
(2014) 09 GAU CK 0045
In the Gauhati High Court
Case No : W.P. (C) No. 4846 of 2014

Khan Nazrul Islam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 1(1), 11(1)
Penal Code, 1860 (IPC) — Section 302, 304(B), 304B, 34, 498(A)

Citation : (2015) 2 GLD 394 : (2014) 5 GLT 231

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : I.A. Talukdar, Advocates for the Appellant; B. Das, C.G.C, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. I.A. Talukdar, learned counsel for the petitioner as well as Ms. B. Das, learned CGC. By means of this writ petition filed on 12.9.2014, the petitioner has challenged the Annexure-6 order dated 26.2.2009, by which, pursuant to a departmental proceeding, he was dismissed from service.

2. Apart from the unexplained delay in filing the writ petition, the only projection made in the writ petition is that in view of acquittal of the petitioner in the particular criminal case, he is required to be reinstated in service by setting aside the aforesaid order of dismissal is also not sustainable in the given facts and circumstances discussed below.

3. The petitioner was a member of a disciplined force and he was working as Constable in 165 Bn. in CRPF. He was so appointed on 5.6.2004. He was on leave for the period from 5.1.2008 to 3.2.2008. Taking leave, he came to his native place at Barpeta. During the currency of the leave and while staying at Barpeta, his wife allegedly committed suicide in her own house on 14.1.2008. Barpeta P.S. Case No. 58/2008 was registered under Section 304(B)/34 IPC. The petitioner was arrested in connection with the said case on 25.1.2008 and released on bail

on 18.3.2008.

4. Admittedly, the petitioner did not furnish any intimation to the respondents and/or to his controlling authority about his involvement and arrest in connection with the criminal case. It also needs to be placed on record that he did not apply for any leave, even after his release on bail and also not reported for duty till August, 2008.

5. The petitioner was twice directed to report for duty, but he did not do so. In the meantime, a departmental proceeding was drawn up against him vide Annexure-5 memorandum of charge dated 1.10.2008 levelling the following charge:

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST No. 041654726 CT/GD KHAN NAZRUL ISLAM, 165 BN, CRPF.

ARTICLE-I

That the said No. 041654726 CT/GD Khan Nazrul Islam, 165 Bn, CRPF while functioning as Constable (GD) committed an act of misconduct/misbehavior in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949, in that he was arrested on 25.1.2008 by Officer In charge, Barpeta Police Station (Assam) in connection with the alleged murder of his wife with reference to P.S. Case No. 58/2008 registered against him under Section 304(B)/34 IPC and he remained under judicial custody w.e.f. 25.1.2008 to 18.3.2008 which is prejudicial to good order and discipline of the member of the Force.

ARTICLE-II

That the said No. 041654726 CT/GD Khan Nazarul Islam, 165 Bn, CRPF while functioning as Constable (GD) committed an act of misconduct/misbehavior in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949, in that till 22.7.2008 he did not inform to his Coy Commander viz. OC C/165 Bn, CRPF or his Head of Office viz. Commandant 165 Bn, CRPF about his arrest by Barpta Police (Assam) on 25.01.2008 and about his judicial custody w.e.f. 25.01.2008 to 18.03.2008. After release from judicial custody on 19.3.08 he remained absent from duty w.e.f. 19.03.2008 to 19.08.2008 unauthorisedly and without permission by the competent authority which is prejudicial to good order and discipline of the member of the Force."

6. Along with the charges, the following statement of imputation of misconduct was also annexed.

"STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGES FRAMED AGAINST NO. 041654726 CT/GD KHANNAZARUL ISLAM, 165 BN, CRPF

ARTICLE-I

That the said No. 041654726 CT/GD Khan Nazarul Islam of 165 Bn, CRPF who is

a resident of Village-Tetlirtal Post-Barpally, Police Station - Barpeta, District-Barpeta (Assam) proceeded on 30 days Earned leave w.e.f. 5.1.08 to 3.2.08. During his leave period, it was informed by control room of NES TAC HQr and S.P. Barpeta vide his letter No. CB/2008/63 dated 25.2.2008 that he has been arrested on 25.1.2008 by Officer In Charge, Barpeta Police Station (Assam) in connection with the alleged murder of his wife with reference to PS. Case No. 58/2008 registered against him under Section 304(B)/34 IPC and he was kept under judicial custody w.e.f. 25.01.2008. Superintendent of Police, Barpeta (Assam) vide his letter No. V/IV-1/2008/1587 dated 22.7.2008 intimated to this office that No. 041654726 CT/GD Khan Nazarul Islam was kept under judicial custody w.e.f. 25/01/2008 to 19.03.2008 and he was released on bail on 19.3.2008 on the order of the Hon'ble High Court, Guwahati (Assam). The said No. 041654726 CT/GD Khan Nazarul Islam suppressed the fact of his involvement in the alleged murder case to this office and thereby committed an act of misconduct in his capacity as a member of the Force.

ARTICLE-II

That the said No. 041654726 CT/GD Khan Nazarul Islam, 165 Bn, CRPF was arrested by Barpeta Police (Assam) in connection with the alleged murder of his wife with reference to P.S. Case No. 58/2008 registered against him under section 304(B)/34 IPC and he was kept under judicial custody w.e.f. 25.01.2008 to 18.03.2008 and he was released on bail on 19.3.2008 on the order of the Hon'ble High Court, Guwahati (Assam). Till 22.7.2008 he did not inform to his Coy Commander viz. OC C/165 Bn, CRPF or Head of Office viz. Commandant 165 Bn, CRPF about his arrest by Barpeta Police (Assam) on 25.01.2008 and his judicial custody w.e.f. 25.01.2008 to 18.3.2008. He was directed to report for duty by 2.8.2008 but till 19.08.2008 he did not report for duty. He did not comply with the directions to report for duty and he remained absent from duty w.e.f. 19.03.2008 to 19.08.2008 unauthorisedly and without permission by the competent authority. Thus he has committed an act of misconduct, negligence of duty and disobedience of lawful orders, which is prejudicial to good order and discipline of the Force."

7. Thereafter the enquiry was conducted, but the petitioner did not respond to the proceeding, although chargesheet was served on him. However, later on, he appeared and submitted his written statement on 24.11.2008 and pleaded guilty of the charges. In order to affect a just and fair enquiry, irrespective of such admission of guilt by the petitioner, the Enquiry Officer recorded statement of P.Ws. in presence of the petitioner and the copies thereof were also furnished to him with all the opportunities to defend his case. He was also apprised of his right to engage defence assistant, but he declined. He was also given ample opportunity of cross examination, but he did not cross examine any of the witnesses.

8. On completion of the enquiry, copy of the enquiry report was furnished to the petitioner on 25.1.2009 with the direction to submit representation if any against

the same. However, the petitioner did not submit any representation.

9. The disciplinary authority by the impugned order dated 26.2.2009 imposed the penalty of dismissal from service with the folio wing finding

"7. The brief of the case is as under:

No. 041654726 CT/GD Khan Nazarul Islam of this unit proceeded on 30 days E/L w.e.f. 5.1.08 to 03.02.08 and he remained absent w.e.f. 4.2.08 without any information. In the meantime an information was received from the Control Room NES TAC HQrs that No. 041654726 CT/GD Khan Nazarul Islam of C/165 Bn who was on leave has been arrested by the Officer In-charge, Barpeta police Station (Assam) in connection with the alleged murder of his wife with reference to P.S. Case No. 58/2008 registered against him under Section 304(B)/34 IPC and he was kept under judicial custody w.e.f. 25.01.2008. Accordingly vide this office sig No. No. P. VIII-1/2008-165-EC-2 dated 9.2.08, Comdt-11 Bn. CRPF was requested to send a representative to ascertain and intimate actual position to confirm about the incident. Comdt-11 Bn. Vide signal No. P. VIII-1/2008-EC-II dated 15.02.2008 has intimated that above CT/GD was arrested by the Officer In-charge, Barpeta police Station (Assam) in connection with the alleged murder of his wife with reference to P.S. Case No. 58/2008 registered against him under Section 304(B)/34 IPC and he was kept under judicial custody w.e.f. 25.01.2008. The deponent No. 041654726 CT/GD Khan Nazarul Islam did not inform this office at his own about his arrest by Barpeta Police and about judicial custody. This office vide letter No. P. VIII-1/2008-165-EC.II dated 19.02.2008 requested S.P. Barpeta (Assam) to intimate details of the case. S.P. Barpeta vide letter of No. CB/2008/63 dated 25.2.2008 intimated that No. 041654726 CT/GD Khan Nazarul Islam of this unit was kept under judicial custody w.e.f. 25.01.2008 in connection with the alleged murder of his wife with reference to P.S. Case No. 58/2008 registered against him under Section 304(B)/34 IPC. Thereafter No. 041654726 CT/GD Khan Nazarul Islam of this unit was placed under deemed suspension w.e.f. 25/01/2008 as per rule 10(2) of CCS (CCA) Rules-1965 vide this office order No. P. VIII-1/2008-165-EC.II dated 29/02/2008. A copy of suspension order was served to him through a special messenger of this unit. As intimated by S.P. Barpeta vide letter No. V/IV-1/2008/1587 dated 22.7.2008, individual was kept under judicial custody w.e.f. 25.01.2008 to 18.03.2008 (54 days) and released on bail on 19.03.2008.

ii) Since the delinquent did not report at this unit even after his release from judicial custody, he was directed to report this unit HQrs immediately vide this office letter No. P. VIII-1/2008-165-EC.II dated 18.7.2008. On 28.7.2008 an application of individual dated 22.7.08 was received in this office informing that he was under judicial custody for 54 days and he has to attend court for every 20-25 days and this is the reason why he did not report to Unit. With reference to his letter dated 22.7.08, individual was again directed to report in this unit HQr vide this office letter No. P. VIII 1/2008-165-EC.II dated 2.8.08 and he was also informed that he will be permitted to attend the court timely after reporting

at this HQR. He reported at unit HQR. Tengasole, Paschim Midnapore (WB) on 20.08.2008 (FN) after unauthorized absence of 198 days w.e.f. 04.02.06 to 19.08.08.

8. On the basis of report of E.O. evidences on records and considering all the prose and cons of the case, the charges framed against the delinquent under Article-I and II have been found proceed beyond any shadow of doubt that he was arrested by In-charge, Barpeta Police Station and remained injudicial custody wef 25.01.08 to 18.03.08 (54 days) and released on bail on 19.03.08 and further, it has also been proved that he remained absent unauthorisedly without prior permission or sanction of competent authority w.e.f. 4.2.08 to 19.08.2008 (198 days). As per rule, it is the duty of the Government servant who is arrested for any reason to intimate promptly the fact of his arrest and the circumstances connected therewith to his superior even though he might have been released on bail subsequently. In this instant case, the said individual has failed to do so. Accordingly, No. 041654726 CT/GD Khan Nazarul Islam of C/165 Bn. CRPF has committed a grave misconduct in that he remained absent unauthorisedly even after he has released from judicial custody on bail w.e.f. 19.3.08 and he did not inform about the fact of his arrest by In-charge, Barpeta Police Station (Assam) and judicial custody to his superior viz. Officer Commanding C/165 Bn. And Commandant-165 Bn, CRPF which is prejudicial to good order and discipline of this Force. Such an act of grave misconduct by a member of the disciplined Force like CRPF deserves stringent punishment. Therefore, in exercise of the power vested in me under Section 1(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955, No. 041654726 CT/GD Khan Nazarul Islam of C/165 Bn. Is "DISMISSED" from service with immediate effect i.e. w.e.f. 26.02.2009 (AN)."

10. Being aggrieved by the said order of penalty, the petitioner filed the Annexure-7 appeal, which was also dismissed by Annexure-8 order dated 30.11.2009. In the appeal while narrating the above facts, the petitioner admitted in paragraph-7 of the appeal that he did not intimate the unit Headquarter about his arrest and detention. He also admitted that he remained at his residence at Barpeta till 19.8.2008. It will be pertinent to mention here that because of the arrest of the petitioner in connection with the aforesaid case, he was placed under suspension vide Annexure-3 order dated 29.2.2008 clearly stipulating therein that he will have to furnish certificate in the prescribed form every month to the effect that he was not engaged in any other employment business, profession or vocation for profit/remuneration/salary.

11. After the aforesaid order of penalty and dismissal of the appeal vide Annexure-8 order dated 30.11.2009, the petitioner did not do anything in the matter and now has filed this writ petition after 5 years of penalty of dismissal simply on the ground that he has been acquitted in the criminal case vide judgment dated 4.7.2014. The criminal case registered as Sessions Case No. 80/2008.

12. From the above narration of facts, it is abundantly clear that the departmental proceeding and the criminal proceeding were on two different charges. While the departmental proceeding pertains to non-furnishing of information regarding arrest and detention in connection with the said criminal case and also unauthorized absence from duty, the criminal case was in connection with the charges framed under Section 498(A)/304B/302/34 IPC. Thus, acquittal of the petitioner in the criminal case has got nothing to do with the departmental proceeding that was initiated against the petitioner and eventually completed with the imposition of the aforesaid penalty of dismissal from service. Now, after 5 years of such penalty, the petitioner cannot invoke writ jurisdiction of this Court on the basis of his acquittal in the criminal case pertaining to the aforesaid charge, which has got nothing to do with the charges leveled against him in the departmental proceeding.

13. Mr. Talukdar, learned counsel for the petitioner submits that the penalty being disproportionate to the gravity of the charges, the same is required to be interfered with. This Court exercising writ jurisdiction cannot substitute the opinion of the disciplinary authority in the matter of imposition of penalty. Irrespective of dismissal of the writ petition in view of the above facts and circumstances, it will always be open for the petitioner to approach the authority in respect of the order of penalty, which he claims to be disproportionate to the gravity of the misconduct attributed to him. The writ petition is dismissed. No order as to costs.