
(2012) 10 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4578 of 2010 (O and M)

Diler Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10(m), 11(1)

Citation : (2013) 1 SCT 558

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : D.S. Nirban, for the Appellant; Tarundeep Kumar for Mrs. Geeta Singhwal and Mr. Anil Kumar Gahlawat, for the Respondent

Final Decision : Allowed

Judgement

A.N. Jindal, J.—The Civil Judge (Senior Division), Narnaul, vide judgment and decree dated 09.12.2008, while setting aside the dismissal order No. P-VIII-8/2001-61-Stha-II dated 12th September, 2001, decreed the suit filed by the plaintiff-appellant (hereinafter referred as "the plaintiff") and had reinstated him into Central Reserve Police Force service with effect from 20.09.2001 along with arrears of pay, allowances and all consequential benefits. However, the Additional District Judge, Narnaul, while accepting the appeal of the defendants-respondents (hereinafter referred as "the defendants"), dismissed the suit of the plaintiff. Factual background of the case is that the plaintiff was posted in 23rd Battalion and thereafter, he was transferred to 61 Battalion of CRPF, where he was charge sheeted on the ground that on 22.06.2001, he had left the campus without permission of the competent authority at 13.30 hours and went to market, where he consumed liquor and quarreled with civilians. Thereafter, Assistant Commandant conducted a departmental enquiry and found him guilty. Ultimately, he was dismissed from service vide order dated 12.09.2001. The petitioner challenged his dismissal on the following grounds:

(a) The delinquent was neither served the copy of charge sheet nor was asked to

enter upon the plea of guilt. He was not medically examined to prove the charge.

(b) He was pressed to sign on the blank paper with assurance that he would be granted service pension.

(c) Neither his statement was recorded by the Enquiry Officer nor a show cause notice was issued to him before his dismissal from the service.

(d) He was neither allowed to cross-examine the departmental witnesses nor was allowed to produce documents in the defence.

(e) Authorities concerned violated Rule 27 of CRPF and whole proceedings of enquiry were wrong and illegal.

(f) Only minor penalty could have been imposed on him, consequently, order of dismissal u/s 11 (1) of CRPF Act, 1949, is against the law.

2. The trial Court, while decreeing the suit of the plaintiff, had relied upon a judgment of this Court in case Ex. 720080444 Lnk. Ram Singh Rai Vs. Union of India (UOI) and Others, wherein it was observed as under:-

The fact that the Commandant/Disciplinary Authority had issued the memorandum of charges u/s 11(1) of the CRPF Act, 1949, would pre-suppose that for the acts of omission and commission on the part of the delinquent official a minor punishment was intended to be imposed on him. Removal from service is definitely not minor punishment. Besides in an allegation which entails severe punishment, the nature of defence that an employee might take, is quite different. It is possible that had the petitioner known that he would be dismissed from service, he would in all probability not confessed his guilt. Even the possibility of his being given a minor punishment on the pretext of his pleading guilty cannot be ruled out. Therefore, the Authorities having proceeded against for minor punishment u/s 11(1) of the CRPF Act, it was improper on their part to have imposed major punishment of removal from service.

3. Heard. In the present case also, a notice u/s 11(1) of the CRPF Act, 1949, was issued to the plaintiff, which presupposes a minor punishment, but he was slapped with major punishment, for which, he was neither prepared nor informed. Even otherwise, precisely the charge against the plaintiff was that he had left the campus without permission for one hour and when he returned, his mouth was emitting smell of alcohol. In such situation, he should not have been punished with such a major punishment of removal from service, but a minor penalty. The Hon"ble Calcutta High Court in case Deputy Inspector General of Police, CRPF and another v. Akhilesh Kumar, 2007(6) SLR 438, has observed as under:-

It is an admitted position from the factual matrix of the departmental proceeding that the writ petitioner/delinquent was posted in a camp. As per rule of such posting in a camp/lines the concerned personnel is not free to move as per his choice even during the period when he is not on actual duty. The discipline of a

camp is completely different in comparison with the posting of an individual in an office and or in other places outside of the camp. It is true, by rotation of 8 hours duty is allotted to the respective personnel who are attached to the camp and staying in the camp but that does not mean that when he will not be in active duty, he would be allowed to go outside the camp without prior permission. From the relevant provision of Clauses 7.2 and 6.23 as already quoted, it appears that absence without leave or permission from the camp would invite initiation of judicial trial of the delinquent if there is a serious and grave situation or otherwise a departmental enquiry. Hence, finding of the learned trial Judge that as the delinquent/writ petitioner was not on active duty, the aforesaid clauses got no effect, is not appealing us for its applicability to quash the order of dismissal. However, from the aforesaid provision of maintaining discipline while a personnel is posted in a camp which requires a prior permission to leave the camp even for a short period from the Company Commander, we are of the view that the charge under Article No. 1 was proved. Now, on the question of quantum of punishment namely, dismissal from service as imposed on such charge, we are of the view that as under Clause 6.23 there is a provision for initiation of the departmental enquiry and as per decision only a minor punishment could be imposed and as Section 10 (m) of CRPF Act provides the minor punishment issue in that field, we are of the view that dismissal being a major punishment should not have been passed by the Disciplinary Authority.

4. The present case is fully covered by the aforesaid judgment. Keeping in view the fact that proper procedure was not followed in the enquiry proceedings and the allegations levelled against the petitioner are not of serious nature, which could attract a major penalty of dismissal from service, the impugned judgment deserves to be set aside. Resultantly, this appeal is accepted; the impugned judgment is set aside and the judgment and decree dated 09.12.2008 passed by the trial Court are restored.