

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

SWP No.971/2003

Date of Order:28.03.2016.

Babu Ram

vs

UOI and ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the petitioner(s) : Mr. K L Pandita, Advocate.

For the Respondent(s) : Mr Parimoksh Seth, CGSC

(i) Whether approved to be reported in press/ media : Yes.

(ii) Whether approved to be reported in Law Journal/Digest: Yes.

1. The petitioner aggrieved by the order of removal from service dated 23.12.2002 passed by Commandant had filed the appeal before the appellate authority Inspector General of Police, CRPF but before its disposal, he also filed the instant writ petition. During the pendency of the writ petition, the appellate authority has rejected the appeal of the petitioner vide order dated 01.08.2003.
2. The contention of learned counsel for the petitioner is that the respondent authorities have not followed the procedure prescribed instead in an arbitrary manner penalty has been imposed. In opposition, learned counsel for the respondents stated that the procedure has been meticulously followed. Petitioner has participated at every stage of the enquiry and disciplinary proceedings, it is only thereafter a well considered order has been passed.

Therefore, petition is liable to be dismissed.

- 3.** Considered the submissions as well as the record of the petition and the record as produced by the learned counsel for the respondents. In terms of Rule 27 of the CRPF Rules, 1955 (hereinafter referred to as Rules), the Commandant is the competent disciplinary authority to pass the order of penalty after formal departmental enquiry.
- 4.** The petitioner has been removed from service vide Order No.D-ii-5/2002-74-EC-ii dated 23.12.2002 by the competent authority (Commandant 74. Bn CRPF. Lamphelpat, Imphal, Manipur) thereafter in terms of Officer Order No.D-ii-8/2002-74-EC-ii dated 17.01.2003 as issued, it has been observed that the petitioner is no more in service as he has been removed from service. The delinquent suspendee will be revived if he reinstate into service on the basis of appeal etc. Both the said orders are sought to be quashed by medium of this petition.
- 5.** The admitted position is that the petitioner was enrolled as B/74 of No.921342248-CT/GD. He had remained absent when he was detailed on 03.06.2002 at Hangar Gate of Imphal Airport. He had committed an act of

misconduct as he consumed liquor on 03.06.2002 at 11.00 hours while he was on duty which act of the petitioner was stated to be prejudicial to good orders and discipline of the force.

- 6.** A memorandum was issued by Shri Karamjeet Singh, Commandant 74 Bn. CRPF, Imphal on 17.07.2002 whereunder inquiry against the petitioner under Rule 27 of the Central Reserve Police Force Rules, 1949 was proposed. Statement of imputation of misconduct in support and articles of the charge were made mention of. The petitioner was given 10 days time from the date of receipt of memorandum to file written statement of his defence and also to inform whether he desires to be heard in person. Petitioner appears to have submitted his reply. It was considered.
- 7.** The Commandant vide Order dated 18.09.2002 in exercise of the powers conferred by sub rule (b) of Rule 27 of CRPF Rules, 1955 appointed Shri S N Singh, Deputy Commandant of the unit as inquiry officer to enquire into the charges framed against the petitioner. The departmental enquiry proceeded on the article of charge and substance of imputation of misconduct which were as under:

Articles of Charge

Article-I

That the said No.921342246 Ct/GD Babu Ram of B/74 Bn. CRPF, while functioning as Ct/GD in this unit, 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 consumed liquor on 3/6/02 at 1100 hrs while he was on duty, which is prejudicial to good orders and discipline of the Force.

Article-II

That the said No.921342248 Ct/GD Babu Ram of B/74 Bn. CRPF, while functioning as Constable/GD in 74 Bn. CRPF 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 remained absent from Govt. Duty for which he was detailed on 3/6/02 at 1100 hrs at Hanger Gate of Imphal Airport, which is prejudicial to good orders and discipline of the Force.

SUBSTANCE OF IMPUTATION OF MISCONDUCT:

ARTICLE-I

That the said No.921342248 Ct/GD Babu Ram of B/74 Bn. CRPF, while functioning as constable/GD in

this unit 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 was detailed for security duty at Hangar Gate of Imphal Airport on 3/6/02. While checking by his coy. Comdr. i.e. Shri B. S. Guleria, A/Comdt. the above constable/GD was found absent from the duty point for which he was detailed and was found in the state of intoxication. Thereafter, he was sent to the Bn. Hqr. At Lamphelpat, Imphal (Manipur) for his medical examination by the unit Medical Officer on the same day. As per Medical Report dated 3/6/02, he has consumed liquor and was in the state of intoxication with alcohol. Thus he committed an act of misconduct in that he consumed liquor on 3/6/02 at 1100 hrs during duty hours and was found in a state of intoxication.

ARTICLE-II

That the said No.921342248-Ct/GD Baby Ram of B/74 Bn. CRPF was detailed for security duty at Hanger Gate of Imphal checking by Shri B. S. Guleria, A/Comdt. his coy. Officer Commanding, the above Ct/GD was found absent from the duty point on 3/6/02 i.e. Hanger Gate of Imphal Airport for which he was detailed. Thus he committed an act of misconduct in that he

remained absent from duty for which he was detailed.

- 8.** The petitioner had participated in the enquiry and he has also been examined. The enquiry officer concluded as under:

FINDINGS AND CONCLUSION

- a) After careful Examination of statements of all the P.Ws, delinquent, prosecution Exhibits, defence Exhibits produced and analysis and assessment of evidences, I am of the opinion that the charge framed against Ct/GD Babu ram of B/74 Bn. CRPF in Article-I vide Memorandum No.D.ii-5/02-74-EC-II dated 17/7/02 found proved beyond any shadow of doubt.
- b) After careful examination of statements of all the P.Ws., delinquents, prosecution exhibits, defence exhibits produced and analysis and assessment of evidences, I am of the opinion that the charge framed against the Ct/GD Babu Ram Bn. CRPF in Article-II vide Memorandum No.D.ii-5/02-74-EC-ii dated 17/7/02 found proved beyond any shadow of doubt.

- 9.** The disciplinary authority (Commandant) forwarded the copy of report of enquiry officer to the petitioner on

04.12.2002 informing the petitioner that if he wishes to make any representation or wants to submit any statement in defense, shall do so in writing within 15 days from the date of receipt of copy of the report.

10. The disciplinary authority (Commandant) has passed the final order dated 23.12.2002 whereunder in exercise of his powers under Section 11(1)(e) of CRPF Act, 1949 imposed the penalty of 'REMOVAL FROM SERVICE' from the date of issue of order. He has been struck off from the strength of the unit. For suspension period from 07.06.2002 to 23.12.2002, petitioner has been ordered not to get anything other than subsistence allowances which had already been paid.

11. The procedure to be followed for the departmental enquiry is envisaged by Rule 27(c) of CRPF Rules, 1955 which for facility of reference is quoted hereunder:

"27(c) The procedure for conducting a departmental enquiry shall be as follows:

- (1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs before the commencement of the enquiry.
- (2) At the commencement of the enquiry the accused shall be asked to enter a plea of 'Guilty' or 'Not

Guilty' after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary; if oral;

- (i) It shall be direct;
 - (ii) It shall be recorded by the Officer conducting the enquiry himself in the presence of the accused;
 - (iii) The accused shall be allowed to cross examine the witness.
- (3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.
- (4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads 'Not guilty', he shall be required to file a written statement, and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.
- (5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the

proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to all such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought, the proceedings shall be closed for orders.

- (6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his findings and pass orders, where he has power to do so."

12. The records reveal that:

- (a) Substance of the accusation has been reduced to the form of written charge. Same has been read out to the petitioner. Copy has been furnished to the petitioner more than 48 hours before the commencement of the enquiry.
- (b) The second requirement is that at the

commencement of the enquiry, petitioner was to be given chance to plead 'guilty' or 'Not guilty'.

- (c) It is thereafter evidence has to be lead and the delinquent has to be allowed to cross examine the witnesses.
- (d) The records reveal that firstly the Commandant has prepared the memorandum containing all details of accusation. After response of the petitioner, it has been found desirable to hold the enquiry, as such commandant has passed the order for holding departmental enquiry. The articles of charge and the substance of imputation as quoted above had been framed. On 02.08.2002, the petitioner had been put five questions regarding pleading or not pleading "guilty" by the Enquiry Officer. The petitioner has pleaded guilty and has signed the same. The said questions and answers series documents regarding pleading or not pleading guilty as available on the DE file as produced is quoted hereunder:

PLEADED GUILTY /NOT GUILTY:

Que No.1. Have you received Memorandum No.D.II-5/02-74-EC-II dated 17/7/2002 and signed by the Commandant 74th Bn. CRPF, have you

understood the contents therein or otherwise?

Answer- Yes Sir, I have received Memorandum No. D.II-5/02-74-EC-II dated 17/7/2002 and fully understand the contents therein.

Que No.2. Have you received Annexure-I,II, III and IV alongwith Article-I and II dated 17/7/2002 signed by the Commandant 74th Bn, CRPF and have you understood the contents therein or otherwise?

Answer- Yes Sir, I have received Annexure-I,II, III and IV alongwith Article-I and II and fully understand the contents therein.

Que No.3. Have you received Officer Order No.D.II-5/02-74-EC-II dated 30/07/2002 signed by the Commandant 74th Bn. CRPF, vide which I have been appointed Enquiry Officer to enquire into the charges framed against you?

Answer- Yes Sir, I have received Officer Order No.D.II-5/02-74-EC-II dated 30/07/2002

Que No.4 Do you accept me as Enquiry Officer in this regard or have you any objection?

Answer- Yes Sir, I accept you as Enquiry Officer and I have no any objections.

Que No.5. In this regard you plead yourself guilty or not guilty?

Answer- Sir, plead guilty.

- 13.** Witnesses have been examined and cross examined. The petitioner had also been sent for medical examination. The medical report about alcohol consumption has been submitted by the Medical Officer which suggests that the petitioner was intoxicated with alcohol on 03.06.2002 when after occurrence he was examined at 1.30 pm.
- 14.** When the petitioner has participated in all proceedings has pleaded guilty and then has still been given opportunity to cross examine the witnesses and has also been examined. Thereafter copy of enquiry report has been forwarded to him by the disciplinary authority and his response has been considered. Can he still say that the provisions of CRPF Act and the Rules have not been followed, answer has to be no.
- 15.** The petitioner belonged to a disciplined force. The trivial negligence sometimes can be catastrophic. While on duty at Hangar Gate of Imphal Airport, he was noticed to have committed misconduct firstly leaving the duty post without permission and secondly consuming liquor while on duty which at such time of duty was prohibited. A serious situation i..e when he was posted at a very sensitive place. Can he be allowed to say that he had consumed little bit of liquor as he wanted to have relief

from cold, answer has to be no.

16. The seriousness and sensitivity of the duty which the petitioner was to discharge at 1100 hrs at Hangar Gate Imphal Airport is clearly highlighted in the reply filed by the respondents.
17. In the reply, it has been stated that various incidents, **in May, 2000, the petitioner had consumed liquor while on duty for which he was punished for 15 days confinement to line. Then again on 18.12.2001 he was found in the state of intoxication during his duty hours for which he was again warned. In March, 2002 he was caught intoxicated while on duty for which he was warned by the Coy. Comdr vide letter No.P.VIII,1/2001-02-B/74 dated 16.03.2002.**
18. It is seriously stated that the present case is not a simple case of intoxication. The petitioner has been guilty of disobedience, neglect, remissness in discharge of his duties. Airport duty is a very sensitive duty and even a bit of negligence may cause untoward incidents, loss of life and property. Violation of such security norms or carelessness at such vulnerable places cannot be compromised at any cost. Duty at such vital installation

warrants utmost care, alertness and dedication of the highest degree. Petitioner being member of disciplined force committed an act of grave misconduct which falls within the ambit of Section 11(1) of CRPF Act, 1949 and in view of the seriousness; he was placed under suspension w.e.f 07.06.2002. Subsequently memorandum of charge under Rule 27(b) of CRPF Rules, 1955 was served upon him. A proper enquiry has been held. Petitioner had participated. He has pleaded guilty by stating that he had consumed liquor due to cold but has not admitted the position of being absent from duty.

- 19.** The detailed departmental enquiry revealed that both the charges against the petitioner were proved. The enquiry officer in his report confirmed that petitioner has consumed liquor on 03.06.2002 at about 1100 hrs, then on checking, he was not also present in the Hangar Gate Morcha i.e. duty point and he was highly intoxicated. Same position has been proved during the enquiry.
- 20.** Petitioner belonged to a disciplined force committed the acts as have been proved on proper enquiry held, in strict adherence to the provisions of the CRPF Act and the Rules, and has been heard, there shall be scope for him to claim violation of principles of natural justice,

therefore can petitioner be allowed to claim that the punishment inflicted is not in consonance with the rules and law, the answer has to be no.

- 21.** Earlier thrice petitioner was found to have consumed liquor while on duty i.e. (1) In May, 2000 was punished for 15 days confinement to line (2) On 18/12/2001 and (3) In March 2002 was warned. Now 4th time, on 03.06.2002 violation was very serious as stated above, as such punished. The Commandant (disciplinary authority) has rightly invoked the power under Section 11(1)(e) CRPF Act, 1949 which for the proved acts committed by the petitioner, warranted removal from service. Though other minor punishments are also prescribed but same depend upon the mode, method and the seriousness of the offence. As indicated above, earlier thrice petitioner has been caught violating the norms as having been consuming the liquor while on duty and remaining highly intoxicated during duty hours, other minor punishments had been inflicted but the instant occurrence has occurred at Airport when he was posted at Hangar Gate, a sensitive point, the disobedience and consumption of liquor was highly unacceptable being prejudicial to good orders and discipline. The misconduct of magnitude,

therefore punishment inflicted i.e. removal from service under Section 11(1)(e) of the Act is commensurate to the misconduct committed by the petitioner.

22. For the stated reasons and facts, petition is found to be without any merit, as such dismissed.

23. Record as was produced be returned to Ld. CGSC.

(Mohammad Yaqoob Mir)
Judge

Jammu
28.03.2016
Raj Kumar