IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Arjun Ray Mukherjee
(Samarpita)

WPA/16926/2024

ASHIK MIRZA
VS
UNION OF INDIA AND ORS

For the petitioner	:	*Rabindra Kumar Jaiswal*
For the Respondents	:	*Ms. Sayani Roy Chowdhury,* *Ms. Biswadeepa Mandal*
Heard on	:	19th November, 2026
Judgment on	:	19thNovember, 2026
Uploaded on	:	19th November, 2026

Arjun Ray Mukherjee, J.

1. The petitioner is an employee of the Central Reserve Police Force.
2. A criminal case was initiated against the petitioner and he was arrested in connection with the said criminal case by the Dibrugarh Police Station.
3. Subsequently, a disciplinary proceeding was also initiated against the petitioner under Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as "the CRPF Act" for short).
4. By an order dated 24th December, 2008, the disciplinary authority/the Commandant, 171 Battalion, CRPF, removed the petitioner from service.

5. Being aggrieved by the order dated 24th December, 2008, the petitioner preferred an appeal before the Deputy Inspector General of Police, Siliguri Range.

6. The appellate authority, by an order dated 2nd January, 2010, upheld the order passed by the disciplinary authority and rejected the appeal preferred by the petitioner.

7. The petitioner thereafter filed a revisional application under Rule 29 of the CRPF Rules, 1955. The Inspector General of Police, CRPF, by an order dated 3rd July, 2010 rejected the revisional application.

8. On 30th January, 2017 the learned Court of Sub-Divisional Judicial Magistrate, Dibrugarh, by a judgment and order, found the petitioner "not guilty" in connection with GR Case No. 1118 of 2008.

9. The petitioner filed a writ petition before this Court being WP No. 11726(W) of 2017 challenging the orders passed in connection with the disciplinary proceeding.

10. A coordinate Bench of this Court, by an order dated 22nd June, 2017, dismissed the said writ petition.

11. Being aggrieved by the order dated 22nd June, 2017, the petitioner preferred an appeal being MAT no. 69 of 2018, which was subsequently renumbered as FMA 350 of 2019.

12. The said appeal was taken up for consideration by a Division Bench of this Court and by a judgment and order dated 31stAugust, 2023 the Division Bench set aside the order passed by the learned Single Judge, and remanded the matter back to the revisional authority for fresh consideration of the issue.

13. Pursuant to the order dated 31st August, 2023 the Inspector General, CRPF took up the issue and by an order dated 8th November, 2023, found the petitioner guilty of misconduct. However, the Inspector General, CRPF, having considered the submissions of the petitioner and the materials on record, also found that the punishment imposed upon the petitioner was harsh and disproportionate. The Inspector General, CRPF, *inter alia,* passed the following order.

> *"Now Therefore, keeping in view of all aspects of the case and judgement of SDJM(S), Dibrugarh, Criminal Court dated 30/01/2017, Hon'ble High Court of Calcutta order dated 31/08/2023 and direction of DIG (Law) Dte signal No. J.II-384/2017-LWP-9 dated 19/09/2023, considering gravity of offence, socio economic condition, I take a lenient view and pass following orders to meet the ends of natural justice....*
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> *1) The punishment order dated 24/12/2008 of "Removal from Service" passed by the disciplinary authority i.e. Commandant -171 Bn is set aside. Besides, orders dated 02/01/2010 and 03/07/2010 passed by Appellate authority and Revisioning authority are hereby set aside.*
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> *2) No. 045260757 Ex-Water Carrier Ashik Mirza of 171 Bn is hereby "re-instated into service" and awarded punishment of "Stoppage of Annual Increment for 01 year effective from date of reporting which will not have the effect of postponing his future increments of pay" as per Sl. No. 07 of table, under Rule 27 of CRPF Act & Rule, 1955.*
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> *3) The intervening period between the date of Removal from service i.e, from 24/12/2008 (AN) and date of his actual joining on re-instatement shall be treated as "not spent on duty" on the principle of "No work No pay" in terms of FR 54(5) However, the break in service for above period is hereby condoned for the purpose of pension in terms of Rule 25 of CCS (Pension) Rules, 1972.*

> *4) Suspension period wef. 06/07/2008 to 03/10/2008 is hereby treated "AS SUCH". Suspension period beyond 90 days i.e. 04/10/2008 to 24/12/2008 was to be reviewed by the disciplinary authority which has not been done. Therefore, the petitioner is deemed to be revoked immediately after completion of 90 days suspension period le. wef. 04/10/2008 to 24/12/2008 in terms of provision of Rule 10 of CCS(CCA) Rule. Hence, the period from wef. 04/10/2008 to 24/12/2008 shall be treated as duty.*
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> *5) On his reinstatement he is posted to 228 Bn, CRPF. No. 045260757 Ex-CT/WC Ashik Mirza will report for duty at 228 Bn within 15 days from the date of receipt of this order."*

14. The petitioner, by filing this writ petition, has, *inter alia,* sought for the following reliefs:

> *" (a) A writ in the Mandamus do issue upon the state respondents to treat his intervening period between the date of Removal from service i.e. from 24/12/2008 (AN)and date of his actual joining on re-instatement as on duty and regulate his pay and allowances and make payment of full back wages to the petitioner;*
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> *(b) nature A writ in the Certiorari directing the of state respondents to certify, transmit and to produce the relevant records of the case before this Hon'ble Court at the time of hearing, SO that conscionable justice may be done;"*

15. Learned Counsel appearing for the petitioner refers to FR 54(2) of the Fundamental Rules. He also refers to FR 54 (4) and FR 54(5), which are set out herein-below:

> *"(2) Where the authority competent to order reinstatement is of opinion that the Government Servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the*

Government Servant shall, subject to the provisions of sub-rule(6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired r suspended prior to such dismissal, removed or compulsory retirement, as the case may be…

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held held the Government Servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government Servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified, in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal of compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant."

16. Learned Counsel appearing for the petitioner, in support of his contention, also refers to Rule 16(4) of the Central Civil Services (Conduct) Rules, 1964.

17. He relies upon a judgment passed in ***Appeal No. 4411 of 2011*** [***Mithilesh Kumar Pathak vs. Union of India &Ors. Civil]*** by the Hon'ble Supreme Court and submits that the petitioner is entitled to receive back wages from the date of his removal till the date of his joining pursuant to the order dated 8th November, 2023.

18. *Per contra*, learned Counsel appearing for the respondents submits that the petitioner is not entitled to receive any back wages in view of FR 54(4). She further submits that there is no procedural infirmity in the order dated 8th November, 2023. In view of the above, she submits that the writ petition is liable to be dismissed.

19. Heard the parties.

20. FR 54(2) provides that a government servant is entitled to receive full pay and allowances if he has been fully exonerated. That is the precondition which is required to be fulfilled for getting such benefit under FR 54(2), whereas, those cases which are not covered under FR 54(2) are required to be considered by the competent authority under FGR 54(4), which says that a delinquent employee be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily

retired or suspended prior to such dismissal, removal, or compulsory retirement, as the case may be, as the competent authority may determine.

21. In the instant case the respondent authority/the Inspector General of CRPF found the petitioner guilty of misconduct. Therefore, it is not the case of the petitioner that he has been fully exonerated. Such imposition of punishment has not been challenged by the petitioner and the same has attained finality. In view of the above, the order dated 8th November, 2023, having not been challenged by the petitioner, is binding upon him.

22. Moreover, the proviso in Rule 16(4) of the CCS (Conduct) Rules, 1964, is not applicable to the petitioner's case at this stage, since the petitioner has not challenged the order dated 8thNovember, 2023, this Court cannot reopen this issue on merits.

23. It has not been alleged by the petitioner that there was any procedural impropriety in the decision-making process. The respondent authority exercised its discretion in terms of FR 54(4) and FR 54(5) and the same cannot be termed perverse.

24. The judgment relied upon by the learned counsel for petitioner passed in ***Mithilesh Kumar Pathak*** [supra] is not applicable to the facts and circumstances of the present case.

25. In view of the above, the writ petition being **WPA 16926 of 2024** stands dismissed. There will be no order as to costs.

26. Parties shall act on the server copy of this order.

(Arjun Ray Mukherjee, J.)