

**(2019) 07 CAL CK 0035**

**In the Calcutta High Court**

**Case No : Writ Petitions (WP) No. 27408 (W) Of 2012**

Kashem Ali Biswas

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision : 10-07-2019**

**Acts Referred:**

Central Reserve Police Force Act, 1949 — Section 11(1), 21(1)  
Central Reserve Police Force Rules, 1955 — Rule 27(b), 27(c)  
Constitution Of India, 1950 — Article 226, 227

**Citation : (2019) 07 CAL CK 0035**

**Hon'ble Judges : Biswajit Basu, J**

**Bench : Single Bench**

**Advocate : Mujibar Rahaman, Indrajeet Dasgupta**

**Final Decision : Dismissed**

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## **Judgement**

Biswajit Basu, J

1. The petitioner was appointed as a constable (General Duty) in the Central Reserve Police Force against the post reserved for the members of the

Other Backward Class (hereinafter referred to as "OBC" in short) subsequently on an enquiry being conducted by the concerned authority the

OBC certificate produced by the petitioner at the time of his initial appointment was found to be fake.

2. Production of such fake OBC certificate was considered to be a grave misconduct in his capacity as a member of the force under Section 11(1) of

the Central Reserve Police Force Act, 1949 and accordingly disciplinary proceeding was initiated against the petitioner. The respondent no. 5 on

August 13, 2011 issued a charge-sheet to the petitioner along with the statement of imputation of misconduct in support of the Article of charges

framed against him, the documents on which the said Article of charge was framed and the list of witnesses by whom the Article of charges framed against the petitioner proposed to be initiated.

3. The respondent no. 5 in exercise of his power under Rule 27 (b) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the

â?? said Rules of 1955â? in short) vide office order dated September 15, 2010 appointed Shri. Dhananjay Kumar, Assistant Commandant 3rd

Battalion of Central Reserve Police Force, the respondent no. 6 herein as the enquiry officer to enquire into the charges framed against the petitioner.

4. The enquiry officer thereafter conducted the departmental enquiry in accordance with Rule 27(c) of the said Rules of 1955. The petitioner in course

of the said enquiry pleaded guilty. The statements of three witnesses were recorded and opportunity was given to the petitioner to cross-examine the

said witnesses. The petitioner was also given fifteen days time to produce document and witness in support of his defence but the petitioner did not

avail the said opportunities. Thereafter the departmental enquiry was closed and report was submitted holding that the charges against the petitioner

are wholly proved.

5. The enquiry officer before submitting his final report serve a copy of it to the petitioner inviting him to submit a representation against the said report

if any within fifteen days from the date of receipt thereof but the petitioner did not avail the said opportunity.

6. The respondent no. 5 considered the report of the enquiry officer and on assessment of the materials on record imposed the following punishment to

the petitioner vide office order bearing no. P.VIII-11/2011-38-EC-II dated February 9, 2012.

â??(I) That No. 981230694 CT/GD Kashem Ali Biswas awarded the punishment of â??REMOVAL FROM SERVICEâ? from the date of issue

this order and he will be struck off from the strength of this unit of with effect from the same date.

(II) All Medals and decoration if any earned by him during his in the Force are also ordered to be forfeited under the provision of service Section

21(1) of CRPF Act, 1949

(III) The identify card issued to said CT/GD is hereby cancelled.

(IV) All outstanding dues including deduction if any will be recovered from the

dues payable to him and deposited into the Govt treasury.â??

7. The petitioner assailed the said order of punishment in appeal before the respondent no. 4, the appellate authority under the provisions of Central

Reserve Police Force Act, 1949 and the rules framed thereunder. The respondent no. 4 by the order dated May 03, 2012 on consideration of the

materials on record, particularly in view of the fact that on reverification of the cast certificate produced by the petitioner, it was found to be a fake

one and dismissed the said appeal thereby affirmed the decision of the disciplinary authority. The respondent no. 4 while affirming the order of the

disciplinary authority has specifically held that the production of such a fake certificate is fraud on public.

8. The petitioner filed a petition before the respondent no. 3 seeking revision of the revision/reconsideration of the Award of Dismissal from service.

The respondent no. 3 by the order dated July 17, 2012 dismissed the said petition of the petitioner holding that on consideration of all aspect of the

matter there is no cogent reason to interfere with the orders of the disciplinary authority and the appellate authority.

9. The petitioner feeling aggrieved by the said award of punishment, in the present writ petition has challenged the said charge-sheet dated August 13,

2011 the said report of the Enquiry Officer dated January 19, 2012, the said show cause notice dated January 21, 2012 the said award of punishment

dated February 09, 2012 and confirmation thereof by the appellate authority dated May 03, 2012 and the said order dated July 17, 2013 passed in

revision.

10. Sk. Mujibar Rahaman, learned advocate appearing on behalf of the petitioner submits that the petitioner is a member of â??Jola Communityâ??

and the members of the said community are OBC in West Bengal. He further submits that the petitioner had no idea that the OBC certificate

produced by him at the time of his appointment was a fake certificate and he did not produced the same with the mala fide intention to defraud his

employer. His further contention is that the petitioner has hailed from a poor family background and the authorities should not have awarded the

punishment of removal from service in view of his unblemished service record of more than thirteen years. Sk. Rahaman, learned advocate further

submits that the petitioner subsequently on February 29, 2012 has filed another

cast certificate and the authorities should have exercised their power to regularise the service of the petitioner on basis of the said cast certificate.

11. Sk. Rahaman, relies on the decision of the Honâ??ble Apex Court in the case of UNION OF INDIA Vs. P. GUNASEKARAN reported in AIR

2015 SUPREME COURT 545, the unreported decisions of the learned Single Judges in the case of SRI MANORANJAN ROUT Vs. UNION OF

INDIA AND OTHERS in W.P NO. 5790(W) OF 2010 and in the case of SUBRATA MOANDAL Vs. UNION OF INDIA AND OTHERS in

W.P NO. 24693 (W) OF 2012 to contend that the impugned award of punishment is disproportionate with the alleged charge of misconduct and the

authorities by not considering the unblemished service record of the petitioner for more than thirteen years while awarding the said punishment has

violated the principles of natural justice.

12. Mr. Indrajit Dasgupta, learned advocate appearing on behalf of the Union of India submits that the petitioner got the appointment on the basis of

false certificate and with his such conduct he is not entitled to any sympathy. In support of his such contention he refers to the decision of the

Honâ??ble Apex Court in the case of UNION OF INDIA AND OTHERS Vs. AMAR SINGH reported in (2007) 12 SUPREME COURT CASES

621 and the unreported decision of the Division Bench of this Court in the case of SIDDARTHA DAS Vs. UNION OF INDIA AND OTHERS

passed in F.M.A. NO. 2395 of 2016.

13. The Honâ??ble Apex Court in the case reported in AIR 2015 SUPREME COURT 545 (supra) relied on by Sk. Rahaman, learned advocate has

laid down the scope of interference with the disciplinary proceedings by the High Court in exercise of itâ??s power under Article 226 of the

Constitution of India.

14. It has been held in the said decision that High Court in exercise of its power under Articles 226 and 227 cannot venture into reappraisal of

evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/adequacy of

evidence, or interfere if there is some legal evidence on which the findings are based, or correct error of fact however grave it may be, or go into

proportionality of punishment unless it shocks conscience of court. It can only consider whether enquiry held by competent authority was in

accordance with procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and/or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced decision rendering it vulnerable. It has further been held in the said decision that the High Court can interfere where the finding is wholly arbitrary and capricious based on no evidence which no reasonable man could ever arrive at.

15. The respondent no. 3 disposed of the revision petition of the petitioner after dealing with each and every ground on which the said revision petition was based. The findings of the respondent no. 3 recorded in the order dated July 17, 2012 assume significance in view of the limited scope of judicial review in respect of a disciplinary proceeding as such the said findings are reproduced below:-

4. And whereas, the grounds of instant Revision Petition have been examined with the brief history and para wise comments and other relevant documents pertaining to the matter furnished by the DIGP, Range, CRPF, Durgapur and my comments are furnished against each of the above grounds as under:-

(a) The contention of the petitioner is not tenable. Before passing the final order dated 09/02/2012, whole disciplinary proceedings was conducted in the presence of the petitioner & he was aware of the fact for which the proceedings were conducted and lastly the final order was issued.

(b) At the time of enlistment, petitioner produced Caste Certificate (OBC) bearing No. 2055/TWN (Sl. No. 2841) dated 03/09/1995 issued by the SDO, Sadar (South), Krishnanagar, District-Nadia and availed concession as applicable to an OBC candidate. On verification of the caste certificate, the Sub-Divisional Officer, Sadar, Krishnanagar, District " Nadia (W.B.) vide his Memo No. 1505/S dated 20/09/95 was issued from their office.

Therefore, it is evident that the petitioner was not eligible in terms of the recruitment rules for his initial enlistment in service, as the petitioner did not possess the required qualification but the petitioner got enlisted himself in CRPF as CT/GD by furnishing/producing false caste certificate. The petitioner produced OBC certificate at the time of his enlistment in CRPF, was not a genuine one. He was not eligible for enlistment in CRPF under reserved category of OBC. The certificate was obtained by the petitioner through

illegal means. The Disciplinary Authority after gone through all facts came to the conclusion that the certificate produced by the petitioner was fake and thereby imposed the penalty of removal from service upon the petitioner.

(c) The version of the petitioner that the requisite caste certificate issued by the concerned authority having Ref No., National emblem seal etc is not

acceptable as the concerned issuing authority categorically refused that the said caste certificate was not issued by their officer and as such the certificate was false and fake.

(d) The petitioner was enlisted in CRPF on 04/05/1998. At that time he produced the requisite caste certificate before the recruiting board which could

not be verified its genuineness on the spot as such verification is a time consuming process. Such certificate is required to be verified from the

concerned issuing authority. When the fact was verified through the concerned authority, it came to the notice that the said caste certificate was not

genuine. Since the said caste certificate was fake & false, the petitioner was not eligible for enlistment in CRPF.

(e) The petitioner produced another caste certificate bearing Sl. No. 6866/OBC/S dated 19/03/2012 issued by SDO, Sadar, Krishnanagar, Nadia along

with the revision petition. It shows that the petitioner was doubtful that his earlier certificate might be false and fake. As such he obtained another

caste certificate on 19/03/2012 and produced the same to the revisionary authority while preferring revision petition.

(f) The version of the petitioner that he was not guilty of any offence leveled against him is not acceptable. The caste certificate obtained by the

petitioner earlier was doubtful to him that is why he had obtained another caste certificate during 2012. As such it is fact that the certificate which

was produced by the petitioner at the time of enlistment in CRPF was false and fake.

(g) The petitioner produced one caste certificate issued on 1995 at the time of enlistment and another issued on 2012 while preferring revision petition.

The issuing competent authority clearly intimated that the certificate which was produced by the petitioner at the time of enlistment was not issued by

the competent authority. Further if he was not supposed to know which one was fake he would not have obtained another caste certificate. Therefore

the plea of the petitioner is not acceptable.

(h) During the course of departmental enquiry, he did not ask for any witnesses from the SDO office, Krishnanagar at the time of enquiry. The E.O

has given another opportunity to the petitioner vide letter dated 14/12/2011 to submit defence witness(s) / exhibit(s) if any but he did not submit any

documentary evidence / witness. Therefore he should not be given any benefits of doubt / resumption of his innocence.

(i) The contention of the petitioner is not correct. At the time of enlistment, he produced caste certificate (OBC) bearing No. 2055/TWN (Sl. No

2841) issued by the SDO, Sadar (South) Krishnanagar, District "Nadia and availed concession as applicable to an OBC candidate. On verification

of the caste certificate from the concerned authority it was not found to be genuine. As such he was not eligible for appointment in CRPF against

reserved quota of OBC. Though he claimed he is a truly member of OBC, the CRPF department has no concern to restrict the corruption or any

function done by the SDO's office.

(j) The contention of the petitioner is not correct. The appellate authority has examined his appeal very carefully. He could not produce any

documentary evidence stating that the caste certificate produced by him at the time of enlistment was genuine. Therefore no irregularity / miscarriage

of justice has occurred while considering his appeal by the appellate authority.

(k) The petitioner had produced fake OBC certificate at the time of recruitment which is prejudicial to good order and discipline of the Force. A

reasonable time was taken in the process of verification of the caste certificate produced by the petitioner at the time of enlistment through the

concerned competent authority and petitioner at the time of enlistment through the concerned competent authority and after conducting DE he was

removed from service for producing fake caste certificate. As such he was allowed to continue in service till completion of the verification / enquiry

proceedings.

(l) The averment made in this para is not tenable, as the petitioner got enlisted in CRPF fraudulently in the rank of CT/GD by producing fake caste

certificate after availing concession in respective reserve category initially for which the petitioner was not eligible / entitled. Since the petitioner

secured enlistment in CRPF based on a forged OBC caste certificate which is in

gross contravention to existing Govt. Rules, the question of re-instatement does not arise. Therefore even after dedicating service of 13 years his request cannot be considered being devoid of merit and far from satisfaction.â??

16. The petitioner was appointed against a post which was reserved for the members of the other backward classes. It is not in dispute that the OBC certificate produced by the petitioner was not genuine. The prayer of the petitioner that considering his unblemished service for more than thirteen years the highest punishment of removal from the service should not have been awarded, does not deserve any consideration in view of the settled exposition of law that a person who seeks equity must come with clean hand. The equity jurisdiction cannot be exercised in case of a person who got the appointment on the basis of a false certificate by playing fraud as has been held by the Honâ??ble Apex Court in the decision reported in (2007)

12 SUPREME COURT CASES 621 (supra).

17. The contention of Sk. Rahaman, that the respondent authorities should have regularised the service of the petitioner considering the cast certificate obtained by him subsequently is also of no merit since the petitioner cannot make good of his action which he took at the time of his initial appointment, as has been held by the Division Bench of this Court in F.M.A 2395 of 2016 (supra).

18. The unreported decisions relied on by Sk. Rahaman is distinguishable in facts. In the case of SRI MANORANJAN ROUT Vs. UNION OF INDIA AND OTHERS in W.P NO. 5790(W) OF 2010 there were serious lapses in the procedure adopted at the time of departmental enquiry. The petitioner of the said case was acquitted from the criminal case initiated against him for production of fake cast certificate and the learned Single Judge of this Court in an order passed in a writ petition directed the authorities to consider the said acquittal of the petitioner from the criminal case at the time of the departmental enquiry but the petitioner was awarded with punishment of removal from service without considering the said order of acquittal. Under the said facts and circumstances the learned Single Judge directed reinstatement of the petitioner in service. In the case of SUBRATA MOANDAL Vs. UNION OF INDIA AND OTHERS in W.P NO. 24693 (W) OF 2012 the revisional authority accepted the claim of

the petitioner of the said case that he is a member of 'Namhasudra' cast and in the backdrop of such factual matrix the learned Single Judge

held that the disciplinary authority should have been lenient in awarding punishment. In the present writ petition the facts and circumstances are

discussed above are completely different.

19. This Court does not find any procedural lapses in conducting the disciplinary proceeding. The award of punishment is nicely balanced with

evidence and is supported by sufficient reason. The findings of the disciplinary authority have been affirmed by the appellate authority as well as the

authority exercising the power of revision. The High Court cannot act as an appellate authority in a disciplinary proceeding. The legal standard of

judicial review in interfering with the disciplinary proceeding in service matters as laid down by the Hon'ble Apex Court in the above mentioned

report, AIR 2015 SUPREME COURT 545 (supra) does not permit this Court to interfere with the impugned award of punishment. The petitioner had

secured the service reserved for a particular class claiming to be a member of the said class by producing a fake certificate, therefore, the award of

punishment from removal of service is not disproportionate with the charge of misconduct.

In view of the discussion made above the writ petition fails W.P. No. 27408 W) of 2012 is dismissed. No order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.