

(2002) 04 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No. 8890 of 1995

K.S. Wankhede

APPELLANT

Vs

The Inspector General, Central Reserve Police Force,
Hyderabad, (A.P.), The Deputy Inspector General, Central
Reserve Police Force, Madras and The Commandant, 42
Battalion, Central Reserve Police Force, , Tirap, ACP

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2002) 04 MAD CK 0173

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

**Advocate : M. Ibrahim Ali, for the Appellant; S. Udayakumar, Additional Central
Government Standing Counsel, for the Respondent**

Final Decision : Dismissed

Judgement

1. Petitioner prays for a Writ of Certiorarified Mandamus by calling the records pertaining to the record of the petitioner in No.R.XIII-34/94

ADM-1 dated 25.11.1994 on the file of the first respondent and quash the same AND consequently direct the third respondent to re-instate the

petitioner in service with full back wages along with exemplary damages of Rs.5 Lakhs.

2. The petitioner, while working as LNK at Namasai (ACP), was issued with memorandum dated 05.07.1993 containing the following three

articles:-

ARTICLE-I: That the said No.800643953 LNK K.S. Wankhede of F/42 Bn CRPF while functioning as LNK of F/42 Bn CRPF during the

period of April'93 committed an act of misconduct in his capacity as a member of the force u/s. 11(1) of the CRPF Act, 1949, in that he on

30.04.1993 at about 19.30 hours sneaked out of the F/42 Bn Camp without permission from competent authority.

ARTICLE-II: That during the aforesaid period and while functioning in the aforesaid office, the said No.800643953 LNK K.S. Wankhede of

F/42 Bn CRPF was guilty of an act of misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949, in that he, on

30.04.1993 during the period of his said unauthorised absence, intruded into a civilian area, consumed country liquor and quarrelled with civilians.

ARTICLE-III: That during the aforesaid period and while functioning in the aforesaid office, the said No.800643953 LNK K.S. Wankhede of

F/42 Bn was guilty of an act of misconduct in his capacity as a member of the Force u/s 11(1) of the CRPF Act, 1949, in that he, during the

period of his said un-authorised absence from the camp on the night of 30.04.1993 he got injured and sustained fracture in his left tibia.

An enquiry was conducted and on the basis of the statement recorded in the enquiry, finding of the Enquiry Officer dated 28.02.1994 was

submitted to the Disciplinary Authority viz. the third respondent. The third respondent, by order dated 18.03.1994, exercising the power under

Rule 27 (a) of Central Reserve Police Force, Rules 1955 r/w Section 11(1) of Central Police Force act, 1949, dismissed the petitioner from

service with immediate effect. Aggrieved by the said order, the petitioner preferred an appeal before the second respondent which was rejected on

12.07.1994. Against these orders, the present writ petition has been filed.

3. Mr. Mohamed Ibrahim Ali, learned counsel appearing for the petitioner would challenge the impugned orders on the following grounds:-

Firstly the articles of charges will not fall within the ambit of Section 11(1) of the Central Reserve Police Force Act, 1947 warranting the

punishment of dismissal. Secondly, there is absolutely no evidence to sustain the second charge. Thirdly, the Appellate Authority has not property

considered the grievance of the petitioner, raised in the appeal.

4. Per contra, Mr. Udayakumar, learned counsel appearing for all the respondents contended that the Articles of charges shall definitely fall within

the ambit of Section 11(1) of the said Act and the respondents are empowered

to impose the punishment of dismissal under the said Section. He has also submitted that the statements available before the Enquiry Officer regarding the involvement of the petitioner in the act of intruding into a civilian area, consuming country liquor and quarreling with civilians, as per charge No. II, would be sufficient to sustain the said charge and strict rule of evidence is not required in the departmental enquiry as only a preponderance of probability would be sufficient and hence the petitioner cannot make any grievance as to the second charge on the ground of no evidence and finally, the learned counsel submitted that all the grounds raised in the appeal were considered by the Appellate Authority and therefore the said contention is also not sustainable.

5. I have considered the submissions made by the respective counsel.

6. In so far as the first Article of charge is concerned, it relates to unauthorised absence. In this context, the learned counsel appearing for the petitioner relied upon the order of this Court in W.P.No.16066 of 1997 dated 07.01.1999, wherein this Court has held that for unauthorised absence from duty, charges u/s 11(1) of the Act is not maintainable as the said charge will fall u/s 10 (m) and (n) of the Act. Holding so, the punishment of dismissal for unauthorised absence exercising the power u/s 11(1) of the Act was set aside. In the appeal, at the instances of the respondent in the said writ petition, a Division Bench has held that the punishment of dismissal was disproportionate to the charges of unauthorised absence. However, on the applicability of Section 11(1), the Division Bench has observed in para 8 of the order, that Section 11 of the Act enables the appellants to pass the punishments enumerated under the Section. Placing reliance on the above judgments, the learned counsel submitted that charge for unauthorised absence cannot be sustained u/s 11(1) of the Act.

7. It is true that the learned Single Judge held that for an unauthorised absence, charge u/s 11(1) cannot be maintained. However, the Division Bench, on the said question, has held that the respondents were empowered to take action u/s 11(1) of the Act and impose punishment of dismissal also. But the punishment of dismissal was interfered with by the Division Bench only on the ground that the same was disproportionate to the charges viz., unauthorised absence. Coming to the facts of this case, the

petitioner was issued with not only the charge of unauthorised absence but was also charged for mis-behaviour with other civilians in an intoxicated mood. The second charge does not relate to any of the mis-conduct, contemplated u/s 10 of the Act. In that event, the second charge shall fall u/s 11(1) of the Act. Hence, the second charge framed u/s 11(1) of the Act cannot be said to be outside the ambit of Section 11(1) of the Act. Hence, I do not find any merit in the contention of the learned counsel for the petitioner that all the charges levelled against the petitioner will not fall u/s 11(1) of the Act and the respondents are not empowered to impose punishment of dismissal.

8. Coming to the next submission as to the absence of any evidence or materials to sustain the second charge, it is to be seen that the Enquiry

Officer, while considering the statements of the prosecution witnesses, has stated as follows:-

All the remaining five prosecution witnesses stated that none of them had seen the delinquent L/NK K.S. Wankhede sneaking out of the camp on

30.04.1993 evening or consuming liquor or being beaten by civilians. But all of them stated that he was found in the labour colony area of Namsai

in injured condition. He was smelling foul as smell of liquor was coming out through his breath, he was in a state intoxication and talking

incoherently, he was asking to be left alone to take rest when brought in a civil car back to the camp and he denied to take immediate medical help

that time. P.W.3, 4, 5 and 6 clearly stated that when as members of the town patrolling party, they found L/NK K.S. Wankhede in the labour

colony area. He told them that he was beaten up by some civilians and they should catch those civilians and beat them. The cross examination of

the P.Ws. by the delinquent did not bring out any fact which might cast any doubt on these depositions made by the P.Ws. Or disprove the same".

Even in the preliminary enquiry, the petitioner has admitted that he went to the civilian place and had quarrelled with some of the civilians by which

he sustained injuries. It is a well settled law that in the departmental enquiry, strict rule of evidence is not required to sustain the charges. In the

departmental enquiry, the authorities are entitled to consider the preponderance of probability of the case to arrive at a conclusion as to whether

charges have been established or not.

9. Though, the learned counsel for the petitioner submitted that there was no evidence whatsoever as to the involvement of the petitioner in

quarrelling with the civilians on the evening of 30.04.1993, the evidence of prosecution witnesses would undoubtedly establish that after the

incident in the Labour Colony, the petitioner was found smelling foul of liquor and he was in a state of intoxication and was talking incoherently.

The fact remains that the petitioner was in fact found in a state of intoxication during the working hours as the same could be ascertained from the

evidence let in on behalf of the prosecution. It is further well settled law that this Court is not empowered to go into the evidence afresh and to find

out as to the sufficiency of the evidence in respect of the charges. From the statements of the witnesses examined at the time of enquiry, it is clear

that the petitioner was found in a drunken mood and was talking incoherently. The second charge against the petitioner speaks about not only

unauthorised absence, but also the petitioner intruded into the civilian area, consumed country liquor and quarrelled with them. Therefore, from the

evidence, it is clear that the second charge relating to consumption of liquor has been established. When once the said charge is established through

the evidence of the prosecution witnesses, merely because there was lack of evidence as to whether the petitioner has gone to the Labour Colony

or not, it will not alter the conduct of the petitioner, being found in an intoxication mood during the working hours. Hence, I am not able to accept

the said submission of the learned counsel for the petitioner.

10. Finally, it is the grievance of the petitioner that the grounds raised in the appeal have not been properly considered. The learned counsel, in

fact, relied upon paragraph 1 of the grounds of appeal to contend that there was total absence of evidence as to the charge that the petitioner

sneaking out of the Camp on 30.04.1993 at 19.30 hours, which fact was brought to the notice of the Appellate Authority in addition to the

grievance that the petitioner did not know English in which language the enquiry proceedings were conducted. These factors have also been

considered by the Appellate Authority. As already pointed out, the petitioner was found outside the Campus by the party in an intoxicating mood.

By virtue of the said statement, it is clear that the petitioner was away from the campus without any permission. The said fact has also been

considered by the Appellate Authority. So far as the Enquiry Proceedings, which were in English are concerned, the Appellate Authority has stated

that the petitioner was aware of Hindi and he was made known of the entire proceedings by translating the same into Hindi and explaining the same

to the petitioner and the petitioner also submitted all his written submissions in Hindi. This grievance was also considered by the Appellate

Authority as could be seen from the order of the Appellate Authority dated 12.07.1994. Therefore, I am not able to accept the last submission

made by the learned counsel for the petitioner.

11. In view of my above findings as to all the three grounds raised by the learned counsel for the petitioner, the Writ Petition has to be dismissed.

Accordingly, the same is dismissed. No costs.