

from two persons in lieu of ensuring jobs of constable in C.R.P.F.

The order of suspension was followed by initiation of disciplinary proceeding. The Enquiry Officer found the writ petitioner guilty under Article 1 of the charge. The report of the Enquiry Officer was referred to the Disciplinary Authority who passed an order of removal from service against the petitioner with effect from 19th January, 1993.

The materials-on-record are explicit. Previously, the petitioner invoked the constitutional writ jurisdiction of this Court by filing C.O. No. 3628 (W) of 1993 alleging, *inter alia*, that the order of removal was passed without jurisdiction or in violation of Section 11 of the Central Reserve Police Force Act, 1949 (hereinafter described as the said Act). It is pertinent to mention here that the said writ petition was dismissed, however, a Coordinate Bench of this Court passed the following order: -

“However, it will be open to the petitioner to prefer an appeal under Rule 28 of the said Rules, 1955. For the purpose of calculating the period within which such appeal is to be filed, the period between the date of moving this writ petition and the date of its disposal shall be excluded. If, after exclusion of the said period, the appeal is not within the time, the delay may be condoned, if sufficient grounds is shown, and the appeal may be disposed of, in

accordance with law on merits, within 3 months of making such appeal.”

The petitioner accordingly filed statutory appeal before the Appellate Authority. The said appeal being dismissed the instant writ petition is filed.

It is submitted by the Learned Advocate for the petitioner at the outset that the order passed by the Enquiry Officer and subsequently followed by various authorities up to the Disciplinary Authority were based on surmise and conjectures. The petitioner was removed on the charge that he allegedly took bribe of Rs.24,000/- from one Gopal Das and one Tarakeswar Kewat on condition that he would ensure their service in the Force. It is submitted by the Learned Advocate for the petitioner that there is absolutely no evidence to the effect that the petitioner accepted bribe from the above-named two persons. It is also submitted by the Learned Advocate for the petitioner that 15 candidates were not considered for appointment in the Force on the ground that they filed false academic certificates. Amongst them the above-named Gopal Das and Tarakeswar Kewat were the two. Except the said two persons all the candidates left. However, the said Gopal Das and Tarakeswar Kewat did not recuse their candidature on the ground that they paid bribe to the writ petitioner amounting to Rs.24,000/-. This allegation prompted the

superior officer of the Force to initiate a disciplinary proceedings against the petitioner.

It is submitted by the Learned Advocate for the petitioner that nobody saw the petitioner to accept bribe from the above-named two candidates. He was falsely subjected to disciplinary enquiry on the ground of his repayment of a sum of Rs.11,000/-. It is contended by the Learned Advocate for the writ petitioner that the petitioner paid that amount under compulsion to secure his service. Referring to a decision of the Hon'ble Supreme Court in the case of **Commissioner of Police, Delhi & Ors. -Vs.- Jai Bhagwan** reported in **(2011) 6 SCC 376**, it is submitted by the Learned Advocate for the petitioner that a police constable faced disciplinary proceeding on the allegation made by a passenger that he took a sum of Rs.100/- as bribe from the said passenger at 161 Airport, Delhi and on the basis of such complaint a departmental proceeding was initiated. It was brought on record that the delinquent constable returned the said amount of Rs.100/- to the complainant. The Hon'ble Supreme Court in paragraph 15 was pleased to hold:-

"15. *In the present case, although there is some evidence that an amount of Rs.100/- was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the*

departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination. It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs.100/- to the complainant by way of a link-up”.

It was further held by the Hon’ble Supreme Court in the above-mentioned report in paragraph 17 as hereunder:-

“17. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence”.

The learned counsel for the petitioner further refers to a report in the case of **Narinder Mohan Arya -Vs.- United India Insurance Co. Ltd. and Others** reported in **(2006) 4 Supreme Court Cases 713** and submits that an employee cannot be subjected to disciplinary proceeding and should not be punished, either minor or major, on suspicion or presumption because suspicion or presumption cannot take the place of proof even in domestic inquiry. In the instant case, the petitioner was punished after departmental inquiry of removal from office. At the risk of repetition there is absolutely no evidence that he accepted the bribe and the decision taken by various authorities

including the disciplinary authority was based on suspicion and / or presumption.

Last but not the least, the learned counsel for the petitioner refers to Rule 27 of the Central Reserve Police Force Rules, 1955 and submits that the commandant is the disciplinary authority of the constables and enrolled followers. In the instant case the order of removal being finally passed by Addl. D.I.G.P., the same is per se illegal.

The learned counsel for the Union of India, on the contrary, draws my attention to paragraph 27 of the affidavit-in-opposition where it is specifically contended that as per the provisions contained in Government of India, MHA Letter no.1/45027/I/84DO(Pers.II) dated 17th January, 1984 as incorporated in Appendix-V to GC& Bn Officers' Manual, the Additional Deputy Inspector General of Police in the Central Reserve Police Force shall be the Commandant of Respective Group Centre and shall continue to perform the functions and exercise the powers vested in a Commandant under the Central Reserve Police Force Act, 1949. The said memorandum is also annexed with the written notes of argument filed on behalf of the respondents.

In view of such office order, this Court has no other alternative but to hold that the final order passed by the Addl. D.I.G.P. G. C., Durgapur is not an order beyond his

authority under Rule 27 of Central Reserve Police Force Rules.

On factual score indisputably two candidates namely Gopal Das and Tarakeswar Kewat did not want to leave and stuck to their candidature on the ground that they gave bribe of Rs.24,000/- to the petitioner. They identified the writ petitioner as the person who accepted bribe. They also deposed during inquiry proceeding against the delinquent i.e., the petitioner. Therefore, payment of bribe and acceptance thereof is proved by direct evidence during disciplinary inquiry against the writ petitioner and on factual score ratio of the decision in the case of ***Jai Bhagwan*** (supra) is not applicable in the instant case. On the same reason, I cannot but hold that the orders passed by the Inquiry Officer and affirmed by the Disciplinary Authority as well as Appellate Authority were passed on proof of acceptance of bribe by the petitioner and therefore, there is no reason to interfere with the impugned administrative decisions.

In view of the aforesaid, I do not find any merit in the instant writ petition and accordingly, the same is dismissed on contest, however, without costs.

However, admissible dues, if any, be paid to the petitioner.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Bibek Chaudhuri, J.)