

(2003) 07 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 847 of 2002

Dambru Dhar Naik

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1), 2

Citation : (2003) 3 JKJ 559

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Advocate : Surinder Kour, for the Appellant; P.S. Chandel, Addl. CGSC, for the Respondent

Judgement

Y.P. Nargotra, J.—Short question arising for consideration in this writ petition is as to whether submission of a fake educational certificate

for obtaining employment in CRPF would constitute and mis-conduct so as to entitle the competent Authority to impose punishment u/s 11 of The

Central Reserve Police Force Act, 1949. The necessary facts which are required to be stated are that the petitioner was appointed as constable

on 1st January 1975. He was promoted to the post of Head constable on 21st December 1985 after his qualifying the requisite test. Thereafter the

petitioner in the year 1990, appeared in approved list 'D' test and qualified the same in order to earn promotion to the post of Sub-Inspector.

Before he could be promoted to the post of Sub-Inspector, it came to the notice of the respondents authorities that he had obtained employment

on the basis of a fake Matriculation certificate. Consequently, Article of Charges were drawn against the petitioner and inquiry was ordered after

appointment of Sh. R.C. Yadav, Deputy Superintendent of Police as Inquiry

Officer, by the Additional DIGP, Group Centre Bantalab Jammu vide

his order dated 13th May, 1991. The inquiry was conducted by the Inquiry Officer. After the inquiry, Additional DIGP, Group Centre Bantalab,

Jammu vide his order dated 23rd April 1992, awarded the punishment in the following terms to the petitioner:-

On going through all pros and cons of the proceedings of Enquiry and as discussed in the preceding paras, it is found that all the three charges

leveled against No. 750530017 HC(GD) D.D. Naik have been proved fully beyond any shadow of doubt and No. 750530017 HC(GD) D. D.

Naik has committed serious offence as a member of the Force u/s 11(1) of the CRPF Act, 1949 for which I find him guilty. Hence, he is not a fit

person to be retained in the force. I, therefore, award the penalty of ""REMOVAL FROM SERVICE"" to No. 750530017 HC(GD) D. D. Naik of

this Group Centre with effect from 24/7/1992 u/s 11(1) of the CRPF Act, 1949, read with SI No. 1 of Table to rule 27 of CRPF Rules, 1955.

2. The petitioner being aggrieved of the punishment awarded, filed a writ petition in this court being SWP No. 1190/1992. This writ petition was

allowed by this court vide order dated 20th April 1999. The Disciplinary Authority was directed to pass fresh orders without being influenced by

the earlier order passed by it. In compliance to the directions passed by this Court in the above said Judgement rendered in the said writ petition of

the petitioner, fresh inquiry was conducted and again punishment of removal from service was granted by the Additional DIGP, Group Centre

Bantalab, Jammu vide his order dated 15th September 1999.

3. The petitioner has questioned the awarding of the punishment through the medium of this writ petition. Learned counsel for the petitioner

challenged the order on various grounds taken in the writ petition but in course of hearing she has pressed into service only one ground i. e. that

even if the allegation that petitioner had obtained employment by submitting a fake Matriculation certificate is assumed to be correct even then no

mis-conduct as contemplated u/s 11 Sub-section 1 of the Central Reserve Police Force Act, 1949, is constituted and as such, punishment u/s

11(1) could not be awarded. According to the learned counsel, the order impugned is without jurisdiction and is illegal.

4. Contention of Mr. P.S. Chandel, learned counsel for the respondents, however,

is that such plea has not been raised in the writ petition by the petitioner, therefore, the petitioner cannot be permitted to raise such a plea. Objection of the learned counsel for the respondents requires to be ruled out because the plea raised in the arguments by the learned counsel for the petitioner stands already taken in paras 8 and 10 of the writ petition. Learned counsel for the respondents further submits that the case of the petitioner would be covered by Clause(e) of Section 11(1) CRPF Act, 1949.

5. Before I embark on deciding the question raised, it will be apt to take into notice the provisions contained in Section 11 of the CRPF Act, 1949, which is reproduced here under :-

11. Minor punishments. -- (1) the Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal or any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,

- (a) reduction in rank;
 - (b) fine of any amount not exceeding one month's pay and allowances;
 - (c) Confinement to quarters, lines or camp for a term not exceeding one month;
 - (d) Confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty;
- and

(e) removal from any office of distinction or special emolument in the force.

(2) Any punishment specified in clause(c) or clause (d) of Sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the force away from headquarters, provided he is specially authorized in this behalf by the Commandant.

(3) The assistant commandant a company officer or a subordinate officer, not below the rank of subedar or inspector, commanding a separate

detachment or an outpost or in temporary command at the headquarters of the Force, may, without a formal trial, award to any member of the

force who is for the time being subject to his authority any one or more of the

following punishment for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of sufficiently serious nature to require prosecution before a criminal court, that is to say, -

(a) Confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) Punishment drill, or extra guard, fatigue or other duty, for not more than thirty days with or without confinement to quarters, lines or camp;

(c) censure or sever censure:

Provided that this punishment may be awarded to a subordinate officer only by the commandant.

(3) A jemadar or Sub-inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any

like offence, award to any member of the force for the time being subject to his authority any of the punishments specified in clause (b) of Sub-

section (3) for not more than fifteen days.

6. From the bare persual of Sub-Section 1 of Section 11, it transpires that this Section deals with the official mis-conduct committed in the

discharge of the duties or in the duties or in the capacity as member of the force. There is nothing in the counter filed by the respondents to suggest

that the petitioner misconducted in any manner in the performance of his duties or in his capacity as a member of the Force after the period he

obtained the employment till the date of filing of the counter affidavit. Thus, the main charge against the petitioner is that he had obtained

employment on the basis of a fake Matriculation certificate. Can this charge constitute a charge for which punishment can be awarded u/s 11 of the

Act ? Learned counsel for the petitioner has argued that it does not fall within the meaning of Section 11 and in support of her contention, She has

relied upon the case entitled Dheeraj Singh v. Union of India 2000 KLJ 612. In that case the petitioner was in service. Respondents found that his

actual date of birth as per School Record was August 8,1950 and in the service record it was August 8, 1948. He was accordingly asked to

explain by a show cause notice dated 10.2.1994. A ""domestic inquiry was held. After receiving the explanation, the inquiry officer confirmed the

discrepancy but suggested that it be ignored. After considering the report of the Inquiry Officer, respondents vide notice dated 15.4.1995, asked

the petitioner to show cause why major penalty should not be imposed upon him. Thereafter order of removal from service was passed which was

questioned by the petitioner in the writ petition. This court on the above said facts considered the question whether provisions of Section 11 were

attracted. Hon'ble Mr. Sharma, J(as His lordship then was) after noticing the provisions contained in Section 11, held as follows:-

6. The expression ""anyone or more of the following punishments to any member of the force whom he considers to be guilty of disobedience,

neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as member of the force"" leave no doubt

whatsoever that misconduct must be in the capacity as member of the Force. Not otherwise.

7. As the petitioner was not member of the force at the time the alleged offence was committed by him because he allegedly did so to secure

enlistment without which he could not have been recruited below 18 years and thus under age, Section 11 of the Act is clearly not attracted.

However, assuming that the section is applicable to only punishment provided u/s 11(1)(e) is ""removal from the office of distinction of special

emolument in the force"" and not removal from service. Removal from any office of distinction cannot be equated with removal from service, as the

former u/s 11 is a minor punishment. While the latter under Article 311 of the Constitution of India is a major punishment. Further more, the

expression ""removal from any office of distinction or special emoluments in the force"" means either removal from office of distinction or withdrawal

of special emolument. Since withdrawal of special emoluments is the alternate punishment which does not amount to removal from service.

Moreover, withdrawal of special emolument payable in the force is the alternate minor punishment. If that be so removal from any office of

distinction cannot be construed as removal from service. Besides removal from service is a major punishment under Article 311 of the constitution

of India. Since Section 11 authorises only minor punishment, the commandant could not have imposed major punishment while exercising powers

under this section. In Dr. Dattatraya Mahadev Nadkarni (since deceased by his L. Rs.) Vs. Municipal Corporation of Greater Bombay, the

Supreme Court held that:

The only difference in the punishment of dismissal and removal is that in case of dismissal the employee is disqualified from future employment

while in case of removal he is not debarred from getting future employment,

8. So the removal from service has all the attributes of dismissal except that he is eligible for re-employment. As noticed above, the removal from

service is not warranted by Section 11 because it is not a minor punishment. Therefore, the order of removal from service is thus without

jurisdiction.....,

7. The ratio of the above said Judgement applies to this case from all four corners, the case of the petitioner cannot fall within the meaning of

Section 11(1) for the reason that when he used the fake certificate allegedly, he was not in service and, therefore, it cannot amount to misconduct

committed during the service.

8. Learned counsel for the petitioner has also for submitting that the penalty of removal from service cannot be granted u/s 11(1) because Section

11(1) deals with the minor penalty only relies upon the Judgement rendered in case entitled B.S. Pandey v. Union of India and Ors., SWP No.

1626/1996 and this Judgement was up-held in the Letters Patent Appeal. In this Judgement, while interpreting the scope of Section 11(1) of the

CRPF Act, 1949, Justice Doabia, J (as His Lordship then was) observed as follows:-

This Section thus contemplates imposing of punishment up to reduction of rank. It does not deal with punishment of removal. Therefore, the

petitioner is right in the submission that if action is also taken in terms of Section 11(1) then punishment of removal cannot be imposed. For this

reason and for reasons given in SWP No. 2/1996 (Supra) this writ petition is allowed. The order of removal of the petitioner is set aside. The

petitioner shall stand reinstated.

9. Now the question is whether the petitioner has obtained employment on the basis of fake matriculation certificate. The answer to this question

becomes important because a person who has obtained employment on the basis of fake certificate or fake eligibility cannot be allowed to continue

in the service and may be required to be compulsorily retired. This question is required to be considered by the appointing authority, who can take

a decision as to whether the petitioner to be retained in service or is to be retired compulsorily. Be it so, the impugned order passed by respondent

No. 5, is liable to be set aside. Accordingly the same is set aside and the respondents are directed to reinstate the petitioner in service. The

Competent Authority shall be at liberty to take a decision with regard to the petitioner as to whether he is to be retained in service or is to be

retired compulsorily after verifying the genuineness of the certificate of education submitted by the petitioner for securing employment and if the

petitioner is to be compulsorily retired, he shall be retired after following the due procedure of law. With these observations the petition is disposed

of.