

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

Case:- SWP No. 1780/2003

**Salochna Devi W/O Late Bhag  
Chand Ramola R/O Village Silari  
P.O Gerri, District Tehri Gharwal,  
Uttaranchal**

.....Appellant(s)/Petitioner(s)

Through: Mrs. Surinder Kour, Sr. Advocate with  
Mr. Dalvinder Kumar, Advocate.

**Vs**

- 1. Union of India Through  
Home Secretary, Ministry of Home  
Affairs, Govt. of India, New Delhi;**
- 2. Director General of Police, C.R.F.F,  
C.G.O Complex, Lodhi Road, New  
Delhi;**
- 3. Addl. Director General of Police,  
C.R.P.F, North West Zone,  
Chandigarh;**
- 4. Inspector General of Police, RT  
C.R.P.F, Bihar;**
- 5. Dy., Inspector General of Police,  
Muzzaferpur, Bihar;**
- 6. Dy. Inspector General of Police,  
C.R.P.F, Group Centre, Muzzaferpur,  
Bihar;**
- 7. Commandant, 116 Bn. C.R.P.F., C/O  
56 A.P.O.**

..... Respondent(s)

Through: Mr. Prem Sadhotra, CGSC.

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**29.02.2024**

**(ORAL)**

1. In the instant petition filed under Article 226 of the Constitution of India, it is revealed that the original petitioner, namely, Bhag Chand Ramola

(*hereinafter for short, the 'deceased petitioner'*) while working as a Driver in the Central Reserve Police Force (*for short, the CRPF*) and posted at Group Centre in 116 Bn., CRPF Bantalab Jammu, came to be dismissed from service by the respondent No. 7 herein in terms of order No. P-VIII-7/2002/116-Est.-II dated 30.11.2002, whereupon an appeal came to be preferred by the deceased petitioner against the said order of dismissal before the appellate authority being respondent No. 5 herein, which appeal came to be dismissed on 13.06.2003.

2. Before proceeding further in the matter, a brief background, which resulted into initiation of the departmental inquiry against the petitioner, becomes imperative hereunder:-

It came to be alleged by the respondents herein against the petitioner that while posted as L/NK (Driver), Headquarter, 116 Bn. CRPF, Jammu, the petitioner committed indiscipline and dereliction of duty having obtained liquor from the local market and used the same and had a scuffle with one-Mangal Singh (Constable/Driver of 49 Bn. CRPF) and during the scuffle, caused an injury to the said Mangal Singh, besides receiving an injury to himself as well at the hands of the said Mangal Singh, resulting into initiation of a disciplinary enquiry against the deceased petitioner by the respondents, whereupon completion of the same, conducted by the inquiry officer- Sh. O.R.M. Munda (Assistant Commandant) appointed by the respondent No. 7 herein on 20.07.2002, the petitioner came to be dismissed from service by the respondent No. 7 herein in terms of the impugned order dated 30.11.2002.

3. The deceased petitioner challenged the impugned order of dismissal, as also the order of the appellate authority, whereby the appeal preferred by him against the order of dismissal came to be rejected in the instant

petition, *inter-alia*, on the grounds that the impugned order of dismissal is against facts and law and that the punishment of dismissal imposed upon the petitioner under Section 11(1) of the Act of 1949 being major in nature, is against the provisions of law having originated from the departmental inquiry not conducted in accordance with the provisions of the Central Reserve Police Force Rules, 1955 (*for short, the **Rules of 1955***), inasmuch as, without holding a preliminary inquiry in the matter and that the respondents before issuing the impugned order of dismissal did not issue and serve the notice of proposed punishment upon the deceased petitioner and that the respondents initiated and conducted the disciplinary proceedings against the deceased petitioner in breach of the Rules of 1955, as the said disciplinary inquiry in the matter could have been ordered only by the Inspector General of Police, CRPF alone on account of alleged misconduct not against the petitioner and that of the co-accused, namely, Mangal Singh and that in the said disciplinary inquiry, the statement of said Mangal Singh (co-accused) was never recorded by the inquiry officer and that the said Mangal Singh was never proceeded against for the alleged mis-conduct and instead, the said Mangal Singh came to be accorded promotions, whereas in the case of the petitioner, a major penalty of dismissal came to be imposed by the respondents herein, wherein besides directing forfeiture of his medals and appreciation certificates earned by the petitioner, thus, subjected him to discrimination.

**4.***Objections* to the petition have been filed by the respondents herein, wherein it is being stated that the deceased petitioner came to be enlisted in CRPF on 27.05.1998 as a Constable/Driver and was posted in 116 Bn. CRPF in the month of May, 1996 and that a joint departmental inquiry was ordered

against the petitioner vide order dated 24.10.1999 in connection with drinking liquor and quarrelling with his colleagues on petty matters, as a result whereof, the deceased petitioner was reverted from the post of LNK/Driver to the post of Constable/Driver for the period of two years from 21.03.2000 to 20.03.2002 and came to be attached with Field Workshop, GC, CRPF, Jammu (J&K) w.e.f. 22.02.2002.

It is being further stated that during the said attachment period on 05.05.2002, the deceased petitioner purchased liquor from the market and consumed it and thereafter, quarreled with one Constable/Driver, namely, Mangal Singh of 49 Bn. while paying cards, in which both the Drivers sustained injuries, whereafter, a preliminary inquiry was conducted in the matter and thereafter, the deceased petitioner was placed under suspension w.e.f 26.06.2002 and a departmental inquiry thereafter was initiated against the deceased petitioner on 06.07.2002, wherein charges came to be framed against the deceased petitioner, which later on, came to be proved during the course of inquiry and consequently, after completion of the said inquiry and taking into consideration the report of the inquiry, the gravity of offence committed, the deceased petitioner came to be dismissed from service vide order dated 30.11.2002, against which order of dismissal, the deceased petitioner preferred an appeal before the appellate authority on 14.12.2002, which appeal came to be rejected on 13.06.2003.

**Heard learned counsel for the parties and perused the record.**

5. Perusal of the record pertaining to the case in hand produced by the learned counsel for the respondents reveals that a preliminary inquiry have had been conducted by the official respondents against the deceased petitioner and

co-accused-Mangal Singh qua the incident dated 05.05.2002, wherein both the petitioner, as also the said Mangal Singh had got injured during a scuffle between them. The preliminary inquiry record reveals that both the personnel have had consumed liquor and had quarreled with each other during the course of playing cards and in the said quarrel, the petitioner first received an injury at the hands of the said Mangal Singh in his right eyebrow and thereafter, the said Mangal Singh sustained injury at the hands of the petitioner on his head. It also gets revealed from the said enquiry report that upon medical examination of both the personnel, it came to be observed that both of them had consumed liquor. The said preliminary established that both the personnel have had indulged in gross indiscipline after consuming liquor and assaulted each other in the barrack, having resulted into injuries to them and, thus, the said preliminary inquiry upon its completion recommended holding of a departmental inquiry against both the delinquent personnel.

6. Perusal of the aforesaid record further reveals that a departmental inquiry was initiated against the deceased petitioner alone and charges thereof came to be drawn and framed against the deceased petitioner on the basis of a complaint filed by one-Sajjan Singh (HC/GD) dated 06.05.2002 regarding the incident, alleging therein the said charges that the deceased petitioner committed indiscipline, laxity and negligence on 05.05.2002 while consuming liquor alongwith Constable/Driver-Mangal Singh and entered into a scuffle with him and caused injury to him, besides receiving injury to his person.

Perusal of the record of the disciplinary inquiry would reveal that the disciplinary authority appointed one-Sh. O.R.M. Munda (Assistant Commandant) as an inquiry officer on 20.07.2002 and during the course of the

said inquiry, the inquiry officer examined the Havaladar-Sajjan Singh as a witness, besides S.T.O. Chandrashekhar of Composite Hospital, Bantalab, Jammu, as also Sh. Balihar Singh, Assistant Commandant, O.S.T.O, F.W.S, Bantalab, Jammu and on the basis of the statements of the said witnesses, as also the documents produced by the said witnesses being EXIBIT-I and EXIBIT-II, concluded that the charges framed against the deceased petitioner are proved and established.

A deeper and closer examination of the inquiry record in general would reveal that the inquiry officer conducted the same in a mechanical manner without strictly following the procedure prescribed by Rule 27 (C) of the Rules of 1955, which Rule being relevant and germane herein, is extracted in extenso and reproduced hereunder:-

**“27(A).....**

**(B).....**

**(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 and 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 accuse;**
  - (iii) The accused shall be allowed to cross examine the witnesses.**
- (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 2024:JKLHC-JMU:180 14 SWP No. 188/2007 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 allow 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 on record, 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."

7. It is significant to note here that the perusal of the statement of the witness-Sajjan Singh (HC/GD) made by him before the inquiry officer in disciplinary proceedings is in total contradiction and conflict with the statement of the co-accused-Mangal Singh made by him during the course of preliminary inquiry, wherein the said Mangal Singh had specifically stated that after pushing the deceased petitioner during scuffle, he noticed injury on the right eyebrow of the deceased petitioner, which was bleeding, whereafter, he went outside to clean the utensils and while doing so, the deceased petitioner hit his head from the backside with some hard object, whereafter I saw him fleeing from the place

and *by that time, HC/GD-Sajjan Singh also arrived there* and I narrated the whole story to him and we tried to search for the deceased petitioner, but could not locate him and the said Sajan Singh told me to go to Hospital, whereafter I went to the Hospital and the doctor and the nurse present on duty attended me, whereon the witness-Sajjan Singh (HC/GD) before the inquiry officer in the disciplinary proceedings has given a totally different version and, therefore, under the said circumstances, it was obligatory on the inquiry officer to have examined the said Mangal Singh, as the Sajjan Singh (HC/GD) in his statement before the inquiry officer have had deposed that he found on the date of incident both the delinquent personnel fighting with each other, catching underwears of each other, having torn them off, blood oozing out of them and that he got them released from the scuffle and thereafter, sent both of them to the Hospital for treatment, whereafter he submitted a report in writing regarding the incident to the O.C.

8. Perusal of the record of the inquiry also tends to show that the inquiry officer has in his report stated that it came to be established on the basis of the statements of the witnesses and the documents on record that the petitioner obtained wine from local market, used it, hurled abuses and committed beatings in the line without making any mention about the role of the Mangal Singh (co-accused of the petitioner) therein in the said beating.

9. Perusal of the impugned order also reveals that the respondent No. 7 herein has observed that the accused (petitioner herein) has himself in the preliminary investigation admitted to be a culprit and during the course of the disciplinary inquiry, the petitioner did not putforth any solid proof for establishing his innocence. The respondent No. 7 as well in the impugned order,



seemingly, has proceeded on the basis of the inquiry report, which, *per se*, is found to be perverse hearing originated from an enquiry conducted in a mechanical manner and in breach of Rule 27(C) of the Rules of 1955.

**10.** Besides the aforesaid infirmities being writ large in the disciplinary proceedings conducted by the respondents herein against the deceased petitioner, inasmuch as, in the impugned order as well, the respondents in their reply affidavit have nowhere justified or offered a reasonable explanation as to why the petitioner alone came to be subjected to the departmental inquiry and not the co-accused-Mangal Singh despite the fact that the preliminary inquiry conducted in the matter have had recommended, holding of the departmental inquiry against both of them.

The respondents herein have not even denied the contention of the deceased petitioner urged in the petition that the respondents herein instead of proceeding against the said Mangal Singh chose to promote him to the next higher post at one hand and, on other hand, dismissed the petitioner from service for the alleged misconduct, which, *per se*, was not proved sufficiently during the course of the disciplinary inquiry and that otherwise as well, the said punishment of dismissal imposed have had been shockingly disproportionate to the alleged act of misconduct.

**11.** Having regard to the aforesaid facts and circumstances, the only inescapable conclusion that can be drawn in the matter is that, the respondents have grossly faulted in the matter of holding the disciplinary inquiry against the petitioner and proceeded to issue the impugned order of dismissal while subjecting the deceased petitioner to hostile discrimination vis-à-vis Constable/Driver-Mangal Singh and though under these circumstances, directing

of holding of a fresh inquiry in the matter would have been appropriate, yet having regard to the fact that the petitioner has died during the pendency of the petition, such a direction could not be passed.

**12.** For what has been observed, considered and analyzed hereinabove, the instant petition deserves to be allowed. Accordingly, the same is allowed and by issuance of a writ of certiorari, the impugned order of dismissal dated 30.11.2002 passed by the respondent No. 7 herein and the consequent order of rejection of appeal dated 13.06.2003 passed by the respondent No. 5 herein are quashed and by issuance of writ of mandamus, the respondents herein are commanded to treat the deceased petitioner to have been in service and extend all the service benefits, to which the deceased petitioner would have been entitled thereto, minus back wages w.e.f. the date of dismissal uptill 10.04.2021, i.e., the date of the death of the deceased petitioner and present petitioner being the wife of the deceased petitioner shall be deemed to be entitled to the said service benefits of the deceased petitioner.

**13.** Writ petition is, accordingly, *disposed of*.

**(Javed Iqbal Wani)**  
**Judge**

**Jammu**  
29.02.2024  
*Ram Krishan*

**Whether the order is speaking?    Yes**  
**Whether the order is reportable?    Yes**