeding as also the impugned dismissal order along with the appellate and revisional order and remand the matter back to the respondents for holding a fresh departmental inquiry on the basis of the same Chargesheet, which was the basis for passing of the impugned dismissal order.

12. Now coming to the petitioner's prayer for grant of consequential benefits upon setting aside of the dismissal order. Having given our thoughtful consideration to this prayer of the petitioner, we are of the view that since the dismissal order is being set aside only on account of violation of the principles of natural justice and not on merits, instead of directing the respondents to pay full back wages to the petitioner for the period he has remained out of service, the respondents ought to be directed to pass an appropriate order in respect of this intervening period by resorting to Rule 54-A(2)(i) of the Fundamental Rules and Supplementary Rules (FRSR) after the completion of the *de-novo* inquiry by following the laid down procedure.

13. We, accordingly, set aside the impugned orders as also the proceedings of the inquiry and grant liberty to the respondents to initiate a



de-novo inquiry against the petitioner on the Charge Memorandum dated 27.04.2017. He will, therefore, be entitled to receive his salary from the date he is reinstated in service. However, in case, he is suspended for the purposes of holding the inquiry, he will be entitled only to suspension allowance as per law. We further make it clear that this order will not preclude the respondents from taking any further action against the petitioner for any subsequent misconduct after the date of the issuance of Charge Memorandum.

14. The writ petition is, accordingly, disposed of in the aforesaid terms, making it clear that we have not expressed any opinion on the merits of the rival claims of the parties in respect of the alleged misconduct committed by the petitioner.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 11, 2024/ss