

[Departmental Action] Enquiry Officer Cannot Return A Finding On Allegation Which Is Not Part Of Chargesheet: JKL High Court Reiterates

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH ATJAMMU

SANJEEV KUMAR; J.

SWP No.1881/2007; 02.12.2022

Laxman Dass *versus* Union of India and others

Petitioner (s) through: - Mr. Rakesh Sharma Advocate

Respondent(s) through: - Mr. L.K.Moza CGSC

J U D G M E N T

1. The petitioner joined the CRPF service in April 1990. While the petitioner was posted in 31Bn, then deployed at Jammu, an FIR bearing No. 66/1996 for commission of offence under Section 302 RPC came to be registered against him in Police Station, Bari Brahamana on the allegation that he had committed the murder of Inspector M.C.R.C.Reddy. While the trial against the petitioner was pending adjudication in the competent Court of criminal jurisdiction, the respondents simultaneously embarked upon a Departmental Enquiry and dismissed the petitioner from the service vide order dated 11.03.2000. The trial of the petitioner, however, ended in acquittal vide judgment dated 16.10.2002 passed by the Principal Sessions Judge, Jammu.

2. The petitioner called in question order of his dismissal dated 11.03.2000 in SWP No. 1019/2000. The said writ petition was allowed by a Bench of this Court vide judgment dated 03.11.2004 and the order of dismissal of the petitioner from service was set aside. The petitioner was ordered to be reinstated in service with all consequential benefits, however, reserving liberty to the respondents to hold an enquiry against the petitioner in accordance with CRPF Act and the rules framed thereunder.

3. In compliance with the judgment of this Court, respondent No.2 revoked the order of dismissal of the petitioner and reinstated him into service with all consequential benefits. However, simultaneously, with a view to holding fresh enquiry, the petitioner was again placed under suspension retrospectively w.e.f 11.03.2000 till the finalization of the departmental enquiry. This was done by respondent No.2 vide his order dated 26.07.2005. The petitioner was once again served with memorandum and Article of Charges on 01.10.2005. The petitioner pleaded not guilty to the charges framed against him and submitted his detailed reply on 14.10.2005. It is alleged by the petitioner that a number of enquiry officers were appointed to enquire into the charges from time to time, but, during the departmental enquiry, none of the witnesses examined by the respondents could substantiate the charges. The Enquiry Officer i.e. respondent No.3 concluded the enquiry and submitted his report vide Letter No.G.II-1/06-07-AKS dated 28.02.2007 to the Disciplinary Authority. As per the Enquiry Officer, the charges framed against the petitioner were not proved. However, the respondent No.4 vide his letter dated 09.03.2007 communicated to respondent No.3, the Enquiry Officer, that there were some shortcomings in the enquiry report. Responding to the letter of respondent No.4, respondent No.3 amended his report and changed his initial enquiry report with his observation that the charges framed against the petitioner were partially proved. The subsequent enquiry report dated 28.02.2007, was, accordingly, submitted by respondent No.3 to respondent No.4. The

petitioner was given a copy of the enquiry report and was asked to file reply. Once again, the petitioner submitted a detailed reply denying unequivocally the charges framed against him and submitted that none of the witnesses examined during the enquiry had supported the charges.

4. Be that as it may, respondent No.2, who was the Disciplinary Authority qua the petitioner vide his order dated 09.06.2007 after considering the reply filed by the petitioner, concluded that the charges against the petitioner were partially proved. The petitioner was inflicted the penalty of 'stoppage of annual increment for a period of five years with cumulative effect'. The petitioner was reinstated into service and was treated to be under suspension w.e.f 12.06.1996 till the passing of order dated 09.06.2007.

5. The petitioner is aggrieved by the enquiry report dated 28.02.2007 submitted by respondent No.3 and the consequential order of penalty passed by respondent No.2 on 09.06.2007 and has challenged the same, inter alia, on the following grounds:

(i) *That, in terms of Rule 27 (ccc) of CRPF Rules, the petitioner could not have been punished without seeking prior sanction of the Inspector General, therefore, the order impugned is required to be set aside.*

(ii) *That as per the order impugned, the Articles of Charges were not the same on which the petitioner has been held guilty.*

(iii) *That the Enquiry Officer has not applied his mind as he did not state in the enquiry report as to how the charges were partially proved against the petitioner.*

(iv) *That the order impugned is contrary to the judgment passed by this Court in SWP No. 1019/2000 in which, the respondents were directed to reinstate the petitioner in service with all consequential benefits, as such respondent No.2 could not have passed the order impugned.*

(v) *That respondent No.2 was not competent to pass the order impugned and therefore the same deserves to be set aside being bad in law.*

6. On being put on notice, the respondents have filed the reply. It is submitted by the respondents that the enquiry has been conducted against the petitioner in accordance with the provisions of CRPF Act and the Rules framed thereunder. It is further submitted that the disciplinary authority has passed the order on the basis of enquiry report submitted by the enquiry officer and that in terms of the judgment passed by this Court in a writ petition No. 1019/2000, the petitioner was reinstated in service and departmental enquiry was initiated against the petitioner pursuant to the directions of this Court whereby opportunity was granted to them to hold an inquiry against the petitioner in accordance with the rules. With regard to competence of the competent authority to dismiss the petitioner from service, it is submitted that the Commandant is the appointing authority of the petitioner in terms of Rule 7(b) of CRPF Rules and, therefore, is fully competent to dismiss/remove/suspend a person who has committed an offence.

7. Heard learned counsel for the parties and perused the material on record.

8. Learned counsel for the petitioner while arguing the matter restricted his argument to the following two points:

(i) That, although the Enquiry Officer had found the charges framed against the petitioner not proved in the enquiry, yet, the Disciplinary Authority held the petitioner

partially guilty of the charges framed and imposed a penalty of 'stoppage of increment of the petitioner for a period of five years with cumulative effect' and period of suspension from 12.06.1996 till the passing of the impugned order has been treated as 'period of suspension'. This was done by the Disciplinary Authority without even providing any opportunity of being heard to the petitioner; and,

(ii). That, this Court, vide judgment dated 03.11.2004 passed in SWP No. 1019/2000 while quashing the order of dismissal of the petitioner from service, also directed reinstatement of the petitioner in service with all consequential benefits. It is in compliance with the aforesaid judgment, the petitioner was reinstated into service on 26.07.2005, but was again placed under suspension till the finalization of fresh enquiry initiated. It is submitted that the Disciplinary Authority has even treated the period of suspension of the petitioner as it is w.e.f 12.06.1996 and therefore, the order impugned is in violation of the judgment dated 03.11.2004 passed by this Court.

9. I have given my thoughtful consideration to the contentions aforesaid raised by the petitioner. I am in agreement with the learned counsel for the petitioner that both the charges framed against the petitioner have been held not proved by the Enquiry Officer. For facility of reference, the Article of Charges i.e Article I and Article II are reproduced hereunder:

“Article I

That the said No. 9011707587 CT/GD Laxman Dass of E/31 Bn CRPF, while functioning as Coy Writer during his posting with the said Coy during the year 1996 has committed an act of misconduct and remissness in his capacity as a member of the Force u/s 11(i) CRPF Act 1949 in that he allegedly made a false transaction in the OR's Mess Cash Book and also misappropriate mess money worth Rs.1000/-(One thousand rupees) only during May 96 while performing the duties of Coy writer for late Inspector. MCRC Reddy, the then OC E/31 Bn CRPF. As a result No. 9011707587 CT/GD Laxman Dass misbehaved and manhandled his OC in the F.N. Later on, in the evening while late Inspector M.C.R.C.Reddy was sleeping in his tent No. 9011707587 CT/GD Laxman Dass shot dead late Inspector M.C.R.C.Reddy with his service rifle for which he has been tried by the Civil Court Jammu under IPC 302”

Article-II

That the said No. 9011707587 CT/GD Laxman Dass of E/31 Bn CRPF while functioning as Coy Writer during his posting with the said Coy during the year 1996 has committed an act of misconduct and misbehavior in his capacity as a member of the Force u/s 11(i) CRPF Act 1949, wherein his Coy Commander late Inspector. M.C.R.C.Reddy, when enquired about the false transaction of Rs.1000(one thousand only) allegedly made in the Mess Cash Book during May/June 96, the said constable got infuriated and misbehaved with his Coy Commander and also assaulted his OC. Later on in the evening No. 90117075787 CT/GD Laxman Dass shot dead late Inspector M.C.R.C.Reddy on 12.06.96 by firing 18 rounds from personal weapon SLR bearing No. 447 Body No. 15428678 for which he has been tried separately by the Civil Court Jammu under IPC 302, by putting him into judicial custody at civil jail Jammu and placing him under suspension w.e.f 12.06.96(AN)”

10. From a reading of Article of charges aforesaid, it is abundantly clear that there is no charge with respect to any misconduct or remissness on the part of the petitioner in respect of handling of his service rifle as has been held to be proved by the Enquiry Officer. The allegation against the petitioner, as is apparent from a reading of Article I and Article II of the charges, is that he had committed an act of misconduct and remissness in his capacity as member of the Force, in that, he allegedly made false transaction in the OR's Mess Cash Book and also misappropriated mess money worth

Rs.1000. It is this allegation which the petitioner was asked to meet and enquiry was also conducted into that allegation. It was, thus, not open to the Enquiry Officer to return a finding that the petitioner had committed an act of misconduct and remissness in his capacity as a member of the Force by not keeping his official rifle in the safe custody. It is on the basis of this partial proof of the charge, the petitioner has been visited with penalty imposed vide order impugned.

11. I am also at a loss to understand as to how the Disciplinary Authority could treat the period of suspension of the petitioner as it is, w.e.f 12.06.1996 when this Court while allowing SWP No. 1019/2000 vide judgment dated 03.11.2004 has quashed the order of dismissal of the petitioner and ordered his reinstatement with all consequential benefits.

12. It is true that, while allowing the writ petition of the petitioner and setting aside the order dated 11.03.2000 dismissing the petitioner from service, the Writ Court gave liberty to the respondents to hold an enquiry against the petitioner in accordance with the CRPF Act and the rules framed thereunder. Pursuant to the directions passed by this Court on 03.11.2004, the petitioner was reinstated into service with all consequential benefits, but was again put under suspension for the purposes of holding the fresh enquiry. This was done by respondent No.2 vide his order dated 26.07.2005. That being the position, the suspension of the petitioner, the enquiry held against him and ultimately the order of dismissal passed by the Disciplinary Authority, came to be effaced with the passing of judgment dated 03.11.2004 in SWP No.1019/2000. The petitioner was, thus, placed under suspension afresh only on 26.07.2005. The maximum that could have been done by the Disciplinary Authority was to treat the period of suspension of the petitioner w.e.f 26.07.2005 till the passing of the impugned order as it is and nothing beyond.

13. However, having regard to the fact that the allegation, which is said to have been proved against the petitioner in the enquiry was not part of the charges framed against him, the entire impugned order is vitiated in law. The Enquiry Officer could not have returned a finding on the allegation which was not part of the charge-sheet framed against the petitioner, nor the Disciplinary Authority could have imposed any punishment on the basis of such finding of fact returned by the Enquiry Officer which was totally foreign to and unrelated with the charges framed against the petitioner. The mandate of enquiry officer holding disciplinary enquiry is to conduct enquiry into the charges framed against the delinquent and restrict his finding to the charges framed. He cannot return his findings beyond the terms of his reference i.e., beyond the charges to be investigated or enquired into. Any such findings, if returned, would be in violation of principles of natural justice (Audi Alteram Partem). It is trite that nobody can be condemned unheard. Delinquent must know the charges he is going to meet in the disciplinary enquiry and may, accordingly, put up his defense. Finding of fact which are foreign to the charge and even if deducible from evidence recorded during enquiry, cannot be used against the delinquent. Indisputably, there was no charge against the petitioner that he was negligent in keeping his service rifle in safe custody or that, by his negligence and remissness, the petitioner allowed his gun to be used by someone for killing Inspector M.C.R.C.Reddy. Needless to point out that the criminal trial which the petitioner faced for committing the murder of M.C.R.C.Reddy ultimately ended in acquittal of the petitioner. This is evident from the judgment of acquittal recorded by the Principal Sessions Judge, Jammu on 16.10.2002.

14. From a reading of judgment of acquittal aforesaid, it clearly transpires that the petitioner was acquitted for want of adequate evidence to connect him with the commission of crime.

15. Be that as it may, since the allegation taken to have been proved by the Enquiry Officer and made the basis for disciplinary action by the Disciplinary Authority was not part of the charge sheet, as such, the action impugned taken by the Disciplinary Authority is in its entirety vitiated and, thus, cannot sustain in law.

16. For the foregoing reasons, this petition is allowed. Order impugned is set aside. Petitioner shall be deemed to be in the service of the respondents with all consequential benefits as if he was never suspended or punished for misconduct in terms of the impugned order. This, however, does not mean the respondents cannot frame fresh charge and hold a fresh inquiry if permissible in law.

Record be returned to the concerned.

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