

**(2012) 02 DEL CK 0513**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 1146 of 1999

Ex. CT. Dhara Singh Meena

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 09-02-2012

**Acts Referred:**

Central Reserve Police Force Act, 1949 — Section 11(1)

Central Reserve Police Force Rules, 1955 — Rule 27

Constitution of India, 1950 — Article 14, 226, 227, 32

**Citation :** (2012) 02 DEL CK 0513

**Hon'ble Judges :** Sudershan Kumar Misra, J;Anil Kumar, J

**Bench :** Division Bench

**Advocate :** Anil Singhal, for the Appellant; Ashwani Bhardwaj, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sudershan Kumar Misra, J.

W.P.(C) No. 1146/1999

1. The petitioner has invoked the extraordinary jurisdiction of this court under article 226 of the Constitution of India praying, inter alia, that the order of removal from service dated 13th August, 1998 along with the charge sheet dated 8th September, 1997 be quashed and the petitioner be reinstated in service along with all consequential benefits. The petitioner was enrolled in the Central Reserve Police Force on 15th February, 1993 from Group Center Ajmer. While the petitioner was posted at 70 Bn. CRPF, he was served with a charge sheet dated 8th September, 1997 stating that an enquiry is proposed to be held against the petitioner under Rule 27 of CRPF Rules, 1955. The charge against the petitioner read as under :

"ARTICLE - I

That the said No. 931190264 Constable Dhara Singh Meena of A/70 Bn.,CRPF

while functioning as Ct/GD in A/70 Bn, CRPF committed an offence of misconduct in his capacity as a member of force u/s 11(1) of CRPF Act 1949, in that Ct Dhara Singh Meena on 20-7-97 at 1930 hrs in Coy Mess of A/70 fought with Mess Ct No. 921150322 Ct C.H. Ibotombi Singh on distribution of food and later at 1930 hrs. when Ct C.H. Ibotombi Singh was on his way to his line, Ct Dhara Singh Meena through a stone on him due to which Ct C.H. Ibotombi Singh suffered a fracture on right side clavical bone."

2. On 6th October, 1997, the Disciplinary Authority appointed an Enquiry Officer to enquire into the charges framed against the petitioner. In his report to the Disciplinary Authority, the Enquiry Officer concluded that the charges framed against the petitioner had been proved beyond doubt. Agreeing with the report of the Enquiry Officer, the Disciplinary Authority imposed a penalty of "Removal from Service" w.e.f. 18th August, 1998 vide order dated 13th August, 1998.

3. The petitioner contends that the order dated 13th August, 1998 and the charge sheet dated 8th September, 1997 are illegal and therefore liable to be quashed. In support of this contention, the petitioner had raised six grounds in the writ petition. It was also stated therein that the petitioner had preferred an appeal dated 26th October, 1998 with a special prayer for condonation of delay in filing the appeal but he did not receive any reply from the respondents.

4. Counsel for the respondents submits that the writ petition has no merit, and the contentions raised therein have already been considered in appeal and rejected by the Dy. Inspector General, CRPF, Calcutta vide order dated 23rd April, 1999. He also contended that the appeal preferred by the appellant/petitioner against the order of dismissal was time barred, but for the sake of natural justice, the appeal was entertained by the Dy. Inspector General, CRPF, Calcutta. However, as the appellant/petitioner had not brought out any new facts in his appeal, the same was rejected as being devoid of merit and a copy of the same was forwarded to the home address of the appellant/petitioner vide office order dated 23rd April, 1999.

5. It is relevant to mention here that the instant writ petition had earlier been dismissed in default for non- prosecution on 27th September, 2011 by a Division Bench of this Court. It was restored thereafter on an application moved by the petitioner.

6. Today, counsel for the petitioner seeks time to file an appropriate application seeking amendment of the writ petition on the ground that during the pendency of the writ petition, the appellate order dated 23rd April, 1999 was passed. He contends that the petitioner came to know about the dismissal of his appeal by the above noted order from the counter affidavit filed on behalf of the respondents dated 25th May, 2000. He submits that the said appeal which was dismissed on 23rd April, 1999, contained some additional grounds which were not mentioned in the writ petition because the appeal was still under consideration at the time when the petition was filed. However, since the appeal

has now been rejected he wants to incorporate those additional grounds in this petition.

7. The main purpose of allowing amendment to a petition is to minimize litigation and if the granting of an amendment serves the cause of justice and avoids further litigation, the same should be allowed. However, amendment cannot be claimed as a matter of right and under all circumstances. Discretion in such cases would depend on the facts and circumstances of the case.

8. In the instant case, if the petitioner is saying that apart from the six grounds raised in the petition, the appeal which was pending had some additional grounds, then, admittedly, on the date the petitioner filed the petition, he had restricted his grievances only to those six grounds mentioned in the writ petition. Since the appeal was disposed of on 23rd April, 1999, if at all any cause of action accrued in favour of the petitioner to challenge the decision in the appeal by agitating the very same grounds which were taken in that appeal, in a writ petition, the petitioner should have filed a fresh writ or sought amendment of the current writ to incorporate those grounds as well as the challenge to the appellate order. He did not do so. There is no ground to permit amendment after more than 11 years. For all these reasons, the amendment, which is being sought at a belated stage, and that too after the petition had already once been dismissed in default, deserves to be declined.

9. Today, there is also no challenge to the appellate order of 23.4.1999; and we cannot now allow the petitioner to reargue those grounds which were repelled by the appellate authority because that would amount to enabling him to indirectly challenge an order that was passed more than a decade ago, without that order being specifically impugned in this petition.

10. A perusal of the order dated 27th September, 2011 wherein this writ petition was dismissed in default shows that out of the six grounds raised by the petitioner, four had been dismissed as having no merit and reasons had also been given as to why there is no basis for those grounds. We have now re-examined all of them with the assistance of the petitioner's counsel.

11. As regards the first ground raised in the petition that the charge sheet dated 8th September, 1997 is vague, uncertain and does not disclose any misconduct against the petitioner, counsel for the petitioner states that he does not press that ground as he is not in a position to rebut the stand taken by the respondents on facts.

12. The second ground raised in the petition was that the petitioner was not supplied with copies of all the listed documents and statements of listed witnesses along with the charge- sheet. In the order passed on 27th September, 2011 wherein this petition was dismissed in default, this Court has noted that although in their counter affidavit, the respondents stated that all annexures to the memorandum of charge dated 8th September, 1997 were handed over to the petitioner, the annexures referred to had not been filed with the counter affidavit.

However, this assertion of the respondents has gone un rebutted since the petitioner has failed to file any rejoinder despite opportunity. Petitioner's counsel has also failed to draw our attention to any contemporaneous protest lodged by the petitioner with the respondent in this regard. We are, therefore, not inclined to accept this ground.

13. As regards the next question, whether the petitioner was given an opportunity to engage a defence assistant, counsel for the petitioner is again not able to say anything further to enable us to take a view which might be in any way different from the view already taken by the Court in paragraph 9 of the order passed on 27th September, 2011 when the matter was dismissed in default. Even with regard to the next ground that whether the petitioner was not granted an opportunity to cross examine the witnesses, counsel for the petitioner has not been able to rebut the stand taken by the respondents in the counter affidavit that during inquiry the petitioner was permitted to cross examine the witnesses but he himself chose not to avail of the opportunity.

14. The only remaining ground which has been raised is that the punishment imposed on the petitioner was disproportionate to the misconduct which has been found. In this behalf, counsel for the petitioner submits that this is a case where the petitioner could have been let off with any other punishment that may have resulted in saving his job and the punishment of removal from service is extreme and harsh. In support of this contention, counsel has relied on the doctrine of proportionality which lays down that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportion to the gravity of the misconduct would be violative of Article 14 of the Constitution.

15. Looking to the facts and circumstances of the case, we are not impressed by the submission made by the counsel for the petitioner. A Court exercising writ jurisdiction in a matter concerning punishment imposed by the Disciplinary Authority should not interfere with the Disciplinary Authority's decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the court. In the present case, we notice that the allegation is an extremely serious one inasmuch as the petitioner first quarreled with the mess constable demanding that he be served a non-vegetarian meal notwithstanding the fact that he was listed as a vegetarian in the dinning list. The non vegetarian meal demanded by the petitioner was also given to him by the mess constable. At that point, the petitioner is stated to have verbally abused the mess constable. Later on, when the mess constable was returning to the lines, the petitioner is stated to have thrown a stone at him which resulted in the mess constable suffering a fracture of the right clavical bone. Looking to the circumstances; and the fact that the assault with a stone resulted in a serious injury, we are of the view that the punishment imposed is in no way disproportionate to the act of which he was found guilty.

16. The Central Reserve Police Force is a disciplined force and the petitioner,

being a constable in the CRPF, had attacked the mess constable and had fractured his clavical bone. The petitioner cannot be said to have conducted himself in a manner befitting a member of a disciplined force. A punishment of removal from service for such misconduct cannot be said to be illogical or extreme. On the contrary, we are inclined to think that the petitioner was treated very mildly. We find support of this view from the report of the Enquiry Officer and even in the order of the Commandant dated 13th August, 1998 wherein the Commandant had stated that the action of the petitioner was a dangerous one and the stone could have even killed the mess constable. Furthermore, the punishment imposed on him is merely one of removal and not dismissal. Not only that, we notice that no criminal proceedings were taken out against the petitioner.

17. In the case of *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, the delinquent officer, who was a constable in the CRPF, had reportedly misbehaved with his superior officer in an inebriated condition, snatched his AK-47 rifle and pointed the barrel of the rifle at him. He was sentenced to imprisonment till the rising of the Court and by a separate order he was also dismissed from service. The Supreme Court held that the acts of indiscipline by the delinquent officer were "prejudicial to the good order and discipline and when committed by a member of a disciplined force like the CRPF were serious enough to warrant dismissal from service." Further, the Apex Court, relying on the case of *Union of India and Others Vs. R.K. Sharma*, highlighted that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it is only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. The act of indiscipline for which the petitioner had been removed from service is serious and grave, more so for a member of the disciplined force. Under the circumstances, the punishment of removal awarded to the petitioner cannot be said to be excessively severe or shockingly disproportionate so as to require interference by a writ court. The petition is, accordingly, dismissed.