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

% Date of Decision :30th November, 2009

+ **W.P.(C) 4803/2008**

KANCHAN LATA MISHRA Petitioner
Through : Mr. S.M. Hooda, Advocate

versus

UOI & ORS. Respondents
Through : Mr. Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. On 05.02.1993 the petitioner was enrolled as a Constable (Women) in CRPF.
2. Her service profile is not too healthy. Her problems appear to have commenced when she got married and had a family i.e. children. Her husband is also employed as a Constable in CRPF. As we are informed, there are only two women Battalion in CRPF, one of which stationed at Delhi and the other at Ahmedabad. Depending upon the requirements Platoons from these two battalions are posted at different places. As regards the regular Battalions i.e. the men, these

are stationed at different places all over India and thus it becomes difficult to have husband and wife posted at the same place.

3. As the petitioner grew in family i.e. had children, the additional burden of looking after the children fell on to her lap and in the absence of her husband it become difficult for her to retain her composure.

4. This is not the ipse dixit of the judges who are penning the present order, but can be gathered from the service record of the petitioner.

5. It be noted that in the first 5 years of her career there was no cause or occasion for the petitioner to earn any kind of displeasure from her seniors. Thing happened since 1998 when she was married and children were born.

6. The first misdemeanour took place when petitioner remained unauthorisedly absent from duty from 09.05.1998 to 04.07.1998 for which she was awarded 15 days confinement in the line with pack drill of one hour and forfeiture of pay and allowances for said period. The absence period was regularized by being converted into earned leave.

7. The second misdemeanour took place the next year when the petitioner absented from duty without any information from 23.05.1999 to 25.05.1999 for which she was awarded 7 days confinement in the line with forfeiture of pay

and allowances for said 3 days period.

8. The third misdemeanor took place on 10.12.2001 when the petitioner tore the last page of the sick report register and changed the remarks of the doctor. It was found that 1 day sickness sanctioned by the doctor qua her was altered to 7 days. For the same, petitioner was confined to line for 6 days with forfeiture of pay and allowances for the said 6 days.

9. The fourth misdemeanour occurred when on 12.07.2002 the petitioner was on sick report and did not make any entry in the register. She used abusive language towards the CHM and Coy, for which she was awarded 7 days confinement to Quarter Guard with pack drill for one hour.

10. The next i.e. the fifth misdemeanour was when the petitioner misbehaved with the Platoon Commander and the Company Commander on 11.01.2002 and refused to do the work assigned to her for which she was awarded 7 days confinement to the line with forfeiture of pay and allowances for said period.

11. Next i.e. the sixth misdemeanour followed soon thereafter when petitioner misbehaved with SI Krishna Ahlawat. She refused to do RP duty for which the petitioner was awarded 15 days confinement to the line with pack drill for one hour.

12. The employer tolerated the petitioner till, probably, the

employer could take no more.

13. In the year 2008 a charge memo was issued and served upon the petitioner. The articles of charges are four in number being:-

ARTICLE-I

That the above named No.953352621, L.C. Kanchan Lata Mishra, while working as L.C. at Headquarter Company 88 Bn. C.R.P.F., being a member of force under section 11 (1) of the C.R.P.F. Act, violated the orders issued by the Battalion and that on 16.10.06 the above-named Lady Constable made telephone from Battalion Telephone Booth and when No.943070096 Lady Constable Vilas Panda, posted at the Telephone Booth for charging the phone charges, demanded the phone charges from her, she refused to pay phone charges from her. By committing this act, she has violated the rules and committed an act of indiscipline and misconduct, which is an offence cognizable under above and said section of C.R.P.F. Act, 1949.

ARTICLE-II

That on 29.11.06 when No.953352621 Lady Constable Lata Mishra, Headquarter Company 88 was being produced in the Orderly Room in the Office Incharge regarding incident of non-payment of Telephone Charge, she gave her Mobile Set stick to No.040881274 Lady Constable Sushmita Berman, present on Orderly Duty, for keeping the same with her. On investigation, it has been found that it is the Mobile Set of No.860886226 Lady Havaldar Shukla Dey, which had misplaced some days back. Therefore she is found guilty of keeping the material of someone else unauthorisedly/committing theft. This act of above-named Lady Constable is the violation of rules, directions and is an act of indiscipline, which is punishable under section 11 (1) of C.R.P.F. Act, 1949.

ARTICLE-III

That No.953352621 Lady Constable Kanchan Lata Mishra, while working as Lady Constable at Headquarter Company 88 Bn. C.R.P.F., being the member of a Force under section 11 (1) of C.R.P.F. Act, violated the orders of senior officers that on 21.12.06, the above-named Lady Constable went to Sick Report Composite Hospital Group Centre, New Delhi for treatment, where the above-named Lady Constable misbehaved with the Doctors and when Sick Report N.C.O. tried to intervene, she abused him and used filthy language for him. She misbehaved with Ambulance Driver also. In this manner, the above-said No. 953352621 Lady Constable Kanchan Lata Mishra, Headquarter Company 88 Bn. C.R.P.F. committed the act of indiscipline against her senior officers and misbehave with her seniors. Therefore, the above named Lady Constable had committed the violation of orders and indiscipline/misconduct, which is a punishable offence under above-said section of C.R.P.F. Act, 1949.

ARTICLE-IV

That No. 953352621 Lady Constable Kanchan Lata Mishra, while posted at Headquarter Company 88 Bn. C.R.P.F. as Lady Constable/GD, being the member of force under section 11 (1) of C.R.P.F. Act, residing at Jyoti Kunj Complex, C.R.P.F. Dwarika, committing the violation of rules and directions framed for residential premises, in which on 9.1.07, in the evening, the above-named Lady Constable tried to take a civilian with her inside the complex forcibly and when the guard on duty stopped them, she abused and used filthy language against him and threatened to get him involved in a false case. By committing this act, the above-named Lady Constable has violated the rules/directions and committing an act of indiscipline, which is a punishable offence under the above mentioned sections of the C.R.P.F. Act."

14. The petitioner has been indicted and the penalty of dismissal from service has been inflicted upon the petitioner vide order dated 11.08.2007. The appeal and the revision filed by the petitioner have been dismissed vide order dated

05.11.2007 and 13.05.2008 respectively.

15. It is averred in the writ petition, and hence was urged, that the charge memo was served without any documents supplied to the petitioner and that the petitioner could not appear at the inquiry on 28.02.2007 because she received the notice of date of inquiry a day prior on 27.02.2007. Thus, it is urged that the inquiry against the petitioner is vitiated in law.

16. The second contention urged is that the penalty imposed is disproportionate.

17. With respect to what happened before the Enquiry Officer, in para-7 of the counter affidavit it has been explained as under:-

“Contents of para 7 are wrong and denied. It is submitted that the EO has conducted the DE in free and fair manner and as per prescribed rules and given instructions and has recorded the preliminary statement of the petitioner on 5.2.07. Copies of documents demanded by the petitioner vide her letter dated 12.2.2007 and 20.2.07 were provided by the Commandant on 20.2.07 and 24.2.07. On 28.2.07 petitioner appeared before EO but left the office before reading of first statement of PWs. Since the appellant did not appear before the EO was compelled to record the statement of witnesses in absence of delinquent. After recording the statement of the witnesses, the EO has dispatched the recorded statements through post, as the delinquent refused to receipt the copy of recorded statements during the course of the DE. Before passing the final orders on DE, copy of report of enquiry officer was given to the appellant with direction to submit her representation/reply. She submitted the defence

statement but it have no valuate points so it was dismissed. After ex-parte departmental enquiry she was dismissed from service vide office order dated 11.8.07."

18. Needless to state as per the respondents such documents which were demanded by the petitioner vide letter dated 12.02.2007 and 20.02.2007 were provided to her by the Commandant on 20.02.2007 and 24.02.2007. Further as per the respondents, the petitioner duly appeared before the Enquiry Officer on 28.02.2007 but left the office before reading of first statement of the prosecution witnesses.

19. In the rejoinder filed, it is simply stated as under:-

"1. That in reply of the counter affidavit it may be submitted that the respondents have failed to highlight the offence of the petitioner under CRPF Act or Rules and it appears that personal vigilance is prevailing throughout the counter affidavit that the petitioner cannot be punished for such offences which are not covered by CRPF Act or Rules.

2. That the enquiry was conducted ex-parte even though the petitioner was always available on duty during enquiry period."

20. Suffice would it be to state that the first ground of challenge pertaining to relevant documents not being supplied is incorrect. Further, petitioner appeared on 28.02.2007 but left.

21. As regards the plea of proportionality of the punishment, suffice would it be to state that considering the past service profile of the petitioner and the four indictments under the

inquiries in question, nobody can say that the penalty imposed is disproportionate.

22. It is apparent that the petitioner is unable to manage her three children as also her job. The problem has been compounded due to the fact that her husband is also working as a Constable in CRPF and his duties keep him posted at different places.

23. But, that would not be a ground for any sympathy to be extended by this court to the petitioner.

24. Within the confines of our writ jurisdiction, we find no scope to extend any benefit to the petitioner.

25. The writ petition is dismissed.

26. No costs.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

NOVEMBER 30, 2009
'nks'