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(2019) 02 GAU CK 0064

In the Gauhati High Court

Case No : Writ Appeal No. 220 Of 2018

Union Of India And 5 Ors — APPELLANT

Vs

Bichitra Sarmah — RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2019) 02 GAU CK 0064

Hon'ble Judges : A.S. Bopanna, CJ;Arup Kumar Goswami, J

Bench : Division Bench

Advocate : SC Keyal, R Sarma

Final Decision : Disposed Off

Judgement

A.S. Bopanna, CJ

Heard Mr. S.C. Keyal, learned Assistant Solicitor General of India for the appellants.

Also heard Mr. R. Sarma, learned counsel for the respondent.

The appellants are before this Court assailing the order dated 11.1.2018 passed by the learned Single Judge in case number W.P.(C) 5541 of 2009.

The respondent herein was before the learned Single Judge assailing the order dated 5.3.2009, whereby he was removed from service under Section 11(1) of the Central Reserve Police Force Act, 1949 read with Rule 27 of the Central Reserve Police Force Rules, 1955. The charge based on which the respondent was proceeded and ultimately removed from service is that while he was posted for Sentry Duty on 19.8.2006 at Post No.5, at around 20.20 Hrs., he had fired four rounds of shots from his 5.56 MM Insus Riffle, based on which the instant charge memo dated 22.6.2008 was issued to the respondent. Pursuant thereto, on denial of the charges, an enquiry was held and a report was submitted by the

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Enquiry Officer. The Disciplinary Authority having taken note of the charge as also report submitted by the Enquiry Officer, has through the order dated 5.3.2009 imposed the punishment of removal from service on the respondent.

Learned Single Judge while taking note of the same and also the contentions as put forth, was of the opinion that there is no sufficient evidence on record to indicate that the act of the respondent is intentional. In that regard, the learned Single Judge has arrived at the conclusion that it was not deliberate firing, but accidental and, therefore, disproportionate punishment of removal from service would not be justified. The learned Single Judge was accordingly of the opinion that the said order of removal is liable to be set aside and, in that light, has directed the appellants herein to impose a lesser punishment other than removal from service. It is in that view, the appellants claiming to be aggrieved by the order passed by the learned Single Judge are before this Court in this appeal.

Learned Assistant Solicitor General of India while assailing the order passed by the learned Single Judge would contend that the conclusion as reached by the learned Single Judge that the firing was accidental, is not justified. He contends that as per the evidence tendered by PW-10, keeping in view the nature of the weapon used, four rounds of shots cannot be fired in a single burst and as per the evidence as tendered, the gun can be used for single firing or three rounds of controlled burst fire. In that view, he contends that if the fact remains that four shots were fired, it has to be considered as deliberate and the conclusion as reached by the learned Single Judge is not justified. To support his contention, the learned Assistant Solicitor General of India has taken us though the report of the Enquiry Officer, wherein the evidence of the witnesses was recorded. Hence, he contends that the order of removal as imposed is justified and the order of removal does not call for interference.

Learned counsel for the respondent while controverting the contention put forth by the learned Assistant Solicitor General of India, would also refer to the report of the Enquiry Officer and the conclusion reached by the Enquiry Officer that the respondent had attempted to commit suicide. In that regard, it is pointed out that the same was not a charge framed against the respondent. In that view, in a circumstance, where the Enquiry Officer had traversed beyond the charge and had concluded to hold that the firing was deliberate and it was an attempt to commit suicide and while such report of the Enquiry Officer was relied on by the Disciplinary Authority, the learned Single Judge has taken note of this aspect and has arrived at the conclusion that the respondent herein had no opportunity to defend in respect of the allegation of his attempting to commit suicide when it was not a part of the charge. In that light, in such circumstance, when the fact remains that the firing was not deliberate, the learned Single Judge was justified in his conclusion that the it was accidental firing and, therefore, the order of the learned Single Judge does not call for interference.

In the light of the rival contentions put forth by the learned counsel for the parties, at the outset we have taken note of the reasoning adopted by the

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learned Single Judge. It is clear that the learned Single Judge has taken into consideration the aspect of the matter that the appellants have proceeded on the basis of the report of the Enquiry Officer that the respondent had attempted to commit suicide though the same was not a part of the charge. Learned Single Judge has, in fact, extracted the Charge No.1 and 2, which has been alleged against the respondent. Though the charge has not been exhaustively referred in the course of the order, a perusal of the charge sheet would indicate that the respondent was lodged with two charges both to the effect that on 19.8.2006 while he was at Post No.5, he had fired four shots from his 5.56 MM Insus Riffle. The charge does not indicate that such firing was deliberate in order to commit suicide. All that the charge states is that such firing being deliberate is an offence punishable under Section 11(1) of the Central Reserve Police Force Act. In that background, if the evidence of PW-10 is taken note of, what the witness states is with regard to positioning of the chase lever and it is stated therein that four rounds of shots can be fired if the chase lever was positioned at mark 'B'. In that regard, he states that if the chase lever is at Mark 'R', the person handling the weapon can fire one round and then the second lever is positioned at mark 'B' and firing is done making it mandatory to push the trigger twice in order to fire four shots. Therefore, in such circumstance, firing of the number of rounds depend on the positioning of the lever and it is not being said that the gun could not have fired four rounds at all. Therefore, in that circumstance, if the positioning of the lever is kept in view and the case of accidental firing is taken into consideration, in that background, it was for the appellants to adduce sufficient evidence in support of the charge and that too after making a specific charge. That apart, when the Enquiry Officer had traversed beyond the charge and had arrived at the conclusion that the respondent has attempted to commit suicide, the Enquiry Officer in fact was swayed away by such reasoning that the firing was deliberate. In such circumstance, when that aspect of the matter was not a part of the charge, the ultimate conclusion as reached would not be justified. Therefore, when the incident of firing had occurred accidentally and no other motive was alleged in the charge sheet, the disciplinary authority's decision to ultimately impose the punishment on the basis of the conclusion of the Enquiry Officer that such firing was an attempt to commit suicide, would not be justified. The learned Single Judge had, in fact, taken note of these aspects of the matter while arriving at the conclusion. Therefore, we do not see any reason to interfere with the order passed by the learned Single Judge in an intra-court appeal of the present nature.

Accordingly, the appeal being devoid of merit stands disposed of.

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