

(2001) 05 DEL CK 0191
In the Delhi High Court
Case No : C.W. No. 2012 of 1994

Shri Nankku Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 12, 12(1), 9

Citation : (2001) 05 DEL CK 0191

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

Bench : Single Bench

Advocate : Mr. B.K. Sinha, for the Appellant; Mr. Jayant Bhushan and Ms. Jasleen K. Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—This writ petition is filed by the petitioner seeking for quashing of the order of dismissal from service of the petitioner w.e.f. 3.7.1992 passed by the Commandant, 38 Bn. CRPF u/s 12(1) of Central Reserve Police Force Act, 1949 as also the orders dated 22.4.1993 and 16.8.1993 passed by the Appellate and Revisional Authorities.

2. The petitioner while serving in the Central Reserve Police Force was unauthorisedly absent from duties. Allegation against him was that he left the line/camp on 20.6.1992 without leave/permission of the Competent Authority and deserted from the line and consequently committed an act of misconduct which was prejudicial to the good order and discipline of the Force as envisaged in section 9(f) and 10(p) of the CRPF Act, 1949. In the light of the aforesaid allegation a criminal case was instituted against the petitioner and he was taken into custody on 28.6.1992 and remained in custody till 9.7.1992. A trial was conducted against the petitioner by the Judicial Magistrate 1st Class and Deputy Commandant, 38 Bn CRPF and on closure of the trial found the petitioner guilty of the said charges u/s 9(f) read with section 10(p) of the CRPF Act and he was convicted and sentenced to undergo simple imprisonment till rising of the court

on 3.7.1992.

3. Consequent to the aforesaid order of conviction and sentence the Commandant of the Battalion of the respondent passed an order dated 3.7.1992 dismissing the petitioner from service u/s 12(1) of the CRPF Act and his name was struck out from the strength of the Force.

4. Being aggrieved by the said order an appeal was preferred before the Appellant Authority and by an order dated 22.4.1993 the appellate authority dismissed the appeal holding that the punishment of dismissal from service inflicted upon the petitioner by the disciplinary authority is commensurate with the misconduct committed by the petitioner and that there was no need to interfere with the order passed by the disciplinary authority. "A revision was preferred in accordance with the provisions of the CRPF Act which was also dismissed and hence the present petition before this Court.

5. Counsel appearing for the petitioner during the course of his submissions submitted that the order dated 3.7.1992 is illegal and is liable to be set aside as no enquiry was conducted by the respondents prior to passing of the aforesaid order of dismissal and that no opportunity of hearing was also given to the petitioner. It was also submitted by him that since the quantum of punishment awarded to the petitioner is excessive Therefore, the order is required to be set aside.

6. Counsel appearing for the respondent while refuting the aforesaid submissions relied upon the ratio of the decision in Union of India and Another Vs. Tulsiram Patel and Others, and also in the decision of Union of India (UOI) Vs. Parma Nanda, .

7. In order to appreciate the contention of the counsel appearing for the parties it would be relevant to refer to the provisions of section 12 of the Central Reserve Police Force Act on the basis of which the impugned order was passed by the respondents:-

"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, allowances 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, 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."

From the aforesaid provision it is clear that a person who is sentenced under the provisions of the Act to imprisonment could be dismissed from the Force. The

said provision Therefore, is somewhat similar to the provisions of Article 311(2) (a) which provides that any employee convicted and sentenced by a Criminal Court could be dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. The aforesaid provision of Article 311(2)(a) came to be considered by the Supreme Court in case of Tulsi Ram Patel (supra). In the said decision the Supreme Court has held that no opportunity of hearing to the delinquent is required to be given when action is taken under the aforesaid provisions of Article 311(2)(a). In the said decision it was further held by the Supreme Court that where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of proportion to the offence committed or not warranted by the facts and circumstances of the case or that requirement of that particular government service the court will also strike down the impugned order. The aforesaid decision of the Supreme Court was referred to in the case of Parmanand (supra). In Parmanand's case the Supreme Court while referring to and relying upon the aforesaid decision of Tulsi Ram Patel has held that where a person without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction of criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person and that if the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under clause (a).

8. In the backdrop of the aforesaid position in law I have examined the facts of the present case in the light of the records placed before me. The records disclosed that a criminal trial was instituted and conducted against the petitioner by the Judicial Magistrate Class I, under the provisions of section 9(f) read with section 10(p) of the CRPF Act. In the said criminal proceedings the petitioner was convicted and sentenced to undergo simple imprisonment till rising of the court. The said order of conviction and sentence has become final and binding between the parties. The legality of the same is neither challenged in the present proceedings nor could be gone into and enquired in the present proceedings. Section 12 empowers the disciplinary authority to dismiss a person from the Force who is sentenced under the Act to imprisonment. A contention was raised by the counsel appearing for the petitioner that the petitioner was convicted and sentenced to undergo only a simple imprisonment till the rising of the court which would not come within the ambit and purview of the expression "imprisonment" as stated in section 12 of the Act. No such limitation and/or restriction could be put to the express provision of the Act. A provision of the Statute is to be read as it is and nothing could be added to or subtracted from the provisions of the Statute, when the meaning and the purport of the expression used in the provision is clear and unambiguous. The interpretation sought to be given by the petitioner could be held to be valid only if certain

words are added to the aforesaid express provision of the section 12(1) of the CRPF Act. The expression and the words used in the section are clear and unambiguous and according to the said provision the disciplinary authority could dismiss a person sentenced to imprisonment. If the imprisonment is even for one day it cannot be said that the said provision is not applicable. The punishment is awarded to the petitioner for an offence which is included within the inclusive definition of section 10 for which punishment could extend to imprisonment for a term which could extend to one year or with a fine which may extend to three months" pay or with both. Here is a case where the Magistrate conducted the trial, convicted the petitioner and sentenced him to undergo simple imprisonment till rising of the court. Therefore, the petitioner was sentenced to imprisonment and in view of the aforesaid decision action could be taken by the disciplinary authority as provided for under the provisions of section 12(1) of the Act.

9. The contention that an enquiry should have been conducted by the respondent and an opportunity of hearing should have been provided to the petitioner prior to taking an action u/s 12, the law has since been finally settled in that regard in the decision in Tulsi Ram Patel's case (supra). It is conclusively held in the said decision that no opportunity of hearing is required to be given when an action is taken by way of dismissing, removing or reducing in rank a person on the ground of conduct which has led to his conviction on a criminal charge. Here is a case whether the services of the petitioner were dismissed on the ground of his imprisonment and Therefore, in my considered opinion neither any enquiry was required to be held nor any opportunity of hearing was to be provided to the petitioner prior to the issuance of the impugned order dated 3.7.1992.

10. With regard to contention of the petitioner that the quantum of punishment awarded to the petitioner is excessive, law on the aforesaid issue is also well settled after the decision of Tulsi Ram Patel and Parmanand's cases (supra). It is settled law that a tribunal or a court may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person where he without enquiry is dismissed, removed or reduced in rank solely on the discretion of the criminal court. But such a power should be exercised by a Tribunal or a Court where it is found that the penalty imposed by the impugned order is arbitrary or grossly excessive to the offence committed or not warranted by the facts and circumstances of the case. It cannot be held that the order of dismissal passed against the petitioner is either arbitrary or out of proportion to the offence committed nor the same could be said to be excessive. The petitioner belonged to a disciplined force and was declared a deserter, for which he was tried, convicted and sentenced to imprisonment. The petitioner was working in Punjab at the time when the aforesaid occurrence took place, which was at that point of time a highly disturbed State and Therefore, the maintenance of discipline was of paramount importance. The said aspect of the matter was also considered by the disciplinary authority as also by the appellate authority as is clear from the order dated 22.4.1993 and Therefore, no interference is called for

to impugned order on the aforesaid score also.

11. In the result, none of the contentions raised by the counsel appearing for the petitioner is found to be valid. I find no merit in this writ petition and the same stands dismissed. However, there will be no order as to costs.