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Court : Punjab and Haryana

Decided On : Dec-22-2015

Judge : Harinder Singh Sidhu

Appeal No. : CWP No. 5514 of 2013

Appellant : Joginder Pal

Respondent : Union of India and Others

Judgement :

This petition has been filed praying for quashing the order dated 29.02.2012 (Annexure P-3) whereby punishment of compulsory retirement has been imposed on the petitioner. Also challenged are the orders dated 22.06.2012 (Annexure P-4) and 05.11.2012 (Annexure P-5) whereby the appeal and revision of the petitioner against the said order has been dismissed.

The petitioner was enlisted in CRPF on 28.02.1992. It was alleged that on 24.07.2011, at 1430 hours, while the petitioner was detailed as Guard Commander of Quarter Guard for two days w.e.f. 23.07.2011 to 24.07.2011, he consumed alcohol/ liquor and displayed ill manner behaviour under intoxication and started abusing in the line area. The matter was brought to the notice of the Commandant by O.C.G./190. Taking cognizance of the complaint lodged by O.C.G./190, the petitioner was attached with Unit Headquarter for attachment duty. On 07.08.2011, at 930 hours, he again consumed liquor and started abusing in the camp/line area

of Bn. Headquarter. A preliminary enquiry was ordered into these two incidents vide order dated 08.08.2011 and on the same being prima facie proved, vide Office order dated 08.09.2011, a departmental enquiry under Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as the "1949 Act"), read with Rule 27 of the Central Reserve Police Force Rules, 1975 (hereinafter referred to as the "1975 Rules") was initiated against the petitioner on the following charges:

"Charge-I

No.921340913 HC/GD Joginder Pal of 190 Bn

CRPF

Details of Article

Article-I

That above No.921340913 Ex. HC/GD Joginder Pal of 190 Bn dated 24.07.2011 posted at G 190 Vahini Pakadiya during duty consumed liquor and in the influence of liquor instead of doing duty was lying on his bed and was uttering abusive words which under Section 11(1) of the Central Reserve Police Force Act, 1949 as a member and violation of orders/instead of duty/in discharging of his duty acted shamefully and disrespectfully.

P.P. Pauly

Commandant-190 BN

Charge-I

Allegations of bad behavior and leveled against No..921340913 HC/GD Joginder Pal of 190 Bn CRPF in the article of charge sheet.

Article-2

No.921340913 Ex. HC/GD Joginder Pal of 190 Bn dated 24.07.2011 posted as member of the CRPF Police Force, committed under Section 11(1) of the Central

Reserve Police Force Act, 1949 as a member and violation of orders and instead of duty and in discharging of his duty acted shamefully and disrespectfully and 7.08.2011 at office vahini Chatra during duty consumed excess liquor and the effect of liquor was such that he removed the clothes of his body and was roaming in the camp/line and was uttering abusive words in line which under Section 11(1) of Central Reserve Police Force Act, 1949 is an offence.

P.P. Pauly

Commandant-190 BN

Charge-2

Details of the allegation leveled in article No.921340913 HC/GD Joginder Pal of 190 Bn.

Article-I

That above No.921340913 Ex. HC/GD Joginder Pal of 190 Bn dated 24.07.2011 posted as HC and on 24/07/11 his duty was between 1200 to 1600 and at about 1400 it was seen that above mentioned HC/GD was lying on his bed and was vomiting and in the influence of liquor was uttering useless. Information of this was given to commandant and on issuing orders by the commandant for medical examination, medical examination of employee was conducted at Civil Hospital Chatra. In the report of medical examination consumption of liquor was confirmed, which was under Section 11(1) of Central Reserve Police Force Act, 1949 as a member and violation of orders/instead of duty/in discharging of his acted shamefully and disrespectfully.

Charge-2

Allegations of bad behavior and leveled against No..921340913 HC/GD Joginder Pal of 190 Bn CRPF in the article of charge sheet.

Article-2

No.921340913 Ex. HC/GD Joginder Pal of 190 Bn dated 24.07.2011 posted as member of the CRPF Police Force, committed under Section 11(1) of the Central Reserve Police Force Act, 1949 violation of orders and instead of duty and in discharging of his duty acted shamefully and disrespectfully because of which HC/GD on 7.08.2011 at office vahini Chatra during duty consumed excess liquor and the effect of liquor was such that he removed the clothes of his body and was roaming in the camp/line and was uttering abusive words in line which under Section 11(1) of Central Reserve Police Force Act, 1949 is an offence. Information of this HC/GD Shriniwason was conveyed to the higher officials after which employee was examined at Civil Hospital Chatra and in the medical report it was verified that during duty consumed liquor which under Section 11(1) of Central Reserve Police Force Act, 1949 is an offence."

P.P. Pauly

Commandant-190 BN"

The enquiry officer submitted his report dated 22.12.2011 (Annexure P-2), wherein, the allegation leveled in Article-I of Charge-1 namely that the petitioner consumed alcohol on 24.07.2011 during duty hours and instead of being on duty was lying on his bed in an intoxicated state and uttering non-sense, was held to have been fully proved. Article-2 of Charge-I, namely that on 07.08.2011, the petitioner while on duty at the Battalion Headquarter consumed excessive liquor and in an intoxicated state had removed his clothes and was walking about naked in the camp and shouting abuses was not fully proved. The Enquiry Officer held that though the petitioner had admitted this charge but on the basis of statements of witnesses, it was only partly proved to the extent that the petitioner had consumed alcohol and was uttering abuses. Article-I of Charge-2, that on 24.07.2011, the petitioner at 1400 hours during his duty from 1000 to 1800 hours was lying on his bed in an intoxicated state and uttering abuses and had vomited was held to have been fully proved. Article-II of Charge-2 was proved to the extent that on 07.08.2011, the petitioner had consumed excessive liquor and was roaming about uttering abuses and disturbing the others present.

A copy of the inquiry report was sent to the petitioner on 06.01.2012, calling upon him to make representation in regard thereto within 15 days. He replied vide letter dated 23.01.2012 that he does not wish to present any witness or any document in defence. He only requested that he would not commit any such mistake again and that he be forgiven for the lapse. After considering the enquiry report, the competent authority i.e. Commandant-190 Bn. CRPF, passed the impugned order dated 29.02.2012 imposing punishment of compulsory retirement on the petitioner and removed from the service of the Battalion. He was to be given 85% proportionate pension and full gratuity.

Aggrieved against the aforesaid order, the petitioner preferred an appeal before the Deputy Inspector General of Police, Agartala, which was dismissed vide order dated 22.06.2012 (Annexure P-4). The revision filed by the petitioner against the said order was dismissed by the Inspector General of Police, Bihar Sector, C.R.P.F. vide order dated 05.11.2012 (Annexure P-5).

Aggrieved, the petitioner has filed the present writ petition.

Learned counsel for the petitioner has urged the following grounds:

(i) As the inquiry was initiated against the petitioner under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of Central Reserve Police Force Rules, 1975, only minor punishment as contemplated under Section 11(1) could have been imposed and not the major punishment of compulsory retirement.

(ii) The Disciplinary Authority while imposing punishment has taken into account the past conduct of the petitioner, which could not have been done with first giving him notice and opportunity to explain.

(iii) The punishment imposed is grossly disproportionate to the charges alleged and proved.

Learned counsel for the respondents on the other hand has justified the imposition of punishment. He states that it has been settled by the Hon'ble Supreme Court as also this Court, that under Section 11(1) of the CRPF Act, 1949, punishment of dismissal or removal from service can also be awarded. He has further stressed

that the Central Reserve Police Force being a disciplined force, the act of the petitioner in consuming liquor during duty hours and roaming about in an inebriated condition shouting abuses, is wholly subversive of the discipline in the force and such a behaviour cannot be countenanced. He has further argued that the respondents have in fact taken a lenient view in awarding the punishment, of compulsory retirement. In regard to the argument of the past conduct having been taken note of by the Disciplinary Authority, it has been urged that the said reference was only to re-inforce the conclusion of the Disciplinary Authority. He has argued that the punishment imposed is justified even on the allegations proved against the petitioner, without reference to any past conduct.

The argument of the Ld. Counsel for the petitioner, that punishment of compulsory retirement could not have been imposed as the enquiry was initiated under Section 11(1) of the 1949 Act, cannot be accepted. The issue already stands settled by the decisions of the Hon'ble Supreme Court as also this Court.

In Union of India v. Ghulam Mohd. Bhatt, (2005) 13 SCC 228, it was observed as under:

"5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the Force who is found guilty of disobedience, neglect of duty or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the Force. According to the High Court the only punishments which can be awarded under this section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. The use of the words "in lieu of, or in addition to, suspension or dismissal", appearing in sub- section (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or

suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.

7. It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the Force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10."

Before going into the second ground urged by the Ld. Counsel for the petitioner, it is necessary to refer to the observations of the Disciplinary Authority while passing the impugned order which as translated read as under:

"The enquiry officer has held an impartial enquiry and in compliance with the rules of natural justice has given the delinquent full opportunity to defend himself. Hence I have concluded that the delinquent No. 921340913 Hav/ GD Jogender Pal (G/190) is irresponsible, indisciplined and prone to excessive drinking. Even when the department proceedings were going on against him, without caring for the departmental proceedings, he consumed alcohol on 2.11.2011 and 8.11.2011 and became drunk. Thereafter his medical examination was got conducted and the Medical Officer from Sadar Hospital, Chatra confirmed the consumption of liquor. On nine earlier occasions also the delinquent has been awarded punishments for similar acts. These include line imprisonment six times, pack drill one time, one time absent and one time half salary. Such action cannot be expected from any member of a disciplined force like the CRPF. The delinquent is highly indisciplined and not fit to be retained in the force."

It was noted that keeping in view his service of more than 19 years a lenient view was taken and the impugned punishment imposed.

A perusal of the aforementioned order reveals that the act of the petitioner in consuming alcohol on 2.11.2011 and 8.11.2011 during the pendency of departmental proceedings as also his past conduct and the punishments earlier imposed appear to have influenced the conclusion of the Disciplinary Authority that the petitioner was highly indisciplined and not fit to be retained in the force. If the Disciplinary Authority had confined itself to only the two incidents which were the subject matter of the present enquiry, it is possible that its conclusion may have been different.

Now the question is what is the impact thereof on the order of punishment.

The question has been considered by the Hon'ble Supreme Court a number to times. In one of the earlier cases a Constitution Bench of the Hon'ble Supreme Court in State of Mysore v.K. Manche Gowda, (1964) 4 SCR 540 held that if the previous record or previous punishment is to be taken into consideration for imposing penalty, the employee should be informed about it . It was observed as under:

"7.Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam v. Bimal Kumar Pandit. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past

record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

Affirming this principle that Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee, the Hon'ble Supreme Court in Mohd. Yunus Khan v. State of U.P., (2010) 10 SCC 539, observed as under :

"34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge- sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, India Marine Service (P) Ltd. v. Workmen, State of Mysore v. K. Manche Gowda, Colour-Chem Ltd. v. A.L. Alaspurkar, DG, RPF v. Sai Babu, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate and Govt. of A.P. v.

Mohd. Taher Ali and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required".

The same position has again been reiterated by the Hon'ble Supreme Court in Indu Bhushan Dwivedi v. State of Jharkhand, (2010) 11 SCC 278 and observed as under:

"19. We shall first deal with the question whether consideration of the past adverse record of the appellant by the High Court had the effect of vitiating the ultimate order passed by the State Government. An exactly similar question was considered and answered in the affirmative by the Constitution Bench in State of Mysore v. K. Manche Gowda. The facts of that case were that while the respondent was holding the post of an Assistant to the Additional Development Commissioner, Planning, Bangalore, the Government of Mysore appointed Shri G.V.K. Rao (Additional Development Commissioner) to conduct a departmental enquiry against him in respect of the false claims for allowances and fabrication of vouchers.

20. The enquiry officer framed four charges against the respondent. After holding an enquiry in accordance with relevant rules, the enquiry officer submitted report with the recommendation that the respondent might be reduced in rank. However, the Government issued a notice to the respondent requiring him to show cause as to why he may not be dismissed from service. After considering his reply, the Government dismissed the respondent from service. The respondent challenged his dismissal by filing writ petition under Article 226 of the Constitution of India. The High Court quashed the order of dismissal on several grounds including the one that the respondent had not been foretold about the proposed consideration of his past adverse record.

21. This Court approved the view taken by the High Court and observed: (Manche Gowda case, AIR pp. 509-10, para 7) "7. Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in State of Assam v. Bimal Kumar Pandit. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in

inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of 'presumptive knowledge' or that of 'purposeless enquiry', as their acceptance will be subversive of the principle of 'reasonable opportunity'. We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation." (emphasis supplied)

The proposition laid down in the abovenoted judgment represents one of the basic canons of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause.

22. As a general rule, an authority entrusted with the task of deciding lis between the parties or empowered to make an order which prejudicially affects the rights of any individual or visits him with civil consequences is duty-bound to act in consonance with the basic rules of natural justice including the one that material sought to be used against the person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of the

concept of rule of law. This right has its roots in the notion of fair procedure. It draws the attention of the authority concerned to the imperative necessity of not overlooking the cause which may be shown by the other side before coming to its decision.

23.When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also to disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty- bound to act in consonance with the rules of natural justice --U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee."

Ld. Counsel for the respondents has relied on the judgment of Hon'ble the Supreme Court in Govt. of A.P. v.

Mohd. Taher Ali, (2007) 8 SCC 656, to contend that that there is no absolute proposition that where past conduct is taken into consideration without giving the employee an opportunity to explain, the action of the disciplinary authority has to be quashed. He has argued that where the past conduct has been referred to only to reinforce the conclusion of the disciplinary authority then the action has to be upheld.

In my view the argument of the Ld. Counsel for the respondent cannot be accepted. In the above case relied upon by the Ld. Counsel for the respondent, the police official had been deputed for making security arrangement for the elections.

He absented himself for 21 days. Considering the gravity of the lapse on the part of the police official, the Hon'ble Court held that the conduct itself was so serious as to justify the imposition of the punishment of compulsory retirement. It was in that context that the Hon'be Supreme Court held that the reference to the past

conduct was only with a view reinforce the opinion of the authority which was justified even without a reference to such conduct.

The Hon'ble Court observed as under:

"4. It is an admitted position that the respondent was appointed on election duty but he absented himself from election duty. It seems that the respondent did not consider the election duty to be an important business which is very important for the whole nation. The respondent was appointed on election duty and was deputed to take security arrangement but absented himself from duty. This is a very serious lapse on the part of the respondent. The police force is a disciplined force and the respondent was detailed for such an important duty of election. He absented himself from election duty. Such kind of serious lapse cannot be treated lightly. It is a very important function and if the incumbent avoided the duty of election, he cannot escape from the liability of the penalty of compulsory retirement. We fail to understand the reason for the Administrative Tribunal or for the High Court to have remitted the matter back to the disciplinary authority for reconsideration of the punishment of compulsory retirement imposed on the respondent.

5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled State of Mysore v. K. Manche Gowda1 but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the

said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement."

The same cannot be said for the present case. It cannot be held with the same degree of certitude that the two solitary instances would have persuaded the authority to impose the punishment of compulsory retirement and further that the said punishment would be justified.

Considering the fact that the past conduct has clearly been relied upon while imposing the punishment of compulsory retirement on the petitioner and there is nothing on record to suggest that he was informed that the past conduct would be relied upon, in view of the settled legal position, there is no option but to conclude that the punishment imposed on the petitioner cannot sustain.

In view of the conclusion on this ground there is no occasion to deal with the third ground urged by the Ld. Counsel for the petitioner that the punished imposed is highly disproportionate to the charges alleged and proved.

Accordingly this petition is allowed. The order of the disciplinary authority as also the appellate and revisional orders, Annexures P-3, P-4 and P-5, respectively, are quashed.

The matter is remitted to the disciplinary authority to take a fresh decision on the basis of the enquiry already conducted after giving the petitioner an opportunity of hearing. If the past conduct is to be taken into consideration the petitioner be duly informed about it and given an opportunity to explain his position.

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