
(1996) 05 PAT CK 0018
In the Patna High Court
Case No : Civil W.J.C. No. 11318 of 1994

Jai Narayan Khaw

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-05-1996

Acts Referred:

Citation : (1996) 05 PAT CK 0018

Final Decision : Dismissed

Judgement

N. Pandey, J.—In this petition, under Article 226 and 227 of the Constitution of India, the petitioner has invoked the writ jurisdiction of this Court for quashing of the Deputy Director General of Police Central Reserve Police Force, dated 6th June, 1989, u/s 12(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as "the Act"), contained in Annexure-2 whereby and whereunder the petitioner has been dismissed from service for his misconduct.

2. It appears, at the relevant time, while the petitioner was proceeding as convoy commander of the 1st Bn. CRPF, deserted the convoy enroute at Gopalganj, on 29th June, 1987 and reported his own Unit Head Quarter on 11th July, 1987. Thus he committed an offence as defined u/s 10 (M), (N) and (P) of the Act.

3. In the background of the aforesaid allegations, the Deputy Superintendent Officer Commanding filed a written complaint in the Court of the Judicial Magistrate, 1st Class 1st Bn. CRPF, Churachandpur, Mainpur. Apart from the allegation of desertion, it was also alleged that the petitioner had unauthorisedly carried the pistol and live cartridge as also an amount of Rs. 2000 (two thousand) in cash which was advanced to meet the contingency expenditure on route.

4. The learned Magistrate having found the allegation against the petitioner true, convicted him u/s 10 (M) and (P) of the Act and accordingly sentenced him an imprisonment till rising of the court.

5. The petitioner being aggrieved by the said order, filed an appeal before the

Sessions Judge, Mainpur at Imphal, who by his judgment dated 29th January, 1988, contained in Annexure-1, although affirmed the conviction but released him after due admonition under the provisions of Section 3 of the Probation of Offenders Act (hereinafter referred to as the "Offenders Act").

6. Thereafter, having regard to the conviction and sentence, a show cause notice was issued against the petitioner vide, office order dated 9th September, 1987, through the Company Commandant, 1st Bn. as to why he be not dismissed from service as required under the provisions of Section 12(1) of the Act. The petitioner thereafter, filed his show cause which was duly received by the authorities on 13th October, 1987. The matter was examined by the competent authority and having found that petitioner was guilty of misconduct for deserting the convoy with firearm along with cash amount, dismissed him from service holding that he was not a fit person to be retained in a Force which requires high standard of devotion and sincerity to the duty.

7. Mr. Ganesh Prasad Singh, learned Counsel contended that admittedly the petitioner was released on probation u/s 3 of the Offenders Act. Therefore, as per the provisions of Section 12 of the Offenders Act, he shall not suffer disqualification, if any attached to a conviction of an offence under any law. Therefore according to him the aforesaid provisions completely obliterate the effect of any conviction and wipes out disqualification attached to a conviction for an offence.

8. Mr. Singh further contended that even the order of the District Judge amounts to conviction of the petitioner, no punishment could have been imposed ipso facto by the disciplinary authority without applying his mind to the facts of the case and determining the quantum of punishment. In this case, order for dismissal has been recorded simply because the authority has considered removal/ ipso facto following the convictions in the criminal case. In support of his contention Mr. Singh, placed reliance to a decision in the case of Hardayal Singh v. The State of H.P. and Ors. 1977 Lab 868 (Himachal Pradesh) as well as another decision of the Allahabad High Court of the case of Dost Mohammad v. Union of India and Ors. 1981 Lab IC 1210 (Allahabad High Court).

9. The questions thus emerges whether provisions of Section 12 of the Offenders Act completely wipes out disqualification's contained in Section 12(1) of the CRPF Act.

10. Before answering the aforesaid proposition, would be apt to notice the provisions of Section 12 of the Offenders Act as well as Section 12(1) of the CRPF Act which contains disqualification in view of sentence and conviction for the alleged offence.

OFFENDERS ACT

12. Removal of disqualification attaching to conviction.-Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with

under the provisions of Section 2 or Section 4 shall not suffer disqualification if any, attaching to a conviction of an offence under such law. Provided that nothing in this Section shall apply to a person, who,

after his release u/s 4 is subsequently sentenced for the original offence.

CRPF ACT

12. Place of imprisonment and liability to dismiss on imprisonment.-(1) Every person sentenced under this Act to imprisonment may be dismissed from the force and shall further be liable to forfeiture of pay allowance and any other moneys due to him as well as of any medals and decorations received by him.

(2)....

11. A bare reference to the provisions of Section 12 of the Offenders Act would indicate that the submissions of Mr. Singh are based on a gross misreading of the provision. This Section refers to two situations (a) there must be disqualification must be provided under some law other than the Probation of Offenders Act.

12. It is well known that the Indian Penal Code as noticed under Sections 3 and 4 of the Offenders Act does not contain any disqualification. It cannot be disputed that disqualification cannot be an automatic consequence of misconduct unless it is required by a particular statute. Therefore, if the submission made by Mr. Singh is accepted then such a provision would be ultra vires as being in direct conflict with the provisions of Section 12(1) of the CRPF Act.

13. In the aforesaid circumstances, it has to be held that Section 12 of the Offenders Act cannot preclude automatic disqualification, due to conviction in a criminal case. Therefore, the disciplinary authority was not precluded from taking action against the petitioner u/s 12(1) of the CRPF Act. In support of my view. I would like to quote a passage from judgment of the Apex court in the case of The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, in these words:

12.....

It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification attached to a conviction of an offence under such law. This argument in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act. The words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it can not be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest that disqualification is essentially different in its connotation from the word "misconduct".

Disqualification cannot be an automatic consequence of misconduct unless the statute so requires. Proof of misconduct may or not lead to disqualification, because this matter rests on the facts and circumstances of a particular case or the language in which the particular statute is covered.

Therefore, having regard to the aforesaid authoritative "pronouncement of the Supreme Court as well as the relevant provisions of Section 12 of the CRPF act. It is wrong to contend that simply because the Sessions Judge had granted admonitions u/s 3 of the Offenders Act, therefore, unless a regular proceedings is carried out, no punishment for the alleged misconduct can be awarded.

14. Mr. Tripathi learned Counsel for the Union of the India of course, raised a preliminary objection about the maintainability of the present writ application before, this Court since the impugned order imposing punishment was passed at Neemuch, Manipur, therefore, not within the jurisdiction of the Patna High Court. He contended that when the trial for the offence under Sections 10 (M) and 10 (N) of the C.R.P.F Act was carried out at Imphal, therefore, this Court will have no jurisdiction over such Latter.

15. Mr. Singh contended that since the offence alleged was committed by the petitioner at Gopalganj as also the impugned order was communicated to the petitioner while working under Commandant 34 Bn. CRPF, it is wrong to say that the Patna High Court will have no jurisdiction.

16. There is no dispute that a mere communication of an order will not confer jurisdiction on the High Court but also the alleged offences was committed by the petitioner at Gopalganj, that is, within the jurisdiction of Patna High Court, therefore, it would not be correct to say that this Court will have no jurisdiction over such matter. Because undisputedly, cause of Section arose at Gopalganj, within the territorial jurisdiction of the Patna High Court.

17. Mr. Tripathi, next contended that having regard to the nature of allegation as also since the trial court as well as the appellate court has held that petitioner guilty of the alleged charges as also having regard to the fact that the impugned order was passed as back as on 6th June, 1989, it would not be proper for this Court to interfere with such matter practically after even years from the date of the order. In support of his contention. Mr. Tripathi placed reliance to a decision of the apex Court in the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . Admittedly the order of the disciplinary authority regarding dismissal of the petitioner was recorded on 6th June, 1989. No plausible explanation has been furnished by the petitioner under what circumstances the said order is being challenging in a writ jurisdiction in this Court at such a belated stage.

18. It is well known that writ jurisdiction is a discretionary remedy. Therefore, normally no relief should be granted in favour of such a person who has invoked such a remedy after inordinate and unexplained delay. That apart, nature of allegation is also quite serious against the petitioner because it is beyond

imagination that a convoy commandant would desert the convoy enroute with arms along with the total money which was entrusted to him to meet immediate contingency.

19. I have already indicated that in spite of a reasonable opportunity to file explanation no statutory explanation whatsoever was furnished by the petitioner for the alleged misconduct. Therefore, it cannot be alleged that the disciplinary authority has recorded the order of dismissal without applying his mind.

20. Therefore, for the reasons stated above, I find, no merit in this application. It is accordingly dismissed.