

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Through VC)

LPA No. 141/2024
CM No. 3962/2024

Reserved on: - 03.02.2025

Pronounced on: -05.02.2025

Ex-CT/GD Om Prakash, Age 45 years, ...Petitioner(s)/appellant(s)
S/o Shri Murlidhar,
R/o Bunkera Ka Mohalla, Village Etawa Bhopaji,
District, Jaipur, Rajasthan.

Through: Mrs. Surinder Kour, Sr. Advocate, with
Ms. Manpreet Kour, Advocate

Vs.

- 1. Union of India through Home Secretary,** ...Respondent(s)
Ministry of Home Affairs, Govt. of India,
New Delhi.
- 2. Director General**
Central Reserve Police Force,
CGO Complex, Lodhi Road, New Delhi.
- 3. Inspector General,**
Central Reserve Police Force,
CGO Complex, Lodhi Road, New Delhi.
- 4. Deputy Inspector General,**
Central Reserve Police Force,
Patna
- 5. Commandant 4th Bn.,**
Central Reserve Police Force
C/o 56 APO.

Through: Mr. Vishal Sharma, DSGI.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE (thr. VC)
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

J U D G M E N T

Per Atul Sreedharan, J.

1. The present appeal has been filed by the appellant, who is aggrieved by the judgment passed by the learned Single Bench dated 10-05-2024, passed in SWP No. 1808 of 2008. By the impugned order, the learned Single Bench dismissed the writ petition filed by the appellant herein, wherein the appellant challenged the penalty of dismissal from service imposed upon him in terms of Section 11(1) of the CRPF Act, 1949.

2. The order dated 17-04-2004, issued by the Appellate Authority, dismissing the appeal filed by the appellant/petitioner against his dismissal from service, was also challenged. A further challenge has also been given to the order dated 17-06-2008 issued by the Revisional Authority, whereby the revision petition of the appellant/petitioner against the order dismissing his appeal, was also dismissed.

3. The relevant facts, stated briefly, are as follows: The petitioner was appointed as a constable in the CRPF on 15-06-2004. On 03-04-2006, between 1800 hours to 2000 hours, he was on sentry duty at Morcha No. 11 at the residence of the Chief Minister in Jammu. On the same day, a constable named Anand Kumar Singh, who was also detailed on sentry duty at Morcha No. 3 at the same residence, is stated to have caused the deaths of Head Constable H.N. Pandey and Head Constable Yogendra Jha. He also reportedly fired a few rounds at Inspector Mohan Shyam and thereafter surrendered at Police Station Pir Mirtha, Jammu.

4. The appellant/petitioner was charge-sheeted and tried in the departmental enquiry on the grounds that while being on sentry duty, he made no effort to stop or catch sepoy Anand Kumar Singh and neither did he use his firearm to injure or neutralize him. Instead, he fled from the Morcha post, leaving it unattended, despite having an opportunity of stopping and catching the culprit sepoy Anand Kumar Singh.

5. The departmental inquiry was conducted by the Inquiry Officer, who submitted a report dated 29-07-2006, by which the appellant herein was found guilty as charged. Based on the report, the Commandant by the impugned order

dated 23-10-2006, dismissed the appellant/petitioner from service. The order of dismissal came to be challenged by the appellant/petitioner by way of a statutory appeal before the DIG CRPF, who, vide the impugned order dated 17.04.2007, dismissed the appeal.

6. The petitioner thereafter approached the High Court of Delhi, challenging the actions of the respondents herein by filing a writ petition. However, the writ petition was dismissed as withdrawn, with liberty to approach the court vested with the competent jurisdiction. Subsequently, the appellant filed a revision petition under Rule 29 of the CRPF Rules, 1955, which was dismissed by the Inspector General of CRPF vide order dated 17-06-2008.

7. Learned Senior Counsel appearing for the appellant has argued with great vehemence that the inquiry against the appellant was not conducted in accordance with rules, as the appellant was not allowed to have the services of a friend to defend his case, thereby violating Rule 14(8) of CCS (CCA) Rules, 1965. He further argued that the inquiry proceedings were conducted in English, a language not understood by the appellant.

8. Learned Senior Counsel has also argued that the appellant was not accorded a reasonable opportunity to defend his case and that the conclusion arrived at by the Inquiry Officer is based upon no evidences. He argued that the evidence on record went to establish the innocence of the appellant and that the punishment imposed upon the petitioner is harsh, excessive, and disproportionate to the alleged misconduct as on the relevant point of time, the appellant was only into the second year of his service.

9. After having heard the parties, the learned Single Bench examined Rule 27 of the CRPF Rules and summarized its provisions in paragraph 13 of the judgment. The rule requires that the substance of the accusation be reduced to writing and read out to the delinquent officer and also a copy of which, was to be served upon him. The delinquent would thereafter enter a plea of guilty or not guilty, following which evidence is recorded in the presence of the delinquent, giving him an opportunity to cross-examine the witness. After conclusion of the evidence for the department, the delinquent has to be called upon to enter his defense and, if need be for the conduct of the same, be permitted to inspect the documents. Thereafter, the statement of the delinquent

has to be recorded, and if he pleads not guilty, he has to be given an opportunity to produce witnesses in defense.

10. In paragraph 14 of the judgment, the learned Single Bench, perused the record of the inquiry and noted the fact that the Inquiry Officer clearly asked the petitioner whether he had received the articles of charge and the material annexed thereto, to which the appellant responded that he had received the documents.

11. Upon being asked by the Inquiry Officer whether the appellant desires to have the assistance of any person as his friend, the appellant responded that he does not need any such assistance. As regards the contention put forth by the learned Senior Counsel that proceedings were in a language that the appellant did not understand, the learned Single Bench has recorded that the departmental records reveal that the inquiry proceedings were conducted in Hindi and not in English, as was alleged by the appellant, and that the appellant was given ample opportunity to cross-examine all witnesses produced by the department, which the appellant did.

12. After completion of evidence by the department, the record of the inquiry proceedings revealed that the statement of the appellant was recorded on 03-07-2006, and he was granted 15 days to present evidence in defense, to which the appellant stated that he does not want to produce any evidence at that time in his defense, but if he feels so necessary, he would do so. Thereafter, the learned Single Bench held that the appellant was given an ample opportunity to cross-examine the witnesses and to produce his defense, and that the appellant submitted his written statement as also his statement in defense before the Inquiry Officer.

13. One of the main arguments of the learned Senior Counsel appearing on behalf of the appellant was that the Inquiry Officer has conducted himself as a prosecutor inasmuch as he has examined witnesses on behalf of the department. Assistance was also taken of the judgment of the Supreme Court in **UOI Vs. Ram Laxhan Sharma, (2018) 7 SCC 670**, wherein the Supreme Court held that the question as to whether an Inquiry Officer has acted independently or not is to be ascertained based on the facts and circumstances of the case.

14. Applying the said law, the learned Single Bench held that the record of enquiry reveal that the Inquiry Officer had not posed any questions to the witnesses while recording their examination-in-chief and that some questions were asked only to seek clarifications from some witnesses. It was further held in the impugned order that the appellant was given the opportunity to cross-examine the witnesses, which he did in each case. The argument that the findings of the Inquiry Officer were perverse was also considered, but the Single Bench rejected it, noting that there was no material to suggest the appellant was not negligent.

15. The learned Single Bench relied upon the judgment of the Supreme Court in **B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749** and held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made where the power under Article 226 is to ensure that the delinquent receives a fair treatment and that the conclusion which the authority arrives at is not perverse and contrary to the record of the case. It also discussed another judgment of the Supreme Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, where the Supreme Court held that despite the well-settled position, the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the Inquiry Officer,

16. Learned Senior Counsel appearing on behalf of the appellant has argued that the latest position of law as per the rulings of the Supreme Court is that it is essential to see the evidence, which the learned Single Bench failed to do.

17. This Court is unable to agree with the said submission. The law relating to judicial review of inquiry proceedings as raised by the Supreme Court is that the material is not to be examined in a threadbare manner by the Court exercising jurisdiction under Article 226 as it is not a court of appeal against an order passed in a departmental inquiry. Evidence is to be seen for the limited purpose whether the conclusions arrived in the inquiry proceedings are perverse/fanciful, unacceptable to a prudent person.

18. In other words, where the appreciation of the material by the inquiry authority is absurd, the High Court in its jurisdiction under Article 226 can interfere and set aside the said findings in the inquiry proceedings. Otherwise,

this Court under Article 226 is only to examine whether principles of fairness and natural justice were assiduously followed in the inquiry proceedings, ensuring that the delinquent had a reasonable opportunity of defending himself and the procedure adopted was just and fair.

19. The conclusion of the inquiry officer that the petitioner had an opportunity to either stop Anand Kumar Singh who had already shot down some of his colleagues or shoot him down in order to stop Anand Kumar Singh from spreading the carnage cannot be termed as perverse or based on no evidence. The learned Single Bench also rejected the comparison of the case of the appellant with one Havaladar MK Kanhar, whom the record of the enquiry reveal was not armed and was not manning a post at the relevant time.

20. In an LPA, the court does not sit over the judgment passed by the learned Single Bench as an Appellate Court *stricto sensu*. The interference is only called for if the findings of the learned Single Bench are fanciful and so extremely improbable and not based on the material appreciated by it. The order clearly reveals that the inquiry proceedings took place in Hindi, which is a language understood by the appellant herein, that he has received all the documents necessary for his defense and he was given an opportunity to cross-examine the official witnesses, which he did. The learned Single Bench was of the opinion that the records of the inquiry don't reveal that there was any violation of natural justice or any broad principles of fairness, which prevented the appellant from getting a reasonable opportunity to conduct his defense.

21. The argument put forth on behalf of the appellant that the punishment of dismissal from service was disproportionate to the charge against him is also rejected. Merely because the appellant was only in the second year of his service is no reason to be charitable to him. It must be remembered that the appellant was a member of an Armed Force of the Union in a State which was affected by insurgency. His inability to stop or neutralize the assailant who happened to be his own colleague, despite being armed and in a position to do so, reveal that he was incapable of continuing as a member of the Armed Force in the Union, as he lacked the requisite resolve to act with decisiveness when faced with such adversity.

22. Under the circumstances, this Court does not find any perversity in the order passed by the learned Single Bench, and so the appeal is dismissed.

(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR
05.02.2025
Junaaid

Whether the order is reportable?

Yes/No.

