

(2002) 10 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 641 of 2000

Subodh Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 12, 9
Constitution of India, 1950 — Article 226

Citation : (2002) 3 BLJR 2300 : (2002) 4 PLJR 608

Hon'ble Judges : Sachchidanand Jha, J

Bench : Single Bench

Judgement

Sachchidanand Jha, J.—This writ petition has been filed for quashing the order of the Director General of Police, Central Reserve Police Force (CRPF) dated 30.7.1999 upholding the order of the Commandant, 133 Battalion, Patna dated 21.5.1999 dismissing the petitioner from service 1949 for having contracted another marriage in the lifetime of his wife.

2. The services of the petitioner were earlier terminated on the abovesaid ground of plural marriage on 3.7.1995. The order was set aside by this Court in CWJC No. 9844/96 on 12.5.1998. Liberty, however, was given to the respondents to initiate a regular departmental proceeding against him, with further liberty to pass an interim order of suspension during the pendency of the departmental proceeding. Pursuant to the said order the petitioner's joining was accepted on 2.7.1998 and departmental proceeding was initiated against him. As per the charge memo he had committed misconduct by marrying one Santoshi Kumari during the lifetime of his wife Smt. Ranjana Devi on 6.6.1993 an act prejudicial to good order and discipline of the Force, u/s 11(1) of the CRPF Act read with Rule 15 of the CRPF Rules 1959 and Rule 21 of the CCS (Conduct) Rules 1964. As per the statement of imputation, if the petitioner intended to marry another woman in special circumstances he should have obtained prior permission of the Government in terms of Rule 15 of the CRPF Rules read with Rule 21 of the CCS (Conduct) Rules. In the departmental proceeding evidence was led and finally by

impugned order dated 21.5.1999, referred to above, the petitioner was dismissed from service. The order was upheld by appellate authority on 30.7.1999 giving rise to this writ petition.

3. On 4.5.2001 when the case was taken up a plea was taken on behalf of the petitioner that Smt. Ranjana Devi, his wife, had made allegation of his marrying Santohsi Kumari due to differences and out of anger but now she had realised her mistake and was prepared to depose in his favour. In view of the said plea Smt. Ranjana Devi was added as respondent No. 8 and notice was issued to her. On 13.8.2002 when the case was taken up for hearing, both the petitioner and Smt. Ranjana Devi were directed to be personally present in Court on the next date. On 27.8.2002 the parties appeared in person. Smt. Ranjana Devi stated in no uncertain terms that she had been living with the petitioner and in fact, a child was recently born to her from him. As a matter of fact, she appeared with the newly born baby in her lap.

4. Shri Ram Balak Mahto appearing on behalf of the petitioner, submitted that in the facts and circumstances this Court should exercise its extraordinary power under Article 226 of the Constitution and direct the respondents to reinstate the petitioner.

5. Rule 15 of the CRPF Rules provides that no member of the Force who has wife living shall contract any other marriage without first obtaining the permission of the Government notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to the members of the Force. Rule 21 of the CCS (Conduct) Rules also provides that no Government Servant having a spouse living shall enter into, or contract, a marriage with any person, provided that the Central Government may permit him to enter into, or contract, any such marriage if it is satisfied that such marriage is permissible under the personal law applicable to the Government servant and the other party to the marriage and there are other grounds for so doing.

6. The finding of fact arrived at in the departmental proceeding in presence of the petitioner that he contracted second marriage with Santoshi Kumari even while his wife Ranjana Devi was alive possibly cannot be upset in writ jurisdiction. The statement of Smt. Ranjana Devi before this Court however, was that it was due to misunderstanding that she had levelled the charge. The fact is that the petitioner never married Santoshi Kumar. She happened to be daughter of a colleague of the petitioner. Santoshi Kumari has married another person and she (Ranjana Devi) is now living with the petitioner. In fact, a child was recently both.

7. A doubt arose in course of further hearing on 28.8.2002 when the case came up for orders as to whether a member of the Force could be dismissed from service only on being sentenced to imprisonment under the Act. The delivery of order was postponed.

8. Section 12 lays down, "Every person sentenced under this Act to

imprisonment may be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and any other moneys due to him as well as of any medals and decorations received by him." From a bare reading it is clear that Section 12 merely enables or empowers the authority to dismiss a member of the Force in case of his imprisonment, apart from forfeiture of pay, allowance etc. The word "liable" in the section leaves no room for doubt that where a member of the Force is sentenced to imprisonment he becomes liable to dismissal in the discretion of the authority concerned. This becomes further clear from Section 11(1) of the Act which empowers the competent authority to award suspension or dismissal or any one or more of the punishments specified therein "in lieu of or in addition to." Section 11(1) may be quoted as under:

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 discharge of any duty or of other misconduct in his capacity as a member of the Force,....

A Division Bench of this Court in the case of Vishwanth Singh v. The Union of India and Ors. 1984 PLJR 521, has held:

From a conjoint reading of Sections 9 10 and 11 of the Act and Rule 27 of the Rules, it is clearly established that for the enumerated offences in those sections a person can be convicted and sentenced to imprisonment. The concerned person is also exposed to disciplinary action. The list of enumerated offences are, however, not exhaustive. Any act or omission prejudicial to good order and discipline of the Force is also an offence and similarly exposes a person both to be proceeded for action for imprisonment and/or disciplinary action. Minor punishment enlisted in Section 11 of the Act is not the only punishment meant for Less Heinous Offences, as contended by the learned Counsel of the petitioner. They are "in lieu of" or "in addition to" the power of suspension and dismissal. It is merely conferment of discretion on the disciplinary authority in the matter of imposition of punishment in a given case.

9. I may mention that in a case recently I interfered with the order of dismissal on the ground that the person concerned had not been sentenced to imprisonment and, therefore, in terms of Section 12 of the CRPF Act he could not be dismissed from service. My attention was not drawn to provisions of Section 11 or the abovesaid decision of this Court in the case of Vishwanth Singh and, therefore, the said order must be held to be in *percuriam* having no binding force. From the scheme of the CRPF Act, enacted to some extent on the pattern of the Army Act, it would appear that for certain offences specified in Section 9 (described as more heinous offences") and Section 10 (described as less heinous offences") the member of the Force is liable to punishment of imprisonment or fine upto the extent mentioned therein. u/s 12, every person sentenced to imprisonment may be dismissed from the Force and, further, liable to forfeiture

of pay, allowance etc. In other words, a member of the Force sentenced to imprisonment may be dismissed but it does not mean that punishment of dismissal cannot be awarded in other cases after disciplinary proceeding u/s 11(1) of the Act. This is evident from the words, "in lieu of or in addition to" therein, as seen above.

10. The question then arises is as to whether even if the charge against the petitioner is held to be proved, the punishment of dismissal could be justified. Ordinarily, this Court does not interfere with the quantum or nature of punishment which falls within the realm of power of the disciplinary authority. The Supreme Court, however, held that even though the High Court cannot interfere with the nature or quantum of punishment, in an appropriate case where the punishment awarded to a delinquent is found to be harsh, excessive or disproportionate, it may direct the disciplinary authority to reconsider the same. The act of committing plural marriage would undoubtedly attract the mischief of Rule 15 of the CRPF Rules and for that purpose, taking recourse to CCS (Conduct) Rules may not be necessary. It is well-settled that special provisions are applicable to the exclusion of general provisions and since specific provisions have been made with respect to the members of the Force governed by the CRPF Act it may not be necessary to travel beyond. The question is whether the act of committing plural marriage should invite the extreme punishment of dismissal. Rule 15 occurs in Chapter III of the CRPF Rules titled Composition of the Force. It contains provisions, relating to, inter alia, recruitment. In that context it is provided that no member of the Force having a wife living shall contract any other marriage without prior permission of the Government. The provisions relating to discipline and punishments are contained in another chapter, namely Chapter VI titled "Discipline". Though, thus, the act of contracting plural marriage may undoubtedly be violative of the statutory provisions pertaining to conduct of the person concerned, it may have no connection with the acts of "disobedience, neglect of duty, or remissness in discharge of any duty and/or other misconduct in his capacity as a member of the Force" in context of Section 11(1) of the CRPF Act. Clearly, plural marriage has nothing to do with the disobedience, neglect of duty or remissness in the discharge of duty. The words "other misconduct" also have to be understood ejusdem generis as having some nexus with the official duties. It is also evident from the words following "in his capacity as a member of the Force".

11. Reference was made to Clause (n) of Section 10 of the CRPF Act. As indicated above, Section 10 specifies certain offences as being "Less heinous offences". One of them is Clause (n). The said clause may be quoted, in context, as under:

10. Every member of the Force who-

(n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline;

(emphasis added)

shall be 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.

Considering that the act of plural marriage is already specified under the rules framed under the Act, it is doubtful if any violation thereof strictly speaking would come under Clause (n) of Section 10. But I do not wish to go into that larger question. The act of plural marriage may in any case be considered to be prejudicial to good order and descriptive. What I wish to point out is that "less heinous offence" u/s 10 are punishable with imprisonment extending upto one year, or with fine extending upto three months" pay, or both, in contradistinction to "more heinous offences" specified in Section 9 inviting punishment of imprisonment for a term not less than 7 years upto 14 years or fine. I have grave doubts if extrem penalty of dismissal can be awarded to a person found guilty of any act "prejudicial to good order or discipline". If that is considered to be of less heinous offence a minor penalty should be sufficient.

12. So far as the instant case is concerned, I have no hesitation in taking this view in view of the abovenoted subsequent events. If the wife i.e. Ranjana Devi on whose complaint the departmental proceeding was initiated has no grievance against the petitioner and they are happily living together as husband and wife, it would be in the ends of justice to reinstate the petitioner and given him a chance. After all, the question of livelihood is involved. In the circumstances, a relatively minor punishment may serve the ends of justice.

13. For the reasons stated above and in the facts and circumstances of the case, I would set aside the impugned orders dated 21.5.1999 (Annexure-7) and 30.7.1999 (Annexure-9), with liberty to the respondents to award suitable punishment, if so advised, keeping in view the facts and circumstances of the case and the observations made hereinabove.

14. This writ petition is accordingly disposed of.