
(2016) 02 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : LPASW No. 185 of 2003 & MP No. 269 of 2003

Union of India & Ors.

APPELLANT

Vs

A.V. Chauhan

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2016) 1 JKJ 309

Hon'ble Judges : Mr. N. Paul Vasanthakumar, C.J. and Mr. Bansi Lal Bhat, J.

Bench : Division Bench

Advocate : Ms. Sindhu Sharma ASCI, for the Appellant; Mr. S.H. Shah Ashrafi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

N. Paul Vasanthakumar, C.J.—This appeal is filed by Union of India and CRPF officials challenging the order of the learned Single Judge made

in SWP No. 973/2000 dated 31.12.2001 quashing the order of removal from service of the respondent.

2. The brief facts necessary for disposal of the appeal are as follows:

a) The respondent while serving as Constable/DVR (Sector) No. 880895568 in Group Centre, CRPF Bantalab was transferred to Group Centre

CRPF Gauhati by order dated 12.10.1998.

b) The said order was challenged by the respondent by filing SWP No. 2049/1998 and the said writ petition was disposed of by order dated

09.11.1998 with a direction to the appellants to treat the writ petition as a representation and take a decision as is permissible under law and the

operation of the order of transfer dated 12.10.1998 was stayed for a period of 15 days.

c) Pursuant to the said directions issued, the grievance of the respondent was again considered and the order was communicated to the respondent

on 29.12.1998 wherein his representation/claim made in the writ petition which was ordered to be considered by this Court, has been rejected.

3. It is the contention of the respondent that the order of relieving, (movement order) was received by him on 31.12.1998 and on that date, he was

placed under suspension as if he has disobeyed the order of transfer. A charge memo was issued for disobeying the order of transfer in spite of

issuing movement order on 29.12.1998. An Enquiry Officer was appointed to conduct the enquiry on 04.01.1999 and on 01.06.1999, the order

of removal from service was passed which was challenged by the respondent in the writ petition and the said writ petition was allowed by this

Court on the ground that the representation though was rejected on 28.12.1998 and the movement order having been issued on 29.12.1998 which

was served only on 31.12.1998 and the respondent being placed under suspension could not join in the transferred place, therefore, the charge

framed against the respondent is not maintainable. Another reason was mentioned by the learned Writ Court to interfere with the order of removal,

stating that under section 11 (1) of Central Reserve Police Force Act 1949, a charge memo having been issued under section 11 (1) of the Act,

only a minor punishment could be imposed and the punishment of removal from service is a major punishment, which is not permissible and the

punishment imposed is also disproportionate.

4. The learned Writ Court while quashing the order granted liberty to the appellants to pass fresh orders in accordance with the law, if it is required

to be passed. The said order is challenged in this appeal by contending that the CRPF being a disciplined force, the disobedience shown by the

respondent in not complying with the order of transfer, in spite of rejecting the representation which was ordered to be considered by this Court, is

a serious misconduct and therefore after conducting the enquiry, respondent was removed from service. Learned counsel for the appellants also

submitted that Section 11(1) of the Central Reserve Police Force Act 1949 empowers the Commandant to impose major punishment also in lieu

of minor punishment and a judgment in this regard has already been issued by a Division Bench of this Court in LPASW No. 127/2015 decided

on 29.07.2015 (Tajdar Khan v. Union of India and Ors. 2015 (4) JKJ 88 [HC]).

5. Learned counsel appearing for the respondent on the other hand submitted that the movement order having been communicated only on

31.12.1998 and the respondent having been placed under suspension on the same date, he could not join in the transferred place and, therefore,

he cannot be proceeded for not obeying the transfer order and the order of transfer was rightly set aside by the learned Writ Court and no

interference is called for.

6. We have considered the rival submissions and perused the entire record.

7. It is not in dispute that the initial order of transfer dated 12.10.1998 was challenged before this Court in SWP No. 2049/1998 and this Court by

order dated 09.11.1998 directed the appellants herein to treat the writ petition as a representation and take a decision in accordance with law and

the order of transfer dated 12.10.1998 was also stayed for a period of 15 days. Thereafter, the appellants considered the representation and

rejected the same by order dated 28.12.1998.

8. According to the appellants, the order was served on the respondent on 30.12.1998 and the movement order was served on 31.12.1998. It is

a fact that on 31.12.1998, the respondent was placed under suspension in the light of the said fact, namely, placing respondent under suspension

on 31.12.1998, the respondent was prevented from reporting duty at Gauhati as per movement order. Hence, no charge could be framed for not

reporting for duty in terms of the movement order dated 30.12.1998.

9. The learned Single Judge rightly considered the said aspect and gave a finding that only because of order of suspension, the respondent could

not join in the transferred place and as such charge levelled against the respondent is not made out. It is also a fact that for not reporting duty within

a day even assuming that a movement order was served on 30.12.1998, could not be a reason to impose a major punishment of removal from

service even though section 11(1) of Central Reserve Police Force Act, 1949 contemplates imposing of major punishment on the ground of gravity

of the alleged delinquency, i.e. by applying the principle of proportionately. Hence, on facts and law the order of removal from service passed

against the respondent is unsustainable which was rightly quashed by the Writ Court. There is no merit in the appeal which is dismissed. The

appellants are directed to implement the order of learned Single Judge with all consequential benefits within a period of eight weeks from the date of receipt of copy of this order. No costs.