
(2010) 01 RAJ CK 0073
In the Rajasthan High Court

Rama Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 16, 9

Citation : (2010) 1 RLW 772 : (2010) 3 SLR 271 : (2010) 2 WLN 91

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—The petitioner employed as Constable in Central Reserve Police Force (in short "CRPF" hereinafter) was charge sheeted vide memorandum dated 11.11.91, whereby following charges of mis conduct were levelled against him:

Article-I

That the said No. 830734287 CT Rama Khan while functioning as Constable in ISA committed an act of misconduct in the discharge of his duty in his capacity as a member of the Force u/s 11(1) of the CRPF Act, 1949, in that on 10.8.1991 at night he with the connivance of civilians namely Amrit Lal, Mangi Lal and a Jeep driver Babu Singh stole 12 corrugated iron sheets (a Govt. property) from MT Part of ISA, CRPF, Mount Abu and sold it to Shri Mohammed Gafoor, Kabari of Manpur village at Abu Road on 12.8.1991. Thus he acted in a manner unbecoming of a member of the force.

Article-II

That the said No. 830734287 CT Rama Khan while functioning in the aforesaid office, committed an act of misconduct in the discharge of his duty as a member of Force u/s 11(1) of CRPF Act, 1949 in that on 11.8.1991 at night he with the connivance of civilians namely Amrit Lal, Mangi Lal and a Jeep driver Babu Singh

stole 13 corrugated iron sheets private property belonging to Maharaja of Kishangarh from the premises of Kishangarh House and sold it to Shri Mohammed Gafoor Kabari of Manpur Village at Abu Road on 12.8.1991. Thus he acted in a manner unbecoming of a member of Force.

Article-III

That the said No. 830734287 Constable Rama Khan while functioning in the aforesaid office, the said No. 830734287 Ct Rama Khan committed an act of misconduct in the discharge of his duty u/s 11(1) of CRPF, Act 1949 in his capacity as a member of the Force, in that he was running a private business in partnership with a civilian namely Satish Kumar a General Merchant Shop in Kumarvada, Mount Abu during the period from Feb"91 to August"91. Thus he acted in a manner unbecoming of a member of the Force.

2. The Deputy Assistant Director (H.Q.) ISA, CRPF, Mount Abu was appointed Enquiry Officer to inquire into the charges of misconduct levelled against the petitioner. After conclusion of the departmental evidence, the petitioner was called upon to enter his defence. Accordingly, the petitioner submitted his defence statement to the charge sheet on 9.3.92. After conclusion of the enquiry, the Enquiry Officer submitted an enquiry report, wherein the charge No. 2 was found proved against the petitioner and regarding the charge No. 3, the Enquiry Officer recorded the finding that it could not be proved beyond doubt that the petitioner was running private business but there is preponderance of probability of his having run Kabari business. The charge No. 1 was not found proved.

3. After consideration of the enquiry report, the Disciplinary Authority while proposing punishment of dismissal from service, issued a show cause notice to the petitioner. The petitioner submitted a reply to the show cause notice. The Disciplinary Authority while agreeing with the finding recorded by the Enquiry Officer proceeded to hold that the charge No. 2 stands proved against the petitioner beyond doubt and charge No. 3 stands proved on preponderance of probability and accordingly, vide order dated 4.7.92, inflicted punishment of removal from service upon the petitioner.

4. Aggrieved by the order of removal from service, the petitioner preferred an appeal before the Director, ISA, CRPF, which was rejected by the Appellate Authority vide order dated 23.9.92. A revision petition preferred by the petitioner against the appellate order dated 23.9.92 before the Director General, CRPF has also been rejected vide order dated 23.9.93. Hence, this petition.

5. It is contended by the learned Counsel for the petitioner that the allegations which are found proved against the petitioner do not constitute misconduct inasmuch as the allegation of commission of theft relates to a private house which has no relation whatsoever with the petitioner's official duty and, therefore, it cannot be said that he has committed any misconduct while discharging duties as a member of force. It is submitted that if the petitioner had committed any offence as aforesaid, then, he could have been tried by the

criminal court of competent jurisdiction. The learned Counsel submitted that the charges of misconduct levelled against the petitioner has no relation with his place of work or his official duties as member of the force, therefore, no enquiry could have been initiated by the respondents against the petitioner on the basis of alleged misconduct u/s 11 of the Central Reserve Police Force Act, 1949 ("CRPF Act"). In this regard, the learned Counsel has relied upon a decision of the Hon"ble Supreme Court in the matter of "Glazo Laboratories (I) Ltd. v. Presiding Officer, Labour Court" (1983 LIC 1909. Accordingly, it is submitted by the learned Counsel that the disciplinary proceedings initiated against the petitioner and consequential order of penalty passed are absolutely without jurisdiction.

6. The learned Counsel submitted that all the material witnesses have not named the petitioner and he has been held guilty only on the basis of statements of the labourers Amritlal (PW 6) and Mangilal (PW. 7). The learned Counsel submitted that the Enquiry Officer has found that aforesaid witnesses were in collusion with the petitioner, therefore, the testimony of such witnesses, cannot be made basis for holding the petitioner guilty. The learned Counsel submitted that the order passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority, are non speaking orders. The learned Counsel further submitted that all the authorities have simply recorded their conclusion without consideration of material on record and without considering the defence set out by the petitioner. The learned Counsel submitted that charge No. 3 was not found proved against the petitioner by the Enquiry Officer, yet without recording any reasons for disagreement and communicating the same to the petitioner straightaway the finding has been recorded by the Disciplinary Authority that charge No. 3 stands proved against the petitioner on preponderance of probabilities. The learned Counsel submitted that the orders impugned have been passed without application of the mind in a most perfunctory manner, which are not sustainable in the eye of law.

7. Lastly, the learned Counsel submitted that in an enquiry being instituted u/s 11(1) of the CRPF Act, 1949, on the charges being proved, only punishment specified thereunder could have been awarded to the petitioner and the punishment of removal from service is not a punishment specified therein, therefore, the orders impugned deserve to be set aside on this count alone.

8. Per contra, learned Counsel appearing on behalf of the respondents submitted that since the property in question belong to Maharaj Kishangarh, the Department did not deem it fit or necessary to lodge a First Information Report, however, cognizance was taken by the Department on a complaint being filed by the chowkidar of the Kishangarh House Shri Nand Singh, about the misconduct of the petitioner. It submitted that a government servant does not cease to be member of the service while he is on earned leave and allegation of theft of any property committed by a government servant does constitute a serious misconduct. The learned Counsel submitted that all the points raised by the

petitioner have been duly considered and finding of guilt has been recorded after consideration of the evidence on record in its entirety. It is contended that this Court in exercise of its extra ordinary jurisdiction would not like to re appreciate the evidence on record so as to substitute the findings recorded by the Disciplinary Authority after careful consideration of the entire record.

9. The learned Counsel for the respondent further submitted that the CRPF is a disciplinary force and deployed for security duties related to internal security of the State, thus, such a misconduct by a member of the force, cannot be compromised and his continuance in force was neither desirable nor in the interest of the State. The learned Counsel further submitted that the contention of the learned Counsel for the petitioner that the punishment of removal from service do not fall within the purview of Section 11(1) of the CRPF Act, is absolutely devoid of any merit. It is submitted by the learned Counsel that by virtue of provisions of Section 16 of the CRPF Act, the Commandant or Assistant Commandant invested with the powers of Magistrate of any class by the Central Government have jurisdiction even to inquire into and try the offence committed by member of the force. Accordingly, it is submitted by the learned Counsel that the order impugned does not warrant interference by this Court in exercise of its extra ordinary jurisdiction.

10. I have considered the rival submissions and perused the record of the disciplinary proceedings produced by the respondents.

11. Indisputably, enquiry against the petitioner was held u/s 11(1) of the CRPF Act read with Rule 27 of the Central Reserve Police Force Rules, 1955 (in short "CRPF Rules"). The contentions raised on behalf of the petitioner questioning the jurisdiction of the respondents to initiate the departmental proceedings for the charges of misconduct levelled rolls around the provisions of Section 11(1) of the CRPF Act, which may be beneficially quoted:

Minor Punishments.- (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under 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, or remissness in the discharges of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-

reduction in rank;

fine of any amount not exceeding one month's pay and allowances;

confinement to quarters, lines or camp for a term not exceeding one month;

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

removal from any office of distinction or special emolument in the Force.

12. A bare perusal of Section 11(1) makes it abundantly clear that the authority empowered to award punishment of dismissal to the member of the Force who is found guilty of disobedience, neglect of duty or remissness of discharge of duty or other misconducts in the capacity as member of the Force may award any of the minor punishment specified in Clauses (a) to (e) in lieu of the punishment of dismissal or suspension or in addition thereto. Suffice is to say that the provision incorporated aforesaid providing for imposition of the minor punishment specified in Clauses (a) to (e) in no manner can be constructed so as to exclude the imposition of punishment of dismissal or removal which could be otherwise imposed on the charges of misconduct being proved against the delinquent employee.

In *Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat*, the Hon'ble Supreme Court while dealing with the question as to whether the punishment of removal from service can be awarded u/s 11(1) of the CRPF Act, held that:

5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the Force who is found guilty of disobedience, neglect of duty or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the Force. Accordingly to the High Court the only punishments which can be awarded under this section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. The use of 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) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in Clauses (a) to (e) may also be awarded.

Thus, the contention of the learned Counsel that u/s 11(1) the disciplinary authority is not empowered to impose the punishment of removal from service upon the member of the Force on the charges of misconduct being proved, is devoid of any merit.

13. But then, the fact remains that any of these punishments can be awarded by the disciplinary authority to any member of the service who is found guilty of disobedience, neglect of duty or remissness in discharge of any duty or of other misconduct in its capacity as member of the Force. In other words, any act of misconduct alleged to have been committed by an employee not in the capacity as a member of the Force but otherwise, is outside the purview of the

proceedings u/s 11 of the Act.

14. It is to be noticed that the offences for which a member of service may be punished have been specified u/s 9 & 10 of the CRPF Act. Section 9 defines "More heinous offences," whereas Section 10 defines "Less heinous offences". The offences specified u/s 9 are punishable with transportation for life for a term of not less than 7 years or with imprisonment for a term which may extend to 14 years or with fine which may extend to three months" pay or with fine to that extent in addition to such sentence of transportation or imprisonment. The offences covered by Section 10, are punishable with imprisonment for a term which may extend to one year or with fine which may extend to three months" pay or with both. However, even if a delinquent is not prosecuted for offence u/s 9 - 10 of the CRPF Act, the minor punishment including the punishment of dismissal/removal from service can be awarded on the charges of misconduct being proved in terms of Section 11 of the CRPF Act.

15. It is pertinent to note that besides the departmental proceedings in terms of the provisions of Section 11, as per the provisions of Section 16 of the Act, the Commandant or Assistant Commandant invested with the power of a Magistrate of any class by the Central Government may inquire into or try any offence committed by member of the Force and punishable under the Act or any offence committed by member of the Force against the personal property of another member. Further, as per the proviso to Sub-section (2) of Section 16; (i) when the offender is on leave or absent from duty, or (ii) when the offence is not connected with the offender as duty as member of the Force or (iii) when it is a petty offence even if connected with the offender as duty as member of the Force, the offence may, if the prescribed authority within limit of whose jurisdiction the offence is committed, so directs be inquired into or tried by any ordinary criminal court having jurisdiction in the matter. Further, Rule 36J of the CRPF Rules, which provides that where a person subject to the Act has committed an offence which in the opinion of the Commandant is to be tried by the Magistrate in force, the Commandant shall after giving written notice to a Magistrate concerned deliver such person under proper escort to the Magistrate.

16. Thus, it is abundantly clear that the trial of an offence committed by a member of the Force not punishable under the CRPF Act or any offence committed by a member of the Force against the person or property of other than the member of the Force has to be dealt with in accordance with law by the ordinary criminal courts in the manner prescribed/But in any case, from conjoint reading of provisions referred supra, it is abundantly clear that an offence committed by a member of Force not in the capacity of as member of the Force against the person and property of other than member of the Force cannot be a subject matter to departmental enquiry under the provisions of Section 11 of the CRPF Act.

17. Adverting to the facts of the present case, it is to be noticed that the proceedings against the petitioner were initiated on the basis of a written

complaint being lodged by one Shri Nand Singh, Chowkidar of Kishangarh House, Mount Abu stating that 13 corrugated tin sheets entrusted to him have been stolen during the intervening night of 10.8.91 and 11.8.91 and on enquiry being made, it is found that those stolen tin sheets are available at Abu Road. Shri Gafoor Khan, the person in possession of the tin sheets informed that the same were handed over to him by one Shri Rama Khan who is employed in CRPF. It is not in dispute that at the time of the commission of alleged theft, the petitioner was not even on duty inasmuch, as he was on leave for 60 days from 7.8.91 to 5.10.191. That apart, the act of misconduct as alleged cannot be said to have been committed by him in the capacity as a member of the Force so as to entail disciplinary proceedings in terms of the provisions of Section 11 of the CRPF Act. In this view of the matter, the disciplinary proceedings initiated against the petitioner on the alleged charge of misconduct is ex facie without jurisdiction and stands vitiated on this count alone.

18. There is yet another aspect of the matter. As noticed above, the disciplinary proceedings were initiated against the petitioner on the basis of a complaint being lodged by one Shri Nand Singh, the Chowkidar of Kishangarh House. A perusal of the record show that the complaint was withdrawn by the complainant Shri Nand Singh stating that he has already receive back and property alleged to have been stolen and he does not have any doubt on any CRPF personnel. It is also stated in the said complaint that he was made to sign on a written paper without knowledge of the contents thereof. Even before the Enquiry Officer, he has denied the involvement of the petitioner in the commission of the offence. The petitioner has been held guilty on the basis of the statement of Amrit Lal and Mangi Lal, who were alleged to be in collusion with the petitioner in the commission of the offence. Suffice is to say that there is no concrete evidence on record to prove the commission of offence against the petitioner beyond reasonable doubt. In considered opinion of this Court, for the offence of theft, a person cannot be held guilty on the basis of preponderance of probability.

19. Regarding the third charge the petitioner being involved in running Kabari business with Shri Satish Kumar, the only witness produced on behalf of the prosecution Shri Satish Kumar has denied the fact that the petitioner was engaged in Kabari business with him. In absence of any evidence, the ipse dixit of the Disciplinary Authority that the charge stands proved on preponderance of probability cannot be countenanced by this Court.

20. Thus, the finding of guilt recorded against the petitioner by the disciplinary authority is not substantiated by any cogent evidence on record.

21. In the result, the writ petition is allowed. The order impugned dated 4.7.92 passed by the Assistant Director, CRPF, order dated 23.9.92 passed by the DIGP, Deputy Director, ISA, CRPF, Mt. Abu and order dated 20.9.93 passed by the Director, ISA, CRPF, Mt. Abu are quashed. The petitioner shall be entitled for consequential benefits. No order as to costs.