



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 351/00322/2018

Date of order: 24.7.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Om Prakash Kushwaha,
Son of Shri S.M. Kushwa,
Aged about 37 years,
Residing at Nayagaon,
Port Blair – 744106,
District – South Andaman.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
Government of India,
Ministry of Home Affairs,
Department of Police,
North Block, Central Secretariat,
New Delhi – 110 001;
2. The Lieutenant Governor,
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair – 744 101;
3. The Director General of Police,
Andaman & Nicobar Police,
Police Headquarters,
Port Blair – 744 101;
4. The Commandant,
IRBN, Andaman & Nicobar Islands,
Port Mout – 744 103,
South Andaman.
5. The Assistant Commandant,
IRBN, Andaman & Nicobar Islands,
Port Mout – 744 103,
South Andaman.

.. Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has come up in a third stage of litigation as a sequel to O.A.

No. 351/00015/2015 and O.A. No. 350/01577/2017.

2. The applicant has claimed the following relief in the instant O.A.:-

"a. To quash and/or set aside the impugned Order Book No. 253 dated 24th January, 2018 issued by the Director General of Police, Andaman & Nicobar Islands, Port Blair by upholding the penalty order of dismissal from service upon the applicant which was imposed by the disciplinary authority, acting as Appellate Authority by not taking into consideration the fact that against a small charge such capital punishment has been awarded which has not only harm to the applicant but also it harm the family of the applicant, such grievous punishment against the applicant for taking alcohol is highly disproportionate and cannot be sustainable in the eye of law being Annexure A-13 to this original application.

b. To quash and/or set aside the impugned memo dated 3rd August, 2015 whereby it was communicated to the present applicant that the appeal preferred by the applicant has been rejected by the Director General of Police, Andaman & Nicobar Islands, Port Blair. Only two lines order has been passed by the Director General of Police that the appeal preferred by the applicant has been rejected which is an utter violation of the proviso of CCS (CCA) Rules, 1965 being Annexure A-10 of this original application.

c. To pass an appropriate order directing upon the respondent authority to take a lenient view by not imposing a harsh punishment of dismissal from service so that the applicant can resume the duty in the Police Department and the respondents be further directed to give a last chance to the applicant to perform duty in the Police Department with honesty and sincerity.

d. To pass an appropriate order directing upon the respondent authority at least to direct the respondent department to impose any light punishment upon the applicant so that he can get back his service and further direct the respondents to reinstate the applicant in his service so that his livelihood along with his family members may not be suffered any further."

3. Heard Ld. Counsel, examined pleadings, documents on record.

4. It is noted here that although given opportunities, no rejoinder has been filed in this case.

5. The case of the applicant as canvassed by his Ld. Counsel is that the applicant was appointed as Police Constable on 13.11.2002 and that on 3.12.2002 was appointed as a Constable in India Reserve Battalion.

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That, on 10.10.2013, the respondent authorities had issued a memorandum of charges thereby initiating a departmental proceeding against the applicant against which the applicant had submitted his representation on 24.10.2013 and that, on 12.2.2014, the disciplinary authority passed an order thereby dismissing the applicant from service. Although the applicant had preferred an appeal against the order of the disciplinary authority, the appellate authority, vide his order dated 1.4.2014 and without assigning any reasons, had rejected the appeal of the applicant.

That, being aggrieved, the applicant had filed an O.A. No. 351/00015/2015 before the Circuit Bench at Port Blair and vide orders dated 9.6.2015, the Tribunal had granted liberty to the applicant to approach the appropriate authority for seeking leniency in punishment. In compliance to the same, on 09.07.2015, the applicant preferred an appeal before the Director General of Police, A&N Islands, Port Blair and that the Director General of Police, without considering the prayer of the applicant, rejected the said appeal by a summary and cryptic order.

Being highly aggrieved and dissatisfied with respect to such action of the respondent authorities, the applicant moved another O.A. No. 351/01577/2017, which the Tribunal disposed of vide orders dated 29.11.2017 directing the appellate authority to pass a reasoned and speaking order based on the representation of the applicant. Thereafter, the concerned respondent authorities vide Office Order dated 24.1.2018 rejected the appeal of the applicant and upheld the punishment imposed by the disciplinary authority of dismissal from service without considering the issues raised by the applicant in his appeal and without considering the proportionality of the punishment of dismissal of service upon the applicant.

The applicant, thereafter, being aggrieved with such orders of the appellate authority has once again approached the Tribunal in the instant O.A.

6. The respondents' have filed a written statement in which they have argued

as follows:-

That, the applicant while posted at Open Distress Camp, Brookshabad, was found in drunken condition on 12.3.2013 during a surprise check conducted by the then In-charge, Open Distress Camp, Brookshabad. He was subjected to medical examination. The Medical Officer, G.B. Pant Hospital, Port Blair had confirmed the presence of the smell of liquor in his mouth during such examination.

That, the applicant was placed under suspension vide Order No. 791 dated 15.3.2013 and a preliminary enquiry was ordered to be conducted by the then Sub Inspector Anirudra Mondal of India Reserve Battalion, A&N Islands. The Preliminary Enquiry Officer has submitted his report on 21.3.2013 by holding that the applicant was in drunken condition while on duty at Open Distress Camp, Brookshabad.

That, after perusal of the Preliminary Enquiry Report submitted by the PEO, the Commandant (IRBn), A&N Islands ordered a regular Departmental Enquiry on the Articles of Charge vide Memorandum No. Comdt/IRBn/PC/DE/2013/1114 dated 10.10.2013.

That, after carefully and dispassionately examining the written reply submitted by the applicant and after giving him an opportunity of personal hearing and after going through his service records, the disciplinary authority had dismissed the applicant from service vide Order Book No. 328 dated 12.2.2014.

That, the applicant had preferred an Appeal before the then Director General of Police, A&N Islands (appellate authority) on 3.3.2014, which was rejected and communicated through a memo issued by the Assistant Commandant, IRBn vide Memo No. IRBn/GA/PM/2014/32 dated 1.4.2014.

That, in compliance of the order dated 29.11.2017, passed by the Tribunal, the appellate authority after going through representation dated 20.11.2016 submitted by the applicant, available records and after hearing him in person on 19.1.2018, rejected the representation of the applicant by passing a reasoned and speaking order vide Order Book No. 253 dated 24.1.2016.

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The prime issue before us is the question of disproportionate punishment vis-à-vis the applicant's offence and in this context, the orders of the disciplinary authority dated 12.2.2014 (Annexure "A-4" to the O.A.) is examined in detail. The orders of the disciplinary authority is reproduced below:-

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OFFICE OF THE COMMANDANT
INDIAN RESERVE BATTALION
ANDAMAN & NICOBAR ISLANDS

Dated: 12th February, 2014

ORDER BOOK NO. 328

A departmental enquiry under Rule 14 of CCS (CCA) Rules, 1965 was instituted against Ct/021017 Om Prakash Kushwaha vide Memorandum No. Comdt/IRBn/PC/DE/2013/1114 dated 10/10/2013 that he while discharging his duty at Open Distress Camp, Brookshabad on 12/03/2013 at 1530 hrs. was found in drunken state when checked by S Anandan, Assistant Sub-Inspector of IRBn. After examining him the Medical Officer has further opined that Ct/021017 Om Prakash Kushwaha was under the influence of alcohol. That such an act of consuming liquor while on duty amounts to grave misconduct, gross indiscipline and dereliction in discharge of duty and contravention of the mandatory provision under Rule 3(1)(ii) & (iii), and 22 of CCS (Conduct) Rules, 1964 rendering Ct/021017 Om Prakash Kushwaha liable for punishment under Rule 11 of CCS (CCA) Rules, 1965.

That during the process of departmental enquiry Ct/021017 Om Prakash Kushwaha vide his written reply dated 24/10/2013 has voluntarily admitted the charge that was framed against him and pleaded guilty. I have carefully and dispassionately examined the written reply of Ct/021017 Om Prakash Kushwaha and given opportunity to him for personal hearing on 30.12.2013.

That Ct/021017 Om Prakash Kushwaha did not raise any fresh issues/points during personal hearing. After hearing him and going through the service records it has been found that Ct/021017 Om Prakash Kushwaha was earlier dealt leniently on several occasions for his repeated misconduct and indiscipline attitude.

As per records Ct/021017 Om Prakash Kushwaha had altercation at public place with another Ct/021326 Abdul Habib on 14.1.2007 while they were on duty and under influence of liquor. For the above misconduct he was awarded withholding of 01 increment without cumulative effect vide book No. 47 dated 07.01.2008 by the Disciplinary Authority.

That on 19/10/2006 at about 2315 hrs, Ct/021017 Om Prakash Kushwaha was again found creating nuisance under the influence of alcohol in front of the GD Office for which he was awarded withholding of 02 increments without cumulative effect vide order book No. 790 dated 12.4.2007.

That on 09/02/2008 at about 2315 hrs, Ct/021017 Om Prakash Kushwaha authorizedly entered into the NCO Barrack in drunken state and

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attacked over HC/1653 K. Ganeshan with iron rod, for which indiscipline attitude he was awarded withholding of 01 increment with cumulative effect vide order book No. 1580 dated 09/07/2010 by the Disciplinary Authority.

That the said Ct/021017 Om Prakash Kushwaha was subsequently arrested on 15/5/2008 u/s 184/185 MV Act 1988 for which he was awarded withholding of 03 increments with cumulative effect vide order book No. 1580 dated 09/07/2010 by the Disciplinary Authority.

That the said Ct/021017 Om Prakash Kushwaha was subsequently arrested on 15/05/2008 u/s 184/185 MV Act 1988 for which he was awarded withholding of 03 increments with cumulative effect vide Order Book No. 2068 dated 27/12/2008 by the Discipline Authority.

That Ct/021017 Om Prakash Kushwaha was found absent from sentry post at IRBn (HQ) premises, for which he was warned to be more careful in future vide Order Book No. 1188 dated 22/05/2013.

That another departmental enquiry is pending against his cruel/indecent attitude towards his wife besides above he was also challenged by Police Station, for which he has been placed under suspension and the Departmental Enquiry against him is in process.

After seeing his service record I am of the view that lenient view had earlier taken against the attitude of Ct/021017 Om Prakash Kushwaha on several occasions but no progress over his attitude is noticed. Such a person cannot be tolerated in a disciplined force.

Showing even a bit of leniency towards him in this time would be a bad precedent, and would encourage other members of the force to wrongly believe that such acts are minor delinquencies, which could be overlooked. Further, such acts of indiscipline produce undesirable and negative impact on the organization. Now, it has become more important to check them forthwith. Therefore, Ct/021017 Om Prakash Kushwaha is not suitable to continue in a force like India Reserve Battalion whose bedrock is discipline, orderliness and courage.

NOW, THEREFORE, I, Atul Kumar Thakur, IPS, Commandant, India Reserve Battalion hereby order that Ct/021017 Om Prakash Kushwaha is dismissed from the service with immediate effect. He will deposit his kit and make good the pending dues, if any.

Ct/021017 Om Prakash Kushwaha was placed under suspension vide Order No. 79 dated 15.3.2013 and was reinstated in service vide Order Book No. 1884 dated 16/08/2013 and the period from suspension to re-instatement is treated as not spent on duty for all purpose.

If aggrieved by this order he may make an appeal to the Director General of Police, A&N Islands against this order, if he so prefers within 45 days from the date of receipt of this order.

Sd/-

(Atul Kumar Thakur, IPS)
Commandant, IRBn
A&N Islands"

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It is seen that the specific articles of charge against the applicant were as follows:-

ARTICLE -I

That Ct/021017 Om Prakash Kushwaha while on duty at Open Distress Camp, Brookshabad on 12/03/2013 was found under the influence of alcohol.

That such an act of consuming liquor while on duty amounts to grave misconduct, gross indiscipline and dereliction in discharge of duty and contravention of the mandatory provision under Rule 3(1)(ii) & (iii), and 22 of CCS (Conduct) Rules, 1964 rendering him liable for punishment under Rule 11 of CCS (CCA) Rules, 1965.

ARTICLE-I

That Ct/021017 Om Prakash Kushwaha while on duty at Open Distress Camp, Brookshabad on 12/3/2013 at 1530 hrs was found under the influence of alcohol during the surprise check by S. Anandan, Assistant Sub-Inspector, IRBn. Ct/021017 Om Prakash Kushwaha was sent to G.B. Pant Hospital, Port Blair for Medical Examination and Medical Officer on duty after examination opined that he was under the influence of alcohol.

That such an act of consuming liquor while on duty amounts to grave misconduct, gross indiscipline and dereliction in discharge of duty and contravention of the mandatory provision under Rule 3(1)(ii) & (iii), and 22 of CCS (Conduct) Rules, 1964 rendering him liable for punishment under Rule 11 of CCS (CCA) Rules, 1965".

Hence the Articles of charge was specifically based on the applicant's having been found under the influence of alcohol while on duty on 12.3.2013.

The disciplinary authority, however, in his order has observed as follows:-

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That Ct/021017 Om Prakash Kushwaha did not raise any fresh issues/points during personal hearing. After hearing him and going through the service records it has been found that Ct/021017 Om Prakash Kushwaha was earlier dealt leniently on several occasions for his repeated misconduct and indiscipline attitude.

As per records Ct/021017 Om Prakash Kushwaha had altercation at public place with another Ct/021326 Abdul Habib on 14.1.2007 while they were on duty and under influence of liquor. For the above misconduct he was awarded withholding of 01 increment without cumulative effect vide book No. 47 dated 07.01.2008 by the Disciplinary Authority.

That on 19/10/2006 at about 2315 hrs, Ct/021017 Om Prakash Kushwaha was again found creating nuisance under the influence of alcohol in front of the GD Office for which he was awarded withholding of



02 increments without cumulative effect vide order book No. 790 dated 12.4.2007.

That on 09/02/2008 at about 2315 hrs, Ct/021017 Om Prakash Kushwaha authorizedly entered into the NCO Barrack in drunken state and attacked over HC/1653 K. Ganeshan with iron rod, for which indiscipline attitude he was awarded withholding of 01 increment with cumulative effect vide order book No. 1580 dated 09/07/2010 by the Disciplinary Authority.

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That the said Ct/021017 Om Prakash Kushwaha was subsequently arrested on 15/05/2008 u/s 184/185 MV Act 1988 for which he was awarded withholding of 03 increments with cumulative effect vide Order Book No. 2068 dated 27/12/2008 by the Discipline Authority.

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That another departmental enquiry is pending against his cruel/indecent attitude towards his wife besides above he was also challenged by Police Station, for which he has been placed under suspension and the Departmental Enquiry against him is in process.

After seeing his service record I am of the view that lenient view had earlier taken against the attitude of Ct/021017 Om Prakash Kushwaha on several occasions but no progress over his attitude is noticed. Such a person cannot be tolerated in a disciplined force.

Showing even a bit of leniency towards him in this time would be a bad precedent and would encourage other members of the force to wrongly believe that such acts are minor delinquencies, which could be overlooked. Further, such acts of indiscipline produce undesirable and negative impact on the organization. Now, it has become more important to check them forthwith. Therefore, Ct/021017 Om Prakash Kushwaha is not suitable to continue in a force like India Reserve Battalion whose bedrock is discipline, orderliness and courage.

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It is noted here that the disciplinary authority in all his above mentioned findings has travelled beyond the Articles of Charges and extraneous considerations have formed a basis of the orders of penalty of dismissal from service with immediate effect.

Again, while referring to the orders of the Appellate Authority dated 24.1.2018 (Annexure A-13 to the O.A.) while the appellate authority has quoted

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the Articles of Charges accurately, the authority has arrived at the following findings:-

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In order to decide the quantum of penalty to be imposed upon the Appellant herein, the Disciplinary authority had rightly kept in mind of his incorrigible delinquency, especially keeping in view the nature of duties assigned to him and having due regard to their sensitiveness and expected discipline required to be maintained in a disciplined force. Moreover, the Appellant herein has never denied that he has been punished on several occasions for his proven misconducts in the past and the same is irrefutable fact on record. The Disciplinary Authority may take into consideration of the indisputable past conduct and service record for imposing the appropriate punishment as indiscipline is intolerable so far as the disciplined force is concerned.

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That past bad conduct of the Appellant herein is an irrefutable fact on record. The records reveal that he had been shown mercy and pardoned by the Disciplinary Authority by taking lenient view and imposing less stringent penalties upon him on several occasions with the hope that he would reform by improving his conduct. But despite giving him several opportunities, he did not mend his conduct nor show any improvement in his behaviour.

Moreover, to consume liquor while on duty, being a member of a disciplined force amounts to grave misconduct and gross indiscipline and unbecoming of a member of disciplined force.

The Appellant herein is an incorrigible delinquent and the Disciplinary Authority had rightly imposed the penalty of dismissal from service upon the Appellant herein, which warrants no interference.

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Herein also, the Appellate Authority has taken the past conduct of the applicant into consideration and levelled him as an incorrigible delinquent on the basis of his past conduct. We again refer to the fact that the Articles of Charge were only on misconduct on a specific date, that is on 12.3.2013 and hence, the findings of the Disciplinary Authority and Appellate Authority ought to have confined themselves only to the misconduct of the applicant on 12.3.2013.

7. In this we refer to the decision of the Hon'ble Apex Court, in *State of A.P. v. Sree Rama Rao AIR 1963 SC 1723, B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 and Bank of India v. T. Jogram (2007) 7 SCC 236* wherein it has been held that if the decision is vitiated by considerations extraneous to the

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evidence and merits of the case, the disciplinary proceedings invoke judicial review.

8. Accordingly, this being a matter where considerations extraneous to that in the chargesheet have formed the basis of the decisions of the disciplinary authority as well as the Appellate Authority, we deem it fit in the light of the ratio laid down by the Hon'ble Apex Court in *Chairman, LIC of India v. A. Masilamani, 2012 (8) Supreme Today 224 (SC)*, to remit the case back to the disciplinary authority to conclude on the same strictly on the Articles of Charge, enquiry report as well as the written statement of defence of the applicant. The entire exercise is to be completed within eight weeks of the date of this order. The orders of the Disciplinary authority dated 12.2.2014 is hereby set aside. The status of the applicant till such time as the disciplinary authority passes his orders will be spelt out by the disciplinary authority in his orders.

9. With this, the O.A. is disposed of. There will be no orders as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

for me
(Bidisha Banerjee)
Judicial Member

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