

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

SWP no. 349/2000

Date of order: 31/01/2014

Rajinder Singh
V.
Home Secy. to Govt. of India and ors.

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing Counsel:

For the petitioner(s) : Mr. P. S. Bhardwaj, Advocate.
For the respondent(s) : Mr. Rajneesh Raina, CGSC.

1. Whether to be reported in : **Yes**
Press/Journal/Media
2. Whether to be reported in : **Yes**
Digest/Journal
-

1. Petitioner was enrolled in Central Reserve Police Force on 04.04.1991 and served the Force till 31.05.1997. In May, 1997 an enquiry was directed against the petitioner regarding following instances of misconduct and dereliction of duty:

- 1) That the petitioner accompanied by his namesake constable Rajinder Singh in May, 1997, in violation of Camp Standing Order prohibiting the personnel living in barracks/lines from going to family lines/quarters without permission, went to the residential quarter of SI Jagdish Singh at about 2130 hrs, beat the

outerdoor of his residence and threatened the officer.

2) That the petitioner was found absent from night duty as Guard Markar at 1700 hrs without permission of the Competent Authority.

3) That the petitioner was found absent from night duty Guard Markar on 01.06.1997 at about 1700 hrs and when Day NCO Jagdish Parsad accompanied by Day SO SI OS George went to petitioner's barrack they found him taking liquor with Rajinder Singh Constable No. 90099652 of 102 Battalion RAF and when asked to explain their absence, the petitioner and his colleague assaulted S/Shri Jagdish Parsad and OS George.

2. The enquiry was entrusted to Shri Bagwat Singh, Assistant Commandant 102 Bn. RAF. The enquiry officer found substance in all the allegations of misbehaviour, misconduct and dereliction of duty alleged against the petitioner and, accordingly, submitted its report to the Commandant 102 Bn RAF/CRPF.

3. The Commandant 102 Bn RAF/CRPF – respondent no. 2 in the present petition, in exercise of powers under Section 11 (i) CRPF, 1949 read with Rule 27 (a) CRPF Rules, 1955 imposed the penalty of dismissal from service made effective from 17.11.1997 on the petitioner. His period of suspension with effect from 01.06.1997 was ordered to be treated as such without any additional emoluments.

4. The petitioner aggrieved with the order dismissing him from service and penalties imposed, preferred an appeal before Deputy Inspector General of Police, RAF/CRPF – R.K. Puram New Delhi. However, his appeal did not meet any success and was rejected on 09.03.1997. The Revision Petition filed against the order of dismissal and order rejecting appeal also failed and was rejected on 14.09.1998.

5. Petitioner after he exhausted all the remedies available under CRPF Act, 1949 and rules made thereunder without any success, has come up with the writ petition on hand, throwing challenge to aforementioned orders on the grounds set out in the petition.

6. Petitioner denying all the allegations leveled against him, traces the allegations to the malice nursed

by Shri Jagdish Singh, Sub Inspector against the petitioner. It is stated that the petitioner did not go to the residential quarter of Jagdish Singh, SI on his own but was called by him and asked to carry some heavy luggage to his home; that the petitioner expressed his inability to carry the luggage as the petitioner was to carry his own luggage; that his refusal to carry the luggage infuriated Shri Jagdish Singh, SI and made him to concoct and manipulate false charges against the petitioner.

7. The order awarding punishment is questioned also on the ground that the punishment awarded is disproportionate to the offence stated to have been committed by the petitioner. It is pleaded that as Section 11 (i) CRPF Act, 1949 deals with minor punishment, dismissal from service cannot be ordered in exercise of powers under said Provision. Petitioner also assails the department enquiry conducted by Shri Bhagwat Singh, Assistant Commandant on the ground that the petitioner was not provided documents, statement of witnesses as required under Rule 27 (c) (i) (B1) of CRPF Rules and that a joint enquiry was not conducted against the petitioner and Shri Rajinder Singh, Constable No. 90099652 of 102 Battalion RAF

alleged to have accompanied the petitioner to the residential quarters and to have been found consuming liquor with the petitioner after the petitioner left the duty as Guard Duty Markar. It is insisted that failure to conduct a joint enquiry against the petitioner and his accomplice violates mandate of Rule 27 (d) (i) CRPF Rules, 1955.

8. The petitioner complains that he was denied right to submit his representation against the enquiry report, inasmuch as, copies of the enquiry report and connected documents were not provided to him and further that he was denied adequate assistance to organize his defence. Petitioner disputes competence of Shri Avtar Singh Assistant Commandant to place him under suspension vide order dated 03.06.1997 on the ground that only Commandant 102 Bn. was competent to make such order. He also points to communication dated 06.11.1997 received from Assistant Commandant whereby he was shown to have been dismissed from service while the punishment of dismissal from service was awarded by the Commandant on 17.11.1997. Petitioner insists that decision regarding punishment to be awarded to the petitioner was taken much before the punishment was

awarded on 17.11.1997 and, therefore, the order impugned suffered from non-application of mind.

9. The writ petition is resisted by the respondents on the grounds that enquiry was conducted in accordance with CRPF Act, 1949 and CRPF Rules, 1955 and the petitioner given adequate opportunity to put forth his stand. The punishment awarded is said to be in accordance with Section 11 (i) CRPF Act, 1949 read with Rule 27 CRPF Rules, 1955. The respondents dispute and controvert all the averments made in the petition to assail the enquiry and the order awarding punishment as also orders passed by the Appellate and the Revisional Authority. Petitioner is said to have been given a reasonable opportunity to produce any documents or witness in his defence.

10. The respondents deny that a joint enquiry was required to be held against the petitioner and Rajinder Singh Constable No. 90099652. It is pointed out that a separate enquiry was conducted against Shri Rajinder Singh by Commandant 30th Battalion BRF where he was posted on transfer from 104 Bn. RAF. Respondents insist that the petitioner was placed under suspension by the Assistant Commandant under instructions from

the Commandant – an authority competent to make such order.

11. Petitioner in his rejoinder reiterates that as Shri Rajinder Singh, Constable No. 90099652 was alleged to have accompanied the petitioner to the residence of Shri Jagdish Singh, Sub Inspector and also to have been found to consume liquor in his residential quarter, a joint enquiry should have been directed and as Rajinder Singh, Constable No. 90099652 in a separate enquiry was found not guilty, the same evidence could not substantiate allegation against the petitioner. The averments made in the reply in opposition to the writ petition are also controverted in the rejoinder, reiterating the stand put forth in the petition.

12. Learned Single Judge on 06.02.2002 allowed the writ petition, opining that a major punishment like one of dismissal from service cannot be awarded under Section 11 (i) CRPF Act, 1949. The order of Commandant 102 Bn. RAF/CRPF dismissing the petitioner from service, was, accordingly, set aside and the respondents directed to reinstate the petitioner giving them liberty to pass a fresh order in accordance with Rules.

13. The order dated 06.02.2002 was questioned in LPA(SW) no. 111/2002. The LPA Bench relying on law lay down in ***Union of India v. Gulam Mohd. Bhat, AIR 2005 SCW 5228***, held that an order of dismissal or removal from service can be made under Section 11 (i) CRPF ACT, 1949. The judgment impugned in the appeal was, accordingly, set aside and the case remanded for fresh disposal.

14. I have gone through the pleadings and record available on the file. I have heard learned counsel for the parties.

15. The petitioner, as must be clear by now, questions the dismissal order dated 17.11.1997 primarily on following three grounds:-

- (i) That the Enquiry Officer and Disciplinary Authority did not adhere to the procedure laid down under law while dealing with the matter.
- (ii) That his co-accused though alleged to have been guilty of the misconduct alleged against the petitioner was not tried with the petitioner and that on same evidence recorded in separate enquiries, petitioner was held guilty while his colleague was exonerated of all charges.

(iii) That the punishment awarded was disproportionate to the misconduct claimed to have been proved against the petitioner.

16. Perusal of record made available by Shri Rajneesh Raina, learned CGSC would reveal that the authorities followed the procedure prescribed under law in letter and spirit while enquiring into the misconduct alleged against the petitioner and awarding punishment on the basis of outcome of the enquiry. Shri Sahinder Singh Yadav, Inspector CRPF, was asked to conduct preliminary enquiry touching complaint received against petitioner and his colleague Rajinder Singh Constable No. 90099652, detailing misconduct allegedly committed on 31.05.1997 and 01.06.1997.

17. The Enquiry Officer recorded statements of S/Shri Jagdish Singh-102 Bn, O. S. George-102 Bn., Constable Jagdish Parsad and Constable M. N. Paniker, found allegations *prima facie* established against the petitioner and his colleague and submitted his report to the Commandant on 03.06.199. The Commandant 102 Bn. CRPF on going through the preliminary enquiry report under Rule 27 Central Reserve Rules, 1955, decided to hold an enquiry against the petitioner and appointed Shri Bhagwat Singh, Assistant

Commandant 102, Bn as Enquiry Officer. The Memorandum and the Statement of Articles of charges and Statement of imputation in support of the Article of charge and also the list of document and the list of the witnesses by which/by whom the articles of charges framed against the petitioner, were proposed to be substantiated (Annexures I to IV) were duly served on the petitioner. Petitioner submitted a detailed representation to Inspector General of Police, CRPF, New Delhi, wherein he acknowledged to have received the Memorandum alongwith its annexures and put forward his defence. The departmental enquiry was concluded on 27.07.1997. The Enquiry Officer vide his letter dated 2.09.1997 informed the petitioner that the enquiry against him was completed and that the report was being submitted to the Disciplinary Authority for consideration and necessary action. The enquiry report was enclosed with the communication and petitioner informed that reply, if any, submitted by him would be forwarded alongside the Enquiry Report to the Disciplinary Authority so that it is considered by the authority while taking a decision in the matter. The fact that the Enquiry Report with its enclosures was received by the petitioner is substantiated by the application

made by him on 11.09.1997 to the Commandant asking for legible copies of some of the documents received by him. The application dated 11.09.1997 was followed by yet another application dated whereby particulars of eligible documents were detailed. The Commandant 102 Bn. vide Communication dated 23.09.1997 forwarded another set of Enquiry Report with other documents to the officer commanding HQ. 102 Bn. with a request to deliver the documents to the petitioner and ask to submit his reply, if any, within two weeks from the date of receipt of the communication. The petitioner submitted his written reply on 30.09.1997. The proposed punishment was conveyed to the petitioner vide communication dated 06.11.1997 and petitioner submit his representation against the punishment proposed vide written representation dated 13.11.1997. This was followed by dismissal order dated 17.11.1997.

18. The minutes of the proceedings catalogued in the preceding para, support the respondents' stand that the procedure prescribed under law was meticulously followed and adhered to by the authorities at all levels i.e. Preliminary Enquiry Officer, Departmental Enquiry Officer and the Commandant 102 Bn. CRPF while

dealing with the complaint received against the petitioner. The petitioner, therefore, cannot complain of violation of procedural rights available to him under the rules applicable to the matter.

19. Learned counsel for the petitioner while insisting that a joint enquiry was to be conducted against the petitioner and his colleague-Rajinder Singh Constable No. 90099652, seeks to draw support from Section 27 (d) the Central Reserved Police Force Rules, 1955. It would be appropriate to reproduce the Rule:

“Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General [or any other authority competent to impose the penalty of dismissal from service on all such members of the Force] may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note.--Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

- (2) Such order shall specify –
 - (i) the authority which may function as the disciplinary for such a common proceeding;
 - (ii) the penalties specified in the table of sub-rule (a) above which such

disciplinary authority shall be competent to impose;

- (iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose; and,
- (iv) that the enquiry shall be held in accordance with the provisions of sub-rule (a) and sub-rule (c)."

20. The Rule does not extend any support to the petitioner's case. In the first place, the rule is enabling in character and does not create any right in favour of the petitioner to insist that he and his colleague were necessarily to be dealt with, in "common proceedings" or that failure on the part of the disciplinary authority to proceed against the petitioner and his colleague, vitiates the Departmental Enquiry held against him. Secondly, the nature of allegations against the petitioner was different from the allegations against his name sake colleague. Petitioner was alleged to have created a scene at the residence of SI Jagdish Singh, assaulted the officer and cut his hands with blade to threaten his officer. No such allegation was leveled against his colleague. The only allegation was that he accompanied the petitioner, to the residence of SI Jagdish Singh without complaint of any overt act attributed to his colleague. Similarly petitioner was

alleged to have left his duty and to have been found consuming liquor at his residence. There was no allegation of unauthorized absence from duty against petitioner's colleague. The only allegation against the petitioner colleague was that he was present at the residence of the petitioner and found consuming liquor at the time SI O. S. George went to petitioner's residence. The nature and gravity of the allegations against the petitioner, therefore was different from the allegations against his colleague. Thirdly, petitioner's colleague was transferred from 102 Bn. CRPF by the time Departmental Enquiry was initiated against the petitioner. In the said background, failure to take disciplinary action against petitioner and his colleague in common proceedings does not vitiate Departmental Enquiry or its final outcome against the petitioner.

21. The argument that the punishment imposed on the petitioner is disproportionate to the misconduct alleged and, therefore inference is warranted, does not sound convincing. There can be no disagreement with learned counsel for the petitioner that the Court would be acting within its power of judicial review, while examining the punishment imposed on the petitioner to find out whether it is disproportionate

to the misconduct alleged against him. However, courts are loath in interfering with the punishment imposed in disciplinary proceedings, more so in case of Armed and Para Military Forces unless it shocks the conscience. It would be advantageous to reproduce hereunder the observations made by the Apex Court in

Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO & ors. V. Surinder Kumar, 2011 STPL (Web)

924 SC.

“8.....The Division Bench of the High Court, in our considered opinion, should have looked into the acts of indiscipline proved against the respondent for which he has been sentenced to imprisonment and then decided whether the dismissal of the respondent from service was disproportionate to the gravity of acts of discipline. As we have already held, the acts of indiscipline for which the respondent had been sentenced for imprisonment were serious and grave for a disciplined force. Therefore, the competent authority was right in imposing the punishment of dismissal from service.

9. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In *Union of India vs. R. K. Sharma* (AIR 2001 SC 3053), this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to

warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service.”

Having regard to the indiscipline and misconduct established against the petitioner, the punishment awarded cannot be held to be disproportionate and, therefore, warranting interference in exercise of writ jurisdiction.

22. For the reasons discussed, the petition is meritless and liable to be dismissed.
23. Dismissed. Record be returned.

**(Hasnain Massodi)
Judge**

Jammu
31.01.2014
Parshant