



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: April 19, 2023*

Pronounced on: July 04, 2023

+ W.P.(C) 1883/2010

EX CT/GD OM PARKASH Petitioner
Through: Mr. A.K. Trivedi, Mr. Naveen
Kumar & Ms. Mallika Choudhary,
Advocates

Versus

UNION OF INDIA & ORS.Respondents
Through: Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred by the petitioner seeking setting aside of orders dated 11.02.2009, 01.06.2009 and 23.10.2009, issued by the Disciplinary Authority; confirmed by the Appellate Authority and Reviewing Authority respectively, whereby he has been awarded penalty of dismissal from service.

2. The brief background of the case, as narrated by the petitioner in the present petition, is that he had joined services of CRPF on 01.04.1994 on the post of Constable and had been working to the satisfaction of the authorities and superior officials.



3. On 29.10.2018 while petitioner was performing his duty at 176 Bn. CRPF at Varipora (J & K) in the Office of Commandant, a departmental enquiry was sought to be instituted against him under Section 11 (1) of the CRPF Act, read with Rule 27 of CRPF Rules, 1955. A Notice dated 10.12.2008 was served upon him for the charges mentioned as under:-

“Article No.I

That force number 941193052 constable/GD Om Prakash Yadav, (D Company), 176 Battalion Central Reserve Police Force, Waripura, District Badbgaon J & K in capacity of constable/GD under Sec 11(1) of Central Reserve Police Force Act, 1949 read along with Rule 27 of Central Reserve Police Force Rules 1955 has committed disobedience of orders/disregard of duty, carelessness in completion of duty/other offence or misconduct in which on 7.12.2008 during the punishment of line custody unauthorizedly purchased liquor, had consumed over doze of liquor which is against the proper arrangement of force, orders and discipline and is a punishable offence.

Article No.II

That force number 941193052 constable/GD Om Prakash yadav, (D Company), 176 Battalion Central Reserve Police Force, Waripura, District Badbgaon J & K in capacity of constable/GD under Sec 11(1) of Central Reserve Police Force Act, 1949 read along with Rule 27 of Central Reserve Police Force Rules 1955 has committed disobedience of orders/disregard of duty, carelessness in completion of duty/other offence or misconduct in which on 7.12.2008 during the punishment of line custody had consumed over



doze of liquor and in the drunken condition at about 1330 hrs entered unauthorizedly in subordinate officers mess and taken the loaded carbine from the bed of SI/GD Babu Lal and faced the barrel towards force number 8107 91231 SI/GD Kashinath Yadav the SI /GD Kashinath Yadav handled the situation very carefully and seized the carbine from his possession and kept on the bed of SI/GD Babu Lal and the said constable was brought outside the mess by subordinate officer with the help of SI/GD Babu Lal. Thereafter coming out misbehaved with SI/GD Babu Lal and abused him in the indecent manner. During the posting at D/176 Battalion the said constable was caught in drunken condition many times during his duty. Therefore this constable is habitual offender which is against the proper arrangement of force, order and discipline and is a punishable offence.”

4. According to petitioner, consequent upon framing of Charge, the enquiry proceedings were initiated against him. The Enquiry Officer submitted the enquiry report dated 15.12.2008 observing that petitioner was a habitual offender, which is against the proper arrangement of the force, order and discipline; he was in the habit of consuming liquor during his duty hours and in drunken state he misbehaved with SI Babu Lal. After analysing the evidence on record, the learned Enquiry Officer held that the petitioner was in the habit of consuming liquor during duty hours and based upon the evidence of exhibits 1,2,3,5,6,8 & 9, it stood proved that petitioner had directed the magazine loaded carbine towards SI/GD Kasha Nath and behaved in an indecent manner. The Disciplinary Authority i.e. the Commandant concurred with the findings returned by



the Enquiry Officer and vide order dated 11.02.2009 awarded the punishment of “Dismissal from Service” upon the petitioner w.e.f. 11.02.2008. The petitioner preferred a statutory appeal dated 08.04.2009 against the order dated 11.02.2009 before the Appellate Authority, which was rejected vide order dated 01.06.2009. Thereafter, petitioner preferred a statutory revision petition dated 13.09.2009, which also stood rejected by the Reviewing Authority vide order dated 23.10.2009.

5. To substantiate the case of petitioner, learned counsel appearing on his behalf submitted that petitioner has been serving with the respondents with an unblemished service record of 14 years and the Enquiry Officer concluded the enquiry proceedings in an unholy and haste manner to prove the charge on any cost against him. Learned Counsel submitted that the charges of misbehaviour and abusing SI/GD Babu Lal have not been properly “worded” and hence, not sustainable in law. To submit that the vague and indefinite charges deserve to be set aside, reliance was placed upon decision of Hon’ble Supreme Court in *Surat Chand Chakrbarthy Vs. State of West Bengal* AIR 1971 SC 752. It was submitted that though seven witnesses were examined to prove the charge framed against the petitioner, however, none of the witnesses supported the case of prosecution.

6. In support of petitioner’s case, learned counsel submitted that the enquiry made against the petitioner is based upon conjectures and surmises and the allegation of SI/GD Babu Lal that the petitioner in intoxicated condition showed loaded carbine at him, cannot be believed as he himself has stated that when he entered into the Mess he found the



petitioner in intoxicated condition and so, it is unbelievable that petitioner had misbehaved with him. Moreover, if as per medical report petitioner had consumed liquor excessively and so much that he was unable to answer the queries, it was not possible for him to handle the carbine magazine and point it at SI/GD Babu Lal and misbehave with him.

7. Learned counsel further submitted that the penalty of dismissal from service awarded to petitioner is arbitrary and not commensurate with the gravity of misconduct and is in violation of principles of law laid down the by Supreme Court in *B C Chaturvedi Vs. Union of India & Ors.* (1995) 6 SCC 749.

8. On the other hand, the facts put-forth by the respondents in the counter affidavits are that on 29.10.2008 SI/GD Babu Lal found that the petitioner had consumed high dose of liquor. Also, cooked meat packed in a tiffin brought by an unknown civilian, was found with him. The petitioner was sent to Civil Hospital for medical examination and as per medical report, he had consumed liquor and was not in his senses. Even during petitioner's period of confinement to line, petitioner again consumed liquor on 07.12.2008, he entered the Subordinate Officer's Mess and unauthorizedly took out the loaded carbine with magazine from the bed of SI/GD Baby Lal and pointed at him. Petitioner was tactfully handled by SI/GD Kashi Nath Yadav, who was going to dining hall through the same Mess.

9. Learned counsel for the respondents submitted that the matter was reported to a Senior Officer and a disciplinary inquiry was initiated. The Article/Memorandum of Charge dated 10.12.2008 under Section 11(1) of



CRPF Act 6, 1949 read with Rule 27 of CRPF Rules, 1955, was served upon the petitioner, with a copy furnished to him giving opportunity to file a reply. However, petitioner did not file any reply to the same. The departmental proceedings were initiated against the petitioner, wherein a reply was filed on his behalf. The Disciplinary Authority held that the petitioner was not fit for serving in the force and for maintaining good discipline and morale of the force, it was necessary to dismiss the petitioner from service. The petitioner was accordingly dismissed from service vide order dated 11.02.2009 and the appeal preferred by him to DIGP Range, CRPF, was rejected by the Appellate Authority vide order dated 01.06.2009 being devoid of merit. Even the revision petition preferred against the order of the Appellate Authority also stood dismissed vide order dated 23.10.2009. Learned counsel submitted that the orders dated 11.02.2009; 01.06.2009 and 23.10.2009 respectively passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority are valid, legal and deserve to be upheld.

10. Attention of this Court was drawn to the fact that on an earlier occasion also, petitioner was awarded confinement of 15 days as he was found discharging Government duty in a state of intoxication and arranging for cooked meat through local civilian. The petitioner again committed the offence in question and the charges levelled against the petitioner have been proved beyond reasonable doubt. Lastly, learned counsel submitted that being a member of disciplined force, the misconduct committed by petitioner cannot be tolerated and hence, the punishment of “dismissal from service” is commensurate with the gravity



of misconduct committed by him and so, the impugned orders passed by respondents deserve to be upheld.

11. In rebuttal, learned counsel appearing on behalf of petitioner submitted that petitioner had sought 15 days leave to attend his ailing wife but he was not granted leave and due to tension, petitioner consumed small quantity of liquor. It was submitted that SI Babu Lal was biased towards petitioner and so, he had awarded 15 days confinement to line with two hours pack drill. Learned counsel submitted that the charges framed against the petitioner are false and fabricated and the enquiry has been conducted in a hasty manner. The petitioner was not given an opportunity to cross-examine the witnesses and also the material witnesses have not supported the case of respondents. So, the impugned order awarding petitioner's "dismissal from service" deserves to be set aside.

12. The submissions advanced by learned counsel representing both the sides were heard at length and the material placed on record has been carefully perused by this Court.

13. Pertinently, the petitioner in the present petition has challenged his 'dismissal from service' recommended by the Disciplinary Authority vide order dated 11.02.2009 observing as under:-

"8. On the basis of the statements of prosecution side and documents enclosed with the enquiry report and report of the Investigating officer the allegations which are levied against force number 941193052 constable/GD Om Prakash, D/176 BN. Are fully proved. Accused is in the habit of



consuming liquor because during his RPO duty on 20.10.08 he consumed liquor and also had meat after getting it prepared from the residential house which offence he was provided with line custody for fifteen days from 24.11.08 to 8.12.08. It is a serious offence because the area of Jammu and Kashmir is a terrorist area, their during the duty consuming liquor and eating meat after getting it prepared from the residential people, accused being a member of one of the departmental force therefore this type of offence is a serious criminal offence. But I very peacefully giving an opportunity to the accused to improve himself gave the punishment of line custody for fifteen days only. But accused again consumed liquor on 7.12.08 because he was the habitual in consuming liquor and subordinate officer entered in line unauthorizedly and took the carbine which was loaded with magazine from the bed of force number 740190377 SI/GD Babu Lal and directed barrel over the force number 850791231 SI/GD Kashinath Yadav in the drunken condition. Due to all these acts the intention of the accused seems to be wrong because taking of weapon which was kept near the bed of force number 740190337 SI/GD Babu Lal in drunken condition and after taking carbine standing in the firing position seems to be a doubtful incidence. If force number 850791231/SI GD Kashinath Yadav did not reacted in a careful manner then it could have lead to one dangerous incidence in this battalion. Delinquent is appointed in the year 1994 and is working in this superior office from past 14 years. The said delinquent should know the rules of Central Reserve Police Force that in the departmental force what all rules are to



be complied with. From the above incidence it seems that the accused has given black mark to the clean image of force. And also being a responsible constable has presented a shameful example which cannot be ignored. Therefore it is necessary to overcome these kinds of matters with power so that it should be a example for other members of force and the tradition of discipline is to be maintained. Therefore it is necessary to overcome these kinds of matters with power so that it should be example for other members of force and the tradition of discipline is to be maintained. Therefore I come to the conclusion that the force number 941193052 constable/GD Om Prakash D/176 is not capable of keeping in services.”

14. Against the aforesaid order dated 11.02.2009, the petitioner preferred an appeal, which was dismissed by the Appellate Authority vide order dated 01.06.2009 holding as under:-

“After evaluating the all aspect of appeal, application of mind, the DE proceedings and the relevant documents in connection with this case I find that the appellant is a habitual offender of using liquor. While on duty and using abusive/unparliamentary language time and against without any valid reasons and he has not brought out any new facts /substantial evidences in the instant appeal to prove him innocent. The appellant has also failed for establishing himself as innocent either during DE proceedings or in appeal too that he was doing his Govt. Duties in true spirit and not in intoxicated condition. I also find that the punishment awarded by the disciplinary authority i.e. Commandant-176 Bn. CRPF



“DISMISSAL FROM SERVICE” to the appellant w.e.f.12.02.2009 (afternoon) vide office order No. P.VIII-12/2008-Ec_II dated 11.02.2009 is in order and commensurate with the gravity of the offence committed by hi. There is no justification in interfering with the orders passed by the disciplinary authority i.e. Commandant 176 Bn. CRPF. I therefore, in exercise of powers conferred on me under Rule 28 of CRPF Rules 1955 reject the appeal preferred by No.941193052 Om Prakash being devoid of merits.”

15. The Reviewing Authority vide order dated 23.10.2009 refused to interfere with the order of the Appellate Authority observing as under:-

“From the above it is clear that petitioner has not raised any new issue nor presented any evidence which lessens the in disciplinary act done by him. Penalty of ‘dismissal from the service’ which was given to him by the disciplinary authority is in accordance with the principles of natural and is equivalent to the offence committed by him and infirmity in the decision passed by the disciplinary authority to be interfered with. Therefore by using the power given in rule 29 of CRPF Rules 1955 I dismiss the revision petition filed by force number 941193052 ex Constable /GH Om Prakash, 176th battalion being without any merits”

16. The aforesaid orders have been challenged by the petitioner placing reliance upon Hon’ble Supreme Court’s decision in ***Surat Chand Chakrbarthy (Supra)***. In the said case, the petitioner, working as Station Officer in Bengal Fire Service, had challenged his dismissal from service



on the ground that enquiry held against him was vitiated, the charges framed against him were vague and he was not supplied with necessary particulars in the form of statement of allegations. In the facts of the said case, the Supreme Court held that no person can be dismissed or removed from service without informing in writing the grounds on which the action is proposed and without affording him opportunity to defend himself and granted benefits of salary and allowances to the petitioner therein.

17. In the present case, it is not the case of the petitioner that he was not furnished with the required documents. The petitioner has pleaded that the enquiry proceedings are vitiated. On this count, this Court finds that for the two charges framed against the petitioner, an enquiry was held by the competent authority of respondents. The Charge-I pertains to heavy drunken condition of petitioner and seven witnesses were examined, who have deposed against the petitioner, thereby confirming that petitioner had purchased liquor from an outsource unauhorizedly and consumed it heavily. Petitioner's medical examination was conducted on the same day and it was observed in the Medical Report dated 07.12.2008 that petitioner had drunk excessively. Even the petitioner has admitted that he had consumed liquor, however, it was only small quantity he had consumed.

18. The Charge-II pertains to petitioner's misconduct of entering subordinate Mess unauhorizedly in drunken state and showing loaded carbine at SI/GD Babu Lal and SI/GD Kashinath and misbehaving with them. Total four witnesses, including SI/GD Babu Lal and SI/GD Kashinath, were examined. The two other witnesses, namely,



Comp/Commander Chanchal Parwana and Hav/Magan Lal witnessed that the petitioner was in the habit of consuming heavy liquor and he had behaved indecently with SI Babu Lal. No witness was examined by the petitioner in support of his case. Hence, it cannot be said that there was any procedural lapse in conducting the enquiry against the petitioner.

19. Petitioner has also relied upon another Supreme Court's decision in ***B C Chaturvedi Vs. Union of India & Ors. (Supra)***. In the said case a departmental enquiry was initiated against the petitioner therein for having disproportionate assets and so, the facts of the said case are distinguishable and not applicable to the case in hand.

20. During the course of arguments, learned counsel for petitioner also relied upon Supreme Court's decision in ***Brijesh Chandra Dwivedi through LRs Vs. Sanya Sahayak and Ors.*** [Civil Appeal No. 7382/2021] wherein the petitioner had challenged his dismissal from service on account of driving a vehicle, carrying soldiers, under the influence of alcohol, which met with a minor accident. The Supreme Court observed that the misconduct of driving under the influence of alcohol cannot be permitted and merely because the accident was minor, no leniency can be shown. However, the Supreme Court in view of the fact that the accident caused minor loss to the vehicle and no employee died and that petitioner therein had rendered 25 years of long service; held that the punishment of dismissal was too harsh and converted it into compulsory retirement of the employee. The petitioner in the present case cannot claim that the punishment awarded to him is too harsh, as in ***Brijesh Chandra Dwivedi (Supra)*** the petitioner therein had an unblemished service of 25 years,



whereas in the present case there are repeated incidents and complaints of petitioner having consumed heavy liquor.

21. The undisputed position in the present case is that on earlier occasion also petitioner was issued a warning letter dated on 28.08.2005 for his heavy consumption of liquor. On 29.10.2008, petitioner was again found in heavy drunken state by SI/Babu Lal, and he was awarded 15 days confinement with 02 hours drill pack and forfeiture of pay and allowances. For the unfortunate incident that occurred on 07.12.2008, resultant whereof petitioner has been awarded penalty of 'dismissal from service', the petitioner has pleaded that SI/Babu Lal was biased towards him. The fact remains that it was SI/Babu Lal who had on earlier occasion caught the petitioner in heavy drunken state and on his complaint petitioner was awarded punishment of 15 days; therefore, he had become culprit in the eyes of petitioner. Instead of improving his conduct, the petitioner repeatedly consumed heavy liquor, which is substantiated by the evidence of seven witnesses who have deposed against him during enquiry proceedings. In such drunken condition, one day he crossed the limits and pointed the loaded carbine toward SI Babu Lal and misbehaved with him. The position was tactfully handled by SI/GD Kashinath or else any mis-happening could have taken place. The petitioner has challenged his 'dismissal from service' based upon this incident but is clearly silent that even on earlier occasion a warning was issued to him for drinking while on duty.

22. The Hon'ble Supreme Court in *Union of India and Ors. Vs. Constable Sunil Kumar* (2023) 3 SCC 622, dealt with an appeal preferred



by the Union of India against the Judgment passed by the High Court of Rajasthan Bench at Jaipur, whereby the penalty of dismissal imposed upon the respondent, was set aside and petitioner therein was directed to be reinstated in service. The allegation against the petitioner therein was that he had threatened his senior in the state of intoxication. The Supreme Court reversed the Judgment passed by the High Court and held as under:-

“8. At the outset, it is required to be noted that the disciplinary authority imposed the penalty of dismissal after holding the departmental enquiry and after following the due procedure as required under Rule 27 of the CRPF Rules, 1955 and after having held the charges and misconduct proved. The charges and misconduct held to be proved against the respondent who was serving in CRPF — a disciplined force can be said to be a grave and serious misconduct. The charges and misconduct proved against the respondent is of misbehaving with superior and giving threats of dire consequences to the superior, may be under the influence of intoxication. He also misbehaved and gave threats to the colleagues. The misconduct committed by the respondent is of insubordination also. The misconduct of misbehaving with the superior/senior officer and of insubordination can be said to be a very serious misconduct and cannot be tolerated in a disciplined force like CRPF and therefore, as such the Division Bench of the High Court is not justified in observing that on the proved charges and misconduct penalty of dismissal can be said to be disproportionate.

9. While holding that the penalty of dismissal can be said to be disproportionate to the gravity of the wrong, what is weighed with the



Division Bench of the High Court is that as the respondent was found to be in a state of intoxication when not on duty and considering Section 10, he is deemed to have committed a less heinous offence. Whether a member of the force has committed a heinous offence or a less heinous offence as per Sections 9 and 10 of the CRPF Act, 1949 would have bearing on inflicting the punishment as provided under Sections 9 and 10 but has no relevance on the disciplinary proceedings/departmental enquiry for the act of indiscipline and/or insubordination.

10. In Surinder Kumar , it is observed that even in a case when a CRPF personnel was awarded imprisonment under Section 10(n) for an offence which though less heinous, he can be dismissed from service, if it is found to be prejudicial to good order and discipline of CRPF. Under the circumstances, the reasoning given by the High Court that as the respondent is deemed to have committed a less heinous offence, the order of penalty of dismissal can be said to be disproportionate is not required to be accepted.

11. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In Surinder Kumar while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision



in Union of India v. R.K. Sharma that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution.”

23. Applying the observations of the Supreme Court in **Constable Sunil Kumar (Supra)** to the facts of the present case this Court finds that an officer of the Force cannot be permitted to act and behave in lost senses. We are in agreement with the submission of learned counsel appearing on behalf of respondents that a member of force is expected to be highly disciplined and cannot be permitted to do away with such like activities.

24. Even though the petitioner has put forth another plea that he was asking for 15 days casual leave to attend his ailing wife, which was denied and so, he had consumed liquor. This Court finds that grant or rejection of leave is the prerogative of the competent authority of respondents, who while taking such decision, might take into consideration the other administrative and official factors, besides considering the personal requests of the applicant. The officer of a Force cannot be permitted to rebel the decisions of the competent authority and is expected to deal with it with patience and mind. By pleading that since petitioner's leave was rejected, under tension and depression, he consumed liquor; petitioner has



admitted before this Court that he is unable to handle the strain or stress, which is least expected from an officer of the Force. It is not only the medical condition wherein petitioner is found heavily drunk, the situation worsened with petitioner's pointing loaded carbine to another officer of the Force, which is a blunder on his part. The misconduct committed by the petitioner leaves no scope for leniency towards him.

25. In the light of aforesaid, we find that the decision of the Disciplinary Authority, upheld by the Appellate and Revisional Authority is just and proper and calls for no interference by this Court.

26. Finding no merit in the present petition, it is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 04, 2023

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