

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

LPASW No. 193/2018

Reserved on: 09.08. 2023
Pronounced on: 18.08. 2023

Uttam Singh.

..... Petitioner/Appellant(s)

Through: Mr. G.A. Lone, Advocate with,
Mr. Mujeeb Andrabi, Advocate

V/s

Union of India & Ors.

.....Respondent(s)

Through: Mr. T.M. Shamsi, DSGI with,
Ms. Anjum, Advocate

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.**

JUDGMENT

Sanjeev Kumar-J:-

1. This intra-court appeal by the appellant is directed against the judgment dated 17th October, 2018, passed by the learned Single Judge [“the writ Court”] in SWP No. 346/2008 titled “*Uttam Singh Vs. Union of India and Others*”, whereby, the writ Court has dismissed the writ petition of the petitioner challenging his order of removal from service etc.,

2. Briefly, put the facts, as are gatherable from the pleadings of the parties, are that the appellant came to be enrolled in Central Reserve Police Force [“CRPF”] in the year 1992 after due process of selection. While the appellant was posted in 61 Battalion CRPF at Srigufwara Pahalgam, the

appellant was accused of an attempt to kill constable Shri. Rugbeer Singh by firing at him on 1st August, 1998. An FIR bearing No. 92 was also registered against the appellant under Section 307 RPC in the Police Station Pahalgam. The investigation in the FIR culminated in the presentation of charge sheet before the Court of learned Session Judge, Anantnag. After a proper trial the appellant was acquitted by learned Sessions Judge, Anantnag, vide its judgment of acquittal dated 31st August, 1999.

3. Despite the acquittal of the appellant in a criminal case, respondent No. 5 instituted a departmental inquiry against the appellant on the self-same charges and on the basis of same evidence as was produced by the prosecution before the Court of learned Sessions Judge, Anantnag. The appellant was found guilty of the charge in the departmental inquiry and vide order dated 14th October, 1998, he was removed from service. The appellant availed the statutory remedies of appeal before respondent No. 4 and revision before respondent No. 3. The Appellate Authority, as well as the Revisional Authority, upheld the order of his removal from service.

4. Aggrieved, the appellant filed SWP No. 663/2000. The writ petition was contested by the respondents and the same was ultimately disposed of by a Single Bench of this Court vide its order dated 29th August, 2006. The orders impugned in the writ petition were quashed, however, liberty was given to the respondents to conduct an inquiry into the matter against the petitioner if they choose so strictly in accordance with the mandate of law and the Rules applicable. The learned Single Bench of this Court was persuaded to allow the writ petition and quash the impugned orders by the fact that there was no proper consideration of

appeal and revision filed by the appellant as per Rule 27(ccc) of CRPF Rules 1955 [“the Rules”].

5. Be that as it is, the appellant was reinstated and reported back for duty on 2nd March, 2007. He was suspended pending a fresh inquiry into his conduct. In the first instance, the appellant was served with a show cause notice by the respondent No. 3, as to why action would not be taken against him on the basis of Articles of Charges attached with the notice. The appellant filed reply to the show cause notice and denied the charges levelled against him. He also challenged the authority of the respondents to initiate fresh inquiry. The respondents did not accept the reply filed by the appellant to the show cause notice and in terms of the order dated 27th August, 2007, passed by the respondent No. 4, *de novo* Departmental Inquiry against the appellant under Rule 27 of the Rules on the charges framed in May 2007 was ordered. One Shri. P. Kalyani Assistant Commandant of the 61 Battalion was appointed as Inquiry Officer. He conducted the inquiry and returned its finding about the guilt of the appellant. Based on the finding returned by the Inquiry Officer, the Disciplinary Authority (respondent No. 5) vide order No. 02/07-6/2 P8 dated 12th February, 2008, imposed the penalty of “removal of service” of appellant. The period of absence between 15th October, 1998 to 2nd March, 2007, was also treated as ‘dies non’, and the salary except the suspension allowance with effect from 3rd March 2007 to 12th February, 2008, was also denied.

6. The appellant challenged order of *de novo* inquiry, inquiry proceedings, report of inquiry, and the order of his removal from service passed by the respondents in SWP No. 346/2008 on multiple grounds.

Apart from the ground of non-observance of principles of natural justice and non-compliance with the Rules prescribed for holding inquiries, the appellant took a specific ground that the respondents, in view of the categorical provisions of Rule 27(ccc) of the Rules, could not have ordered Departmental Inquiry against the petitioner on the self-same charge or on a similar charge based upon the evidence cited in the criminal challan which had ended in his acquittal otherwise than by seeking prior sanction of Inspector General of CRPF. It was specifically contended before the writ Court that the Inspector General of CRPF was neither approached nor did he give any sanction for proceeding against the appellant departmentally, though the charges to be inquired into in the departmental proceedings were the same and based upon the same evidence as was cited in the criminal case which ended in acquittal of the appellant before the criminal court.

7. The matter was considered by the Writ Court at length. The grounds of challenge urged by the appellant viz non-compliance with the principles of natural justice and the procedural requirements contained in Rule 27 of the Rules were considered by the writ Court. On facts and in the light of the inquiry record, the writ Court found that not only the appellant had participated in the departmental proceedings, but he was also provided adequate opportunity to defend himself. The writ Court also found no infraction of the procedure laid down in the Rules for the conduct of departmental inquiry. The writ Court, however, did not advert to and considered the ground of challenge urged by the appellant in reference to Rule 27(ccc) of the Rules. The writ petition was consequently dismissed by the writ Court vide its judgment dated 17th October, 2018, which is impugned in this appeal.

8. The impugned judgment is assailed by the appellant on numerous grounds. However, Mr. G.A. Lone, learned counsel appearing for the appellant restricted his challenge to the impugned order only to the ground that the entire inquiry proceedings leading up to the removal of the appellant from service are vitiated for non-compliance with Rule 27(ccc). It is argued, since the appellant had been tried and acquitted by a criminal court on the charge of attempt to murder, as such, he could not have been punished departmentally on the same charge or a similar charge upon the evidence cited in the criminal case except with the prior sanction of Inspector General of CRPF. It is urged on behalf of the appellant that the matter with regard to the grant of sanction was never put up before the Inspector General of CRPF, nor did he grant any sanction for proceeding against the appellant departmentally by passing any formal order after due application of mind. He, therefore, urges this Court to set aside the impugned order and reinstate the appellant with all consequential benefits.

9. *Per Contra*, Mr. T.M Shamsi, learned DSGI, appearing for the respondents submits that the appellant was removed from services of the force after conducting a proper departmental inquiry following strictly the procedure laid down in Rule 27. He further submits that the departmental inquiry was initiated against the appellant after his acquittal in terms of the judgment passed by this Court and after seeking appropriate orders from the Inspector General of CRPF. To substantiate his submissions, he also produced original record of inquiry.

10. Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out Rule 27(ccc) of the Rules.-

27 . “.....(ccc) *When a member of the Force tried and acquitted by a criminal court, he shall not be punished departmentally under this rule 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.*”

11. Rule 27 (a) of ‘Chapter VI-Discipline’ *inter alia* enumerates the type of punishments that may be inflicted on non-gazetted officers and men of various ranks, as also the authorities which are competent to inflict such punishments after holding formal Departmental Inquiry. Clauses (b) & (c) of Rule 27 lay down an elaborate procedure to be followed in the inquiry. Whether or not the procedure laid down in Rule 27 was followed by the respondents is not subject matter of debate for the reason that the only ground pressed into service by the learned counsel for the appellant is in respect of non-compliance of Rule 27(ccc).

12. From reading of the Rule 27(ccc), it is crystal clear that if a member of Force has been tried and acquitted by the criminal court, he cannot be punished by holding a Departmental Inquiry on the same charge or on a similar charge upon evidence cited in the criminal case. It does not matter whether the evidence cited in the criminal case is actually led or not. There is, however, an exception to this general rule to the extent that a person acquitted in a criminal court can be punished departmentally even on same charge and the same set of evidence provided there is prior sanction of the Inspector General.

13. In the instant case, as is discernable from the reply affidavit filed by the Additional Deputy Inspector General of Police, CRPF, the office of

IGP vide his signal No. J.II 444/06-NS-O dated 5th February, 2007, accorded approval for conducting of Departmental Inquiry against the appellant. It has also come in the reply affidavit of the respondents that even the fresh draft of Article of Charges framed against appellant was sent to the IGP Northern Sector, New Delhi, which was modified by the later. The signal in the record of the respondents which is claimed by the respondents to be the compliance of Rule 27(ccc) makes an interesting reading and is, therefore, reproduced hereunder:

***“TO 61 BN
INFO DIGCENT (L) DTE, DIG II AJM, GC SNR
FM POLICE NS HQR
NO. J.II-444/2000-NS-O 5/2/07 UNC
SWP NO 663/2000 F/B EX CT UTTAM SINGH IN
THE HIGH COURT OF J&K AT SNR[.] REF DIGCENT
(L) DTE SIG. J.II-252/2002-LWP DTD 2/2/7 [.]REQST
TAKE IMDTE ACTION FOR IMPLEMENT THE
COURT ORDER AND ALSO CONDUCT INQUIRY AS
PER RULES AND OUTCOME BE INTIMATE TO ALL
CONCERNED ACCDLY [.] DIT II AJM ONLY [.] REQST
MONITOR AND ENSURE ACTION BY 61 BN ON TOP
PRIORITY AND CFM/////”***

14. Other than the signal reproduced above, this Court could not find any material in the record which would suggest that the Inspector General of CRPF, who was reportedly approached for grant of prior sanction, applied his mind and passed any formal or informal order for initiating departmental proceedings against the appellant notwithstanding his acquittal from the criminal court on the same charges based on same set of evidence. It needs to be made clear that the respondents do not dispute that the appellant was proceeded departmentally on the self-same charge based on same evidence as it was cited in the criminal case tried by a competent

court of criminal jurisdiction. It is not also in dispute that the appellant was acquitted by the criminal court of the charge levelled against him.

15. From the above, it is abundantly clear that there has been no strict compliance of Rule 27(ccc) of the Rules. It is relevant to mention here that the earlier writ petition filed by the appellant was allowed primarily on the ground that the appellant had been tried by the respondents departmentally, despite his acquittal by the criminal court on the same charges, without seeking prior sanction of Inspector General of CRPF, as envisaged under Rule 27(ccc). The impugned orders were set aside with liberty to the respondents to conduct a *de novo* inquiry strictly in accordance with the mandate of law and the applicable rules. The least that was expected of the respondents was to put up the entire matter before the Inspector General, so that he could take an informed decision as to whether it was desirable and expedient to hold Departmental Inquiry against the appellant on the self-same charges based on same set of evidence as was cited and led before the criminal court which ultimately acquitted the appellant. The power to grant sanction in a situation envisaged by Rule 27(ccc) is conferred by the Rules on the Inspector General, a top ranking Officer in the Force, with the object that a fair, impartial and an informed decision is taken by him with regard to the desirability of conducting the departmental proceedings on the self-same charges for which the delinquent has already faced criminal trial and earned acquittal from the competent court of criminal jurisdiction. The grant of sanction is not an idle formality or a ministerial act to be performed by the Inspector General. Before granting or refusing to grant sanction for departmental proceedings in any such situation would call for a proper application of mind, going through the entire record including the judgment of acquittal recorded by the criminal court, as also the nature of

evidence led before the criminal court and the nature of evidence proposed to be led before the departmental proceedings.

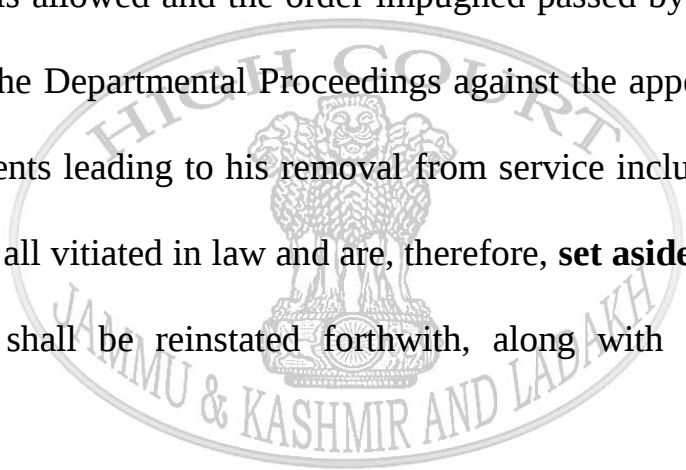
16. The Inspector General is required to take an informed decision as to whether in the given facts and circumstances, it is desirable as also expedient to hold Departmental Inquiry on the charge, notwithstanding the fact that the delinquent has already been acquitted by a competent court of criminal jurisdiction on the same charge. This has not happened in the case on hand, even the signal relied upon by the respondents does not indicate as to whether there was an application of mind by the Inspector General of CRPF: Whether the entire record was produced before the Inspector General of CRPF: Whether the Inspector General of CRPF was even aware that on the self-same charge the appellant stood already acquitted by a competent court of criminal jurisdiction after a full-fledged trial. It seems that Inspector General of CRPF, on being approached, perfunctorily granted approval for *de novo* inquiry against the appellant. He may have even looked into the draft of fresh charges and made certain modifications thereto. However, that does not make the exercise of power by the Inspector General of CRPF in consonance with the Rule 27(ccc).

17. It is trite law that when proceedings are required to be instituted on the basis of a sanction, whether under a statute or otherwise, the sanction must be a valid in law. Not only there should be a formal order of sanction passed by the Competent Authority, but it should also appear from such order that all necessary and relevant materials have been considered by the Sanctioning Authority before according sanction. A signal or a wireless message cannot be a substitute for a formal order of sanction to be passed by the Competent Authority after due application of mind. Even the

endorsement of the words “approval granted” in the contemporaneous record of the respondents is not sufficient compliance of the Rule 27(ccc). The grant of sanction for proceeding against a member of Force in departmental action despite his acquittal from the criminal court on the self-same charge is a serious act required to be performed by proper application of mind and taking an informed objective decision.

18. Viewed from any angle, the Departmental Inquiry initiated against the appellant culminating into an order of removal of the appellant are vitiated for non-compliance of Rule 27(ccc) of the Rules. The writ Court has not considered this issue at all, though the same was specifically raised by the appellant in the writ petition and tried to be met by the respondents in their reply affidavit.

19. Be that as it is, for the reasons given above, the appeal succeeds. The appeal is allowed and the order impugned passed by the writ Court is **set aside**. The Departmental Proceedings against the appellant initiated by the respondents leading to his removal from service including the order of removal are all vitiated in law and are, therefore, **set aside**. The appellant if within age shall be reinstated forthwith, along with all consequential benefits.



(Rajesh Sekhri)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:
18.08.2023
“Mir Arif”

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|---|------------|
| i. Whether the Judgment is Speaking? | Yes |
| ii. Whether the Judgment is Reportable? | Yes |