

(2012) 07 AHC CK 0252

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7236 of 1997

Gulab Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1), 18
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2012) 11 ADJ 5 : (2013) LabIC 84

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : S.A. Gilani, Krishna Ji Khare and O.P. Ojha, for the Appellant; Tej Prakash, A.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Krishna Murari, J.—Heard Shri Krishna Ji Khare, learned counsel for the petitioner and Shri Tej Prakash for the respondents.

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 14.12.1995 passed by respondent No. 4 awarding major penalty of dismissal from service as well as orders dated 28.6.1996 and 13.1.1997 dismissing the appeal and revision filed against the punishment order.

Facts are that the petitioner was recruited and appointed as Constable in Central Reserve Police Force (hereinafter referred to as C.R.P.F.) and after training, he was posted in 8th Batallion. At the relevant time, he was posted in Mokokchung (Nagaland) and was assigned duty to collect store articles from Jorahat, Asam. On 5.2.1994, after collecting the store articles, the petitioner loaded them into a convoy of trucks of which he was a part. While the convoy was coming back to Mokokchung (Nagaland) with the loaded store articles, a raid was conducted by Board of Officers in M.T. Park in the morning on 6.2.1994 and large quantity of Indian made foreign liquor was recovered from the possession of 19 C.R.P.F.

personnels of convoy including the petitioner. On the same day, i.e., 6.2.1994, the petitioner was placed under suspension in contemplation of a departmental inquiry. Three persons were exonerated from the charges on the basis of preliminary inquiry. Departmental inquiry of 14 persons including the petitioner was started and with respect to other two personnels, namely, Ram Kishan Singh and Nand Ram, it was conducted separately. The petitioner was served with a charge-sheet dated 10.11.1994. Inquiry Officer after conducting the inquiry, submitted his report dated 18.9.1995 to the Commandant, 62 Battalion, C.R.P.F., who issued a letter dated 4.11.1995 requiring the petitioner and others to submit reply within 15 days. After considering the reply, two persons, namely, Vijay Shankar and Badal Pal were inflicted with minor punishment of 28 days confinement to Quarter guard with forfeiture of pay and allowance and punishment drill of 2 hours daily while remaining 12 persons including the petitioner were punished with major penalty of dismissal from service. Petitioner went up in appeal before the appellate authority, which was dismissed vide order dated 28.6.1996. He approached this Court by filing Writ Petition No. 31696 of 1996, which was dismissed on the ground of alternative remedy of revision available to him. Petitioner filed a revision before the respondent No. 2, which was also dismissed vide order dated 13.1.1997. Aggrieved, the petitioner has approached this Court.

2. It has been urged by the learned counsel for the petitioner that charges have been framed against him u/s 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as the Act). u/s 11 of the Act, only minor punishment can be awarded which has been specified in the said sub-section, as such, no order of dismissal could have been passed by the authorities and the same is without jurisdiction. Reliance in support of the contention has been placed on a Division Bench judgment of this Court in the case of Giriraj Sharma v. Union of India and others, (1989) 1 UPLBEC 351.

In the said case after analysing the provisions of Section 11 (1) of the Act, which reads as under :

11(1). The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under the Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force when 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 earth guard, fatigue or other duty; and

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

It was held as under.

From a reading of Section 11(1) of the Act, it is apparent that only the punishments specified in sub-section (1) of Section 11 of the Act could have been awarded to a person against whom an enquiry is instituted u/s 11(1) of the Act. The punishments do not include a punishment by way of dismissal. In the instant case, it is not disputed that the enquiry was conducted u/s 11(1) of the Act. That was for a minor punishment. In the circumstances, it is apparent that the Authorities could not have dismissed the petitioner on the basis of a charge-sheet issued u/s 11(1) of the Act. The petitioner has rightly submitted that the order of dismissal passed against him is wholly without jurisdiction. The first submission made by the learned counsel for the petitioner is our opinion, is well founded.

3. However, a learned Single Judge disagreeing with the view taken in the case of Giriraj Sharma (*supra*), referred it to a larger Bench.

The matter went to a Division Bench which recommended the matter to be considered by a larger Bench and that is how the question came for consideration by a Full Bench of this Court in the case of Madan Tiwari, Constable Vs. Deputy Inspector General of Police (Group Centre), C.R.P.F., Rampur and another, .

Two Hon''ble Judges constituting the Full Bench after analysing various provisions of the Act pertaining to the disciplinary proceedings and the Division Bench judgment in the case of Giriraj Sharma (*supra*) held as under.

In view of what has been discussed above the argument that respondents did not have the power to dismiss the petitioner advanced by Dr. Padia by relying upon Rules 107 and 110 framed under the Act read with Section 18 and the provisions of CCA Rules, cannot be accepted and is hereby rejected because the decision in Giriraj Sharma shall have to be confined to the facts of the said case and cannot be held to be laying down the law correctly.

The third Hon''ble Judge constituting the Full Bench also agreed with the same giving his own reasonings and observed as under.

47. For the foregoing reasons the arguments for the petitioner as advanced by Dr. Padia that when the charges were framed u/s 11 (1) of the Act the respondents did not have the power to dismiss the petitioner from service has to be rejected and decision in case of Giriraj Sharma's case has to be treated as decision per-in-curium and the law interpreted therein cannot be held to have been correctly interpreted.

Thus, the law laid down by the Division Bench judgment in the case of Giriraj Sharma (*supra*) was overruled by the Full Bench.

4. In view of the law laid down by the Full Bench judgment in the case of Madan

Tiwari (supra), the argument advanced by the learned counsel for the petitioner has no force and the reliance placed by him on the Division Bench judgment is totally misfounded.

It was next contended by the learned counsel for the petitioner that in the matter of quantum of punishment, the respondent authorities have discriminated the petitioner, qua others against whom similar charges were levelled and found proved, a lesser penalty was imposed.

Categorical averments in this regard have been made in paragraph 29 of the writ petition, which is quoted hereinafter.

29. That Constable Vijai Shanker and Constable Badal Pal were also charged for the same offence for which the petitioner was charged. Charges is identical and the evidence is also same against all the persons but Vjai Shanker and Badal Pal have been punished with lesser and minor punishment, i.e., by awarding them punishment of 28 days Quarter Guard Duty. The respondents have again acted in violation of Articles 14 and 16 of the Constitution of India.

The reply to the said paragraph is contained in paragraph 22 of the counter-affidavit filed by the respondents, which reads as under.

22. That in reply to the contents of paragraph No. 29 of the writ petition it is stated that the factual position has been mentioned in proceeding paragraph. The punishment imposed upon each accused is determined by disciplinary authority according to facts and circumstances, gravity and nature of offence so as to meet the principle of natural justice. Action taken by the disciplinary authority is not against the spirit of Articles 14 and 16 of the Constitution.

5. A perusal of the record indicates that charges against the petitioner was that 48 half bottles of liquor were recovered from his belongings whereas Vijai Shanker and Badal Pal were charged of having possession of 12 bottles of liquor each. The departmental inquiry against them was conducted jointly alongwith the other incumbents and after considering the inquiry report and the reply submitted, the disciplinary authority found that charges against the delinquents have been fully proved beyond any shadow of doubt. The record further reveals that two identically charged delinquents, namely, Vijai Shanker and Badal Pal were given minor punishment of 28 days confinement to Quarter guard with forfeiture of pay and allowance and punishment drill of 2 hours daily for the reasons that the quantity of liquor purchased by each of them was lesser and they were of young age. Thus, the reason for discriminating the petitioner with the said two personnels, has been because of the quantity of liquor purchased by them. The order inflicting punishment further goes to show that one of the incumbent, namely, I.K. Mishra, who was charged of having purchased 16 full bottles of liquor has also been awarded major punishment of dismissal from service.

6. The Court fails to understand how the number of bottles of liquor purchased,

would affect the gravity of offence when purchase itself was prohibited. The Court also fails to understand how purchase of 16 bottles of liquor in the case of I.K. Mishra becomes so grave so as to inflict major penalty of dismissal from service and purchase of 12 bottles by the two personnels, namely, Vijai Shanker and Badal Pal less serious so as to award them minor punishment of 28 days confinement to Quarter guard with forfeiture of pay and allowance and punishment drill of 2 hours daily.

Fixing number of bottles of liquor recovered from the incumbents to decide the gravity of offence and award punishment accordingly, appears to be totally irrational and without any basis.

Normally, in the matter of quantum of punishment unless the same is shockingly disproportionate, this Court does not interfere with the discretion exercised by the disciplinary authority.

It is not the case of the respondents that the two personnels, namely, Vijai Shanker and Badal Pal, in whose matter identical charges had been found to be proved, but have been given lesser punishment on account of any mistake or error.

7. In the case of Sengara Singh and Others Vs. State of Punjab and Others, , where in the absence of any distinction between the two sets of employees; one those dealt with leniently and others dealt with severely, the Apex Court held that those, who have been awarded serious punishment, have been discriminated and in such a case, the Court must intervene.

8. Reference may also be made to a Division Bench judgment of this Court in the case of Kailash Prasad Gupta Vs. Vice-Chancellor/President, Executive Council of B.H.U. and Others, , where in an identical situation, it was held that in the absence of any distinguishing features between the two sets of employees, where charges are similar and found proved and the employer neither pleaded any mistake nor error in giving lesser punishment to some of the employees while severe in other cases, nor is in a position to show any distinguishing features between the two sets of employees, the action of employer in giving different punishments to identically situated employees would be arbitrary and violative of Articles 14 and 16 of the Constitution of India. In the case in hand also, there is no material on record to establish that case of the petitioner was distinct and not identical with the other two employees who were placed in the same position, merely because some lesser number of bottles were recovered from the said two employees and the same would not place them in a situation different than that of the petitioner from whom number of bottles of liquor recovered was little more so as to discriminate them in the matter of inflicting punishment.

Thus, inflicting major penalty of dismissal from service upon the petitioner and providing lesser punishment of 28 days confinement to Quarter guard with forfeiture of pay and allowance and punishment of drill for 2 hours daily to the

other two identically situated incumbents, is discriminatory and arbitrary.

In view of above facts and circumstances, it would be expedient to direct the competent authority to reconsider the matter only in respect of quantum of punishment inflicted upon the petitioner and pass a fresh order. The orders impugned in this petition to the extent of awarding major penalty of dismissal from service upon the petitioner as well as appellate and revisional order are set aside. The matter is remitted back to the disciplinary authority to reconsider the question of quantum of punishment in respect of the petitioner in accordance with law and in the light of the observations made hereinabove and pass fresh orders within two months from the date of production of a certified copy of this order before him.

With the above observations and directions, writ petition stands allowed in part.

In the facts and circumstances, there shall be no order as to costs.