

\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

DECIDED ON: 24.11.2015

+

W.P. (C) 4124/2014

HARI PRAKASH

..... Petitioner

Through: Dr. Vijendra Mehndiyan with Ms.
Pallavi Awasthi, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for Resp-1-3
with Ms. Bhavna Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner is aggrieved by a penalty of removal from service imposed upon him by the Rapid Action Force ("RAF"). This was preceded by an enquiry initiated by the RAF.

2. The petitioner was working as Constable (GD) in 108th Battalion in Meerut; on 14.01.2013, the RAF issued an articles of charge, broadly concerning three incidents between 15.11.2012 and 17.11.2012 during which it was alleged that he made calls to three senior officers and threatened to kill them, from mobile no.8273668466. The incident was widely published in newspapers on

21.11.2012. The RAF alleged that this resulted in bringing the force into disrepute. The second charge was a minor one, i.e., that despite being asked to remain on bed rest (Attend. 'C') between the period 16.11.2012 and 18.11.2012 he went out of the premises where the 108 Battalion, Meerut is housed. The third allegation was that he was negligent in his duties and had disobeyed his superiors on two different occasions earlier.

3. The first charge leveled was the most serious as it pertained to three unconnected phone calls received by one Commandant and two Dy. Commandants of the RAF. Two of them, i.e., Dy. Commandant Ms. Neelam Bonthial (PW-2) and Dy. Commandant Mr. Arun Kumar Singh (PW-3) deposed in favour of the RAF and their allegations. The Enquiry Officer concluded that the petitioner was guilty of misconduct of all the three charges. The findings were accepted by the competent authority and the punishment of removal from service was imposed. This was subsequently upheld by the appellate and revisional authorities.

4. Learned counsel for the petitioner urges that the findings are vitiated because the alleged recovery of mobile and the other materials on record clearly show that he was not the owner of the sim card (corresponding to no.8273668466). It was urged next that the Enquiry Officer's report is based almost entirely upon the allegations contained in the FIR and the criminal proceedings which led to the filing of the final report/chargesheet. Counsel stressed that the mere FIR itself could not constitute any material for the Enquiry Officer to

decide that it was the petitioner who made the alleged calls and no one else. It was next urged that the question of the petitioner being responsible in bringing the force to disrepute would have arisen only if RAF proves that he had made the threatening calls. Whilst the matter was still under investigation, without a shred of material to support the allegation that his cellphone was used to make the calls which threatened PW-2 and PW-3, an adverse finding in that regard could not have been rendered. It was urged that so far as the other two charges are concerned, they are expressly trivial. That the petitioner was out of the premises though required to be on rest and that he had been inflicted with two other penalties in the past could not have been so severely viewed as to result in the imposition of extreme penalty of removal from service.

5. Learned counsel for the respondents urged that this Court should desist from interfering with the impugned removal order. He submitted that the main charge was not that he made the calls but rather he brought the force to disrepute - which was proved by the news item carried in the newspapers with fairly wide circulation on 21.11.2012. It was next urged that with respect to the question of petitioner's criminality, the issue is to be decided by the competent criminal court. An application of the relevant standards, i.e., preponderance of probability in departmental enquiries would mean that there was sufficient material to connect the petitioner with the calls that PW-2 and PW-3 received.

6. The factual narrative would reveal that even though the first

charge is about bringing the RAF to disrepute, at the root of it is the alleged threatening calls made by the petitioner. In other words, the first charge pre-supposes that the petitioner had made threatening calls and the arrest of the petitioner led to the publication of the news item. What has to be established essentially is that it was the petitioner who made the threatening calls from mobile no.8273668466. The material with which the Enquiry Officer had to deal with *inter alia* included the testimonies of PW-2 & PW-3 as well as the FIR. Secondly the call details records - whether certified or not - were not placed on the record of the Enquiry Officer during the course of the proceedings. This material was significant because it would have thrown light as to whether the instrument recovered from the petitioner's custody had the unique ID (IMEI No.) which was reflected in the call details records (CDRs) referred to in the FIR and the chargesheet. The former was made part of the disciplinary proceedings. The omission to consider primary material which could have been easily sourced from the police authorities, in the opinion of the Court, vitiates the findings of the Enquiry Officer. The Supreme Court has held in its long standing authority in *Union of India v. H.C. Goel*, 1964 AIR 364 that in such matters whilst the Courts cannot assess the worth of the evidence in judicial review, it can certainly interfere where a finding is not warranted because of lack of evidence ('no material'). In this case, the copy of the FIR merely reflected what its makers believe or interpreted the CDRs to be. However, that did not obviate producing of the copy of the CDRs before the Enquiry Officer and furnishing a copy of the same to the petitioner.

7. So far as the other submission is concerned, the Court is of the opinion that the second charge was too trivial for the respondents to have imposed the penalty of removal from service.

8. In the light of the above findings, the findings of the Enquiry Officer and the impugned order are hereby set aside. It is clarified that the respondents are at liberty to proceed with the enquiry from the stage it concludes by adducing such evidence as is necessary to establish the petitioner's involvement in the incident. The respondents shall pass appropriate order under FR 54B with respect to consequential reliefs that the petitioner may be entitled to within two weeks from today. All rights and contentions of the parties are reserved.

9. The writ petition is allowed to the above extent.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

NOVEMBER 24, 2015

/vikas/