Ramesh Vs. Director General, Central Reserve Police Force and Others

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Court : Mumbai Nagpur

Decided On : Feb-03-2014

Judge : B.P. Dharmadhikari &Amp; Z.a. Haq

Appeal No. : Writ Petition No. 565 of 2010

Appellant : Ramesh

Respondent : Director General, Central Reserve Police Force and Others

Judgement :

Oral Judgment: (Z.A. Haq, J.)

1. Heard Shri M.M. Sudame, learned Counsel for petitioner and Shri S.K. Mishra, learned A.S.G.I. for respondents.

2. Challenge in the petition is to the order dated 11.10.2008, by which the petitioner was dismissed from service and orders dated January 2009 and 31.05.2009, by which the punishment of dismissal from service inflicted upon the petitioner, has been maintained.

3. The facts of the case are as under:

Petitioner was appointed as a Constable in the year 1990 and during the course of his employment, he was posted and transferred to several places. In 2007, the petitioner was involved in an incident and according to the petitioner, the

petitioner's hand had touched face of a co-employee who had made complaint against him. The petitioner was punished for 7 days confinement from 03.08.2007 to 09.08.2007 for this incident with forfeiture of all pay and allowances with one hour pack drill during that period. On 08.03.2008, the petitioner was given a memorandum for two charges:

(i) For slapping Mr. Harjaya; and

(ii) For tampering the movement certificate.

On the basis of the said memorandum given to the petitioner, an inquiry was conducted and after completion of the said inquiry, by order dated 11.10.2008, the petitioner was dismissed from services and it is ordered that all medals and decorations, if any, earned by him during the period of service would be forfeited under the provisions of Section 12(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as œ**the Act of 1949?** for short).

The petitioner being aggrieved by the punishment inflicted on him, by the impugned order dated 11.10.2008, had filed an appeal which is decided by the Deputy Inspector General of Police, C.R.P.F. Hyderabad in January, 2009, who, after considering the relevant material, dismissed the appeal.

The petitioner thereafter filed a revision before the Inspector General, C.R.P.F., however, the said revision also came to be dismissed by an order dated 31.05.2009. The petitioner being aggrieved by the above orders, has filed the present writ petition.

4. Shri Sudame, the learned Counsel appearing for the petitioner, has submitted that the impugned order inflicting the punishment of dismissal on the petitioner is arbitrary, illegal and contrary to the established principles of service jurisprudence. According to him, the petitioner was not given any show cause notice specifying the punishment before the punishment is inflicted on him. He has further submitted that the inquiry conducted against the petitioner is out of malice and harassment and in support of this he submits that the alleged incident had taken place in the year 2007 and the petitioner was penalized for it and there was no reason for

issuance of the chargesheet on the same grounds again. The learned Counsel for the petitioner has submitted that as far as Article-II of the charges is concerned, the petitioner on his own has stated that he had applied for leave of two days and not for 5 days, and therefore, it cannot be said that the petitioner has tampered with the certificate. According to the petitioner, the charge of tampering with the movement certificate cannot be said to be proved against the petitioner, as the authorities have failed to get it examined by handwriting expert, in spite of the request made by the petitioner. Shri Sudame, learned Counsel, has submitted that while inflicting the punishment of dismissal, it was obligatory on the part of the authority to consider the past record of the petitioner and as it is not done, the impugned order is vitiated.

5. Shri Mishra, learned A.S.G.I. for respondents, has submitted that the inquiry is conducted against the petitioner as per the provisions of Rule 27 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as œ**the Rules of 1955** ? for short). He has submitted that the department has examined as many as 6 witnesses and petitioner has examined 3 witnesses in defence and none of the witnesses has supported the case of the petitioner. Shri Mishra, learned A.S.G.I., has pointed out from the record the answers given by the petitioner to the questions put to him during the inquiry and more specifically he relies on question nos. 3, 4, 5 and 6 and contends that the petitioner has almost accepted the charges leveled against him and the tenor of his reply shows that he was aware about the leave availed by him and the reasons for seeking leave, though he had no leave to his credit.

ShriMishra, learned A.S.G.I. has submitted that the competent authority while considering the material on record has dealt with all the aspects and in paragraph no.6 of the order dated 11.10.2008, has recorded findings which are well reasoned and based on the material on record. He has submitted that the authority has concluded that the petitioner has failed to bring anything on record in his defence and that the petitioner was having knowledge of tampering/overwriting in the movement certificate and he gave application for leave twice and availed two days excess leave. Shri Mishra, has countered the submission made on behalf of the petitioner regarding non-consideration of past record of the petitioner, and has

pointed out from the impugned orders that the past record of petitioner is considered by the Authorities. As far as the submission made on behalf of the petitioner regarding quantum of punishment is concerned, Shri Mishra, has pointed out that C.R.P.F. is a disciplined force and to maintain the high standards of discipline and integrity, punishment of dismissal is rightly inflicted on the petitioner and according to him, this has properly been considered in the order passed by the Authorities.

ShriMishra, learned A.S.G.I., has submitted that the impugned order cannot be said to be perverse and the scope of judicial review by this Court while exercising jurisdiction under Article 226 of the Constitution of India is very restricted and for this, he has relied on the judgments reported in **AIR 1975 SC 2151 (1)** (State of A.P. and others .vrs. Chitra Venkata Rao) and **AIR 2010 SC 137** (State of U.P. and others .vrs. Man Mohan Nath Sinha and another)**.**

6. Shri Sudame, the learned Counsel, in reply has submitted that the departmental inquiry is a quasi judicial proceeding and thus non-issuance of show cause notice to the petitioner after completion of the inquiry, informing him about the quantum of punishment vitiates the ultimate decision of the authority dismissing the petitioner from service. Shri Sudame, learned Counsel has relied upon the judgment reported at **(1995) 6 SCC 749** (B.C. Chaturvedi .vrs. Union of India and others), and more specifically paragraph nos. 17 and 18 of the said judgment and has contended that though the scope of judicial review is very limited, this Court while exercising jurisdiction under Article 226 can properly mould the relief either by directing the disciplinary authority or the appellate authority to reconsider the penalty imposed.

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7. We have gone through the record with the assistance of the learned advocates for the respective parties.

8. As far as the factual aspect of holding the petitioner guilty of the charges levelled against him is concerned, the competent authority has dealt with the documents and the evidence of the witnesses recorded in detail. As pointed out by

the learned advocate for the respondents, out of six witnesses examined by the Department and the three defence witnesses examined by the petitioner, none of the witness has supported the case of the petitioner. Moreover, the answers given by the petitioner to the questions made to him and the consideration of this material by the competent authority also shows that the findings arrived at by the competent authority cannot be said to be perverse in any manner. Therefore, as far as the finding of fact recorded by the competent authority and maintained by the appellate and revisional authority is concerned, we are of the view that it does not require any interference.

9. Now, the main issue, which falls for consideration is regarding the procedure followed by the competent authority while inflicting the punishment and the quantum of punishment. For this, the provisions of Section 9, 10, 11 of the Act of 1949 and Rule 27 of the Rules of 1955 are relevant.

10. Shri Sudame, the learned advocate for the petitioner, has submitted that the petitioner was not given any show cause notice informing about the quantum of punishment and because of that the petitioner is deprived of the opportunity of submitting his say on the quantum of punishment.

The scheme of the Act shows that the offences are categorized into œMore Heinous Offences?, œLess Heinous Offences? and œMinor Punishments?. The provisions of Section 9(a) to (l) show that different types of misconducts are treated as œMore Heinous Offences? for which the punishment provided is transportation for life for a term not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

Section 9(b) reads as follows:

œ9. More heinous offences.- Every member of the Force who “

(a) .....

'(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer,

whether on or off duty, knowing or having reason to believe him to be such; or'

(c) .....

(d) .....

Thus, it lays down that any member of the force, who uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such shall invite a punishment as mentioned above. Thus, though the acts mentioned in Section 9(b) in normal course appears to be of such a nature which may not invite a punishment of transportation for life for a term not less than seven years or with imprisonment for a term which may extend to fourteen years, under the scheme of the Act of 1949, such conduct is made punishable as stated above.

Section 9(e) reads as follows:

œ9. More heinous offences.- Every member of the Force who “

(a) .....

(b) .....

(c) .....

(d) .....

'(e) disobeys the lawful command of his superior officer; or'

(f) .....

(g) .....?

Thus, mere disobedience of the lawful command of the superior Officer, while on active duty,makes the member of the force liable for punishment with

transportation for life or a term not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

11. Similarly, the misconducts as mentioned in Section 10 of the Act of 1949 also makes the member of the force liable for punishment with imprisonment for a term which may extend to one year or fine which may extend to three months pay or with both.

Section 10(a) reads as follows:

œ10. Less heinous offences.- Every member of the Force who '-

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or'

(b) .....

(c) .....?

Thus, a member of a force, who is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march, is liable with imprisonment with term which may extend to one year or fine, which may extend to three months pay or with both.

There are other misconducts as stated in Section 10(p) which in the civil services are not of such a nature which makes the employee liable for punishment with imprisonment but, under the scheme of the Act of 1949, such misconducts are made 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.

12. Section 11 of the Act of 1949 deals with the œMinor Punishments?. Section 11(1) of the Act of 1949 lays down that 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 punishments as stated in sub-sections (a) to (e) of Section 11(1) of the Act of

1949.

13. Section 12(1) of the Act of 1949 lays down that 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.

Section 12(2) of the Act of 1949 lays down that every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court or the Commandant so directs, be confined in the quarter-guard or such other place as the Court or the Commandant may consider suitable.

Thus, the punishment of dismissal is provided under Section 11(1) and also under Section12 of the Act of 1949. In the present case, the punishment of dismissal inflicted on the petitioner is a civil dismissal after the Departmental Enquiry and it is not a dismissal as contemplated by Section 12 of the Act of 1949 consequent to the punishment under Section 9 or Section 10 of the Act of 1949.

14. On consideration of the scheme of the provisions of the Act of 1949, it is clear that the standard of discipline in the Armed Forces is considered to be of a very high grade and this is clear from the punishment of imprisonment laid down as per Section 9 and 10 for the misconducts referred in those sections which in normal course would be considered of trivial nature. Considering from these aspects, the submission made on behalf of the petitioner that the misconducts attributed to the petitioner are not of such a nature which entails the consequences of dismissal, cannot be considered. The competent authority has considered this aspect in the impugned order and in our view it does not require any interference. The appellate authority and the revisional authority have also considered these aspects in detail and properly and does not require any interference.

15. As far as submission on behalf of the petitioner that the past record of the petitioner is not considered properly, we are not aggreable to it. Not only the competent authority but, the appellate authority and the revisional authority have considered the past record of the petitioner. In paragraph 10 of the order passed

by the appellate authority, the past record of the petitioner is considered as follows:

(i) 3 days pack drill from 14/12/92 to 16/12/92.

(ii) 5 days confinement from 21/4/96 to 25/4/96.

(iii) 7 days confinement from 19/11/96 to 25/11/96.

(iv) Suspended on 7/10/2003.

(v) Dismissed from service wef 18/5/2004 as a result of DE. Later, reinstated into service by DIG BLR on an appeal submitted by said CT/GD by modifying the punishment (Stoppage of three increments).

(vi) 7 days confinement to lines from 3/8/07 to 9/8/07.

Therefore, this submission made on behalf of the petitioner also cannot be considered.

16. Rule 27 of the Rules of 1955 provides for the procedure for the award of punishments.

ShriMishra, the learned A.S.G.I., has submitted that the procedure as laid down in Rule 27(c) of the Rules of 1955 has been followed and the petitioner has not pointed out any non-compliance of any of the Rules while conducting the Departmental Enquiry. The learned advocate for the petitioner has also not pointed out any specific provision of the Rules, which is not complied with, while conducting the Departmental Enquiry.

17. In view of our findings upholding the impugned orders, we are of the view that the judgment reported in **(1995) 6 SCC 749** (B.C. Chaturvedi Versus Union of India and others) relied upon by the petitioner does not help him. The standard of discipline which is to be maintained in the Armed Forces is clear on consideration of the provisions of Section 9, 10, 11 and 12 of the Act of 1949. As already discussed by us, the punishment of dismissal from service occurs in Section 11(1) of the Act of 1949, which provides for the minor punishments. Thus, the

punishment of simplicitor dismissal from service under the Act of 1949 being a minor punishment, the submission on behalf of the petitioner that the show cause notice ought to have been given to the petitioner after completion of the enquiry informing him about the quantum of punishment, does not appeal to us. Moreover, this ground has not been raised either before the Appellate Authority or the Revisional Authority.

18. In view of the above, the challenges as made on behalf of the petitioner are not acceptable and the impugned orders does not require any interference. The writ petition is dismissed. Rule stands discharged.

In the circumstances, the parties to bear their own costs.