
(2002) 06 GAU CK 0020
In the Gauhati High Court
Case No : WP (C) No. 6309 of 2000

Kukheswar Saikia

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 12
Central Reserve Police Force Rules, 1955 — Rule 31

Citation : (2003) 3 GLR 1 : (2002) 3 GLT 336

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Saikia; A. Bora and R. Goswami, for the Appellant; B. Sharma and N.D. Sharma, for the Respondent

Judgement

I.A. Ansari, J.—By this writ application made under Article 226 of the Constitution of India, the petitioner, Kukheswar Saikia, who was a person subject to the Central Reserve Police Forces Act (hereinafter referred to as "the CRPF Act") has approached this Court seeking issuance of appropriate writ/s and/or direction/s to the respondents against his removal from service.

2. Briefly Stated, the petitioner's case runs thus : The petitioner was appointed as a cook by the respondents in the month of July 1991, and posted to 126 Auxiliary Bn. Mokamghat, Bihar. This 126 Auxiliary Bn. became 133 Bn. CRPF with effect from April 1994, and the petitioner continued to serve as a cook until the date of his removal from service. In the month of December 1997, on account of his mother's illness, the petitioner, with due permission, left his place of posting at Mahadeva out post, Manipur, for ten days on casual leave with effect from 19.12.1997 to 31.12.1997. After availing sanctioned leave, the petitioner reported at T/C (transit camp) Dimapur on 31.12.1997, but due to nonavailability of convoy, the petitioner stayed at T/C, Dimapur, for two days. During the said period of two days, the petitioner suffered from severe depression and for reasons not known to him, the petitioner left his unit on

3.1.1998, for his native village, but on his arrival there, he was advised by his parents and other well-wishers to go back and join his duty. The petitioner accordingly went to T/C, Dimapur, on the next day, but could not enter into the camp due to unknown fear, which had gripped him, and returned back to his native village at Furkating. The petitioner explained his fear to his family members and he was taken to a Bez (quack) for his treatment, but the petitioner did not improve, whereupon the petitioner went to a doctor and remained under his treatment and, gradually, became fit to resume his duty. In the meanwhile, petitioner received a letter, dated 10.1.1999, issued by the Headquarter, 133 Bn. CRPF, informing the petitioner that since the petitioner had left T/C, Dimapur line, on 3.1.1998, without reporting to any one, the petitioner had already been declared as a "deserter", vide letter dated 17.9.1998, and that a departmental Inquiry had been ordered against him. By the letter, dated 10.1.1999; aforementioned, the petitioner was also informed that the sender of the letter, namely, Shri P.K. Sahoo, Assistant Commandant, had been appointed as Enquiry Officer to conduct the departmental Inquiry against the petitioner and the petitioner had been asked to report for the Inquiry at Headquarter 133 Bn, CRPF, Rajendra Nagar, Patna, within 15 days. The petitioner, then, rushed to his Unit and on his reporting for duty on 29.1.1999, the petitioner was put in quarter guard for 24 hours and thereafter, he was allowed to work as a cook. In course of time, a departmental Inquiry was held and the petitioner was informed about the findings of the Inquiry by a letter, dated 10.4.2000. By the letter, dated 10.4.1999, aforementioned, the petitioner was also informed that if he wished to make any representation or submission, he may do so, in writing, before the Disciplinary Authority concerned. The petitioner accordingly filed a representation. The petitioner was, however, served with an order contained in letter No. P.VIII-12/98-133-EC-II, dated 30.4.1999, whereby the petitioner was informed that he stood removed from service.

3. Resisting the reliefs sought by the petitioner, respondents have filed their affidavit-in-opposition, the case of the respondents being, briefly stated, thus : After availing 10 days" of casual leave with effect from 19.12.1997 to 31.12.1997, the petitioner reported at the Transit Camp at Dimapur on 31.12.1997, but after staying therefore two days, he deserted T. C. Dimapur line, in the forenoon of 3.1.1998, without obtaining prior permission from the authority concerned and without intimation to any one. A Court of Enquiry (in short, COI) was, therefore, held under Rule 31 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the "CRPF Rules"). As per findings of the COI, the petitioner was declared a deserter from the Central Reserve Police Force (hereinafter referred to as "the force") with effect from 3.1.1998 and a warrant of arrest was accordingly issued against him on 5.2.1998, but the petitioner did not report for duty till 10.10.1998. Thereafter, a departmental Inquiry (i.e., disciplinary proceeding) was conducted u/s 11(1) of the CRPF Act read with Rule 27 of the CRPF Rules, but as the petitioner failed to produce any document in support of his illness, he was found guilty of the charges framed

against him and was accordingly removed from service. The disciplinary authority awarded punishment of removal from service, with effect from 30.4.1999, on the basis of the result of the departmental proceeding, which had been held in accordance with the relevant Rules and with and/or of the principles of natural justice. The respondents, therefore, prayed for dismissal of the writ petition.

4. I have carefully perused the relevant records including the record of disciplinary proceeding. I have heard Mrs. N. Saikia, learned counsel for the petitioner, and Mr. Bipul Sharma, learned Addl. CGSC, for the respondents.

5. It has been submitted, on behalf of the petitioner, that the Court of Enquiry was held against the petitioner in violation of the provisions of Rule 31 of the CRPF Rules. It has also been submitted, on behalf of the petitioner, that there was overlapping of charges, which caused serious prejudice to the petitioner. It is further submitted, on behalf of the petitioner, that the petitioner is a semi-literate person, who studied up to Class-IX and, hence, the petitioner was not conversant with English language, but the entire Inquiry was conducted in English language and even the plea of the petitioner was recorded in English and the petitioner was made to sign all the documents written in English without knowing as to what he was signing on. The Inquiry so held was, contends Mrs. Saikia, wholly against the principles of natural justice. Mrs. Saikia also contends that no effective opportunity was given to the petitioner to prove his innocence inasmuch as the petitioner was neither provided with any defence assistance nor was he informed of his right to engage a defence counsel. It is further contended, on behalf of the petitioner, that the petitioner, had suffered from severe depression and he was not really a deserter, but his conduct was misconstrued as an act of desertion and he was illegally removed from service.

6. Controverting the above submissions made on behalf of the petitioner, it has been asserted by learned Addl. CGSC, that a Court of Enquiry was duly held under Rule 31 of the CRPF Rules and only thereafter, the petitioner was declared as a deserter. The learned Addl. CGSC has also contended that the disciplinary proceeding, in the instant case, was held under Rule 27 of the CRPF Rules and this Rule nowhere provides for appointment of any defence counsel or for providing of any defence assistance to the delinquent. It has been further submitted, on behalf of the respondents, that there were adequate materials for holding that the charges levelled against the petitioner stood proved, and on the basis of the charges so proved petitioner could not have been retained in the force and he has, therefore, been legally and justifiably dismissed from service.

7. Before entering into the merit of this writ petition, it is imperative to note that the penal provisions are embodied, among others, in Sections 9, 10 and 11 of the CRPF Act. Section 9 lays down punishments for "more heinous offences", Section 10 lays down punishments "for less heinous offences", and Section 11 prescribes what minor punishments can be imposed for offences enumerated therein.

8. It is, in fact, Section 9(f), which provides for punishment of a person, who deserts the force. The punishment may be, according to Section 9(f), as harsh as transportation for life for a term of not less than 7 years or imprisonment, which may extend to as much as 14 years or with fine, which may extend to three months" pay, or with fine of three months" pay in addition to penalty of transportation and/or imprisonment.

9. Having heard both sides and upon perusal of the record, I find that the submissions made on behalf of the parties are, somewhat, misconceived inasmuch as declaration of the fact that a person, subject to the CRPF Act, is a deserter does not in itself or ipso facto make him liable for punishment ; otherwise, instead of merely declaring that the person concerned is a deserter, the CRPF Act and Rules would have provided for imposition of punishment on him under Rule 31 itself, whereas it is Section 9 of the CRPF Act, which prescribes the punishment for offence of desertion and it is Section 12 of the CRPF Act, which lays down when a person can be removed from service. A Court of Inquiry (COD, it needs to be borne in mind, is neither a trial nor a disciplinary proceeding and, on the basis of the findings of a Court of Enquiry, no punishment can be awarded, otherwise, a COI will become a substitute for trial/disciplinary proceeding and a person, under Rule 31, instead of being declared a deserter, can be treated to have been tried in absentia and the punishment for his imprisonment (under Section 9) as well as his removal from service (under Section 12) can also be awarded/ordered in absentia. If it were so, the logical consequence will be that in such a situation, when the person, who is declared deserter, reports back for duty, he can be straight away sent to prison for undergoing imprisonment and, the, dismissed from service. Such a step would be against the basic concept of principles of natural justice, which forbids punishment without giving opportunity of hearing/showing cause to the accused/delinquent. It is for this reason that the CRPF Act and Rules, same as Army Act and Rules, do not provide for imposition of punishment merely on the basis of the deserter role published following the COI.

10. As a matter of fact, when a person, subject to the CRPF Act, does not report for duty and absents himself without leave. Rule 31 provides for holding of an Inquiry. This Inquiry is held in absence of the delinquent concerned and, hence, giving of a prior notice to the delinquent concerned before holding of the Court of Inquiry under Rule 31, as contended by Mrs. Saikia, does not arise at all. At the same time, I must hasten to add, that Rule 31 is not a penal provision and it does not provide for any penalty and the fact simpliciter that a person has been declared a deserter under Rule 31 can not, in itself, be a ground for either imposing punishment on him or for removing him from service. If a person is to be punished for desertion, he has to be brought for trial, on the charge of deserting the force, before a Court of law and if proved guilty of such charge, he may be punished by imposing punishment for transportation of life, etc., as indicated hereinabove. That a person can not be punished only on the basis of a disciplinary proceedings held on a charge of desertion is evident from the fact

that Rule 27 (which provides the punishments that may be imposed following such disciplinary proceeding) nowhere provides for imposition of punishment for transportation for a term extending fourteen years, which forms, as pointed out above, one of the punishments that may be imposed on a deserter u/s 9(f) of the CRPF Act.

11. It is Rule 27, which, I notice, lays down the procedure for holding of disciplinary proceedings against persons subject to the Act. Without trial or disciplinary proceedings, as provided for under the Act and the Rules, no penalty for desertion can be imposed on a person subject to the Act. In the case at hand, as the record reveals, there was, admittedly, no disciplinary proceeding under the Rule 27 and/or under any other Rules on a charge of desertion against the petitioner. Respondents appear to have acted on the basis of the deserter role, which was published as a sequel to the Court of Inquiry held under Rule 31. This was, as indicated above, wholly against the provisions of the CRPF Act and Rule and also against the principles of natural justice inasmuch as a man is condemned and punished without having been heard.

12. It is also worth noticing that the charge against the petitioner was framed u/s 11(1), i.e., on the basis of the charge framed u/s 11(1) that the present petition faced departmental proceeding as prescribed under Rules 27. It deserves to be carefully noted the Section 11(1) provided for punishment in lieu of, or in addition to, the punishment that may be imposed u/s 9 and/or Section 10. But for enabling the disciplinary authority to impose punishment u/s 11, the person, who is proceeded against, must be proved to be (i) guilty of disobedience or (ii) his conduct must prove neglect of duty or (iii) his conduct must prove remissness in discharge of duties or (iv) he must be proved to be guilty of any other act of misconduct.

13. In the case at hand, the chargesheet, as correctly pointed out by Mrs. Saikia, reveals that the petitioner was charged for disobedience/neglect of duty/remissness in the discharge of duty/misconduct. All these accusations obviously overlapped and there is absolutely no material on record to show that the effect of the overlapping of the charges, so framed, were explained to the petitioner at the time, when he was called upon to plead guilty or not guilty to the charges. It also transpires from the record of the proceeding that even the Enquiry Officer found all the charges proved, which is, to say the least, impossible. There is distinct difference between disobedience and neglect of duty. Both do not mean one and the same thing. Disobedience is willful, whereas neglect of duty may be inadvertent. Disobedience of duty has to be intentional, whereas remissness in the discharge of duty may be unintentional. Therefore, question of roping in a man on all the charges is not possible. The Enquiry Officer and also the disciplinary authority appear to have misunderstood the scope and ambit of Section 11 inasmuch as each of the four grounds for which the punishment u/s 11 can be imposed are distinct and separate and each one of these charges ought to have been proved by adequate evidence, which has, admittedly, not

been done in the instant case. Thus, prejudice caused to the petitioner is manifest and the findings, so reached by the Enquiry Officer, cannot be allowed to stand good on record.

14. Normally, this Court would not interfere with the findings of the proceeding held under Rule 27, but in the case at hand, since the petitioner has been dismissed, contrary to law and the principles of natural justice, this Court can not but interfere with such findings and/or order of removal from service.

15. It appears to have completely escaped the attention of the disciplinary authority that in exercise of powers contained in Section 11, no one can be really dismissed from service. Penalties, which may be imposed on a delinquent u/s 11, are described under this section itself but this section nowhere provides for dismissal from service. It is, therefore, clear that on the basis of the charges, on which the petitioner faced the disciplinary proceeding, he could not have been legally dismissed by taking resort to Section 11. His dismissal is, therefore, without jurisdiction and must be treated as void ab initio and non-est in law.

16. In fact, the power for dismissal is contained in Section 12 of the Act, which lays down that every person sentenced under the Act to undergo imprisonment may be dismissed from service. This shows that until the time a person is sentenced to imprisonment for having committed some offence/s under the Act, question of invoking Section 12 and/or dismissing him from service does not arise at all. In the case at hand, there was, admittedly, no penalty of imprisonment imposed on the petitioner and, hence, question of dismissing him or removing him from service did not arise at all.

17. It may be mentioned that in the case at hand, the petitioner was declared a deserter, as indicated above, following a Court of Enquiry under Rule 31. This declaration was not reached and could not have been treated to have been reached in any trial or disciplinary proceeding. The effect of such a declaration is that when a deserter role bearing the name of the delinquent is published, warrant of arrest is issued against the deserter so that whenever and wherever he is apprehended, he can be brought to face trial/disciplinary proceeding for imposition of punishment u/s 9(f). In the case at hand, since the petitioner never faced any charge of desertion in any trial or disciplinary proceeding, the question of removing him from service did not arise at all.

18. Because of what has been discussed above, the impugned order, dated 30.4.1999 (Annexed to the writ petition as Annexure 4) removing the petitioner from service is completely without jurisdiction and needs to be set aside. This does not, however, mean, I must hasten to add, that the petitioner can not be tried or proceeded against or punished if the disciplinary authority, so wishes, on a charge of desertion or any other valid charge, but in view of the fact that the petitioner's dismissal from service, as reflected from the discussion held above, is wholly without any legal and valid foundation, such an order of removal from service can not be allowed to stand good on record.

19. In the result and for the reasons discussed above, this petition partly succeeds. The impugned order of removal from service passed against the petitioner as well as the disciplinary proceeding held against him under Rule 27 are hereby set aside and quashed. It is further directed that within 2 (two) months from today, the petitioner be reinstated in service with effect from 30.4.1999 (i.e., the date of his removal from service) The respondents shall, however, remain free to hold, if they are so advised, disciplinary proceeding afresh against the petitioner, or bring him before a Court of law for his alleged desertion or for any other accusation that can be legally made against him.

20. With the above directions, this writ petition shall stand disposed of.

21. No order as to costs.