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APHC010570202024

*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

+W.P.NO.30070 OF 2023

% 04.11.2026

#Between:

Manoj Kumar Rai **...PETITIONER**

$And:

The Union Of India and Others **...RESPONDENT(S)**

! **Counsel for the Petitioner:** DEVALARAJU ANIL KUMAR

^ **Counsel for the Respondents:** M UMA DEVI (CENTRAL GOVT COUNSEL)

Counsel for the Respondents: T NIRANJAN Deputy Solicitor General of India

<Gist:

>Head Note:

? Cases referred:

1. (2025) SCC OnLine Del 8364
2. (2022) 1 SCC 373

3. 2018 SCC OnLine Cal 8613
4. 2021 SCC OnLine Megh 232
5. (2013) 6 SCC 530

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

+W.P.NO.30070 OF 2024

Manoj Kumar Rai **...PETITIONER**

$And:

The Union Of India and Others **...RESPONDENT(S)**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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JUSTICE BALAJI MEDAMALLI

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION No.30070 of 2024

ORDER:

This Writ Petition is filed seeking the following relief:

"…to issue a Writ of Mandamus declaring the impugned order dated 03.08.2023 passed by Respondent No.2 in Revision confirming the Order dated 09.02.2023 passed by the Respondent No.3 in Appeal, Confirming the Order dated 06.12.2022 Dismissal of Petitioner from Services passed by Respondent No.4 as illegal, arbitrary, without jurisdiction, violative of Article 14, 16 and 21 of the Constitution of India and to set-a-side the said Orders passed by Respondents No. 2 to 4 by consequently directing the Respondents to continue the services of the Petitioner with payment of salary and all attendant benefits, arrears of salary from the month of December 2022 to till date and other reliefs…"

2. Brief facts of the case are that:

I. Petitioner was appointed as a Sweeper/Constable on 25.02.2009. After rendering service in several battalions, he was posted to the 234 Battalion, CRPF, Visakhapatnam, on 15.11.2021. While so, in connection with an alleged incident that occurred on 01.07.2022, a charge memo dated 19.07.2022 was issued to the petitioner, framing four articles of charge against him. The charges are extracted hereunder.

ARTICLE-I

That the said, F/No. 095260027 Ct/SK (Exe) Manoj Kumar Rai of E/234, while functioning as Ct/SK in E/234 Bn w.e.f 15/11/2021 has committed an act of misconduct in his capacity as a member of the Force under section 11 (1) of CRPF Act 1949 in that, he after consuming liquor in the evening of 01/07/2022 has committed nuisance in the barrack and passed

racist comments against his fellow colleague i.e F/No.065020974 Ct/Cobbler Devendra Kumar and also misbehaved/disrespected/manhandled with his superior Officers (act of insubordination) using abusive language, is prejudicial to good order and discipline of the Force.

ARTICLE-II

That the said, F/No. 095260027 Ct/SK (Exe) Manoj Kumar Rai of E/234, while.. functioning as C/SK. in E/234 Bn. On 01/07/2022 at 1HQ/234 Bn location he has committed an act of misconduct in his capacity as a member of the Force under section 11 (1) of CRPF Act 1949 in that, the said Ct/SK (Exe) Manoj Kumar Rai misbehaved/used abusive language with the treating doctor and medical staff of VIIMS hospital while he was sent for treatment and thereby tarnished the image of Force in public, is prejudicial to good order and discipline of the Force.

ARTICLE-III

That the said, F/No.095260027 Ct/SK (Exe) Manoj Kumar Rai of E/234 while functioning as Ct/SK (Exe) in E/234 Bn w.e.f. 15/11/2021 has already been punished 03 times against various offences committed by him during his short span of service. By committing offence this time proves that he is a habitual offender which itself is an act of misconduct under section 11 (1) of CRPF Act 1949 and prejudicial to good order and discipline of the Force.

ARTICLE-IV

That the said. F/No. 095260027 CISK (Exe) Manoj Kumar Rai of E/234 has committed an act of misconduct in his capacity as a member of the Force under section 11 (1) of CRPF Act, 1949, in that he has taken a large amount of bank loan Rs.11,00,000/- without taking prior approval from Competent Authority as well as has not submitted the report to the Competent Authority within one month from the date of such transaction, amounting to gross misconduct and violation of Rule 18 of the CCS (Conduct) Rules 1964, which is prejudicial to good orders and discipline of the Force.

II. For the above said charges, a departmental enquiry was conducted under Rule 27 of the CRPF Rules. Though the petitioner pleaded guilty to Articles of Charge Nos. 1 and 2, denied the charge under Article 4, 4th respondent imposed major penalty of dismissal from service vide proceedings dated 06.12.2022. Aggrieved by the same, petitioner preferred a statutory appeal, which was dismissed by the 3rd respondent on 09.02.2023. Thereafter, he preferred a revision petition, and the same was dismissed by the 2nd respondent on 03.08.2023. Aggrieved by that, petitioner filed W.P.No. 3256 of 2024 before the Hon'ble High Court of Judicature at Allahabad. The said writ petition was dismissed as not pressed, with liberty to the petitioner to file a fresh writ petition before this Court for want of jurisdiction.

III. Therefore, petitioner filed the present writ petition before this Court.

3. Heard Sri Devalraju Anil Kumar, learned counsel for petitioner and Smt.M.Uma Devi, learned Central Government Counsel appearing for respondents.

4. Learned counsel for the petitioner submits that the articles of charge were framed on the basis of a solitary incident dated 01.07.2022, relating to the consumption of liquor and the consequential alleged misbehaviour, and the petitioner was imposed the capital punishment of dismissal from service,

despite having rendered more than 15 years of service in the department. With regard to the charge relating to the alleged misbehaviour with the doctor and staff of VIIMS Hospital, no evidence was adduced to substantiate the same. Neither the doctor nor any staff member of the hospital was examined to prove the charge. In the absence of any such material on record, the Enquiry Officer erroneously held that the charge is proved. With regard to Article of Charge No. 3, learned counsel for petitioner submits that the incidents of 2015 and 2017, which are unconnected with the incident dated 01.07.2022 and in respect of which petitioner had already suffered penalties, were taken into consideration while imposing the penalty for the present incident, which amounts to punishing the petitioner twice for his past conduct. With regard to Article of Charge No. 4, relating to a loan transaction dated 16.10.2020, learned counsel contended that the said transaction admittedly predates petitioner's posting to the 234 Battalion and the authorities had no jurisdiction to frame a charge in respect of conduct preceding such posting. Learned counsel further submits that the disciplinary authority travelled beyond the charges actually framed and took into account uncharged past incidents to portray the petitioner as a habitual offender and no notice proposing the imposition of a major penalty was issued to the petitioner before passing the order of dismissal, thereby rendering the action illegal. Learned counsel further submits that, even assuming that the consumption of alcohol while on duty constitutes

misconduct, the penalty of dismissal from service is highly disproportionate. As such, the punishment of dismissal from service imposed against the petitioner has to be set aside and petitioner has to be reinstated into service with all consequential benefits.

5. Learned counsel for petitioner placed reliance on the judgment of the Hon'ble Delhi High Court in ***Sarjeet Singh v. Union of India***[1], wherein the relevant portion reads as under:

> ***31.*** *That apart, upon perusal of the Rule 27 and Section 11(1) of the Act of 1949, the instructions issued by the CRPF from time to time, we are unable to find that how consumption of liquor can entail major punishment. Be that as it may, even if it is assumed that the incident of consumption of liquor on duty can call for imposition of major penalty, according to us, extreme penalty of dismissal from service is highly disproportionate to the misconduct involved and it would shock the conscience of writ court..*

6. Placing reliance on the above judgment, learned counsel submitted that mere consumption of liquor cannot entail major punishment. Even if it is assumed that the incident of consumption of liquor on duty can call for imposition of major penalty, the same cannot be of dismissal from service as it is extreme penalty and highly disproportionate to the misconduct involved.

7. Learned counsel for petitioner also placed reliance on the judgment in ***Union of India v. Ram Karan***[2], and submitted that proportionality of

[1] 2025 SCC OnLine Del 8364
[2] (2022) 1 SCC 373

punishment remains upon to judicial review under Article 226 of the Constitution of India, notwithstanding the findings by the authorities. Learned counsel also placed reliance on the judgment in ***Narendra Dutta Rai v. Union of India***[3] for the very same principle that mere allegation of consumption of alcohol while on duty may attract a major penalty, however, the same cannot be capital punishment of dismissal from service, as the same is highly disproportionate to the alleged misconduct.

8. Per contra, learned Central Government Counsel appearing for the respondents, while reiterating the contentions raised in the counter-affidavit, submits that the petitioner had not only consumed alcohol but had also indulged in misbehaviour with the hospital staff and doctors. Learned counsel further submitted that, upon conducting a detailed enquiry, the Enquiry Officer held the charges are proved, and the disciplinary authority, after considering the enquiry report, imposed the penalty of dismissal from service. As such, there is no illegality or irregularity in passing the impugned order. Learned counsel further submits that a member of the armed forces is expected to maintain the highest standards of discipline, whereas the conduct of the petitioner was contrary to the same.

9. Learned Central Government Counsel for respondents placed reliance on the judgment of the Hon'ble High Court of Karnataka in ***Sri***

[3] 2018 SCC OnLine Cal 8613

Dattusingh Rathod v. The Union of India in W.P.No.19124 of 2018**,** wherein the relevant portion reads as under:

> *14. The petitioner was alleged to have become inebriated while on duty on several occasions and has been punished for the same offence six times, five of which were for the offence of intoxication. The following are the offences committed by the petitioner and the penalties imposed upon him in the past:*
>
> > *"(a) For committing an offence under Sec.26 of BSF Act 1968, i.e. "intoxication", and having been found guilty, he was awarded punishment of 14 days detention in Force custody on 12/06/2004.*
> >
> > *(b) For committing offences under Sec. 40 & 26 of BSF Act 1968, i.e. "An act prejudicial to Good order and Discipline of the Force" and "Intoxication" respectively and having been found guilty, he was awarded punishment 28 days Rigorous Imprisonment and 14 days of detention in Force custody on 03/01/2005.*
> >
> > *(c) For committing an offence under Sec. 40 of BSF Act 1968, i.e. "An act prejudicial to Good order and Discipline of the Force" and having been found guilty, he was awarded 07 days Rigorous Imprisonment in Force custody on 19/05/2006.*
> >
> > *(d) For committing an offence under Sec.26 of BSF Act 1968, i.e. "Intoxication" and having been found guilty, he was awarded punishment of 07 days Imprisonment in Force custody on 17/08/2006.*
> >
> > *(e) For committing offences under Sec.30(a) and 26 of BSF Act 1968, i.e. "Committing Theft of Property belonging to Govt." and "Intoxication" respectively and having been found guilty, he was awarded punishment of 14 days Rigorous Imprisonment in Force Custody on 14/03/2008.*
> >
> > *(f) For committing an offence under Sec. 26 of BSF Act 1968, i.e. "Intoxication" and having been found guilty, he was awarded punishment of 07 days Rigorous Imprisonment in Force custody on 24/06/2008."*

The afore-extracted offences committed by the petitioner were all for offences punishable under Section 26 of the said Act for which, the petitioner has already been punished in terms of Section 26 read with 48 of the said Act. On one occasion, the petitioner was punished for violation of Section 40. Section 40 of the said Act which deals with violation of good order and discipline reads as follows:

"40. Violation of good order and discipline.- Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."

17. The petitioner in terms of the receipt has received the record of enquiry with all the exhibits, charge sheet, amended charge sheet and the order of the Security Force Court. Therefore, it would not lie with the petitioner to contend that he was not given any of the aforesaid documents. Having received all the said documents and not filing any reply at any point of time, the orders passed by the Disciplinary Authority imposing penalty of dismissal from service and the Appellate Authority affirming the same, suffer from no error.

18. In the aforesaid facts, it is necessary to emphasize that Border Security Force is a disciplined force. Discipline is of paramount importance in Central Paramilitary Forces like the Border Security Force. The petitioner having violated good order and discipline on several occasions, rightly incurred a penalty of dismissal from service. The past record which is narrated hereinabove is also a circumstance that can be taken into consideration in the facts and circumstances of the case. The petitioner being alleged of such misdemeanor cannot be heard to say that the penalty imposed is disproportionate. In my considered view, the penalty that is imposed upon the petitioner does not shock the conscience of the Court to hold it in anyway to be disproportionate. For the aforesaid reasons, I find no merit in the writ petition.

10. Placing reliance on the above, learned Central Government Counsel submitted that, as the petitioner had exhibited similar misconduct on earlier occasions, the disciplinary authority had taken his past conduct into

consideration while imposing the major penalty. She further submitted that the armed forces are a disciplined force, in which discipline is of paramount importance, and the petitioner had violated good order and discipline on multiple occasions. As such, the penalty of dismissal from service was rightly imposed on the petitioner.

11. Learned counsel for respondents also placed reliance on the judgment of the Hon'ble High Court of Meghalaya in ***A.Murali Krishna v. Union of India***[4]***,*** wherein the Hon'ble High Court held that in view of the misconduct of the petitioner, the Summary Security Force Court was well within its rights to award maximum punishment taking into account of the fact that petitioner had imprisoned on three occasions earlier. Accordingly, the Hon'ble High Court dismissed the writ petition.

12. Considered the submissions made on either side and perused the entire material on record.

As the allegations against the petitioner arise out of the incident dated 01.07.2022, a charge memo dated 19.07.2022 was issued to him, framing four articles of charge. Articles of Charge Nos. 1 and 2 relate to the incident dated 01.07.2022, during which petitioner, while in a drunken condition, misbehaved with the doctor and staff of VIIMS Hospital, Visakhapatnam. Petitioner pleaded guilty to Articles of Charge Nos. 1 and 2. Article of

[4] 2021 SCC OnLine Megh 232

Charge No. 3 relates to a past incident in respect of which the petitioner had already suffered a penalty. Article of Charge No. 4 relates to the availing of loan from a bank without prior intimation to the competent authority, in violation of Rule 18 of the CCS (Conduct) Rules, 1964.

13. As regards the findings of the Enquiry Officer and the scope of interference by this Court, this Court is conscious of the fact that, unless the findings recorded by the enquiry officer or the disciplinary authority are perverse or unsupported by any material on record, this Court cannot re-appreciate the evidence or examine the sufficiency of the material on the basis of which such findings were recorded. In the instant case, there is no dispute regarding the incident involving the consumption of alcohol and the misbehaviour with the hospital staff, as the petitioner himself pleaded guilty to the charges in that regard. However, the past conduct referred to in Article of Charge No. 3 does not relate to an incident similar to the one that occurred on 01.07.2022, and the petitioner had already suffered a penalty in respect of the said past incident. Further, Article of Charge No. 4 relates to availing of loan that took place prior to petitioner's posting to the 234 Battalion, and no material has been placed on record to substantiate the said allegation. However, the Enquiry Officer held the said charge is proved. Consequently, the disciplinary authority imposed the penalty of dismissal

from service, which, in the considered view of this Court, is highly disproportionate to the misconduct established against the petitioner.

14. No doubt, the misconduct committed by the petitioner, being a member of a disciplined force, warrants appropriate disciplinary action and a suitable penalty. However, the same should not necessarily result in depriving him of his employment by way of dismissal from service. Hence, this court feels that punishment imposed is not Incommensurate with the charges and the authority ought to have imposed any other penalty, either major or minor but not the capital punishment of dismissal from service itself. This court is also conscious of the fact that this court cannot substitute or regularise the punishment imposed while exercising judicial review under Article 226 of the Constitution of India, and this Court can only remit the matter to the discipline authority for reconsideration of the penalty and for imposing such punishment as it deems fit and appropriate in the circumstances of the case.

15. In view of the foregoing reasons, Writ Petition is allowed. Consequently, the order of disciplinary authority as was confirmed by the appellate and revisional authority is hereby set aside, and the matter is remitted to the disciplinary authority for reconsideration of the penalty, after affording an opportunity of hearing to the petitioner, and for imposition of an

appropriate and proportionate penalty, duly taking into consideration of the findings recorded hereinabove. The disciplinary authority shall pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

16. It is made clear that, as held by the Hon'ble Apex Court in ***Chairman, Life Insurance Corporation of India v. A. Masilamani***[5], setting aside an order of punishment on account of procedural irregularities in the disciplinary enquiry does not automatically entitle the employee to reinstatement. Therefore, in view of the above said principle, the reinstatement of the petitioner shall be subject to the outcome of the decision to be taken by the disciplinary authority in accordance with law.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

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JUSTICE BALAJI MEDAMALLI

Date: 04.11.2026

Dvs

Whether the order is:

Speaking	☑	Reasoned	☑
Reportable	☑	Non-reportable	

[5] (2013) 6 SCC 530

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION No.30070 of 2024

Date: 04.11.2026

Dvs