
(2015) 01 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 15821 of 2010

Vitthal Baburao Patil

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1)

Citation : (2015) 01 GUJ CK 0034

Hon'ble Judges : Sonia Gokani, J.; Akil Abdul Hamid Kureshi, J.

Bench : Division Bench

Advocate : Ramnandan Singh, for the Appellant

Final Decision : Allowed

Judgement

Akil Abdul Hamid Kureshi, J.—The petitioner has challenged an order dated 26.10.2009 as at Annexure-A to the petition by which the revision authority dismissed the revision petition of the petitioner confirming the order of disciplinary authority and the appellate authority.

2. Brief facts are as under:

2.1. The petitioner was employed as a water carrier in the Central Reserve Police Force ("CRPF" for short). He had put in about nine years of service claiming to be unblemished. When he was brought to CRPF camp, Gandhinagar, he was served with a charge-sheet in July 1997 which contained three charges. Charge No. 1 and 2 pertained to his complaint which he filed before the Hon"ble Prime Minister regarding service conditions without going through proper channel and his refusal to answer inquiry made in respect of such a complaint. Charge No. 3 pertained to his refusal to accept the order of suspension dated 4.7.1997. The disciplinary authority upon completion of the inquiry imposed punishment of dismissal from service. The petitioner's appeal was rejected by the appellate authority. The petitioner thereupon filed Special Civil Application No. 6639/1998 which was disposed of by order dated 23.6.2009 allowing the petitioner to

approach the revisional authority. While doing so, the statement of the petitioner was recorded that he will not claim consequential benefit for the period till the date of revision application. Thereupon the revision petition came to be filed on 15.7.2009. Such revision petition came to be dismissed by the impugned order. Hence, this petition. 3. Learned counsel Shri Ramnandan Singh raised the following contentions:

"1) The petitioner had put in more than nine years of unblemished service.

2) The misconduct in any case was not serious. Penalty of dismissal from service was excessive and disproportionate.

3) The charge-sheet was issued without taking action under section 11(1) of the Central Reserve Police Force Act, 1949 ("the Act" for short) which pertained to minor punishment. The department therefore, in any case could not have imposed major penalty of dismissal from service.

4) The petitioner has remained out of service for number of years of service. For nearly 11 years, he has forgone back-wages."

4. On the other hand, learned counsel Ms. Nayna Gadhvi for the department opposed the petition contending that the petitioner had committed misconduct. He was member of armed force. Punishment cannot be stated to be excessive.

5. Having thus heard learned counsel for the parties and having perused the documents on record, few things clearly emerge:

"a) The petitioner is not seriously disputing the conclusions of the disciplinary authority that the charges were proved.

b) The charge-sheet was issued under section 11(1) of the Act which pertained to minor punishments.

c) Upto 15.7.2009, the petitioner has forgone the claim for consequential relief meaning thereby even if the petitioner ultimately succeeds, till that date the petitioner would not be entitled to any back-wages."

6. We may view the situation in the background of these facts. It is undoubtedly true that the charges against the petitioner were proved. Two out of these three charges pertained to his making representation about the service condition to the Prime Minister without routing the revision through proper channel and, thereafter, refusing to cooperate in the inquiries made by the department pursuant to such a representation. These acts on his part may amount to misconduct, serious question is were they so serious as to warrant dismissal from service? It is equally true that the petitioner refused to accept the order of suspension when the department authority tried to serve the same.

7. Looked from any angle however, such misconduct would not warrant the highest punishment of dismissal from service. The department has not brought on record any material to suggest that the petitioner's contention that he had

blemishless nine years of service was not correct. We therefore, proceed on such basis. That on one hand the petitioner had nine years of blemishless service, on the other hand main misconduct alleged against him was that he made a representation to the Prime Minister without routing it through proper channel. Misconduct it may be, it certainly would not warrant dismissal of an employee from service. This is one of the rare case, where the Court would certainly come to the conclusion that punishment awarded was so out of proportion to the proved charges as to shock the conscience of the Court. This is one of the grounds on which the Courts have recognised the power to interfere with the quantum of punishment. We have also perused the representation. The petitioner had outlined various difficulties felt by the employees at the station. We do not notice any effrontery in his representation.

8. Equally importantly section 11(1) of the Act pertained to minor punishment and reads as under:

"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 considered 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."

9. In essence sub-section(1) of section 11 refers to various minor punishments which can be imposed in lieu of or in addition to major punishments of suspension or dismissal from service. The listed minor punishments include reduction in rank, fine of any amount not exceeding one month's pay and allowances, confinement to quarters, line or camp for a term not exceeding one month, etc. When the charge-sheet and all the proceedings arising from such charge-sheet proceeded on the basis of the proposal of imposition of penalty under section 11(1) of the Act, it was simply not possible for dismissal which was not enumerated under section 11(1) of the Act. In doing so, the disciplinary breached the principles of natural justice.

10. For all these reasons, impugned order dated 26.10.2009 is set aside. The order of punishment is quashed. The petitioner is ordered to be reinstated in service with continuity, however with 50% back-wages from 15.7.2009 till reinstatement which shall be carried out latest by 31.1.2015. It would however,

be open for the disciplinary authority to impose suitable minor punishment after giving a hearing to the petitioner. While doing so, the disciplinary authority shall bear in mind the observations made in this order with respect to the nature of the delinquency of the petitioner as also the additional factor that he has already been out of service for over 15 years by now for which he has already suffered loss of back-wages for majority of the period.

11. With these directions, the petition is allowed and disposed of. Rule made absolute to above extent.

Direct service is permitted.