

(2005) 05 AHC CK 0254

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2997 of 2002

P. Arvindam, Ex-Constable/G.D. Force No. 90 122/1376

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-05-2005

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 12, 12(1), 16(2)
Constitution of India, 1950 — Article 14

Citation : (2005) 6 AWC 6143

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : I.P. Yadav, for the Appellant; D.D. Srivastava, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri Indra Prasad Yadav, learned counsel for the petitioner and Sri Desh Deepak Srivastava, Additional Standing Counsel, Central Government.

2. Brief facts giving rise to this writ petition filed by P. Arvindam, Ex. Constable (GD), Central Reserve Police Force (CRPF) with a prayer to quash the order dated 10.2.1998 by which he has been dismissed from service, and the Appellate and Revisional orders dated 15.3.1999 and 30.9.2001 passed by Deputy Inspector General of Police, Patna and Inspector General of Police, Eastern Section, CRPF Patna, are set out as below.

3. The petitioner was recruited as Constable (General Duty) in C.R.P.F. and after completing training for one year at Palipuram Trivendrum, joined at Bangalore on 5.4.1990. He had earlier served at Amritser, Bhatinda, Patna, Chandigarh, Jammu and Kashmir and was last posted at Golpara in Assam. He proceeded on two month's leave on 28.7.1997. While on leave he suffered from hepatitis infection, commonly known as Jaundice. He was advised rest and requested for another two and half months leave. An arrest warrant was issued against him by the

commandant, 4th Bn. C.R.P.F. District Kokrajhar which compelled him to join. He was not paid his salary from 30.12.1997. On 10.1.1998 he was placed under suspension with a proposal of a departmental enquiry to be conducted against him for unauthorized absence after availing the sanctioned leave. On 4.2.1998 on his way back from interview he was arrested.

4. On 5.2.1998 the Assistant Commandant of the Unit lodged a complaint against him alleging that on 4.2.1998 at 21.30 hours the petitioner had gone to the residence of the Commandant and had threatened to kill the Commandant and his family by joining ULFA and LITTE.

5. Under the Central Reserve Police Force Act 1949 (in Short, the Act), the Commandant and Assistant Commandant have been conferred the powers of Ist Class of Magistrate and IIInd Class of Magistrates respectively, and are authorized to punish the members of the force for heinous offences u/s 9, and for less heinous offence u/s 10 of the Act. They are also authorized to impose minor punishment u/s 11 and to dismiss the persons, who are sentenced under the Act to imprisonment and also to confer penalties of forfeiture of pay and allowances and any other money due from such person as well as any medal and decoration received by them. The petitioner was subjected to a criminal trial by the Commandant, 4th Ban. CRPF Golpara exercising powers of Chief Judicial Magistrate. The allegations on which he was tried are stated as below.

6."On 4.2.1998 at 21.20 hours Force No. 901221376 CT P. Arvindam (under suspension) went out of DAT HQ Company under the influence of liquor, without taking any permission and reached up to office/Commandant residence where as no one has allowed to leave the campus without permission.

He forcibly entered the DAT office/Commandant's residence abused the Guard Commander and threatened the Guard Commander and sentry. Thereafter, he started shouting and extended threats to the Commandant that in case he is punished for remaining absence from duties, he will take care of the Commandant and his family with joining ULFA and LITTE and will shoot everyone. When at 2130 hours he reached the DAT camp he abused the CHM Kunwar Singh Bist and O.C.B./4 and threatened them that he will take revenge from OCB/4 and his family by joining ULFA LITTE."

7. The accused admitted that he had gone out in the night on 4.2.1998 from the camp without any permission. He had jumped the wall on the back of the camp. He also admitted that he had gone to the DAT/Commandant's residence and had gone inside but did not admit that he had threatened anyone or abused any person. He did not admit that he threatened the Commandant or had stated that he will join ULFA and LITTE and shoot every one. The accused refused to take legal advice and wanted that the enquiry be concluded as expeditiously as possible.

8. The Commandant examined six witnesses namely Hawaldar Phool Singh, C.P. Bhure Singh, C.R.C. Meena, C.K. Ram Reddy and Hawaldar Konwar Singh and

Sipahi Remesh Kumar. Each of these witnesses proved the misconduct. The witnesses Bhure Singh, K. Ravi Reddy, who were present at DAT office/Commanders's residence, stated that when the accused had entered the camp Headquarters the Commandant came out from his residence and made enquiries, on which the accuse stated that he had not received his salary for last nine months. He is unable to take care of his family including his small child (a daughter). The Commandant told him that he will be sent home without any enquiries on which the accused started shouting. The Commandant got his hand tied and sent him back to the camp.

9. The alleged offence was committed on 4.2.1998. The trial started on 5.2.1998 and was concluded on 7.2.1998. The Commandant found that the accused is guilty of misconduct in leaving the camp without permission; entering the office/resident of the Commandant; shouting and threatening him, which is a minor offence, punishable with imprisonment up to one year and fine for three month's salary u/s 10(n) of the C.R.P.F. Act 1949. However taking into account his past seven years services, and taking humanitarian view he was sentenced u/s 10(n) of the Act, upto the rising of the Court.

10. On 9.2.1998 the petitioner was served with notice of dismissal from service u/s 12(1) of the C.R.P.F. Act 1949, which provides that where the person has been sentenced under the Act to imprisonment, he may be dismissed from force, and shall further be liable to forfeiture of pay and allowance or any other allowance due to him as well as of any medal or decoration received by him. The petitioner was required to submit a reply within two days. He, however, submitted an application requesting to pardon him. The Commandant observe that after careful consideration of circumstances which led to his conviction, his conduct shows him to be a person not inclined to be disciplined and it is not desirable to continue his in service, as he is not likely to become an efficient member of the force. The petitioner was thus dismissed from service u/s 12(1) of the C.R.P.F Act 1949 w.e.f. 10.1.1998 and his suspension period w.e.f. 18.1.1998 and 9.2.1998 was treated as not spent on duty (dies non) for all purposes.

11. The petitioner preferred an appeal against the conviction before the District and Sessions Judge, Allahabad. This appeal, accordingly to learned counsel for the petitioner, was dismissed for want of prosecution and thus the conviction and sentence has become final.

12. The petitioner filed O.P. No. 15492 of 1998 in the High Court of Kerala at Irnakulam challenging the order of dismissal dated 4.10.2001. This O.P. was dismissed with following orders;

"Petitioner is aggrieved by Ext. P3 order of dismissal from service passed by the second respondent. That order is dated 10.2.1998. For one thing, the jurisdiction of this court is doubtful in the matter and that apart, the petitioner has an effective remedy by way of appeal. So without prejudice to the petitioner's right to move the appropriate forum, O.P. I dismissal.

Sd/- Kurain Joseph.Judge Dated: 4.10.2001"

13. The petitioner thereafter preferred an Appeal against the dismissal order. It was dismissed by DIG, CRPF. A revision has also been dismissed by Inspector General of Police, CRPF on 30.9.2002. Both the Appellate and Revisional orders did not meet the grounds of Appeal and Revision and were dismissed as there was no cogent reason to interfere with the order of the disciplinary authority.

14. Sri I.P. Yadav, learned counsel for the petitioner submits that the petitioner had fallen ill during the period of authorized leave and had applied for extension. Instead of extending the leave, the petitioner was threatened with arrest and was forced to join duties during the period of his illness. He was placed under suspension and in spite of repeated request the enquiry was not concluded. The petitioner has not received salary for nine months. His wife and small girl child were suffering and that the petitioner was under severe depression. His repeated requests to meet the Commandant were turned down. In these special circumstances, the petitioner may have temporarily lost the capacity to understand the affairs, and had entered the office Headquarters with a request to meet the Commandant. The petitioner was not allowed to lead the evidence and to cross examine the witnesses. The trial was concluded with a short period of two days. He was thereafter arbitrarily dismissed from service. The Commandant was not happy with him as the petitioner had made an attempt to call him, at later hours in the night and had demanded the payment of his salary. The Commandant did not find sufficient facts to establish the guilt to punish him for major offences, and sentenced him to undergo imprisonment only till the rising of the Court.

15. Learned counsel for the petitioner further submits that u/s 12 every sentence for imprisonment may not result into dismissal from the force. There is an element of discretion which attracts principles of proportionality. The dismissal from service is an extreme punishment which can be awarded in case of serious misconduct. The offending acts are classified and are defined as "heinous offence" u/s 9(a) to (e) and less heinous offences u/s 10(a) to (p) whereas the punishment for heinous offence is imprisonment for life or a term of not less than seven years, and with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months pay or with fine to the extent in addition to such sentence, the less heinous offences are to be punished with imprisonment for a term which may extend, to one year or with fine which may extend to three months pay or with both. The word "may" u/s 12 calls for use of discretion. The sentence up to the rising of the Court and fine for forfeiting the period under suspension is the minimum sentence which could be awarded for acts, of indiscipline under the residual Section 10(n), found established. In such case, the extreme penalty of dismissal is not to be ordinarily given u/s 12 of the Act. He submits that the appellate and revisional authorities have not applied their mind to the facts and circumstances of the case.

16. In para (2) the "Brief Facts" stated in the counter affidavit of Nagendra

Singh, Additional D.I.G. (P) G.C. C.R.P.F. Allahabad it is stated that the petitioner had proceeded on 60 days earned leave w.e.f. 17.2.1997 to 17.4.97. During the period of leave he sent a letter that he was suffering from malaria and was advised to take month's rest. He had requested for 30 day's extension of leave. He was repeatedly advised to report back on duty with medical documents. A complaint was lodged by the Company Commander in the Court of Chief Judicial Magistrate/Company Commandant, 4th Bn. CRPF on 13.6.1997 for issuing warrants and thus warrant was issued on 5.7.1997. The petitioner reported on his own on 29.7.1997 after overstaying 102 days. He was produced before the Commandant on the same date and the warrant of arrest was cancelled and preliminary enquiry was ordered. He could not produce the medical documents of his treatment and thus he was placed under suspension on 10.1.1998. During the suspension period he went outside the campus on 4.2.1998 at 2120 hours and forcibly entered the sentry post of Commandant's residence and threatened that if any punishment would be given to him by the Commandant regarding overstaying from leave, he will see the Commandant and his family and will kill the Commandant and his family by joining hands with ULFA and LITTE. When the Company Commander brought him to Coy line he opposed loudly the Coy Commander and Coy Hawaldar Major and threatened to kill him by joining with ULFA and LITTE. In view of these, a complaint was lodged on 5.2.1998 in the Court of Chief Judicial Magistrate/Commandant and judicial trial was conducted in which he was awarded punishment of imprisonment till rising of the Court on 7.2.1998. On 9.2.1998 he was given a show cause notice u/s 12(1) of the Act as to why he should not be dismissed from service. In reply he had submitted an application requesting for pardon. However, considering the nature of offence and threat to the life of the officers and men of the unit, he was dismissed from service on 10.2.1998.

17. Section 16(2) of the C.R.P.F. Act 1949 Provides for conferment of the powers of Magistrate of any Class by the Central Government on the Commandant or on Assistant Commandant for the purpose of enquiring or trying any offence committed by a member of the Force punishable under the Act, or any offence committed by a member, of the Force and against the person or property of another member, provided that when the offender is on leave or is absent from duty and when the offence is not connected with the offender's duties as member of the force or when it is a petty offence the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed, so directs, be enquired into or tried by an ordinary Criminal Court having jurisdiction in the matter.

18. Section 9 and 10 of the Act define more heinous offence and less heinous offence. The more heinous offences include mutiny, using criminal force in assaulting on a superior officer, abandonment and delivery any post or guard which is committed to the charge holding correspondence with assist and relieving any person in arms against the state and such other acts whereas less heinous offences include a member of the force to be in the state of intoxication

when on or after having been warned for nay duty or on parade or on the line of march, strikes or attempts to force any sentry; being in command of a guard, picquet patrol refuses to receive any prisons and person duly committed to his charge etc. In the present case the petitioner was found guilty of less heinous offences u/s 10(n), which is a residuary clause and provides for "is guilty of any act or commission which, though not specified in this Act, is prejudicial to good order and discipline". The punishment for more heinous offences is transportation in life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend three month's pay or with fine to that extent such sentence of transportation and imprisonment. The punishment for less heinous offence is imprisonment for a term which may extend to one year and with fine which may extend three month's pay or with both. There are some minor punishments defined in Section 11 of the Act which include reduction in rank, fine and any amount not exceeding one month's pay and allowances confinement to quarters, lines of camp for a term not exceeding one month etc.

19. Section 12 of the Act gives the appointing authority powers to dismiss every person from the Force who has been sentenced under the Act to imprisonment and of forfeiture of pay. Section 12 of the Act reads thus:-

"12. Place of imprisonment and liability to dismissal 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) Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court or the Commandant so directs, be confined in the quarter-guard or such other place as the Court or the Commandant may consider suitable."

20. Section 12(1) uses the word "may", which confers discretion upon the appointing authority to dismiss the person from the force who has been sentenced under the Act to imprisonment. As discussed above there are "more heinous offence" defined in Section 9 of the Act punishable with transportation of life for a term which may extend fourteen years, and "less heinous offenses" which are punishable with imprisonment for a term which may extend. The discretion in the matter of awarding punishment attracts principles of fairness, reasonableness and proportionality. It is not that every sentence of imprisonment may attract extreme penalty of dismissal from the force. The discretion to be used by the appointing authority must be reasonable and should be in accordance with and based upon severity of the offenses which has led to the conviction of the member of the force, and the sentence imposed on him.

21. In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, a Forest Guard had cut twenty one trees. He paid compensation for the illegal act. A disciplinary enquiry was initiated against him. He was removed from service after the charges were proved. The High Court dismissed the writ petition. The Supreme

Court in appeal observed that "the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14".

22. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, the Signal Man in the Army was sentenced with 28 days punishment for insubordination. He refused to eat food, even though directly ordered to do so. On this act of insubordination his Commanding Officer tried him for summary Court Martial and he was subsequently removed from service. The High Court dismissed the writ petition. The Supreme Court referring to Lord Diplock's classic Statement of Judicial Review in *Council for Civil Services Union v. Ministry for Civil Services* (1983) 1 AC 768; and *Bhagat Ram case*'s (supra), held, that a sentence should not be so disproportionate to the offence, as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as a part of judicial review is to ensure that even on an aspect which is otherwise within the exclusive province of Court martial, if the decision of the court even as to sentence is in outrageous defiance of logic that it is not immune from correction".

23. This view was subsequently endorsed in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , by which applicability of the principles of proportionality with respect to Article 14 of the Constitution of India were restated. The Court referred to various authorities including *Ranjeet Thakur case* (supra) and *B.C. Chaturvedi Vs. Union of India and others*, .

24. In *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another*, , the Supreme Court relied upon *Bhagat Ram*'s case (supra); *Ranjeet Thakur*'s case (supra) and *Rang Bahadur Singh and Others Vs. State of U.P.*, , and held that the Court sitting in appeal against the punishment imposed by the disciplinary proceeding will not normally substitute its own conclusion or penalty. However, if the punishment imposed by the disciplinary authority or appointing authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary authority or appropriate authority to reconsider the penalty imposed or to shorten the litigation, it may make an exception in some cases, and impose appropriate punishment and give reasons in support thereof. In this case after twenty years of unblemished service, the appellant was dismissed on the charge of misplacement of a file with no motive attached to it. The Supreme Court upheld the finding of misconduct, but imposed punishment of withholding of one increment including stoppage of the efficiency bar, and the appellant was not held entitled to any amount towards pay except the subsistence allowance.

25. In the present case, I find that with seven years service behind him the petitioner had proceeded on authorised and sanctioned earned leave. There is no denial on the record that the petitioner had suffered with illness during the period of leave on which he had requested for extension of leave. The question of his overstaying the sanctioned leave was not a matter in issue either in criminal trial, and the order by which he was dismissed. The petitioner was held guilty of

misconduct of a "less heinous offence", which is not classified in Section 10 and falls in the "residuary clause "n" of an act of omission which though not specified in the act is prejudicial to good order and discipline. The Commandant acting as Chief Judicial Magistrate assessed the evidence and adopted a lenient view. He took into account the fact that the petitioner has a wife and small child back home and was not paid salary for nine months. He was not able to support his family and in the circumstances, he was under great stress. His demand to meet the Commanding Officer were not accepted and thus he jumped the back wall of the camp and made an attempt to meet the Commandant late in the evening during odd hours. The fact that he tried to threaten the Commandant and the officers, who had apprehended him, was not fully established on record. He did not choose to cross examine witness or made an attempt to defend himself. The misconduct was established, but it was not so severe to merit any harsh punishment. The Commandant took a reasonable view of the matter and gave the minimum possible sentence of imprisonment up to the rising of the Court.

26. The question raised in this writ petition is whether such a small sentence for a "less heinous offenses", could be a ground for extreme penalty of dismissal from service. In the reply to the show cause notice the petitioner pleaded for pardon. The observations that his conduct shows that he is not inclined to be a disciplined soldier, does not take into account his past services and the circumstances which led him to have reacted in a manner which breached the good order and discipline. Every sentence of imprisonment may not call for dismissal from service, otherwise the discretion given u/s 12(1) of the of the Act will have no meaning at all. This discretion must be exercised fairly and reasonably after taking into account all the attending circumstances in which the offence was committed and the quantum of sentence awarded. The disciplinary authority, the appellate and revisional authority have not taken into consideration these circumstances and have mechanically applied the provisions of Section 12(1) in dismissing the petitioner from service only on the ground that he was subjected to a sentence for imprisonment. It has indeed shocked conscience of the Court. I find that in the facts and circumstances nor reasonable person could have taken a view to dismiss the petitioner from service.

27. The writ petition is consequently allowed. The orders passed by Commandant, 4th Battalion CRPF, District Kokrajhar dated 10.2.1998 dismissing petitioner from service as well as Appellate order dated 15.3.1999 and the Revisional order dated 30.9.2002 are set aside. The petitioner shall be reinstated in service with all benefits. Since he has not worked he will not be entitled to the salary. It will be open to the respondents to initiate the proceeding u/s 12(1) of the CRPF Act afresh and to award any penalty to the petitioner which in the facts and circumstances is found adequate by the disciplinary authority, after affording full opportunity to the petitioner to defend himself. There will be no order as to costs.