

(2022) 08 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2280 Of 2014, IA No. 3058 Of 2014

Manzoor Ahmed Din

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-08-2022

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20
Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2022) 08 J&K CK 0007

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : C. M. Koul, A. R. Bhat, Vishal Sharma

Final Decision : Dismissed

Judgement

Rahul Bharti, J

Heard learned counsel for the parties.

The petitioner was in the Central Reserve Police Force ("CRPF" in short). The petitioner was appointed and serving as Constable with his duty at Central Reserve Police Force, Group Centre, Bantalab, Jammu. The petitioner along with his CRPF Constable colleague Nisar Ahmed Lone came to be arrested by the Police of the Police Station, Domana in First Information Report (FIR) no.203/2006 dated 06.10.2006 bearing the allegation that on being stopped by the Incharge Police Post Chinore, said two persons were found carrying charas weighing 2 kg and 200 gms. The FIR against the petitioner and his co-accused constable Nisar Ahmed Lone was registered for commission of offence under section 20 of Narcotics Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" in short). The petitioner and co-accused came to be arrested and thereafter a police challan came to be presented against the two for trial before the court of learned Principal Sessions Judge, Jammu on file no. 70/Sessions instituted on 01.12.2006.

The trial of the petitioner and the co-accused Nisar Ahmed Lone resulted in a judgement of acquittal dated 03.12.2013 passed by the Court of learned Principal Sessions Judge, Jammu. This judgement of the acquittal earned the release of the petitioner and the co-accused Nisar Ahmed Lone.

As a sequel to his arrest by the Police of the Police Station Domana and implication in the criminal case under the NDPS Act, 1985, the petitioner had come to suffer an order of dismissal from service vide order no. P.VIII-6/06-EC-II dated 23.10.2007 passed by the Additional Deputy Inspector General of Police, Group Center, CRPF, Bantalab Jammu. The said order of dismissal against the petitioner was by reference to rule 27 of the CRPF Rules, 1955 for violation of section 11(1) of the Central Reserve Police Force Act, 1949 in terms whereof the petitioner was charged of having failed to inform his superior officer about his arrest.

While the petitioner and the co-accused Nisar Ahmed Lone both were serving their confinement in judicial custody, the departmental inquiry against him and other co-accused Nisar Ahmed Lone had come to take place when they were served with show-cause notice to explain their conduct, to which the petitioner vide reply dated 21.02.2007 apprised the authority issuing the show-cause and in which the petitioner stated that he had informed the police to convey the information of his arrest to the concerned CRPF authority.

Upon receiving the said reply dated 21.02.2007 from the petitioner, a CRPF official was appointed as an inquiry officer in terms of an order dated 03.03.2007 and the inquiry against the petitioner came to be carried out while the petitioner was suffering judicial custody. It was during his time of confinement that the petitioner was asked to defend himself within a period of 20 days vide an order dated 23.06.2007 passed by the said inquiry officer. The inquiry officer came to generate his report to which, the petitioner who was still being in custody, was asked vide a communication dated 11.09.2007 to state his position vis-à-vis inquiry report within a period of 15 days and to which the petitioner submitted his explanation.

The appointing authority of the petitioner on the basis of inquiry report and the explanation tendered by the petitioner came to the conclusion that the petitioner had failed to pass on the information of his arrest by the police to his superior officials as was required under law and as such by reference to rule 27 of the CRPF Rules, 1955 the petitioner was guilty of offence and subjected the petitioner to dismissal from service.

To put it in simple words, the sole reason for dismissal of the petitioner from his service by the DIG concerned was the failure on the part of the petitioner to report his arrest.

The petitioner had come to approach this Court with a writ petition SWP no. 772/2014 in which vide an interim direction dated 19.03.2014 this Court came to direct the DIG CRPF, Bantalab Jammu to accord consideration to the

representation filed by the petitioner with respect to his said dismissal from service.

By acting in compliance to the said direction of this Court, the DIGP GC CRPF, Bantalab Jammu came to pass an Order no. J.II.1/2014-EC-II dated 22.05.2014 in terms whereof the said DIGP GC CRPF, Bantalab Jammu came to hold that there was no cogent reason put up by the petitioner for affording any interference with the order no. P.VIII-6/06-EC-II dated 23.10.2007 passed by the Additional Deputy Inspector General of Police, Group Center, CRPF, Bantalab Jammu effecting dismissal of the petitioner from the service.

The petitioner is aggrieved of the course of action at the end of the respondents in effecting his dismissal from the service by reference to the aforesaid two orders.

The factual premise on which the petitioner came to suffer charge of violation of section 11(1) of the CRPF Act, 1949 by concealing the fact as to arrest by the Police Station Domana is erroneous and misconceived as it was the SHO Police Station Domana himself who vide his communication no. 1386/5-1/PSO dated 06.10.2006 addressed to DG CRPF, Group Center, Bantalab Jammu conveyed the fact of arrest of two CRPF constables namely Nisar Ahmed Lone (Ct. no. 961170215/GCBTB) and the petitioner Manzoor Ahmed (Ct. no. 983360816/GCBTB) being arrested in case FIR no. 203/2006 under section 20 of the NDPS Act, 1985. Said communication of SHO Police Station Domana is to be accepted to have been so addressed to the DG CRPF, Group Center, Bantalab Jammu, as no SHO upon coming to know about arrest of two CRPF personnel would ever avoid intimating the fact of their arrest to the concerned superior authority of the arrestees. This has been referred by the respondents themselves in their reply cum objections. Thus, it cannot be heard to be said by the Additional Deputy Inspector General of Police, Group Center, CRPF, Bantalab Jammu that the fact of arrest of the petitioner was not known to the superior officials of the petitioner. It is not understandable to this Court as well as to how can an arrestee in FIR lodged in a police custody on his/her own generate a communication to his/her employer for purpose of intimating his/her arrest in a criminal case and how that disability/inability of an arrestee can be read as an act of default/omission amounting to culpable act entailing the consequence of punishment including that of dismissal from service as in the present scenario the case is. It repels prudence to accept that the default/disability on the part of the petitioner to report about his arrest to the superior CRPF officials could be attributed an act of omission or commission on the part of the petitioner. On this count only the very basis of the dismissal of the petitioner from the service as ordered in terms of an order P.VIII-6/06-EC-II dated 23.10.2007 deserves to be knocked down and the inquiry conducted for passing the said order can be held to be nothing but a cosmetic exercise for the purpose of file making only without any fair intent attending the same.

Even if it is to be accepted just for the sake of situation that the petitioner did

default in communicating the fact of his arrest by the Police Station Domana to his superior officials thereby amounting to commission of an offence under section 11(1) of the CRPF Act, 1949 even then the punishment visited upon the petitioner in his dismissal from the service by the impugned Order no. P.VIII-6/06-EC-II dated 23.10.2007 read with Order no. J.II.1/2014-EC-II dated 22.05.2014 is so disproportionate that the while on one hand it reflects that the application of mind on the part of the authority was mechanical and one outcome centric on the other hand also repels the standard of fairness and reasonableness by any reference point. The event which had caught under police arrest the petitioner was not of his own making but an act of law enforcement authority and the restraint to which the petitioner came to be subjected as an arrestee could not have left a free option and occasion to the petitioner to follow the provisions of the Act and Rules governing his employment and duty.

In view of the aforesaid, the order of dismissal of the petitioner from the service effected vide Order no. P.VIII-6/06-EC-II dated 23.10.2007 read with Order no. J.II.1/2014-EC-II dated 22.05.2014 is held to be bad both on factual premise and also on legal basis which requires it to be set aside. Thus, Order no. P.VIII-6/06-EC-II dated 23.10.2007 read with Order no. J.II.1/2014-EC- II dated 22.05.2014 are quashed as being illegal and the petitioner is held entitled to reinstatement into service with all consequential and incidental benefits.

Announced.