
(2001) 12 DEL CK 0072
In the Delhi High Court
Case No : C.W. No. 3920 of 1999

Ram Bihari Shukla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 11(1), 9
Constitution of India, 1950 — Article 226

Citation : (2002) 4 AD 317

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : T.P. Mishra, for the Appellant; Rajiv Shakdhar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The present petition has been filed by the petitioner praying for setting aside the order dated November 8, 1997 passed by the respondents whereby the petitioner was dismissed from service.

2. While working in the Central Reserve Police Force, a departmental enquiry was instituted against the petitioner with two specific charges. After the petitioner submitted his reply to the charge sheet and the same was found to be unsatisfactory by the disciplinary authority, an enquiry officer was appointed to enquire into the charges leveled against the petitioner. In Article I of the charges, it was alleged that the petitioner on return from patrolling duty on May 22, 1996 at 2330 hours demanded issue of liquor from Ct. Harish Chandra Tripathy and when his request was not entertained by Ct. Harish Chandra Tripathy, he entered into an altercation with the said Ct. Harish Chandra Tripathy, Store man and also kicked his box to express his anguish. In Article II of the charges, it was alleged that when the petitioner was denied issue of liquor on May 22, 1996, he suddenly cocked his carbine and approached with premeditated and mala fide intention to kill HC S.K.Sharma, L. Nk. Khulin Kuki and Ct. Lokender Singh but on the midway he was intercepted and his carbine was snatched away. the petitioner did

not plead guilty of charges during the course of enquiry and accordingly the enquiry officer proceeded to record evidence of the witnesses produced by the prosecution. On completion of the enquiry, the enquiry officer submitted his report finding the petitioner guilty of all the charges. The aforesaid enquiry report is dated November 8, 1997. After following the procedure, the disciplinary authority considered the report and thereafter passed the aforesaid impugned order imposing upon the petitioner, the punishment of dismissal from services.

3. Counsel appearing for the petitioner submitted that since the impugned action had been taken by the respondent under the provisions of Section 11 of the Central Reserve Police Force Act and, Therefore, according to him no major penalty like dismissal from service could have been imposed upon the petitioner as provisions of Section 11 of the Act relates only to minor punishments, the nature of which are set out in paragraph (a) to (e) of the said Section 11. According to the counsel, dismissal from service is not included as one of those punishments and, Therefore, the action of the respondents in awarding the penalty of dismissal from service was illegal and void. It was also submitted by the counsel for the petitioner that in any case, the punishment imposed on the petitioner is disproportionate to the offence alleged and, therefore, the impugned order is liable to be set aside and quashed. Counsel further submitted that while conducting the departmental enquiry, the principles of natural justice have been violated and in that view of the matter also the impugned order is liable to be set aside and quashed.

4. Mr. Rajiv Shakdhar, counsel appearing for the respondents, however, submitted that a bare reading of the provisions of Section 11 of the Central Reserve Police Force Act would indicate that one of the punishment mentioned therein is dismissal from service and, Therefore, imposition of penalty of dismissal from service in the instant case applying the provisions of Section 11 cannot be said to be illegal and void. It was also submitted by him that this Court has no power and jurisdiction to alter the punishment awarded by the disciplinary authority as the said power is not vested in this Court while dealing with the petition under Article 226 of the Constitution of India. He also submitted that the petitioner was given a fair opportunity to defend himself in the trial and that there was no violation of the principles of natural justice in any manner in conducting the enquiry.

5. In the light of the aforesaid submissions, I have considered the records as also the provisions of the Central Reserve Police Force, which were relied upon and referred to before me. Chapter 5 of the Central Reserve Police Force Act deals with the offences and punishments. Section 9 gives the description and nature of the more heinous offences as stated in the head note of the said Section itself and also describes the punishments which could be awarded for commission of such offences. Section 10 on the other hand deals with less heinous offences and also enumerates the nature of punishment to be imposed in such cases. Section 11 of the Central Reserve Police Force Act provides that:-

"11. Minor Punishments. -(1) The commandant or any other authority or officer as may be prescribed, may, subject to any rules made in this 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 whom he considers to be guilty of disobedience, neglect of duty, of 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 allowance;
- (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 extra guard, fatigue or other duty, and
- (e) removal from any office of distinction on special emolument in the force."

The aforesaid provision makes it clear that punishment could be imposed on a delinquent person if he is 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. If a person is guilty in any manner as stated above, he could be awarded suspension or dismissal from service. The words "in lieu of, or in addition to, suspension or dismissal" appearing in Sub-section (1) of Section 11 before Clauses (a) to (e) show that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to the member of the Force, who is found guilty and in addition to or in lieu thereof, could impose punishment as mentioned in Clauses (a) to (e). The heading "Minor Punishment" in Section 11 is a misnomer. It is an established rule of interpretation that although such heading may be looked into for interpreting a section, the words of which admit of any reasonable doubt, it cannot be taken to restrict the plain terms of Section. A proper reading of the aforesaid Sections 9, 10 and 11 would clearly show that a delinquent person can be punished with dismissal even if he has not been prosecuted for an offence u/s 9 or 10 of the Act. While coming to the aforesaid conclusions, I am fortified by the decisions of the Jammu & Kashmir High Court in *D.D. Yada v. D.I.G., C.R.P.F.* ; reported in 1974 LAB (IC) 929, *Shyamsingh Vs. Deputy Inspector General of Police, Central Reserve Police and Others*, and the decision of the Allahabad High Court in Special Appeal No. 201/1993 (*Deputy Inspector General of Police, Central Reserve Police Force (Rampur, U.P.) and Anr. v. Munna Singh Yadav* ; disposed of on October 6, 2001. The first contention of the counsel for the petitioner is, therefore, found to be without any merit.

6. So far the plea seeking for modification/alteration of the punishment on the ground that it is disproportionate to the offence alleged, suffice it to say, that this Court does not ordinarily exercise such a power as such power is vested in the disciplinary authority. If in case the disciplinary authority on the basis of the evidence on record has come to a conclusion that the delinquent person is

required to be punished with an order of dismissal from service which is justified on the evidence on record, the High Court exercising jurisdiction under Article 226 of the Constitution of India would not normally alter the said punishment unless the punishment appears to be shocking to the conscience of the Court. In a three Judges Bench judgment of the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, , it was reiterated thus. On a proper reading and appreciation of allegations and evidence ,it cannot be held that the punishment isan outrageous defiance of logic.

7. In the present case, the petitioner attempted and pointed his carbine towards some of his colleagues who are also C.R.P.F., personnel but was prevented from firing on the interception of some other C.R.P.F., personel. The offence alleged against the petitioner, Therefore, is grave and serious. Therefore, it cannot be said that the punishment awarded to the petitioner is disproportionate to the offence alleged.

8. A plea is also taken that there was violation of the principles of natural justice in conducting the enquiry. It is alleged in the petition that the petitioner was not provided assistance of a lawyer. The Central Reserve Police Force Rules do not provide for any such requirement of providing assistance of lawyer on a delinquent Central Reserve Police Force personnel in the enquiry .The other allegations pertaining to violation of principles of natural justice are without any basis and substance.

9. No other ground is raised. None of the pleas raised by the counsel appearing for the petitioner is found to be tenable and worth of acceptance .The said submissions are found to be without any merit and the petition, Therefore, stands dismissed.