
(2016) 02 AHC CK 0235

In the Allahabad High Court

Case No : Special Appeal Defective No. 71 of 2016

Union of India and Others

APPELLANT

Vs

Brijesh Kumar

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, Section 11(1), Section 11(3),
Section 11(3)(b)
Constitution of India, 1950 — Article 20, Article 226

Citation : (2016) 2 ADJ 846 : (2016) 4 ALLJ 107 : (2016) 3 ALLWC 2294 :
(2016) 116 ALR 264 : (2016) 150 FLR 217

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Manoj Kumar Gupta, J.

Bench : Division Bench

Advocate : Satish Kumar Rai, for the Appellant; Krishnaji Khare, for the Respondent

Final Decision : Disposed off

Judgement

Dr. D.Y. Chandrachud, C.J.

1. The learned Single Judge has allowed the writ petition filed by the respondent and set aside an order by which he was dismissed from the Central Reserve Police Force¹ and an appellate and revisional order confirming the penalty.

2. The Union of India is in appeal.

3. The respondent was a constable in the Central Reserve Police Force. On 4 August 1998 an incident took place at B/8 Battalion at Morigaon (Assam) in which a few constables attempted to assault Officer Commanding "B" Company Rakesh Rao. It was alleged that the respondent had attempted to spread a false alarm in the Company line to the effect that the Officer Commanding had assaulted his men. Use of provocative language by the respondent is alleged to have instigated the Company personnel more particularly four of them - Love Kumar, Yogender Singh, Rajpal Singh and Mukesh Kumar who advanced towards

the residence of the Officer Commanding. By an order dated 6 August 1998, a minor penalty was imposed by the Officer Commanding on the respondent of thirty days" confinement to lines with forfeiture of all pay and allowances with pack drill for two hours in the morning and two hours in the evening. This punishment was imposed under Section 11 of the Central Reserve Police Force Act, 1949.

4. On 8/9 September 1998, the Inspector General of Police, CRPF, Lucknow set aside the punishment awarded to the respondent and having due regard to the gravity of the offence directed that disciplinary action be initiated against the respondent. An office order was accordingly issued on 9 September 1998 under the signature of the Commandant - 8Bn CRPF. Thereafter, on 18 September 1999, a charge sheet was issued to the respondent for misconduct arising out of the incident. After a disciplinary inquiry, the charge was held to be proved. A notice to show cause was issued to the respondent to which he submitted a reply. The disciplinary authority dismissed the respondent. An appeal and revision against the order of dismissal were dismissed. A writ petition was filed under Article 226 to quash the order of dismissal and the orders of the appellate and revisional authorities.

5. The ground on which the learned Single Judge allowed the writ petition was that a major punishment of dismissal could not have been imposed on the respondent once a minor penalty had been imposed for the same violation and the minor penalty had not been set aside. In the reasons which have been indicated in the order of the learned Single Judge, there is a great deal of emphasis on the finding that the minor penalty had not been set aside before the major punishment was imposed. For convenience of reference, we extract from those findings hereinbelow:

"(i) This means that the petitioner was awarded a minor penalty under Section 11(3)(b) of the Act, 1949. The petitioner accepted the punishment and underwent the same. It was thereafter that a charge sheet was issued to him on 18.09.1999 and after enquiry being held the penalty of dismissal was passed against him on 15.09.1999. It is not a case where the punishment of minor penalty under Section 11(3) was set aside and thereafter a major penalty chargesheet was given to the petitioner...;

(ii) Learned counsel for the respondents, however, could not meet the principal ground of attack of the petitioner that after he had already undergone the penalty imposed under Section 11 sub-section 3 of the Act, 1949 and that order had never been set aside, the subsequent order dismissing him from service amounted to double jeopardy and could not have been passed...; and

(iii) There is nothing on record to show that the order of minor penalty of confinement to the lines with forfeiture of all pay and allowances with pack drill for two hours in the morning and two hours in the evening, daily for 30 days was set aside by the competent authority or by a superior authority before issuing

the major penalty chargesheet to the petitioner resulting in his dismissal from service. Therefore, the chargesheet dated 18.09.1998, the dismissal order dated 15.09.1999 the appellate order dated 07.12.1999 and the revisional order dated 16.05.2000 are quashed."

(emphasis supplied)

6. These findings would indicate that what weighed with the learned Single Judge is that the minor penalty had not been set aside.

7. In paragraph 12 of the counter affidavit which was filed on behalf of the appellants before the learned Single Judge, the specific defence was that the minor penalty which was imposed under Section 11 had been set aside by the IGP on 8 September 1998. The averments in paragraph 12 are as follows:

"That the contents of paragraph No. 11 of the writ petition are totally incorrect hence denied it is stated that the punishment of 30 days confinement to lines awarded to Ex. CT Brijesh Kumar was reviewed by the IGP CS, CRPF, Lucknow under the authority of rule 29(d) of CRPF Rules, 1955 and found that the punishment was not commensurate with the gravity of offence committed by the said Ex. C.T. Therefore, IGP, CS vide his Office Signal dated 8/9/98 passed the orders to the disciplinary authority to cancel the punishment of 30 days confinement to lines and initiate appropriate/stern disciplinary action against Ex. CT Brijesh Kumar. Accordingly the punishment of 30 days confinement to lines awarded by OC B/8 to Ex. CT Brijesh Kumar in the Orderly Room was cancelled by Comdt. 8 Bn, CRPF vide his Office Order No. P. VIII-14/98-8-EC-II dated 9.9.1998. Subsequently a departmental enquiry was ordered and conducted against Ex. CT Brijesh Kumar under Section 11(1) of CRPF, Act 1949 vide Comdt. 8 Bn, CRPF Office Memorandum No. P.VIII-14/98-8-EC-II dated 18.9.1998. As a result of departmental enquiry, EX-CT Brijesh Kumar was dismissed from service w.e.f. 15/9/1999 vide Comdt. 8 Bn. CRPF Office Order No. P. VIII-14/98-8-EC-II dated 15/9/1999. In this connection, it is pertinent to mention that Sector IGP of CRPF, is competent to enhance, modify or annul the punishment under the authority of rule 29(d) of CRPF, Rules, 1955. Thus there has been nothing wrong in the instant case. Everything was done within the defined rules and regulations. Hence, contention of the petitioner does not hold good."

8. The only traverse in the rejoinder affidavit was in following terms:

"That the contents of para 12 of the counter affidavit, are misconceived and incorrect. Position stated in para 11 of the writ petition is reaffirmed."

9. As a matter of fact, it would appear from the averments contained in paragraph 19 of the writ petition that the fact that the earlier order imposing a minor penalty had been cancelled on 9 September 1998 was specifically averred and the order of cancellation was annexed to the writ petition at Annexure 12.

10. In this view of the matter, the finding of the learned Single Judge to the effect that the order imposing a minor punishment had not been set aside is

manifestly erroneous and contrary to the material on the record, besides being contrary to the accepted position as it emerged from the pleadings before the Court.

11. Section 11(1) of the Act provides as follows:

"11. Minor Punishments.--(1) 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, that is to say,--

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and
- (e) removal from any office of distinction or special emolument in the Force."

12. Rule 29(d) of Central Reserve Police Force Rules, 19553 is in the following terms:

"The Director General or special Director-General or the Additional Director-General heading the Zone or the Inspector-General or the Deputy Inspector General may call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such orders:

Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

13. Section 11(1) makes it abundantly clear that a minor punishment as contemplated there can be awarded in lieu of, or in addition to, suspension or dismissal. Clause (c) of Section 11(1) includes confinement to quarters, lines or camp for a term not exceeding one month. Under Rule 29(d), a power is vested to confirm, enhance, modify or annul the award of any punishment in the Director General or Inspector General, amongst other officers.

14. But the submission which has been urged on behalf of the respondent is that once the minor punishment which was imposed in terms of Section 11 had been annulled by the Inspector General on 8 September 1998, the imposition of a major penalty could not be regarded as being in addition to the minor penalty. In the submission of the respondent, once the minor penalty had been set aside, the major penalty was not in addition to the major penalty but was in lieu thereof. Alternatively, it is urged that since the respondent had undergone the

minor penalty, the setting aside thereof on 8 September 1998 after the period of confinement would be of no consequence.

15. In our view, the matter can be looked into from two perspectives. Firstly, if as the respondent contends, he had already undergone the minor penalty which was imposed under Section 11 and the setting aside of the minor penalty would not obliterate the factual position, in that event, the major penalty would be in addition to what had already been undergone by the respondent. This is permissible under Section 11. The principle of "double jeopardy" under Article 20 has no application, as the learned Single Judge seemed to indicate. There was no conviction of an offence. Alternatively, if the order dated 8 September 1998 setting aside the minor penalty is treated as an order by which the order of minor penalty is effaced and obliterated, in that case, under Section 11, the authorities had the jurisdiction to proceed by way of a major penalty in any event. We clarify that, at this stage, we leave open all the contentions which the respondent may have on the merits of his challenge to the order of major penalty since they have not been gone into by the learned Single Judge. We leave it open to be urged before the learned Single Judge. The only ground which weighed with the learned Single Judge was that the minor penalty had not been set aside, which is contrary to the record.

16. In this view of the matter, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 8 September 2015. Writ - A. No. 42833 of 2000 is restored to the file of the learned Single Judge for disposal afresh.

17. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

18. The delay of 105 days in filing the special appeal is condoned since sufficient cause has been shown in the affidavit filed in support of the delay condonation application.

19. The application is, accordingly, disposed of.

1CRPF

2Act

3Rules