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**(2010) 05 GAU CK 0058**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 34 of 2004**

Srikanta Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 13-05-2010

**Acts Referred:**

Central Reserve Police Force Act, 1949 — Section 10, 11, 11(1), 12, 9  
Central Reserve Police Force Rules, 1955 — Rule 27

**Citation :** (2010) 5 GLR 4 : (2010) 3 GLT 216

**Hon'ble Judges :** H.N. Sharma, J;A.C. Upadhyay, J

**Bench :** Division Bench

**Advocate :** S. Talapatra and B. Banerjee, for the Appellant; A. Lodh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

H.N. Sarma, J.—The appellant, being unsuccessful in the Writ Petition No. 237 of 2003, which was dismissed on 24.9.2004 by the learned Single Judge, has approached this Court again by filing this writ appeal.

2. We have heard Mr. S. Talapatra, learned senior counsel assisted by Mr. B. Banerjee, learned Counsel for the appellant/writ petitioner and Mr. A. Lodh, learned Assistant SGI for the Union of India/respondents.

3. The pleaded case of the appellant is that the he was appointed as a Constable in the Central Reserve Police Force (CRPF) and while he was serving at Amarpur, Thpura, the respondents drew up a departmental proceeding against him and framed three articles of charges against him. The appellant denied the charges and submitted his reply. The authority conducted the departmental enquiry against him as per rules. After completion of the inquiry, the charges framed against the appellant having been found established, the enquiry report with the proceeding was forwarded to the disciplinary authority-respondent No. 4, who in turn asked the appellant to submit his representation, if so desired against the finding of the enquiry office. The appellant filed a written representation before

the authority against the inquiry report. However, disciplinary authority accepting the inquiry report, in exercise of power u/s 11(1) of the CRPF Act, 1949 read with Rule 27(a) of the CRPF Rules, 1955 inflicted the penalty of dismissal against the appellant from service vide order dated 19.2.2003. Against the said order, the appellant though filed a departmental appeal, the same also came to be rejected. Challenging the order of dismissal and the proceeding itself, the appellant filed the instant writ petition, which was dismissed by the impugned judgment and order by the learned Single Judge.

4. Mr. S. Talapatra, learned senior judge counsel submits that the particulars of charges leveled against the appellant having categorized under the category of less heinous offence as provided u/s 10 of the CRPF Act, the punishment of dismissal from service cannot sustain against the appellant. In this connection, the learned senior counsel has also relied on the observation of the learned Single Judge at para 6 wherein it has been held that "Admittedly, the petitioner has been charged with less heinous offence as adumbrated in Section 10 of the Act, the punishments for which are enumerated in Section 11 of the Act." As the appellant was charged for a less heinous offence, the penalty of dismissal applying the provisions of Section 11 of the Act is not applicable, contended by Mr. Talapatra. According to the learned senior counsel, the provisions of Section 11 has been misinterpreted and misapplied in the instant case. It is further contended that the appellant not being sentenced to imprisonment, he is also not liable to be dismissed from service u/s 12 of the Act and the learned Single Judge failed to note these vital aspects of the matter. The learned senior counsel referring to the decision reported in *State of West Bengal and Anr. v. Tarun Kumar Sen Gupta and Anr.* AIR 1974 Cal. 39 submits that the Section 9 of the Act deals with more heinous offences whereas Section 10 deals with less heinous offences and Section 11 prescribes for minor punishments. The decision rendered in *Deen Dayal v. D.I.G. of Police*, CRPF 1974 LAB. IC 929 relied on by the learned Single Judge is sought to be distinguished submitting that on a proper and harmonious construction of the provisions of Sections 9, 10, 11 and 12 of the Act for commission of an offence categorized as less heinous offence, punishment of dismissal cannot be awarded.

5. Mr. A. Lodh, learned Assistant SG stiffly refutes the arguments advanced by Mr. Talapatra referring to the charges leveled against the appellant and submits that the article Nos. I and II of the charges clearly attract the provision of Section 9 of the Act, as contained in Clauses (e) and (i), as more heinous and in such a situation, the provisions of Section 11 would clearly be applicable attracting dismissal of the appellant from service.

6. Although, Mr. Talapatra, learned senior counsel has tried to impress upon us that the allegations leveled against the appellant in the articles of charges No. I and II attracts the provisions of Section 10(a) and 10(o), but on close scrutiny of those clauses, we are not inclined to accept the submission. Section 10(a) provides that if a member of a Force in a state of intoxication when on, or after

having been warned for, any duty or on parade or on the line of march he can be punished under that provision. The reading of the allegations leveled in Articles I and II, it clearly disclose that the appellant committed the act of disobedience attracting misconduct in his capacity as a member of the Force inasmuch as while he was detailed on Guard duty at TAC HQ -Amarpur Camp, he went outside the campus without prior permission of the competent authority and consumed liquor during duty hours. Charge No. II discloses that the appellant while was detailed on duty went outside the camp, consumed liquor and under intoxication misbehaved with his Coy CHM and abused him and also tried to manhandle him. Section 10(o) provided that a member of a Force may also be punished, if he contravenes any provision of the Act for which no punishment is expressly provided under the Act. In our considered view there is a residuary clause and it can be attracted in the absence of any other specific provision to that effect. On the other hand, Section 9 which deals with more heinous offences provides that at Clause (e) that every member of the Force, who while on active duty disobeys lawful command of his superior officer or under Clause (i) quits his guard, picquet, party or patrol without being regularly received or without leave, he can be punished under that section.

7. Mr. Talapatra, is, however, justified in his submission that charge under articles No. (III) in fact, do not disclose any allegation of misconduct and it describes the act of misconduct committed by the appellant on previous occasions, which cannot be specifically stated to be a misconduct under the provisions of law. The fact of earlier conduct has been brought on record by way of article of charges, as submitted by Mr. Lodh, learned Assistant SG for the reason to make the appellant known that on earlier occasion also, he was found responsible for such misconducts and accordingly, in the event it is found necessity at later stage of the proceeding to take note of such past conducts and this was provided only to give a fair opportunity to the appellant in that regard. We find sufficient force in the submission of Mr. Lodh.

8. Adverting to the basic submission made by the learned senior counsel as regards non-applicability of the provisions of Section 11 of the Act, a careful reading of the Section 11 disclose that the prescribed and authorized officer, subject to the provisions of rule may 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 discharge of any duty or of other misconduct in his capacity as a member of the Force as provided therein. Section 11 of the Act came to be interpreted by the Apex Court in the case of Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, After considering the relevant provisions of the Act, the Apex Court held as follows:

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. According 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 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 force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in Clause (a) to (e) may also be awarded.

7. It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and Clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence u/s 9 or Section 10.

8. It is fairly well settled position in law that removal is a form of dismissal. This Court in *Dr. Dattatraya Mahadev Nadkarni (since deceased by his L. Rs.) Vs. Municipal Corporation of Greater Bombay*, explained that removal and dismissal from service stand on the same footing and both bring about termination or service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious, consequences in comparison to removal. In any event, Section 11(1) refers to Rules made under the Act under which action can be taken. Rule 27 is early of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.

9. Thus, upon proper interpretation of Section 11 of the CRPF Act and in view of the interpretation as made by the Apex Court, the issue raised by Mr. S. Talapatra, learned senior counsel to the effect that it is not within the competence of the authority to dismiss a member of the Force in lieu or in addition to the punishment prescribed u/s 11 of the Act in a less heinous offence

has no legs to stand.

10. In view of above discussions, we do not find any merit in the appeal and it stands dismissed.