

(2023) 05 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 13915 Of 2019

Dhiraj Kumar Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-05-2023

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)

Citation : (2023) 05 DEL CK 0001

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Anuj Aggarwal, Vikrant Chawla, Ayushi Bansal, Arshya Singh, Amrita Prakash, Vishal Ashwani Mehta

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. Petitioner, a Deputy (Dy.) Commandant in Central Reserve Police Force ("CRPF") was served with a Presidential Memorandum dated 24.05.2007 on the following Charge:-

" MEMORANDUM

The President proposes to hold an inquiry against Shri Dhiraj Kumar Singh, Dy. Commandant (IRLA 4246) of 89 Bn CRPF presently posted in O/O IGP CS CRPF Lucknow under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of charge (Annexure- I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II) . A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

ARTICLE-I

That the said Shri Dhiraj Kumar Singh Dy. Commandant while posted and functioning as Dy. Commandant / QM / MTO in 89 Bn CRPF committed an act of misconduct in that he collected some spare parts for Maruti car amounting to Rs.2,760/- through No .9 13155142 CT/Dvr Ram Bachan Singh of 89 Bn on 06/12/03 from M/S United Motor Stores, GT Road, Ferozepur Cantt and did not make any payment for the same for which the firm concerned approached the CRPF authorities. Thus Shri Dhiraj Kumar Singh, Dy. Commandant has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt servant; thereby violating the provisions contained in Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri Dhiraj Kumar Singh Dy. Commandant while posted in aforesaid Unit and functioning as QM/MTO of the Unit committed an act of misconduct in that on 05/ 10/03, he sent vehicle Regn. No. DIG -424 Tata Truck of 89, Bn for repairs for repairs of M/S Luxmi Machinery Stores, GT road , Ferozepur Cantt, whereas as per comparative statement approved by the competent authority on 22/09/03 , the said vehicle was to be repaired by M/S Mahavir General Store, GT Road, Ferozepur Cantt for which supply / work order was also give to the firm on 05/10/.03 under the signature of Shri Dhiraj Kumar Singh Dy. Commandant being the QM/MTO of the unit. Thus Shri Dhiraj Kumar Singh, DY. Commandant has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt servant; thereby violating the provisions contained in Rule 3(1), (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Shri Dhiraj Kumar Singh Dy. Commandant while posted in aforesaid Unit committed an act, of misconduct in that on 15/10/2003, he collected Rs.6,000/- in cash from M/S Mahavir General Store, GT road, Ferozepur Cantt on the pretext of paying the same to MIS Luxmi Machinery Store, GT Road, Ferozepur Cantt for the portion of job work/ repair done by-them on vehicle Regn. No.DIG-424 but instead of paying the amount to M/s Luxmi Machinery Stores, Ferozepur Cantt., he retained the amount with him. Thus Shri Dhiraj Kumar Singh, Dy. Commandant has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant; thereby violating the provisions contained in Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV

That while posted and functioning as Accounts Officer in 89 Bn CRPF the said Shri Dhiraj Kumar Singh, Dy. Commandant committed a serious misconduct in that on 07/02/04, he collected Rs.11,400/- from Shri R Gautam, Asstt. Commandant who had received 'the same from GC CRPF Jalandhar for meeting

the expenditure in connection with function organized on the eve of presentation ceremony of Best Ops Bn: trophy. Thereafter, he neither took the amount in Cash book nor maintained any account of the amount or deposited the unspent amount in the fund and kept the amount with him unauthorisedly. Thus Shri Dhiraj Kumar Singh, Dy. Commandant has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant; thereby violating the provisions contained in Rule 3(1),(i), (ii) & (iii) of the Conduct Rules, 1964."

2. Upon receipt of aforesaid Memorandum dated 24.05.2007 on 08.01.2007, petitioner in his written statement dated 05.09.2007 denied the charges levelled against him. The enquiry proceedings were set into motion, wherein he participated assisted by his Defence Assistant. Evidence of nine prosecution witnesses was recorded, whereas no defence witness was produced by the petitioner. The Inquiry Officer held that Article-I was proved; Article-III was partially proved; and Article - II and IV were not proved. The Disciplinary Authority in agreement with the report of Inquiry Officer, sought advice from CVC. In agreement with the opinion of the Disciplinary Authority, the CVC advised imposition of minor penalty upon the petitioner. Upon receipt of copy of Inquiry Report along with acceptance of the Disciplinary Authority as well as recommendation of the CVC vide letter dated 02.11.2011; petitioner made a representation dated 13.02.2012 against thereof. However, the same was rejected with the observation that no new facts or material to refute the charges were put forth by the petitioner and respondents consulted with the Union Public Service Commission ('UPSC') to decide the quantum of penalty.

3. After examination of the case of petitioner, UPSC observed that out of four Articles of Charge, Article -I stands fully proved and Article-III proved to a great extent and advised imposition of penalty of "reduction to a lower stage in the time scale of pay for a period of three years with further directions that the Charged Officer will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay".

4. The respondents, vide order dated 19.08.2013, in terms of advice of UPSC, imposed the penalty of reduction from Rs.28,420/- plus Grade Pay Rs. 6,600/- to Rs. 27,400/- plus Grade Pay Rs. 6,600/- w.e.f 01.09.2013 to 31.08.2016 in the pay band of Rs.15,600 - 39,100 (PB-3) with further directions that Charged Officer will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing future increments of pay.

5. Aggrieved against the aforesaid order dated 19.08.2013 passed by the respondents, the petitioner preferred a writ petition (WP No.2117/2013) before the High Court of J&K at Srinagar which was allowed vide order dated 19.03.2015, by setting aside of the order dated 19.08.2013 and directing the respondents to furnish a copy of UPSC advice to the petitioner, which was heavily

relied upon by the respondents in passing the penalty order.

6. Consequent upon quashing of order dated 19.08.2013 by the High Court of J&K at Srinagar vide order dated 19.03.2015, vide Presidential Order dated 31.08.2015 a direction for further enquiry, from the date of supply of copy of UPSC advice dated 05.10.2012 and order dated 31.08.2015, was given. Aggrieved against the aforesaid Presidential Order dated 31.08.2015, the petitioner filed SWP 2163/2015 before the High Court of J&K at Srinagar, wherein vide order dated 24.02.2016 interim direction was passed to the effect that the enquiry held shall be subject to outcome of the said petition. During pendency of SWP 2163/2015, the petitioner preferred a representation dated 10.10.2015 against the advice dated 05.10.2012 given by UPSC. Observing that the petitioner had not put any new fact or material to refute the advice of UPSC, the respondents vide order dated 18.04.2016 imposed the penalty of "reduction to a lower stage in the time scale of pay for a period of three years with further directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay". Accordingly, his pay was ordered to be reduced from Rs.30,560/- plus Grade Pay Rs.6,600/- to Rs.29,470/- plus Grade Pay Rs.6,600/- w.e.f. 01.05.2016 to 30.04.2019 in the pay band of Rs.15,600 - 39,100 CPB-3) with further directions that the petitioner will not earn increments of pay. Vide order dated 14.09.2017, the writ petition being SWP 2163/2015 was dismissed by the High Court of J&K at Srinagar on the ground of territorial jurisdiction.

7. Against the order dated 14.09.2017, passed by the High Court of J&K at Srinagar in SWP 2163/2015, petitioner preferred LPASW 181/2017, which was dismissed with cost of Rs.25,000/- vide order dated 04.06.2019. Thereafter, he filed a review petition being (RP) No. 41/2019 against the aforesaid order dated 04.06.2019 and the same was disposed of while recalling the imposition of cost of Rs.25,000/-.

8. Since no relief, against the order dated 18.04.2016 passed by the respondents, was granted by the High Court of J&K at Srinagar, the present petition has been filed by the petitioner.

9. To present the case of petitioner, learned counsel appearing on his behalf submitted that the petitioner was transferred to 162 Bn CRPF and he apprehended threat to his life at the hands of Commandant-89- Sh. S.S.Sandhu, which fact he had brought to the knowledge of DG, CRPF and also lodged a complaint in Sector -7 police station, Rourkela (Orissa) on 26.07.2004. He was provided with civil police guards till his joining in 162 Bn. The then Commandant-89 Bn had initiated false preliminary enquiry against him and the Constables of 89 Bn were compelled to depose false statement against the petitioner. It was submitted that PW-2 Sh. Pravesh Bansal in his PE had confessed that he was compelled to make false statement against the petitioner and PW-4 Shri Raj Singh Yadav had stated that he did not remember anything

related to the charges and he was persuaded by PW-3 to depose against the petitioner. Further, Shri R. Gautam PW-5, Sh. M.Gangadharan PW-6, Shri Ram Bachan Singh PW-8 and Shri Bhogender Thakur PW-9 had deposed that they had been threatened to depose statement against the petitioner by Shri S.S. Sandhu. Also, Mr. Ram Bachan Singh (Driver) confessed during his cross examination in departmental proceedings that he was made to author defence exhibit-II as he was threatened and pressurized to do so. Learned counsel for petitioner submitted that PW-1 did not turn up to depose his statement and the person who appeared claimed to be son of PW-1 but could not prove his identity.

10. Additionally, P.E. No. 7, is a photocopy of delivery challan, the original or carbon copy whereof was not produced and the photocopy has multiple cuts, as is available in the departmental files, which on the request of the petitioner is cited as D Ex-5. Thereby, prosecution witnesses had failed to support the case of respondents.

11. Learned counsel next submitted that on 22.03.2004 a departmental enquiry was ordered to be conducted; Memorandum of Charge was issued on 24.05.2007 and despite the CVC letter to conclude defence evidence within six months, on petitioner's request vide letter dated 07.09.2010, direction was issued to complete the departmental enquiry proceedings by 30.10.2010, however petitioner was served with the copy of Enquiry Report on 01.08.2011, wherein it was stated that the Inquiry Officer submitted the Report dated 11.04.2011 to the DIG, who returned the same to the Inquiry Officer to rectify certain observations and the same was resubmitted on 12.06.2011, which is impermissible in law. Once the Enquiry Report is submitted by the Enquiry Officer, he becomes functus – officio and is not permitted to make any amendment or rectify the same.

12. Learned counsel next submitted that the Inquiry Officer in his report had stated that none of the charges were proved against the petitioner. The Disciplinary Authority also agreed with the findings of the Inquiry Officer and recommended for suitable minor penalty. Even the CVC in agreement with the recommendations of the Disciplinary Authority advised for imposition of minor penalty. The advice of the Union Public Service Commission was received on 05.10.2012 but till 19.08.2013 no final order was passed and its copy was furnished to the petitioner only pursuant to directions of the High Court of J& K at Srinagar vide order dated 19.03.2015.

13. Learned counsel submitted that the petitioner has been made to undergo twice the punishment vide Orders dated 19.08.2013 and 18.04.2016 for the same Articles of Charge, first from 01.09.2013 to 31.08.2016 when only four months of his punishment were left to be completed and second time pursuant to order dated 19.03.2015 by High Court of J & K at Srinagar, major penalty was imposed afresh from 01.05.2016 to 30.04.2019, thereby causing double jeopardy to the petitioner and delaying prospects for his promotion for a further period of three years.

14. It was submitted that respondents at the first hand deliberately delayed the departmental proceedings and thereafter, made petitioner undergo twice the punishment so that he could not earn next higher promotion and by this time, 2,500 officers junior to the petitioner have been promoted above the rank of petitioner and he has not been able to get his due promotion.

15. Lastly, it was submitted that the advice dated 19.08.2013 as well as order dated 18.04.2016 passed by the Government, are baseless and misleading and, therefore, these deserve to be set aside. A direction is sought to be issued to the respondents to promote the petitioner to the rank of Commandant.

16. Conversely, the respondents in the counter affidavit has taken the stand that before the taking up any matter before the Ministry of Home Affairs, Government of India, the punishment pursuant to departmental enquiry is preceded by orders of Disciplinary Authority and advice of CVC, so as to ensure no injustice is caused. In the present case also, due procedure was followed. However, during the course of enquiry no objection was raised by the petitioner.

17. Ms. Amrita Prakash, learned Central Government Standing Counsel, appearing on behalf of respondents submitted that under Article 320 of the Constitution of India, the UPSC, being an advisory body, is free to agree or differ with the conclusions of the Inquiry Officer and in the present case, after considering all the aspects, in disagreement with CVC and Disciplinary Authority, UPSC advised for imposing major penalty. Thereafter, the Disciplinary Authority, after taking into account the statement of PWs and documentary evidence admitted during the course of DE, had taken the final view.

18. Learned CGSC submitted that the plea of petitioner that he has been victim of double jeopardy is attributable to him only, as after conclusion of DE vide order dated 19.08.2013, the petitioner approached the High Court of J & K and the said order was quashed with direction to respondents to hold further enquiry from the stage of supply of copy of UPSC advice to petitioner. The UPSC advice was served upon the petitioner on 05.10.2012 and after finalisation of DE, vide order dated 18.04.2016, the pay of the petitioner was directed to be reduced for the period from 01.05.2016 to 30.04.2019, as the penalty order has to be from the prospective date and cannot be retrospectively implemented.

19. Also submitted that the allegations levelled against the then Commandant, 89 Bn have no relevance to the misconduct committed by the petitioner. The charges imposed upon the petitioner are based upon the facts and there is no instance where the PWs were pressurized during DE and that the evidence on record has supported the prosecution case, based whereupon the penalty in question has been imposed upon the petitioner. Lastly, submitted that penalty awarded to the petitioner is fully commensurate with the acts of misconduct committed by him and so, the present petition deserves to be dismissed.

20. To controvert the submissions of learned CGSC, learned counsel for petitioner submitted that in terms of advice of UPSC, the respondents vide order dated

19.08.2013 imposed the penalty of reduction from Rs.28,420/- plus Grade Pay Rs. 6,600/- to Rs. 27,400/- plus Grade Pay Rs. 6,600/- w.e.f. 01.09.2013 to 31.08.2016 in the pay band of Rs.15,600 - 39,100 (PB-3) with further directions that Charged Officer will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing future increments of pay. Thereafter, vide order dated 18.04.2016, the pay of the petitioner was directed to be reduced from Rs.30,560 plus grade pay of Rs.6,600 to Rs.29,740 plus Grade Pay Rs.6,600 w.e.f 01.05.2016 to 30.05.2019. Hence, petitioner has been made to undergo double punishment. Learned counsel submitted that the respondents with the mala fide intention to harass the petitioner did not consider the case of the petitioner and mechanically accepted the advice of the UPSC though the Disciplinary Authority had proposed to impose minor penalty upon the petitioner.

21. This Court has meticulously looked into the Presidential Memorandum dated 24.05.2007; the Presidential Orders dated 19.08.2013 as well as dated 18.04.2016 and evaluated the arguments advanced by the learned counsel appearing for the parties based upon the other material placed on record.

22. It is not disputed that for the alleged misconduct dated 05.10.2003 committed by the petitioner, a Memorandum of Charge was served upon him on 24.05.2007. Also not disputed that the petitioner filed written statement of defence on 05.09.2007; the inquiry proceedings were set into motion on 11.03.2008; the Presenting Officer was re-appointed on 26.08.2010; the impugned penalty was proposed on 11.10.2011 and after opinion of the Disciplinary Authority, CVC and UPSC, the impugned penalty was imposed on 19.08.2013, which is as under:-

"10. NOW, THEREFORE, in the light of above and having regard to all aspects of the case as well as considering the advice of the UPSC, the President; considers that the ends of justice would be met, if the penalty of " reduction to a lower stage in the time scale of pay for a period of three years is imposed upon Shri Dhiraj Kumar Singh, Dy. Commandant (IRLA-4246), with further directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay. Accordingly the President hereby orders that pay in respect of Shri Dhiraj Kumar Singh, Dy. Comdt. be reduced from Rs. 28,420/- plus Grade Pay Rs. 6,600/- to Rs. 27,400/- plus grade pay Rs.6,600/- for a period of three years i.e. from 01/09/2013 to 31/08/2016 in the pay band of Rs. 15,600/-39,100 (PB-3:). It is further directed that Shri Dhiraj Kumar, Dy. Comdt., will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing future increments of pay. A copy of the advice of UPSC letter No. F.3/105/2012-SI dated 05/10/2012 is also enclosed."

23. The aforesaid order was challenged by the petitioner before the High Court of J & K in W.P.(C) No. 2117/2013, wherein vide order dated 19.03.2015 the

aforesaid order dated 19.08.2013 was set aside with direction to hold further inquiry from the stage of supply of copy of UPSC advice to the petitioner. After conclusion of the renewed departmental enquiry, the respondents vide order dated 18.04.2016 imposed the following penalty upon the petitioner:-

"14. NOW, THEREFORE, in the light of above and having regard to all aspects of the case as well as considering the advice of the UPSC, the President considers that the ends of justice would be met, if the penalty of " reduction to a lower stage in the time scale of pay for a period of three years is imposed upon Shri Dhiraj Kumar Singh, Dy. Commandant (IRLA-4246), with further directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay. Accordingly, the President hereby orders that pay in respect of Shri Dhiraj Kumar Singh, Dy. Comdt. be reduced from Rs. 30,550/- plus Grade Pay Rs. 6,600/- to Rs. 29,470/- plus grade pay Rs. 6,600/- for a period of three years i.e. from 01/05/2016 to -30/04/2019 in the pay band of Rs. 15,600/-39,100 (PB-3). It is further directed that Shri Dhiraj Kumar Singh, Dy. Comdt., will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing future increments of pay."

24. The aforesaid penalty vide order dated 18.04.2016 was challenged by petitioner before the High Court of J & K in SWP No. 2163/2015, which was dismissed vide order dated 14.09.2017 holding that the respondents, whose orders are challenged, the inquiry conducted by the respondents and outcome thereof; and because the petitioner does not permanently or temporarily reside within the territorial jurisdiction of the Court; and no cause of action vis-a-vis order dated 18.04.2016 had arisen before the territorial jurisdiction of the Court, therefore, the court had no jurisdiction to entertain the said petition. The said petition was dismissed while giving liberty to the petitioner to approach the court of competent jurisdiction.

25. The aforesaid order was challenged by the petitioner before the Division Bench of High Court of J& K in LPASW 181/2017, wherein vide order dated 04.06.2019 it was held as under:-

"32. The present appeal has to fail on yet another principle which, we find, has rightly been considered by the learned Single Judge. On application of doctrine of "forum non-conveniens, also, the writ petition must fail for the reason that the allegations giving rise to the disciplinary proceedings occurred in Punjab; the disciplinary proceedings stand conducted in Patna, Hyderabad and Delhi and the impugned order issued from and communicated from the Directorate at Delhi. Therefore, all relevant official records which would be necessary for adjudication of the present writ petition challenging order dated 18th April, 2016 would be available in Delhi. Maintenance of the writ proceedings in this Court would certainly work undue hardships to the official respondents. The writ petition must fail on application of the doctrine of forum non-conveniens as well."

26. Given liberty, the petitioner has approached this Court challenging the orders passed by the respondents on the grounds that he has been falsely implicated at the hands of Commandant-89- Sh. S.S.Sandhu. Also, the competent authority while imposing the impugned penalty did not take into consideration the fact that the prosecution witnesses, PW-2 Sh. Pravesh Bansal; PW-4 Shri Raj Singh Yadav, PW-5 Shri R. Gautam, PW-6 Sh. M.Gangadharan, PW-8 Shri Ram Bachan Singh and PW-9 Shri Bhogender Thakur; have not supported the case of prosecution. Though the Disciplinary Authority and CVC recommended for implication of 'minor penalty, however, the UPSC advised for 'major penalty' and even though the competent authority of respondents was not bound to adopt the advice of UPSC but still imposed the penalty in question.

27. The petitioner has pleaded that the enquiry proceedings are vitiated and competent authority has not considered the case of petitioner in the light of evidence on record. During the course of hearing, attention of this Court was drawn to deposition of PW-2, PW-5, PW-6, PW-8 and PW-9 to submit that these witnesses have in categorical words denied the case of prosecution.

28. There is no dispute to the position that the Courts while sitting in writ or appellate jurisdiction have to be slow in interfering with opinions rendered by the Disciplinary Authority. However, if an aggrieved person or party knocks the door of the Court, then the Court has to ensure that there is no violation of principles of natural justice. Before interfering in the decision rendered by the Disciplinary Authority, the Courts are required to ensure that the enquiry held by the competent authority is not vitiated from the procedure prescribed and the conclusions arrived at are based upon evidence placed on record. Though the Courts are not expected to re-appreciate the evidence on record, however, if the findings returned by the Enquiry Officer or the Disciplinary Authority, suffer from patent illegality, the Courts shall not permit the same.

29. The Supreme Court in Union of India and Others Vs. Subrata Nath, 2022 SCC OnLine SC 1617, has held the "Courts ought to refrain from interfering with the findings of facts recorded in a departmental enquiry, except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are mala fides attributable to the Disciplinary Authority, then the courts can certainly interfere."

30. Coming to the facts of the present case, first what is required to be weighed is as to whether the enquiry proceedings are vitiated or not.

31. As has already been noted above, for an alleged misconduct committed by petitioner in 2003, he was served with Memorandum of Charge in 2007 and it is only upon persistent request of petitioner to the competent authority to conclude the enquiry proceedings, a direction was passed to conclude enquiry by 30.10.2010. The petitioner claims to have been served with the copy of Enquiry Report on 23.03.2011; which was returned by the DIG to the Enquiry Officer on

11.04.2011 for rectification of certain observations. The petitioner has claimed that once the Inquiry Officer has submitted the report, it cannot be rectified.

32. On this aspect, this Court has gone through the communication dated 11.11.2011 whereby the DIG concerned had returned the Enquiry Report in respect of petitioner to the Inquiry Officer. The rectifications sought in the Enquiry Report were mere technical such like pagination, affixation of index and attested photocopies and no rectification has been directed on the merits of the case and as such this objection raised by the petitioner is rejected.

33. With respect to petitioner's assertion that PWs-5, 6, 8 and 9 have not supported the case of respondents, we have gone through the order dated 19.08.2013 and order dated 18.04.2016 as well as copies of testimony of these witnesses.

34. A perusal of order dated 19.08.2013 shows that the competent authority after adducing the oral and documentary evidence held that the allegations levelled against the Commandant-89- Sh. S.S.Sandhu have no relevancy with the misconduct committed by him. Also held that PW-8 in his evidence has deposed that on 06.12.2003 the petitioner had sent him to M/S United Motors, Ferozpur with a piece of paper, where in turn he was given seat over, window cover, channel set etc., which he gave to the petitioner. Further held that as per statement of Shri Yashpal Chopra, son of Shri Jogender Mohan Chopra (PW-1), PW-8 had approached him with a slip / challan and the spare parts were handed over to PW-8 against credit of upto 15 days and the petitioner failed to make the payment. Also held that PW-4 in his statement has confirmed that PW-1 had met him and reported regarding non payment of dues. Also held that deposition of PW-1 and PW-8 supports the case of prosecution and so, there is no ambiguity in the conclusion of Inquiry Officer.

35. Pertinently, pursuant to order dated 19.03.2015 passed by the High Court of J & K in WP No. 2117/2013, further enquiry was held after furnishing a copy of UPSC advice to the petitioner and the competent authority vide order dated 18.04.2016 noted the findings returned by the Disciplinary Authority, which are as under:-

11. AND WHEREAS the Disciplinary Authority (DA) after examining the submission of charged officer alongwith evidences adduced in the enquiry proceedings observed that:-

(a) On analysis of Commission's advice in the DE proceedings it has been established that the son of the owner of M/s United Motors namely Shri Yashpal Chopra (PW-1) met the CO repeatedly for getting some work, the CO assured him of some work the next day and told with a slip for some M.T. parts. Shri Rambachan Singh, CT/Dvr, Confirmed during Inquiry on 3/5/10 that the CO sent him to M/S United Motors, Ferozepur with a piece of paper on 6/12/03. It is also established in DE proceedings that M/S United Motors, Ferozepur with a piece of paper on 6/12/03. It is also established in DE proceedings that M/S United

Motors gave him seat cover, window cover, channel set etc. which he gave to the CO. Later on, the owner of M/S United Motors came to headquarters to enquire about the payment and approached 2-I/C for it. When Shri Rambachan Singh tried to contact the CO who was in Rourkela then, he could not contact him. It has also been established in the DE proceedings that conclusion drawn by IO sufficiently proves that purchase of spare parts was done and ultimately no payment made to the firm.

(b) The application (undated) of Ct/Dvr Rambachan Singh addressed to DG, CRPF (D Ex-2) was taken on record during the inquiry on 3/5/10 mentioning that he was forced to depose under pressure, without mentioning the case number, subject etc. Further, in an answer to the Q. No.37 during cross examination, he has clearly stated that the application has been written by him at the behest of Mr.Dhiraj Kumar Singh (CO), who took this application from him.

(c) The IO's report and Commission's advice established that Shri Rambachan collected five items such as seat cover, channel set, p/wind screen rubber valuing Rs.2760/- from M/s United Motor Stores on a delivery Challan dated 6/12/13 on behalf of Sh. Dhiraj Kumar Singh (CO) and CO had not paid the amount of Rs.2760 towards the spare parts of Maruti Car taken by him.

(d) The IO's report and Commission's advice established that Shri Pravesh Bansal, owner of M/s Mahavir General Stores, Ferozepur had been dealing with repair of vehicles of 89 Bn. For repair of vehicle No. DIG 424/24 Tata Truck, he had submitted papers to the commandant 89 Bn. The rates quoted by them were found to be lowest by the Commandant 89 Bn. The CO called Shri Pravesh Bansal on 15/10/03 and asked him to start the work of repair of vehicle. When Shri Pravesh Bansal insisted for work order, the CO told him not to wait for the work order as it would be given in due course. The CO told him that some work had already been done by M/s Luxmi Machinery Store, Ferozepur for which he should pay Rs.6000/- to the CO. Shri Pravesh Bansal paid Rs. 6000/-to the CO who in turn gave him work order. Shri Pravesh Bansal, proprietor of M/s Mahavir General Stores, Ferozepur in his statement dated 29/4/10 addressed to the IO mentioned that he returned Rs. 6000/- to the CO against repair of vehicle No. DIG/424 Tata Truck carried out by M/s Luxmi Machinery Stores and received a work order for the said vehicle worth Rs. 14056/- He. Worked only for Rs. 8056/- and the work of Rs. 6000/- was done by M/s Luxmi Machinery Stores. After receiving full payment, he returned Rs. 6000/- to the CO. Shri Jaimni Dewan, proprietor of M/s Luxmi Machinery Stores, stated in his statement that he used to receive vehicle of 89 Bn. For repair. On 4/10/03 the CO called him and told for repairing vehicle registration No. DIG/424/24 Tata Truck the next day. The vehicle reached his workshop on 5/10/03 and was sent back to 89 Bn in the evening and this exercise went on for four-five days. When he approached the CO for some advance, the CO told him that the tender for this particular job had been approved in favour of M/s Mahavir general Stores and asked him to stop the work. Till then a job of Rs.6000/- has already been done by them. Shri Pravesh

Bansal (PW-2) deposed that P/Exh-19 was not his true statement and was given on the request of the man of M/s Luxmi Machinery Stores. During cross examination by PO, Shri Pravesh Bansal deposed that he gave Rs. 6000/- to the CO on loan which was repaid later. Though, the purpose of this transaction has not been testified by Shri pravesh Bansal in conformity with what has been mentioned I the charge but incidentally or co-incidentally the amount is same i.e. Rs. 6000/- Though, there is no clear evidence to prove that Rs. 6000/- obtained from Shri Pravesh Bansal was to be given to M/s Luxmi Machinery store to fully prove this charge, but on the basis of preponderance of probability and circumstantial evidence, Article of charge-III has been partially proved by the IO.

36. In view of afore-noted findings, the competent authority vide order dated 18.04.2016 inflicted the punishment of reduction in the time scale of three years pay without any increments from 01.05.2016 to 30.04.2019, which shall have effect on future increments. It is pertinent to mention here that vide order dated 18.04.2016, the respondents have in fact inflicted the similar punishment, as was awarded vide order dated 19.08.2013.

37. The fact remains that pursuant to coming into force the order dated 19.08.2013 passed by the respondents, the petitioner was inflicted with the penalty of reduction in pay from 01.09.2013 to 31.08.2016. The subsequent order dated 18.04.2016 passed by the respondents was to be implemented from 01.05.2016 to 30.04.2019. In fact, by 01.05.2016, petitioner had already suffered the penalty for about 02 years and 8 months. It was for the fault of respondents having not supplied the copy of UPSC opinion that the enquiry proceedings were re-opened and he has twice been awarded the similar penalty from different dates.

38. This Court now proceeds to examine the plea of petitioner that PW-2, PW-5, PW-6 and PW-8 have not supported the case of prosecution and that a proxy witness in place of summoned PW-1 had deposed, which cannot be permitted.

39. PW-8 in his cross-examination by the Defence Assistant recorded on 03.05.2010 had stated that he was not having the copy of piece of paper on which names of articles were written by the petitioner for handing over to United Motors. This witness on the asking of Inquiry Officer deposed that he did not remember as to whether name of petitioner or 89 Bn. was recorded on the bill or not, except that the names of items and prices were written in front of him.

40. PW-6, Ex.-HC/ Driver R.K. Gangadharan in his statement recorded on 26.09.2010 had stated that the supply order pertained to Mahavir General Store and there was no question to get the vehicle repaired from Luxmi Machinery Store and no direction was given to HC/Satvinder Pal Singh to take the vehicle to Luxmi Machinery Store. So, he had directed Driver Bhogender Thakur to take the vehicle to Mahavir General Store, where the vehicle remained for a few days and after the repair was complete, he himself brought the vehicle back to the Battalion.

41. PW-3 EX HC Driver Bhogender Thakur, in his statement recorded on 06.10.2010 has asserted that the vehicles used to be taken for repairs to different workshops, both on verbal or written directions. He has in unambiguous words stated that his earlier statement on this subject was not his voluntary statement and the then commandant had himself made those statements and forced him to sign it.

42. PW-2 Mr. Pravesh Bansal, proprietor of M/s Mahavir General Stores, in his statement recorded on 09.10.2010 has stated that the repair work in respect of TATA truck DIG 424/24 of 89 Bn had been done by his firm. What is noteworthy is his statement to the aspect that a man from Luxmi Machinery Stores had gone to him, who told that C.O, 89 Bn Shri Sandhu had come to Firozpur and assured that he will get the amount of Rs.6,000. That man also asked him to depose before C.O. 89 Bn Shri Sandhu so that he gets money and on his asking PW-2 made his statement before C.O. 89 Bn Shri Sandhu that he had given Rs.6,000/- on loan to the petitioner. On this aspect, the competent authority in its order dated 18.04.2016 has held that "though, there is no clear evidence to prove that Rs. 6000/- obtained from Shri Pravesh Bansal was to be given to M/s Luxmi Machinery store to fully prove this charge, but on the basis of preponderance of probability and circumstantial evidence, Article of charge-III has been partially proved by the IO."

43. PW-5 Rajrshi Gautam Ex Asst. Commandant post in 89 Bn, with regard to Memorandum of Article No.5 has stated that on 07.02.2004 in the morning hours when he along with Commandant S.S. Sandhu were supervising the preparation of award ceremony, one HC from GC from Jalandhar had given the amount of Rs.11,400 to Commandant S.S. Sandhu and he was asked to receive the amount on advice slip. Even in his cross-examination by the Presenting Officer recorded on 09.10.2010, this witness had stated that though he had not received the amount himself but had signed the advice slip as the Commandant had received the amount in his presence which was being spent in connection with ceremony. The categorical reply to Question No.5 by this witness is as under:-

"Q No. 5 Do you admit your statements on these documents as true?

Ans. The statements are partly true and partly false. As far as the giving the money to Shri Dhiraj Kumar Singh in these statements, they are false, the part of statement where I mentioned that money was spent in connection with the ceremony is true. The false part was given under pressure."

Further, in his cross-examination by the Presenting Officer, this witness has stated as under:-

"Q No.1 In reply to question No.5 you have stated that you were under pressure. Can you tell what type of pressure it was?

Ans. The Then Commandant 89 Bn CRPF (Shri S.S.Sandhu) was in habit of harassing the officers. He used to harass me also and in order to avoid direct

conflict with him and dreading bad consequences I yielded to this pressure. I mean immediate threats of things like "my inter coy transfer, delay in relief on transfer to Bhopal (a better place suiting me) etc. I would like to state that while stating the false parts of my previous statement I was under the impression that the P.Es will not lead to any D.E.

XXXXX

Q No.4 As you see in the Exhibit only 3000/- is shown against 89 Bn alongwith rest of the amount shown against 30, 119 and 124 Bn (totaling 11400) pleas tell whether only Rs.3,000 was meant for 89 Bn or the entire amout Rs.11400/-?

Ans. It is clear in the exhibit that the money 11400/- was the collection from four different units 30 Bn, 119 Bn and 124 Bn which was issued to 89 Bn on 06.02.2004 vide this advice slip."

44. The statements of PW-2, PW-5, PW-6 and PW-8 clearly show that they have categorically stated that they had been threatened to depose against the petitioner in PE on the asking of Commandant S.S. Sandhu 89 Bn. This Court highly deprecate the decision making of the competent authority who while passing the order dated 18.04.2016 did not take note of the fact that the statements of PW-2, PW-5, PW-6 and PW-8 were recorded under duress. Moreover, it is the settled position of law that if a view is required to be taken on the basis of probability, then the one in favour of the charged officer, has to be taken and so, Article of Charge-III cannot be sustained.

45. With regard to Memorandum of Charge-IV, we find that the order sheet dated 08.10.2010 recording the disciplinary proceedings notes that Mr. Joginder Mohan Chopra, proprietor of M/S United Motors, who was summoned as the prosecution witness did not appear himself but his son appeared on his behalf on the said date, which was strenuously objected to by the Defence Assistant appearing on behalf of the petitioner stating that only the summoned witness has to be permitted to record the statement. There is no dispute to the position that deposition of proxy witness is impermissible and deposition of a witness, who was not in the list of witnesses or was not summoned by the Court, cannot be taken into count.

46. In the light of afore-noted testimony of prosecution witness, this Court finds that the prosecution case of respondents not only fails on merits but also suffers procedural lapse. This Court does not hesitate to observe that with the mala fide intention to harass the petitioner, he has been made to undergo the punishment which he does not deserve. Consequentially, the present petition is allowed. The impugned orders dated 19.08.2013 as well as 18.04.2016 are hereby set aside. Respondents are directed to refix petitioner's pay, seniority and financial benefits within four weeks.

47. With directions, as aforesaid, the present petition is accordingly disposed of.