

L.MOHAPATRA, J & C.R.DASH, J.

O.J.C. NO.5077 OF 1999 (Decided on 30.11.2010).

PREM CHAND UPADHYAY

.....Petitioner.

.Vrs.

UNION OF INDIA & ORS.

..... Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.311 (2).

For Petitioner - M/s. Prasant Kumar Mishra & Smt. P.Mishra.

For Opp.Parties - Assistant Solicitor General

L.MOHAPATRA, J. The petitioner, who was working as a Constable-Driver in the Central Reserve Police Force, having been removed from service in pursuance of a disciplinary proceeding by order dated 7th January, 1998 in Annexure-8 and his appeal having been rejected in Annexure-10 dated 19th March,1999, this writ application has been filed challenging the order of punishment as well as the order passed by the appellate authority.

2. The petitioner joined as a Constable-Driver under 101 Bn. Group Centre, Durgapur, CRPF on 30th November, 1990. He was transferred to 39 Bn. under Group Centre, Bhubaneswar on 1.4.1993 and joined in the post. Along with the battalion he moved to different parts of the country and while posted as such at Halflong in the State of Assam, on 7.6.1996 he was assigned the duty of driving a CRPF vehicle bearing registration No.1363 of the Unit carrying about 18 CRPF personnel to Halflong Railway Station. On the way of the railway station, the vehicle met with an accident near Halflong (Assam) Police Station, as a result of which, some of the CRPF personnel and two civilians sustained injuries. Some articles and a police quarter at the accident place also got damaged. The vehicle also suffered damages. So far as injuries of two civilians are concerned, the matter was settled but a departmental proceeding was initiated against the petitioner in relation to the said accident.

The memorandum of charge is that the petitioner while functioning as Constable-Driver committed an offence of neglect of duty in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 and had exhibited negligence and carelessness on 7.6.1997 by causing an accident while driving the CRPF vehicle carrying CRPF personnel from 39 battalion headquarter to Halflong Railway Station. In the said accident, eighteen CRPF personnel and two civilians sustained injuries. The vehicle and a police quarter with some valuable items were also severely damaged.

The petitioner submitted his reply to the said charges but not being satisfied with the reply submitted by the petitioner, a regular inquiry was directed to be conducted. An inquiry officer was appointed and on conclusion of inquiry, report was submitted before the disciplinary authority finding the petitioner guilty of the charge. On the basis of such inquiry report, the order of punishment was passed by the Commandant of 39 Bn. CRPF on 7.1.1999 in Annexure-8 removing the petitioner from service. The petitioner preferred

an appeal against the said order of punishment, but the appellate authority rejected the appeal in Annexure-10.

3. Mrs. Mishra, learned counsel appearing for the petitioner assailed the impugned punishment on two grounds. The first ground taken by the learned counsel is that the petitioner was directed to drive the vehicle bearing registration No. DIL 1363 even though the vehicle had defects and, therefore, the accident occurred due to such defect in the vehicle cannot be attributed to the petitioner saying that due to rash and negligent driving on the part of the driver, the accident took place. The second ground of challenge is the quantum of punishment which according to the learned counsel is disproportionate and does not commensurate with the charge.

Learned Assistant Solicitor General appearing on behalf of the opposite parties submitted that there being no dispute about the fact that the petitioner was driving the vehicle on the fateful day and it met with an accident resulting in injuries of some of CRPF personnel and damage to the vehicle as well as a police quarter clearly indicate that the petitioner was rash and negligent in driving the vehicle. Therefore, he has been rightly found guilty of the charge by the inquiry officer, which was accepted by the disciplinary authority as well as the appellate authority. So far as question of punishment is concerned, it was contended by the learned Assistant Solicitor General that this Court has no jurisdiction to substitute the punishment and the quantum of punishment to be imposed in facts and circumstance of a particular case is within the domain of the disciplinary authority and the Court should not interfere with the quantum of punishment.

4. As rightly stated by the learned Assistant Solicitor General there is no dispute that the petitioner was working as Constable-Driver and on 7.6.1998 he was asked to drive the vehicle bearing registration No.DIL 1363. There is also no dispute that the said vehicle was carrying some CRPF personnel. There is also no dispute that the vehicle met with an accident on the way to the railway station and in the said accident, some of the CRPF personnel sustained injuries apart from two civilians. There is also no dispute that because of such accident, there was damage to the vehicle, a police quarter and some valuable items. Therefore, it cannot be said that the charge has not been proved against the petitioner but at the same time it appears from Annexure-1 that the vehicle lost control and fell into a Khud on the slope side of the road. There was heavy drizzling and the road was slopping down after a curve. The petitioner was not attached to the said vehicle and on the date of incident, he was asked to drive that vehicle. We had requested the learned Assistant Solicitor General to produce the MVI report before us at the time of final hearing of the writ application. It was intimated to the Court that the said report is not available. It is the specific case of the petitioner that the vehicle was defective and non-production of the report of the concerned MVI by the opposite parties forces us to take an adverse view against the department in this regard. Even accepting the submission of the learned Assistant Solicitor General that the charge has been proved and the vehicle had no defect, we cannot ignore the report submitted by the Commandant in Annexure-1 that at the time of accident, there was heavy drizzling and the road was slopping down after a curve. The vehicle lost control and fell into a Khud on the slop side of the road. Under these circumstances, the question of rash and

negligent driving does not arise but it can be said that the petitioner was not careful enough to avoid the accident.

5. Having come to a conclusion that the petitioner was not careful enough to avoid the accident under the circumstances stated above, the order of punishment of removal from service appears to be disproportionate. Law is well settled that the quantum of punishment to be imposed is completely within the domain of the disciplinary authority and the Court cannot substitute a punishment. But when the Court feels that the punishment is shockingly disproportionate to the nature of allegation, it can always direct the disciplinary authority to reconsider the question of punishment. Accordingly having found that the punishment of removal from service is grossly disproportionate, we set aside the appellate order in Annexure-10 and remit the matter back to the appellate authority to reconsider the question of punishment and impose such punishment which shall commensurate the allegations made in the memorandum of charge specially taking into consideration the circumstances in which the accident took place. The appellate authority may reconsider and pass orders within two months from the date of communication of this order. .

The writ application is disposed of accordingly.

Writ petition disposed of.