

(2004) 07 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 5283 of 2003

Sitaram Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1), 12
Constitution of India, 1950 — Article 226

Citation : (2004) 4 CHN 671

Hon'ble Judges : Pranab Kumar Deb, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Mujibar Rahaman, for the Appellant; Anwara Qureshi and Sarbani Ghosh, for the Respondent

Judgement

Amit Talukdar and Pranab Kumar Deb, JJ.—Pursuant to an assignment made by the Hon'ble the Chief Justice this matter has been posted for hearing before us.

2. Since Girish Chandra Gupta, J. by His Lordship's Order dated 27.2.2004 could not agree with the ratio of the decision passed by D. K. Seth, J. in Bhubaneshwar Das v. Union of India and Ors. in CO. No. 3628(W) of 1993 dated 7.02.2002. His Lordship referred the matter before a Division Bench by way of formulating the following, question :

"Can a delinquent be dismissed from service when he has been charged u/s 11 of the CRPF of 1949 ?"

3. It is thereupon we have been asked to answer the said question formulated by our Esteemed Learned Brother.

4. The present reference arises out of a writ application which matured for hearing before our Esteemed Learned Brother, Girish Chandra Gupta, J. on behalf of one Sitaram Mishra, Head Constable of the Central Reserve Police Force (C.R.P.F), who has been dismissed by the Respondent No. 3 (Inspector General of Police, Central Reserve Police Force, Eastern Sector) by his order dated

6.1.2003 (Annexure-P 11 to the writ application) whereby the petition for revision of the writ petitioner was dismissed and the order of the Appellate Authority (Respondent No. 4) (Annexure-P7) to the writ application upholding the order of dismissal from service with effect from 12.4.99 as recorded by the respondent No. 5 (Commandant).

5. The writ application was taken out assailing the said order of dismissal which was finally affirmed in revision by the respondent No. 3.

6. In course of hearing our Esteemed Learned Brother, Girish Chandra Gupta, J. felt, that although the charge was framed against the petitioner in respect of section 11 of the Central Reserve Police Force Act, 1949 (hereinafter referred to as the said Act) which bears the caption minor punishment, however, as he was visited with the order of dismissal which is a major punishment and was of the view that the said major punishment could not be inflicted since the charge was framed for the offence u/s 11 of the said Act; and accordingly, His Lordship framed the question quoted hereinabove and referred the matter to the Division Bench as there was a contrary view by our another Esteemed Learned Senior Brother, D. K. Seth, J. in Bhubaneshwar Das v. Union of India and Ors.

7. Our Esteemed Learned Brother, Girish Chandra Gupta, J. formulated the said question as His Lordship was of the view that-

"Where delinquent was charged u/s 11 he cannot be visited with a major penalty of dismissal."

8. Whereas, on the other hand our Esteemed Learned Senior Brother, D. K. Seth, J. had earlier taken a contrary view and dismissed the writ application of Bhubaneshwar Das (supra) and held that:-

"the disciplinary authority is empowered to inflict punishment in addition to suspension or dismissal or in lieu of suspension or dismissal in all the punishments specified in clauses (a) to (e) of section 11 of the said Act;" . and His Lordship was of the further view :

"It does not preclude the authority from inflicting punishment of suspension or dismissal."

9. Shri Rahaman, Learned Advocate appeared on behalf of the petitioner and made his submission and referred to the various provisions of the said Act and the said Rules in support of his contention that the order of dismissal was absolutely illegal which being a major penalty was passed in respect of a charge u/s 11(1) of the said Act which speaks of minor offences. Shri Rahaman invited our attention to the xerox copy of a Division Bench judgment of our Court in Union of India and Anr. v. Kalipada Das in M.A.T. No. 1951 of 2001 decided on 9.7.2002 wherein Their Lordships of the said Division Bench had held that neither the Disciplinary Authority nor the Appellate Authority has applied their mind that when the respondent (writ petitioner) was served with a chargesheet for minor penalty the major penalty of dismissal could not be passed and the

said Division Bench struck down the order of dismissal and directed reinstatement of the respondent (writ petitioner).

10. Shri Rahaman laid much emphasis on the provisions of section 11 of the said Act and submitted that as the said section speaks of minor punishment the order of dismissal from service of the petitioner by the concerned respondent being a major punishment cannot be upheld.

11. Shri Rahaman further submitted that as the charge was framed against the delinquent in respect of offence of section 11 of the said Act he could not be visited with a punishment which was beyond the charge framed and on that ground alone the same has to be set aside and he heavily relied on the Division Bench judgment of our Court in Union of India and Anr. v. Kalipada Das (supra).

12. Smt. Anwara Qureshi appearing with Smt. Sarbani Ghosh refuted the submissions of Shri Rahaman and argued that the order of dismissal passed by the concerned respondent in respect of the delinquent was absolutely proper and no interference was called for. She submitted that section 11 of the said Act also contained the power for dismissal in addition to the other punishment contained in the said section. As such there was no mistake committed by the concerned respondent in awarding the sentence complained of. She placed the provisions of section 11 of the said Act in details and submitted that the Authority had the power to award in lieu of or in addition to suspension or dismissal of punishment contained in section 11 of the said Act. As such, even if the section was captioned "minor punishments" there was no bar in passing an order of dismissal.

13. Smt. Qureshi referred to the Constitution Bench decision in A.K. Gopalan Vs. The State of Madras, and submitted that every word of a section must be given its proper meaning in construction of the Statute and if a particular word is omitted then the whole Statute cannot be appreciated in its true light. She also referred the Division Bench judgment of the Rajasthan High Court in Shyamsingh Vs. Deputy Inspector General of Police, Central Reserve Police and Others, and submitted that a delinquent who is not prosecuted for offence u/s 10 of the said Act can be awarded punishment of dismissal u/s 11 of the said Act to illustrate her point in question.

14. Smt. Qureshi also referred to, as a part of her submission, the Division Bench decision of the Allahabad High Court in Deputy Inspector General of Police, Central Reserve Police Force (Rampur, U.P.) and Anr. v. Munna Singh Yadav son of Nagina Yadav Resident of Village Mirzabad, Post Office Bhanuja Mirzabad, District Ghazipur in Special Appeal No. 201 of 1993 consisting of Sen, C.J., and R. K. Agrawal, J. on the identical point. She further placed the decision of Delhi High Court Ram Bihari Shukla v. Union of India and Ors. decided by Dr. Mukundakam Sharma, J. on December, 2001 in C.W. No. 3920 of 1999 in connection with the issue in question.

15. For the Union of India it was also submitted that in view of catena of decisions covering the subject the issue having been decided there is no merit in

the prayer of Shri Rahaman.

16. While answering the question which has fallen for reference in terms of the formulation by Our Esteemed Learned Brother, Girish Chandra Gupta, J. we feel it necessary to look into the entire gamut of the said Act so as to get a grasp of the whole hog of the entire matter.

17. The said Act was enacted by the Constituent Assembly for regulation of the Armed Central Reserve Police Force. It outlines the powers of the different category of members of the Force and deals with offences and punishment of different degrees and gave powers to the Central Government to make Rules (section 18).

18. It is in exercise of the power vested u/s 18 of the said Act the Central Reserve Police Force Rules, 1955 (for short, the said Rules) was initiated which also contained certain regulatory scheme for proper functioning of the Force.

19. Both the said Act and the said Rules, although enacted after a gap of some years, if read carefully, it will appear that the said Rules is quite supplementary to the said Act and is, in fact, corollary to each other and cannot be understood in a disjunctive pose.

20. Now, let us address Ourselves with regard to the core aspect of the matter.

21. From the heading in section 11 of the said Act it is no doubt clear that it speaks of minor punishments but, however, in the body of sub-section (1) of section 11 of the said Act it reads :

"The Commandant (read respondent No. 5) 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.....

(a) *****

(b) *****

(c) *****

(d) *****

(e) ***** "

22. Firstly, the heading "minor punishments" is exactly not consummate with the body of sub-section (1) thereof. However, Rule 27 of the said Rules cannot be kept in oblivion which shows that a Commandant (respondent No. 5) can order dismissal or removal from the Force of a constable after formal departmental enquiry.

23. For effective discussion the provision of Rule 27 in Chapter VI of the said Rules has to be looked into closely. Rule 27 reads as follows :

"27. Procedure for the Award of Punishments.? (a) The punishment shown as items 1 to 11 in column 2 of the table below may be inflicted on non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7."

24. The table No. 2 shows dismissal or removal from the force of a constable (read the petitioner) can be effected (under the table 6) by the Commandant (read respondent No. 5) in conjunction with table 7 i.e. after formal department enquiry.

25. According to Maxwell on the INTERPRETATION OF STATUTES "The headings prefixed to sections or sets of sections in some modern statutes are recorded as preambles to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words,". This was quoted with approval by the Supreme Court in *Bhinka and Others Vs. Charan Singh, K. Subba Rao, J.* (as the Learned Chief Justice then was) speaking for the 3- Judge Bench of the Supreme Court consisting of S. K. Das, A. K. Sarkar (as the Learned Chief Justice then was) and K. Subba Rao, JJ. upon quoting the aforesaid lines from Maxwell on THE INTERPRETATION OF STATUTES held:

"If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt."

26. But in the present case the position is converse. As such, there cannot be any quandary over the issue of a hearing.

27. Similarly, in the Constitution Bench judgment of *Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay*, speaking in a different voice Patanjali Sastri, J. (as His Lordship then was)-

"Nor can the title of a chapter be legitimately used to restrict the plain terms of an enactment."

28. As such, taking cue from Maxwell on the INTERPRETATION OF STATUTES which has been quoted with approval by the Supreme Court in *Bhima v. Charan* (supra) and *Commissioner of Income Tax, Bombay v. Ahmedbhai Umarbhai & Co.* (supra) it is quite clear that that simple heading of a section should not restrict the Judicial Eye but the wholesome impact the section under the said heading contains has to be understood in its plain meaning as shown earlier.

29. The heading of section 11 of the said Act-minor punishments is quite intriguing; but, once the entire text of the section is gone into which inter alia speaks for "award in lieu of, or in addition to suspension or dismissal any one or more of the following punishments" contained in clauses (a) to (e). It would appear that apart from the several punishments outlined in clauses (a) to (e) of sub-section (1) of section 11 of the said Act the order of suspension or dismissal can be passed in lieu of the punishment contained in clauses (a) to (e).

30. We feel that in a manner the position which has haunted the entire spectre of this reference can be taken care of in the observation of the Supreme Court in *Kehar Singh and Others Vs. State (Delhi Administration)*, :

"But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as one paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and the avoid undesirable consequences."

31. A grammatical interpretation may not always be helpful where the provision is not either hallucinating or evasive.

32. In this context Francis Bennion in his famous Treatise *STATUTORY INTERPRETATION* has dealt with this question. The principle of *ut res magis valeat quam pereat*, which in other words, means the interpreter of a legislative intent must construe the enactment in such a way as to implement rather than defeat the legislative intention.

33. It is with this principle let us proceed further. The *FUNCTIONAL CONSTRUCTION RULE*, according to Francis Bennion, is a rule of law where in construing an enactment the significance to be attached to each type of *COMPONENT* of the Act or other instrument containing the enactment must be assessed in conformity with its legislative function as a *COMPONENT* of that type.

34. In the said Treatise it has been shown what are the unamendable descriptive components of the Act which contained chapter number, date of passing, enactment formula, heading, side note or marginal note, punctuation, format.

35. In section 281 of the Treatise a heading has been described as a heading within an Act, whether contained in the body of the Act or a Schedule, is part of the Act, It must be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore necessarily inaccurate, guide to the material to which it is attached.

36. In his *COMMENTARY* it has been shown that although the *HEADING* is part of the Act despite dicta to the contrary. However, it is of very limited use in interpretation because of its necessarily brief and inaccurate nature. "Any heading can only be an approximation, and may not cover all the detailed matters falling within the provision to which it is attached."

37. It would be further found in the said *COMMENTARY* that - "Where a heading differs from the material it describes, this puts the Court on enquiry. However, it

is most unlikely to be right to allow the plain literal meaning of the words to be overridden purely by reason of a heading."

38. From the discussion in the light of the said Treatise of Prof. Bennion it is quite clear that the Court should not restrict itself to the starting captions of a heading as the purpose of heading cannot either engulf or militate against the contents of the section under which it is housed.

39. Long long ago the Supreme Court in Poppatlal Shah Vs. The State of Madras, Sir Bijan Kumar Mukherjea, J. (as the Learned Chief Justice then was) speaking in the Constitution Bench of Patanjali Sastri, CJ., B. K. Mukherjea, Vivian Bose, Ghulam Hasan and Bhagwati, JJ. held :

"It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

40. As such, the mist, raised surrounding the heading of section 11 of the said Act has to be pierced and it can easily be seen what is the entire issue in question.

41. In our humble view if we make a purposive construction of section 11 of the said Act it manifests that the authority concerned can award the punishments contained in the five clauses of sub-section (1) of section 11 of the said Act in addition to suspension or dismissal.

42. Sinha, J. (as His Lordship then was) the speaking voice in the Division Bench decision of Ananta Kumar Bej v. State of West Bengal and Ors. 2000(2) CLT (HC) 186 : 1999 WBLR (Cal) 441 quoted from the Treatise of Francis Bennion : STATUTORY INTERPRETATION :

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

"(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

"(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)".

43. That way, the order of suspension or dismissal cannot be said to have been passed in connection with a minor punishment as contained in section 11 of the said Act. The clauses and sub-section (1) itself has to be read in juxtaposition with each other and in disintegration of the two parts it would at once be clear that the various punishments in clause of sub-section (1) of section 11 of the said Act can be awarded in addition to either suspension or dismissal.

44. Section 12 of the said Act has to be read parallelly with section 11 of the said Act. The said section empowers the Authority to dismiss a person from the Force who has been sentenced to imprisonment under the said Act.

45. The extract of the formal charge framed against the petitioner as appearing at page 31 of the writ application (Annexure-P2) shows :

"That, No. 710170325 HC Sita Ram Mishra while serving as a Head Constable (GD) in "B" Coy, 41 Bn, CRPF, committed an offence of grave misconduct and remissness in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949, punishable under Rule 27(a) of CRPF Rules, 1955, in that he, on 18.2.98 at about 0945 hours, started cleaning barrel of his loaded 9 MM Carbine (No. 15356032, Butt No. 13) in men's barrack of B/41 Bn, CRPF, carelessly without removing its magazine on his bed. In this process of cleaning, 08 rounds got fired automatically and one of these bullet hit No. 901310271 Ct. Sailesh Kumar Tiwari who was present there in the barrack No. 901310271 Ct. Sailesh Kumar Tiwari subsequently succumbed to his injuries at about 1020 hours same day in Civil Hospital, Jirania, Agartala."

46. From the plain reading of the charge shows that the petitioner was asked to answer the allegation with regard to the offence of grave misconduct and remissness in his capacity as a member of the Force. Both the ingredients of question of remissness and misconduct have been well-incorporated in section 11 of the said Act.

47. It appears that the petitioner took his effective defence and duly cross-examined the witnesses and actively took part in the proceeding. As such, by no stretch of imagination it can be said that he was either prejudiced by any mistake in the charge or he was precluded from taking his appropriate defence.

48. That apart, the charge reflects that the offence of grave misconduct and remissness which is part of sub-section (1) of section 11 of the said Act is punishable under Rule 27(a) of the said Rules which as we have seen earlier can be visited can be visited with dismissal or removal from the Force by the Commandant (respondent No. 5) after completion of formal Departmental Enquiry.

49. As such, from the chargesheet which was submitted (Annexure-P9 collectively) it emphatically contains recitals with regard to the major penalty in respect of dismissal of service apart from the consequential penalties contained in sub-section (1) of section 11 of the said Act. The chargesheet issued against the petitioner is quite clear and unambiguous and cannot be branded with the label that it contained material in respect of minor penalty contained in section 11(1) of the said Act which we have discussed hereinabove apart from the fact that the heading of the Act cannot act as a key note the charge-sheet being quite self-explanatory the order of dismissal passed against the petitioner cannot be said to be illegal.

50. As discussed earlier the ratio of the said Division Bench decision in Union of India and Anr. v. Kalipada Das (supra) in our considered view cannot retrieve the situation for the reasons unfurled hereinabove as the petitioner in this case was directed to answer in the chargesheet the allegation in respect of the offence of section 11(1) of the said Act read with Rule 27(a) of the said Rules. Fact situation of the present case is sidely different from Union of India and Anr. v. Kalipada Das (supra) and as such is quite distinguishable.

51. On the other hand the decisions cited by Smt. Qureshi we find are much the point. The Delhi High Court judgment (the decision of Ram Bihari Shukla v. Union of India and Ors. (supra) rendered by Dr. Mukundakam Sharma, J. which has taken note of the Division Bench of the Allahabad High Court and the Rajasthan High Court had held :

"The heading "Minor Punishment" in section 11 is a misnomer. It is 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 the 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 under Sections 9, or 10 of the Act."

52. We whole-heartedly find much substance in the decision of His Lordship Dr. Mukundakam Sharma of the Delhi High Court in Ram Bihari Shukla (supra). We are of the humble opinion that the view taken by our Esteemed Learned Senior Brother, Dilip Kumar Seth, J. in Bhubaneshwar Das v. Union of India and Ors. (supra) is quite in tune with the proposition of law unravelled by us and is apposite in the line of the facts discussed above and the Division Bench decisions of the Allahabad High Court and the Rajasthan High Court as also the Single Bench decision of the Delhi High Court.

53. Accordingly on the basis of the discussion held hereinabove, while taking into account the wholesome import of section 11 of the said Act read along side Rule 27(a) of the said Rules we return a POSITIVE reply to the answer framed by our Esteemed Learned Brother, Girish Chandra Gupta.

54. Accordingly, we are of the view :

"Yes" a delinquent can be dismissed from service when he has been charged u/s 11 of the said Act.

55. Since we have answered the reference in the positive on the basis of our finding let the matter now be placed before the appropriate Bench for hearing.

56. Reference answered accordingly.