IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

SWP No. 1207/2013

Reserved on: 16.05.2024
Pronounced on:24.05.2024

Prem Pal Singh Ex. Driver No. 930920695, CRPF son of Sh. Sohanpal Singh age 38 years resident of village Nagla Kanshi Post Office Samana District Panchsheel Nagar UP.

…Petitioner

Through: - Mr. A.K.Sharma Advocate with
Mr. S.M.Wajahat Advocate.

Vs.

1 UOI through Home Secretary Ministry of Home Government of India New Delhi
2. Director General, CRPF New Delhi
3. Inspector General CRPF, Bihar Sector Patna
4. Deputy Inspector General CRPF Group Center Muzaffarpur Bihar
5. Commandant 116 Bn. CRPF care of 56 APO.

…Respondents

Through: - Mr. Vishal Sharma DSGI

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 The petitioner has challenged order dated 02.04.2012 issued by respondent No.5/Commandant, 116 Bn. CRPF whereby he has been dismissed from service. Challenge has also been thrown to order dated 18.09.2012 issued by respondent No.4 whereby the appeal of the petitioner against order dated 02.04.2012 (supra) has been dismissed. The petitioner has further challenged order dated 27.02.2013 issued by respondent No.3 whereby the revision petition against order dated 02.04.2018 (supra) has been dismissed.

2 The facts, emerging from the pleadings of the parties, are that the petitioner was appointed as Constable in Central Reserve Police Force (for short 'CRPF') on 28.09.1993. He was transferred to 133 Bn. on 15.06.1994 and after qualifying driver's course, he continued to serve with CRPF as Constable Driver. According to the petitioner, on 11.04.2011, he was assigned the duty of getting the keys of a Treasury/Safe prepared from Ware House, Nehru Market, Jammu and, accordingly, he proceeded in the Bus bearing No. MH 31-7338 to the said place and he was accompanied by Havaldar G.D. Baban Kakoti of 116 Bn. CRPF. After getting the task accomplished, while he was driving out the Bus from Ware House, Nehru Market, Jammu, the said Bus was intercepted by the local police. This was done pursuant to registration of FIR No. 68/2011 for offences under Sections 409/411 RPC on the basis of the allegations that the petitioner was involved in selling of fuel to the civilians. After investigation of the case, the charge-sheet was laid before the Court of learned CJM, Jammu wherein the petitioner was arrayed as accused No.2. Vide order dated 21.11.2011 the learned CJM discharged the petitioner and dismissed the challan as against him. The State preferred a revision petition against the order of the CJM, but without any success and the revision petition was dismissed by the learned Principal Sessions Judge, Jammu on 26.03.2012.

3 It has been averred by the petitioner that on the identical charge of selling fuel of Bus bearing registration No. MH31-7338 to civilians in Ware House area of Jammu city on 11.04.2011, a departmental enquiry was initiated against him. After culmination of the departmental proceedings, charge against the petitioner was stated to have been established and, accordingly, the impugned order dated 02.04.2012 came

to be passed by respondent No.5. The appeal filed by the petitioner against the said order was dismissed by respondent No.4 vide impugned order dated 18.09.2012 and the revision petition filed by the petitioner was dismissed by respondent No.3 in terms of impugned order dated 27.02.2013.

4 The petitioner has challenged the impugned orders on the ground that the respondents have not adhered to the provisions contained in Rule 27 (2)(ccc) of the Central Reserve Police Force Rules, 1955 ('Rules of 1955' for short) which provides that without prior sanction of Inspector General, a member of the Force cannot be punished departmentally in case he is acquitted by a criminal Court on a similar charge. It has been contended that the petitioner has not committed any misconduct warranting his dismissal from service and that the finding of the Inquiry Officer in this regard is based on no evidence. It has been further contended that the petitioner has been condemned unheard and that the Inquiry Officer has ignored the order of discharge passed by the learned CJM, Jammu.

5 The respondents have contested the writ petition by filing a reply thereto. In their reply, the facts narrated in the writ petition have been admitted by the respondents. However, it has been contended that acquittal of petition in criminal proceedings does not, *ipso facto,* amount to his exoneration from the departmental proceedings. It has been submitted that though the petitioner has been acquitted of the charges of selling fuel, but his act has tarnished the image of CRPF for which he has been appropriately dealt with departmentally. It has been further

submitted that the petitioner has been dismissed from service after holding a proper inquiry and after giving him opportunity of hearing and leading evidence in defence. It has also been submitted that arrest of the petitioner by police for selling fuel to civilians in itself is a serious charge which has been proved during the inquiry and, as such, he deserved to be dismissed from service.

6 I have heard learned counsel for the parties and perused the record of the case.

7 As already stated, so far as the factual aspects of the matter are concerned, the same are not in dispute. The question, that is required to be determined in this case, is whether discharge of the petitioner by a criminal Court in respect of a charge, which was also the subject matter of determination in the departmental proceedings, would vitiate the impugned order of dismissal of the petitioner from service. In this regard, we need to have a look at the allegations made in the charge-sheet against the petitioner and the allegations made against him in the articles of charge framed against him in the departmental proceedings.

8 In the criminal case, the case set up by the prosecution was that on 11.04.2011,the police received an information from reliable sources that drivers of vehicles belonging to police department and CRPF indulged in misappropriation of fuel issued to them for use in their official vehicles and that these drivers sell the said misappropriated fuel to the civilians. On receiving this information, the police swung into action, registered FIR No. 68/2011 for offences under Sections 409/411 RPC and intercepted, *inter alia,* the vehicle that was being driven by the petitioner

and it was found that he was selling diesel to accused No.3 in the charge-sheet. Thus, the allegation against the petitioner in the charge-sheet has that he was misappropriating the fuel that was issued in favour of Bus bearing No. MH31-7338 which was in charge of the petitioner and selling the same to civilians.

9 If we have a look at the articles of charge framed against the petitioner in the departmental proceedings, it is alleged therein that on 09.04.2011, the petitioner was detailed for official duty and given charge of vehicle bearing No. MH31-7338 for taking it to Jammu, but on 11.04.2011 at about 1120 hours, he was caught by police of Police Post, Ware House, Jammu selling fuel to certain civilians, where-after, he was arrested and taken into custody by the police. It was also alleged that this occurrence was covered by media with photographs, as a result of which, adverse impact was caused to the reputation of CRPF..

10 From the narration of the allegations made in the charge-sheet and the allegations made in the articles of charge framed in the departmental proceedings, it is clear that genesis of both the proceedings is the alleged misappropriation of fuel by the petitioner and its sale to civilians. So, there can be no doubt to the fact that the allegations made in the two proceedings viz the criminal proceedings and the departmental proceedings in the instant case are identical except that in the departmental proceedings, it has been alleged that arrest of the petitioner, which was covered by the media, has caused adverse impact to the image of CRPF. However, the fact of the matter remains that the basis of even these

allegations is the selling of fuel of official vehicle by the petitioner to the civilians.

11 The learned CJM, Jammu, while considering the case for framing of charge against the petitioner, has concluded that there is no evidence collected by the Investigating Agency that would become a basis for proceeding against the petitioner and, accordingly, he has been discharged vide order dated 21.11.2011 passed by the CJM. In this regard, the conclusion arrived at by the learned CJM is reproduced as under:

> *"Once the figures regarding the balance of fuel available in the fuel tank, as shown by the issuing authorities in their records and that which was removed by the investigating officer from the fuel tanks of the vehicles at the time of occurrence only works out to be equal, in the opinion of this court, prima facie the accused No.1 and 2 cannot be held liable for the commission of offence of criminal breach of trust for there is no reason to disbelieve the authenticity of the record submitted by the authorities responsible for issuing fuel to the said accused persons. The record (supra), as already noticed, has been made part of the charge sheet by the Investigating officer himself. Moreover, there is no direct evidence regarding the sale of fuel to the accused No.3 by accused No.1 and 2. Any element of suspicion against the accused persons on the basis of the attending circumstances like recovery of diesel in plastic cans and barrels, the pipes etc. and presence of the accused No.3 on spot at the time of occurrence just pales into insignificance in view of the record submitted by the authorities responsible for issuing fuel to the accused No.1 and 2 which, as already noticed, totally matched with the balance fuel that was recovered from the fuel tanks by the authorities of police"*

12 From the foregoing observations of learned CJM, it is clear that the quantity of fuel issued for the vehicle that was in charge of the petitioner, after taking into account the distance that was covered by the said vehicle, matches with the quantity of fuel that was actually found in tank of the vehicle meaning thereby that there was no shortfall of fuel and, as such, nothing was misappropriated by the petitioner. The learned CJM

has also concluded that merely because two Jerry Cans filled with fuel were found in the Bus in question does not mean that the petitioner was indulging in sale of fuel, particularly when there was no evidence that he had sold the same to accused No.3. The said order of the learned CJM has been upheld by the learned Principal Sessions Judge, Jammu in the revision petition filed by the State.

13 That takes us to the findings recorded by the Inquiry Officer during the departmental proceedings. The Inquiry Officer, after recording the statements of witnesses, concluded that because two Jerry cans of fuel were found inside the Bus, that was being driven by the petitioner, it is established that the petitioner was indulging in sale of fuel to the civilians.

14. It is a settled law that this Court, in exercise of its writ jurisdiction, cannot go into the sufficiency of evidence on the basis of which the Inquiry Officer has given his findings, yet, it is open to this Court to interfere in the findings of the Inquiry Officer if the same are based upon no evidence or if the said findings are based upon irrelevant material. With this position of law in mind, let us now advert to the case at hand.

15 The only evidence before the Inquiry Officer for concluding that two Jerry Cans of fuel were found inside the bus that was being driven by him is the statement of Baban Katia. Merely because two Jerry cans of fuel were found inside the Bus does not mean that the petitioner indulged in sale of fuel, particularly when no shortfall of fuel was found in tank of the vehicle. There was no evidence on record before the Inquiry Officer to show that the petitioner had either expressed his intention to sell the

fuel to anyone or that he was found conversing with any civilian for striking a deal. In fact, a perusal of the statement of Baban Katia recorded during the departmental proceedings reveals that he has clearly stated that the petitioner never withdrew any fuel from tank of the Bus, nor did he put it in Jerry Can. He further clarified that the petitioner did not enter into conversation with any civilian with regard to the sale of fuel. This part of the statement of Baban Katia, the person who was accompanying the petitioner at the relevant time, has been totally ignored by the Inquiry Officer, as a result of which, he has landed into error in arriving at the conclusion that the petitioner was found indulging in sale of fuel just because two Jerry Cans of fuel were found inside the Bus.

16 Further the Inquiry Officer has totally ignored the order of learned CJM whereby the petitioner has been discharged and exonerated in connection with similar allegations. Although, in his report the Inquiry Officer has taken note of the order of learned CJM, yet he has neither discussed it nor has he assigned any reason for taking a different view. Thus, it is a case of non-consideration of the relevant material by the enquiry officer, as such, this Court does have jurisdiction to interfere in the findings recorded by the Inquiry Officer which, on the face of it, appear to be perverse.

17 It is true that from the evidence led before the Inquiry Officer, it is established that the petitioner was arrested from spot and the media persons covered the event, but for this ,the petitioner cannot be held responsible. He has been exonerated by the criminal Court and in fact, the case lodged against the petitioner by the police could not even proceed to

the stage of trial, meaning thereby that the case against the petitioner was based on no material. In spite of this state of affairs, if the petitioner was arrested and it made a big news in the media, he cannot be blamed for it, nor can he be made a scapegoat for an act for which either the police or the media is to be blamed. The conclusion of the Inquiry Officer in this regard is devoid of any logic and reasoning and, as such, cannot be sustained in law.

18 It has been argued by learned counsel appearing for the respondents that mere discharge by a criminal Court will not debar the respondents from holding departmental inquiry against the petitioner and inflict punishment upon him.

19 There cannot be any dispute to the legal proposition that mere acquittal by a criminal Court will not confer on an employee a right to claim any benefit including reinstatement. However, if the charges in the departmental inquiry and the criminal Court are identical or similar, then the matter acquires a different dimension. This aspect has been dealt with by the Supreme Court in a recent case of **Ram Lal vs State of Rajasthan and others**, (Civil Appeal No. 7935 of 2023 arising out of SLP (C) No. 33423 of 2018**)** wherein the Supreme Court after examining the legal position, observed as under:

> "12 *We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See Deputy Inspector General of Police and Another v. S. Samuthiram, (2013) 1 SCC 598).*
>
> *13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal*

> *proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances.*
>
> *The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]"*

From the above, it is clear that if it is found that acquittal in the criminal proceedings was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, it would be open to the Court to exercise its power of judicial review and interfere in the findings of the disciplinary inquiry.

20 In the instant case, as already stated, the charges in the criminal case and the departmental proceedings are similar in nature. The departmental proceedings, as is clear from the record, are primarily based upon the material collected by the police during investigation of the case. The police case against the petitioner, as already stated, has been thrown out by the criminal Court. at the charge stage itself, not on technical grounds, but after considering the material collected by the Investigating Agency. Therefore, in the peculiar circumstances of the instant case, it would be open to this Court to interfere in the findings of the disciplinary proceedings which, as already stated, are perverse and deserve to be set aside.

21 Apart from the above, it appears that the respondents have not adhered to the provisions contained in Rule 27 (2)(ccc) of Rules of 1955 which provides that when a member of the Force has been tried and

acquitted by a Criminal Court, he shall not be punished departmentally on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General which means that once a member of the Force has been tried and acquitted by a criminal Court, he cannot be punished departmentally for the same charge without the prior sanction of the Inspector General.

22 As already noted, in the instant case, the allegations which formed the basis of criminal prosecution and the allegations which formed the basis of departmental proceedings against the petitioner are similar in nature. The petitioner has been discharged by the criminal Court, but the respondents have proceeded departmentally against the petitioner on the same charge without seeking sanction of the Inspector General.

23 Learned counsel for the respondents has argued that sub-clause (ccc) of Rule 27(2) of the Rules of 1955 uses the expression "tried and acquitted" and, therefore, if an accused is discharged by a criminal Court, the provisions contained in the said sub-clause would not get attracted.

24 Technically, the learned counsel for the respondents may be right in arguing so, but when we closely have a look at the provisions contained in the sub-clause (cce) of Rule 27 (2) of the Rules of 1955, it conveys that if a Criminal Court has tried and acquitted a member of the Force in respect of a charge, whether any evidence has been led or not, he cannot be departmentally punished without the sanction of the Inspector General. This means that the aforesaid sub clause would get attracted to a

case where a member of the Force has been exonerated of the allegations even without leading of evidence in support of the charges in a criminal case. Thus, even a case of discharge from criminal charges on a ground other than technical ground would be covered under aforesaid sub clause. In the instant case, the petitioner may not have been tried by the criminal Court, but he has certainly been discharged and exonerated of criminal charges so his case stands at the higher pedestal than acquittal, particularly when the petitioner has been discharged on merits and not on technicalities.

25 Thus, once it was found by the Criminal Court that the case against the petitioner is so weak that it cannot even proceed to the stage of trial, this Court is of the opinion that it was incumbent upon the respondents to seek the sanction of Inspector General before proceeding against the petitioner on same charge departmentally which, in the instant case, has not been done. On this ground also, the impugned orders passed by the respondents deserve to be set aside.

26 Once it is held that the findings of the departmental proceedings are not sustainable in law, the impugned order of dismissal of petitioner from service also becomes unsustainable in law and, as such, the same deserves to be set aside. The next question that requires to be determined is as to whether the petitioner would be entitled to back wages for the period he has remained out of service. In this regard, it is to be noted that the consistent view of the Supreme Court has been that ordinarily, an employee whose services are terminated and who is desirous of getting back wages is required to either plead or at least make

a statement before the Court that he was not gainfully employed or was employed on lesser wages. Reference in this regard is made to a judgment of the Supreme Court in the case of **National Gandhi Museum vs Sudhir Sharma, (2021) 12 SCC 439,** in which it was held that the fact whether an employee after dismissal was gainfully employed is something within his special knowledge. A similar view has been taken by the Supreme Court in the case of **Allahabad Bank vs Avtar Bhushan Bhartiya, 2022 LiveLaw SC 405.** In the said case, the Supreme Court noticed the propositions laid down by it in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors(2013)10 SCC 324** which are reproduced as under:

> "*31. The propositions which can be culled out from the aforementioned judgments are:*
>
> *(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> *(ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> *(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the*

employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

(vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the

> *sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.*
>
> *Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).*
>
> *(vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman".*

27 From the going analysis of law on the subject, it is clear that even if an employee has succeeded in establishing that his dismissal from service is illegal, he may be entitled to reinstatement, but it is not necessary that he should be given full back wages. For entitling such an employee to full back wages, he has to show that he was not gainfully employed after dismissal of his service. This can be shown by incorporating pleadings in the writ petition in this regard.

28. In the instant case, the petitioner has not pleaded anywhere that he was not gainfully employed after his dismissal from service. Even the respondents have not submitted anything on this aspect of the matter in their reply. In these circumstances, the petitioner may not be entitled to full back wages. In addition to this, it is not a case where the respondents have foisted a false charge upon the petitioner but it is a case where due to registration of criminal case against the petitioner by the police, the respondents had no alternative but to initiate departmental proceedings against him. Therefore, in the facts and circumstances of the case the

relief of back wages in favour of the petitioner deserves to be restricted to 50%.

29 In view of what has been discussed hereinbefore, the writ petition is allowed and the impugned order whereby the services of the petitioner have been terminated is set aside. He is directed to be reinstated with all consequential benefits with a rider that he shall be entitled to only 50% of the back wages. The respondents shall implement this judgment within a period of three (03) months from today.

The record of Inquiry be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

JAMMU
24.05.2024
"Sanjeev '

Whether order is reportable: Yes