

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32592 of 2016

M.Muthu

... Petitioner

Vs.

- 1.The Union of India
Represented by the Secretary,
Ministry of Home Affairs
Government of India, North Block,
Central Secretariat,
New Delhi – 110 001.
- 2.The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
- 3.The Inspector General of Police,
Western Sector, CRPF,
CGO Complex,
CBD Belapur,
Navi Mumbai,
Maharashtra – 400 614.
- 4.The Deputy Inspector of Police,
Range HQr., Group Centre, CRPF,
Talegaon Post, Vishnupuri
Pune, Maharashtra – 410 507.

5.The Commandant,
97 Battalion, CRPF,
Group Centre, CRPF,
Avadi, Chennai – 600 065.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of 5th respondent herein made in proceedings P.VIII.4/2014-97-Estt-2 dated 22.12.2014 imposing punishment of dismissal from service and consequential order dated 26.05.2015 of 4th respondent in proceedings No.R.XIII.1/2015-Estt-I and order dated 21.01.2016 of 3rd respondent in proceedings No.R.XIII-16/2015-W.S.Adm.-6 and quash the same and direct the respondents to reinstate the petitioner into service with all monetary benefits and back wages.

For Petitioner : Dr.R.Gowri
For M/s.R.Meenakshi

For Respondents : Mr.A.Murugan
Central Government Standing
Counsel

ORDER

The punishment of dismissal from service imposed on the writ petitioner by the Disciplinary Authority and which was confirmed by the

Appellate Authority and Revisional Authority, are under challenge in the present writ petition.

2. The petitioner joined in the Central Reserve Police Force (CRPF) as Constable on 25.09.2004. While the petitioner was serving in 97 Battalion CRPF, Jharkhand, he reported to A/97 Battalion Company. The Officer Commanding (OC) Shri V.Sumesh Kumar of the Company asked the petitioner to do orderly duties to assist him in doing all kind of personal works. The petitioner expressed his inability to do such duties as he was interested only for performing all kind of combatant duties applicable for Constable Rank in CRPF. On behalf of OC A/97 Battalion, Company Havildar Major and Mess SO insisted the petitioner to do orderly duty to OC A/97 Battalion. The petitioner again expressed his inability and stated that he is not interested in performing orderly duties. This was the incident, which created personal vengeance against the petitioner in the mind of the Superior Officials.

3. The petitioner states that in an another occasion, while the

Company was deployed for Election Duty at Nellore, Andhra Pradesh during February 2014, every Saturday evening a mini cultural programme was being conducted at Company location under the supervision of Shri.V.Sumesh Kumar, OC A/97 in which and talented personnel used to sing and dance in front of Company personnel. When the Company Commander asked the petitioner to sing and dance after finishing the mess meeting, the petitioner expressed his inability to sing and dance being a shy person. The Company Commander repeatedly asked the petitioner in abused manner and the petitioner could not do the same. Thereafter, the Company Commander used to behave indifferently with the petitioner. Whenever, the Company personnel applied for leave, Company Havildar Major (CHM) pressurised them to offer liquor bottles for ensuring sanction of leave. The petitioner refused to give liquor bottle, whenever his leave was sanctioned.

4. The petitioner narrated some other ordeal circumstances underwent by him at the instance of Superior Officials. In this backdrop, a charge memo was issued against the writ petitioner in proceedings dated 31.05.2014 framing five charges as detailed hereunder:-

“ARTICLE - I

That the said Force No. 041677353 CU/GD M. Muthu A/97 Battalion while functioning as Constable (GD) committed disobedience of orders/neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the Force us 11(1) of the CRPF Act 1949, in that he went out of the campus without permission of the Competent authority in sensitive area like Jharkhand.

ARTICLE - II

That the said Force No. 041677353 Ct/GD M. Muthu A/97 Battalion while functioning in the aforesaid Battalion committed a guilty of disobedience of orders/neglect of duty /remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the Force us 11(1) of the CRPF Act 1949, in that he consumed country liquor madhira in sensitive area like Jharkhand.

ARTICLE-III

That the said Force No. 041677353 Ct/GD M. Muthu A/97 Battalion while functioning in the aforesaid Battalion committed a guilty of disobedience of orders/neglect of duty /remissness

in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the Force u/s 11(1) of the CRPF Act 1949, in that he abused the Company Commander with the influence of liquor madhira and threatened him to fire 5.56 mm 300 rounds of LMG.

ARTICLE- IV

That the said Force No. 041632036 Ct/GD Vasudevan K.R. of A/97

Battalion while functioning as Constable (GD) committed disobedience of orders/neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the Force us 11(1) of the CRPF Act 1949, in that he consumed country liquor madhira in sensitive area like Jharkhand.

ARTICLE-V

That the said Force No. 041632036 Ct/GD Vasudevan K.R. of A/97 while functioning in the aforesaid Battalion committed a guilty of disobedience of orders/neglect of duty /remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the Force us 11(1) of the CRPF Act 1949, in that he abused the Company Commander with the

influence of liquor madhira and instigated No. 0414677353 Ct/GD M. Muthu of A/97 Battalion against the Company Commander.”

5. The petitioner submitted his explanation denying the charges. Not satisfied with explanation, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry and submitted his report. Accepting the findings of the Enquiry Officer, the Disciplinary Authority imposed the punishment of dismissal from service upon the petitioner with effect from 22.12.2014.

6. The petitioner states that in respect of the other similarly placed delinquent, the Disciplinary Authority imposed the punishment of reduction to a lower stage in the time scale of pay for three years with cumulative effect to Constable (GD) K.R.Vasudevan in order dated 22.12.2014. On the same day in respect of the same allegations, the Disciplinary Authority imposed the penalty of dismissal from service on the petitioner and imposed reduction of time scale of pay to the other Constable Mr.K.R.Vasudevan. In this context, the petitioner states that he was discriminated on account of personal vengeance against him.

7. The petitioner preferred an appeal on 07.01.2015 and the said appeal was rejected in order dated 26.05.2015. Mr.K.R.Vasudevan also preferred an appeal before the fourth respondent and the punishment was modified to him as reduction of pay by one stage from Rs.9,090/- to Rs.8,760/- in the time scale of pay of Rs.5,200- Rs.20,200/- for a period of one year without cumulative effect. The major penalty was modified as minor penalty to Mr.K.R.Vasudevan.

8. The petitioner preferred Revision Petition before the third respondent and the said Revision Petition was rejected in order dated 21.02.2016.

9. The learned counsel for the petitioner reiterated that Article of charge No.I was not proved. Article of charge Nos.II and III are proved without sufficient supporting prosecution witnesses and evidences.

10. The learned counsel for the petitioner reiterated that the Officer Commanding on account of certain personal vengeance imposed

major penalty of dismissal from service. However, imposed minor penalty in respect of other Constable (GD) K.R.Vasudevan with reference to the similar allegations.

11. It is contended that charge No.I was not proved and therefore, it is not possible to consume the local liquor Madhira at outside the campus. The petitioner has no habit of taking alcohol in his life. The charge has been proved on the basis of wrong suggestions, which was managed to obtain from the Medical Officer of the CRPF by the fifth respondent in order to prove the charges and to impose major penalty of punishment on the writ petitioner. No Blood Test or Urine Test was conducted to prove the charges. Thus, the Enquiry Officer held that Charge No.II is proved without any evidence and therefore, the findings of the Enquiry Officer with reference to charge No.II is perverse.

12. Regarding charge No.III, on 13.04.2015, the petitioner with Constable (GD) K.R.Vasudevan and other colleagues discussed about the unhygienic and tasteless food that too not distributed in time. The petitioner had reported the matter to CHM and Mess SO, but during that time no

weapon was carried on by the petitioner. The petitioner had deposited his weapon to the Kote one day before. The CHM blew the whistle and ordered to stand and asked the petitioner to deposit his weapon to the Kote next day. Thus, the petitioner was not holding any weapon at the time of the alleged occurrence. The petitioner had never threatened anybody to fire 300 rounds from LMG as that point is purely a concocted story and created for the purpose of trapping the petitioner.

13. The petitioner states that his colleague Constable (GD) K.R.Vasudevan had allegedly involved in the same offence and the Joint DE was conducted. However, the said Constable (GD) K.R.Vasudevan was awarded with the punishment of reduction of three increments with cumulative effect, whereas the petitioner was dismissed from service. The Appellate Authority further modified the punishment in favour of Mr.K.R.Vasudevan to that of withholding of one increment without cumulative effect, but rejected the appeal filed by the petitioner. Thus, the petitioner was discriminated in the matter of imposing the penalty on par with co-delinquent Mr.K.R.Vasudevan.

14. The learned counsel for the petitioner contended that the major penalty of dismissal from service was imposed based on personal vengeance and by creating certain circumstances in order to trap the petitioner. Thus, the findings of the Enquiry Officer is without any evidence and therefore perverse and consequently, the punishment is to be set aside.

15. The learned Central Government Standing Counsel appearing on behalf of the respondents objected the said contentions raised on behalf of the petitioner by stating that the charges were framed against the writ petitioner. Charge No.I has not been proved, but the other charges are held proved. The Disciplinary Authority conducted the proceedings by following the Rules in force and there is no infirmity. The petitioner was afforded with an opportunity to defend his case and he participated and defended. Therefore, there is no perversity in respect of the findings of the Enquiry Officer. The Enquiry Officer considered the documents and evidences on record and thereafter, formed an opinion that charge Nos.II and III levelled against the writ petitioner are held proved. The proved charges are grave in nature and therefore, the Disciplinary Authority imposed the punishment of dismissal from service. As far as

Mr.K.R.Vasudevan is concerned, the authorities have considered the veracity of the evidence and accordingly, imposed the lesser punishment and therefore, the contention raised by the petitioner in this regard is untenable. It is further contended that the Authorities Competent considered the quantum of offence and accordingly, awarded the suitable punishment to the said Mr.K.R.Vasudevan and therefore, the petitioner cannot compare the punishment, which was imposed based on the quantum of offence and the evidence available on record.

16. Regarding the personal motive as alleged by the petitioner, this Court has to consider whether the said allegation against the Higher Officials are brought to the notice of the Authorities Competent, including the Appellate Authority during the relevant point of time.

17. Perusal of the appeal filed by the writ petitioner dated 07.01.2015 to the fourth respondent. The said appeal reveals that the petitioner has clearly stated that Shri.Sumesh Kumar, Assistant Commandant asked the petitioner to do butt man duty i.e., orderly duty i.e., to assist the OC (Officer Commanding) in doing all kind of personal works.

But the petitioner expressed his inability to do such duties and said that he is interested only in performing law and order and all kind of combatant duties applicable for CT rank in CRPF. When the petitioner has consistently brought to the notice of the Higher Officials, Appellate Authority and Revisional Authority that he was forced to perform orderly duty to the Higher Officials, it is the duty mandated on the part of the Higher Officials to conduct an enquiry into the allegations specifically raised by the petitioner in the Appeal Petition. Contrarily, the Appellate Authorities have dealt with the charges framed against the writ petitioner and taking note of the findings of the Enquiry Officer and confirmed the penalty of dismissal from service.

18. In this context, the Directorate General, CRPF, Ministry of Home Affairs in Letter No.S-XII-1/2013-Adm.3(Rules) dated 23rd May, 2014, communicated a copy of the letter issued by the Ministry of Home Affairs in proceedings dated 06.03.2014, wherein, the provision of Suraksha Shayaks to Officers in Central Armed Police Force (CAPFs), National Security Guard (NSG) and Assam Rifles (AR) are discontinued. In this regard, the Ministry of Home Affairs, Government of India passed the

following orders.

*“Government of India
Mnistry of Home Affairs/PERSII*

Subject: Discontinuing provision of Suraksha Shayaks to Officers in Central Armed Police Force (CAPFs), National Security Guard (NSG) and Assam Rifles (AR)

1. The 6th Central Pay Commission vide para 7, 19, 46 of its report has recommended that "Use of Constables/other combatants for attachment with specific officers as Suraksha Sahayaks at their respective residences should be stopped immediately. The posts in CPMFs which need to be provided some help for performing these functions should be identified and sanction obtained from the Ministry of Finance. Posts so sanctioned should be filled up only on contractual basis. No regular Constable/Combatant/other employee of the Government should be used for this purpose and in case any officer is found to be using any Government employees for this/any other personal purpose, the salary payable to the Government employee should be recovered from the officer immediately. This will be over and

above any other departmental action which the rules may allow.

2. The above recommendation of the 6th Central Pay Commission was considered by the Government and vide para 10 of the Gazette of India Extraordinary, Ministry of Finance (Department of Expenditure RESOLUTION dated 29th August, 2008, it was decided that "The Government has decided that the practice of provision of Suraksha Schavaks to officers in CPMFs will be discontinued with effect from a date to be fixed. Meanwhile, absolutely necessary posts may be created on the basis of functional justification alone. The decision regarding Suraksha Sahayoks will also apply to similarly placed categories in other departments."

3. The above decision of the Government was communicated to all CAPFs, NSG & AR vide MHA's UO even no. dated 24.09.2008.

4. The CAPFs, NSG & AR have requested this Ministry to continue with the practice of Suraksha Sahayaks to the officers of the rank of above Inspectors of the Forces, on the grounds, among others of sensitive nature of duties the officers are dealing with. The Forces have to

proposed to outsource such activities of Sureksha Sahayaks in stead of non-sensitive postings by creating new posts.

5. The matter has been considered in detail in the Ministry and has been decided to implement the decision of the Government taken on 29.08.2009 and communicated to the all Forces on 24.09.2008, as referred above by stipulating a firm date. Accordingly, it has been decided that the practice of providing Suraksha Sahayaks, to the officers of CAPFs, NSG & AR will stand discontinued w.e.f 30.06.2014.

6. Further, as regard to fresh/new creation of Suraksha Sahayaks posts on the basis of functional justification, the CAPFs, NSG & AR are requested to proceed further for referring the matter to the 7th Central Pay Commission which has already been constituted.

7. This has the approval of Union Home Minister.”

19. When the practice of Orderly System was abolished long back and the Directorate General communicated the decision of the Government of India to all the Subordinate Authorities of the receipt of any

such complaint from any Uniformed Personnel, then it is duty mandatory on the part of the Competent Authorities to conduct an enquiry against the Officers concerned and initiate all appropriate actions under the Statutes and the Rules in force.

20. Contrarily, in the present case, none of the Authorities have looked into the seriousness of the complaint raised against the Officials by the petitioner and concentrated only on confirming the punishment of dismissal from service. Such an approach of the Appellate Authority and the Revisional Authority, at no circumstances, be appreciated. Whenever the last Grade Police personnel is raising a complaint that is to be attended to properly.

21. The Constables are the backbone of the Force and their grievances are to be addressed and redressed in the manner known to law. Contrarily, the Officials are not expected to have a colonial mind set in the matter of practising orderlies in their personal residences or for performing their personal works.

22. Human dignity is ensured under Article 21 of the Constitution of India. Right to life includes the right to live with dignity and all that goes along with it. The dignity is infringed at the instance of the powerful Higher Uniformed Authorities, then the poor subordinate, the last grade police personnel became voiceless and their life became misery, as they are forced to perform such menial job in the name of orderlies, which is undoubtedly below the dignity of the trained Uniformed Personnel, who is expected to perform the combatant duty and other law and order duties in the interest of public at large.

23. The basic right of the citizen of our Great Nation is also infringed on account of such large scale abuse and misuse of the poor Uniformed Personnels, more specifically, by the Higher Authorities by not utilising their services of these trained Uniformed Personnels only for performing the public duties.

24. The trained Uniformed Personnels, at no circumstances, be utilised to perform the menial job in the residences of the Higher Authorities or to do their personal works. The very concept is based on

public policy and directly in violation of Article 21 of the Constitution of India as it affects the very dignity of the trained Uniformed Personnels, whose public duties are to maintain law and order to perform their combatant duties in the Force.

25. The Arms of the Indian Constitution is far more powerful to hammer the organised misconduct or offences if any committed by the higher police officials, since the Constitution of India is resolved by "*We people of India*". In the event of continuing such misconduct or offences such officials are liable to be prosecuted under the relevant Law and under the Departmental Disciplinary Rules.

26. Constitutional Courts are expected to realise ill effects of the situation, where an organised misconduct is being committed by the higher police officials and there is no one to complain as they are the powerful officials, maintaining Law and Order in the society and possessing Arms and Ammunition and the Subordinate officials, who became voiceless. Thus, the Constitutional Courts are the only Institution to step in and protect the rights of the last grade police personnels, who all are made

to suffer on the hands of the higher officials in the name of orderly system.

27. Organised or structural misconducts or offences leading to unconstitutionality result not only in violation of individual rights but to be construed as structural violations. The unconstitutional affairs at large in the Police Department is the cause allows the Constitutional Courts to acknowledge the failure of the Executive Branches of the Government to enforce public policies against the widespread and systematic violation of fundamental rights of our citizen. Thus, judicial intervention by invoking residuary relief clause in the writ prayer in order to combat the systematic violations are justified.

28. The importance of structural misconducts or offences therefore lies in its focus upon the widespread and systematic violation of fundamental rights. In the matter of abolition of orderly system of extracting household works from the trained uniformed police personnel by large number of higher police officials, not only are the criteria for the application of certain legal principles, but such unconstitutional affairs of the Police Department, at no circumstances be allowed to be continued in a

developing Nation, wherein the people are marching towards vibrant democracy. It allows the Courts to take into the “systematic nature” of this practice, both in the recent past, and in its spread across the State of Tamil Nadu.

29. The question arises, once unconstitutional affairs largely in any Uniformed Services and/or Government Departments, have been identified, what is the remedy follows? Certain Courts in foreign countries developed the remedy of structural injunction, or as we know it in India, the continuing Mandamus. The continuing Mandamus allows the Constitutional Courts to take cognizance of the situation, issue interim orders and to monitor for compliance, which crucially will not be limited to single case, but will extend to such unconstitutional affairs in any of the Government Department at large.

30. In the present case, the findings of the Enquiry Officer is not based on the acceptable evidences and it seems that certain Forces are created for the purpose of holding the charges as proved. For instance, Charge No.3 states that the petitioner abused the Company Commandant

with influence of liquor Madhira and threatened him to fire 5.56 mm 300 rounds of LMG. If at all Constable threatened the Company Commandant with gun, it is very serious offence and a criminal case is to be registered. Further in such circumstances, the other Constables and other Officials standing nearby would have immediately prevented the petitioner, but no such sort happened.

31. Contrarily, the Enquiry Officer proceeded merely based on the statement without considering the probability of such incident in Force place and held that the charges are proved. Thus the very finding is not based on any acceptable evidence. Consequently, it became perverse. The charge No.1 has not been proved. The charge No.1 states that the petitioner went out of the campus without the permission of the Competent Authority. The inconsistency in considering the documents and evidences made the findings perverse. Thus the major penalty of dismissal from service is not in proportionate with the allegations.

32. The serious allegations raised are not established with acceptable evidences. The very fact that the complaint raised by the

petitioner against the Superior Officials were not addressed by the Appellate Authority and the Revisional Authority, this Court has to draw an inference that the respondents proceeded against the writ petitioner with some motive or due to the misguidance of the Officer commanding against him.

33. The petitioner has raised certain allegations of forcing the petitioner to perform the orderly duties. The entire reading of the findings would reveal that it is insufficient to form an opinion that the petitioner has threatened the Officer commanding by using his gun in the particular place and no criminal case was registered nor any detailed enquiry was conducted by the Competent Authorities in this regard. Therefore, the findings of the Enquiry Officer is perverse and all these aspects were not deeply considered by the Appellate and Revisional Authorities.

34. In view of the facts and circumstances, this Court is of the considered opinion that the punishment of dismissal from service is excessive and not in proportionate with the gravity of the charges. Further, the petitioner was discriminated in the matter of imposing penalty on par with the other delinquent Mr.K.R.Vasudevan. Accordingly, the following

orders are passed:-

(1) The impugned orders passed by the fifth respondent made in proceedings P.VIII.4/2014-97-Estt-2 dated 22.12.2014, and the fourth respondent in proceedings No.R.XIII.1/2015-Estt-I dated 26.05.2015 and the third respondent in proceedings No.R.XIII-16/2015-W.S.Adn.-6 dated 21.01.2016, are quashed.

(2) The respondents are directed to reinstate the petitioner in service without back wages but with continuity of service.

(3) The respondents are directed to impose the penalty of reduction of pay by one stage for a period of one year without cumulative effect to the petitioner, which was imposed on the other delinquent Constable (GD) Mr.K.R.Vasudevan. An order to that effect shall be passed by the Competent Authorities.

(4) The respondents are directed to implement the orders of the Government of India dispensing with the orderly system in all respects and effectively.

(5) In the event of receiving any complaint from any person, regarding the colonial practice of orderlies for personal works, then actions are to be initiated under the Discipline and Appeal Rules and also under the

Law. That apart, the salary payable to the Government employee, who was made to serve as orderly should be recovered from the Officer concerned immediately by following the procedures. Recovery of salary must be in addition to the departmental action.

(6) The 1st respondent shall ensure that the Government of India orders are effectively implemented and actions are initiated against the Higher Officials, who all are practising the colonial system of orderly in their Battalion by using the constables/combatant/other employee for their personal works either at their residence or elsewhere.

35. With the above said directions, the writ petition stands allowed. However, there shall be no order as to costs.

18.11.2022

Index : Yes / No

Internet: Yes/No

Speaking Order / Non-speaking Order

Jeni/Svn

S.M.SUBRAMANIAM, J.

Jeni/Svn

To

- 1.The Secretary,
The Union of India
Ministry of Home Affairs
Government of India, North Block,
Central Secretariat,
New Delhi – 110 001.
- 2.The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
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