

Madan Tiwari, Constable Vs. Deputy Inspector General of Police (Group Centre), C.R.P.F., Rampur and Another

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Court : Allahabad

Decided On : May-25-1999

Reported in : 1999(4)AWC2908; (1999)2UPLBEC1494

Judge : Palok Basu, ;R.R.K. Trivedi and ;P.K. Jain, JJ.

Acts : [Central Reserve Police Force Act, 1949](#) - Sections 1, 2, 2(4), 3, 4, 5, 6, 7, 7(2), 8, 9, 10, 11, 11(1), 12, 12(1) and (2), 13, 14, 15, 16, 16(2), 17, 18, 18(2) and (3) and 19; Central Reserve Police Force Rules, 1949 - Rules 27, 27A, 27(1), 107 and 110; Civil Service (Classification, Control and Appeal) Rules; [Constitution of India](#) - Articles 16, 16(3), 33, 35, 226, 311 and 311(2); [General Clauses Act, 1897](#) - Sections 33; [Indian Penal Code \(IPC\), 1860](#); Central Reserve Police Force (Amendment) Rules, 1955 - Rules 4, 4A, 5, 6 and 7; Central Civil Services (Classification, Control and Appeal) Rules, 1957 - Rules 103 to 110; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 36(E) and 36(F)

Appeal No. : C.M.W.P. No. 31389 of 1991

Appellant : Madan Tiwari, Constable

Respondent : Deputy Inspector General of Police (Group Centre), C.R.P.F., Rampur and Another

Advocate for Def. : Ajit Kumar Singh, ;S.C. and ;Ashok Mehta, C.S.C.

Advocate for Pet/Ap. : R.G. Padia and ;Prakash Padia, Adv.

Judgement :

Palok Basu and R.R.K. Trivedi, JJ.

1. Madan Tiwari has challenged his dismissal order dated 17.8.1991 passed by the Commandant, 7 Battalion, Central Reserve Police Force and also the appellate order dated 2.12.1991 passed by the appellants authority, namely, the Deputy Inspector General of Police, C.R.P.F., Rampur, U. P. The petitioner was charge-sheeted on the allegations of having abused his superior officer and being drunk while on duty and further that he aimed his rifle at another constable. While hearing the instant writ petition, the learned single Judge was of the view that the decision of a Division Bench in Giriraj Sharma v. Union of India, and others, 1989 (1) UPLBEC 351, was not in accordance with the objectives and intentions behind Section 11 of the Central Reserve Police Force Act [for short, the Act). When the matter went to the Division Bench headed by one of us (Hon. R.R.K. Trivedi, J.), the said Division Bench recommended that since Giriraj Sharma case (supra) was a Division Bench decision, the matter should go before a large Bench. This is how this Full Bench has been constituted by the Hon'ble Chief Justice.

2. Dr. R.G. Padia assisted by Sri Prakash Padia has been heard at length in support of this writ petition. Sri Ajit Kumar Singh, learned Standing Counsel for the respondents as also Sri Ashok Mehla, learned Chief Standing

Counsel for the State of U. P. who appeared as an intervenor, have also been heard and the entire record has been examined thoroughly.

3. Dr. R.G. Padia developed his arguments in the following manner. He first proceeded to lay stress on the fact that the petitioner was a permanent member of the Force as defined in Section 2(d) of the Act. He then proceeded to rely upon the language used in Sections 9, 10, 11 and 12 and proceeded to argue that a case of dismissal and removal of a permanent member of the Force cannot be deemed to be a minor punishment. Dr. Padia attempted to confine the applicability of Section 18 of the Act to making of Rules and Regulations for conditions of service. Relying upon the provisions of Civil Service (Classification, Control and Appeal) Rules, he further argued that dismissal and removal cases should be termed as major punishments as they cannot be minor punishments and thus placing strong reliance on the Division Bench decision in the case of Giriraj Sharma (supra) said that the order of dismissal of the petitioner is wrong and, therefore, the order of dismissal as well as the appellate order confirming the dismissal order should be quashed.

4. Lastly, he has submitted that this Court should exercise extraordinary jurisdiction under Article 226 of the [Constitution of India](#) and quash the dismissal order and the appellate order confirming the same.

5. Sri Ashok Mehla, learned Chief Standing Counsel for the State of U. P. who argued the matter on behalf of the respondents said that Section 16 of the General Clauses Act confers power to dismiss or suspend any person, on such authority which can appoint. He also relied upon Article 33 of the [Constitution of India](#) and said that the provisions of the Act are protected under the said Article 33. He further contended that major and minor punishments have to be understood by making reference to Article 311(2) of the [Constitution of India](#) and, therefore, argued that in view of Rule 27 there would be no difficulty in imposing punishment of dismissal against the member of such service and, therefore, he further argued that Giriraj Sharma case (supra) does not read out the law correctly.

6. Some discussion is now necessary about salient provisions contained in the Act. Its preamble says that it is an Act to provide for the constitution and regulation of an Armed Central Reserve Police Force. The members of the Central Reserve Police Force are armed and the various sections of the Act authorised and imposed a strict military discipline for the members of the Central Reserve Police Force. The object of creation of the Force appears to be the performance of the functions performable by the police in a more efficient manner. It may be pointed out that the discipline 'required in a para-military Force like C.R.P.F. must be of the highest order so as to make the members of the Force amenable to the orders of the superior officers and the purpose of the enactment is smoothly carried out.

7. Section 2 contains some definitions which will be relevant for discussion here and likewise Sections 3 and 4 of the Act provide for constitution of the Force and appointment and powers of superior officers. Section 5 deals with enrolment, Section 6 talks of resignation and withdrawal from the Force, Section 7 deals with general duties of members of the Force and Section 8 provides superintendence, control and administration of the Force. They are quoted below :

'Section 2. Definitions.--In this Act, unless there is anything repugnant in the subject or context:

(a) 'active duty' means the duty to restore and preserve order in any local area in the event of any disturbance therein ;

(b) 'close arrest' means confinement within the Force or a detachment of the Force or a post quarter guard building or tent under charge of a guard ;

(c) 'the Force' means the Central Reserve Police Force ;

(d) 'member of the Force' means a person who has been appointed to the Force by the Commandant, whether before or after the commencement of this Act, and in Sections 1, 3, 6, 7, 15, 17, 18 and 19 includes also a person appointed to the Force by the Central Government, whether before or after such

commencement ;

(e) 'open arrest' means confinement within the precincts of any barracks, lines or camp for the time being occupied by any part of the Force ;

(f) 'prescribed' means prescribed by rules made under this Act ;

(g) 'subordinate officer' means a member of the Force of the rank of Subedar-major, Subedar, Jamadar or Sub-Inspector :

(h) the expression 'assault', 'criminal force', 'fraudulently', 'reason to believe' and 'voluntarily causing hurt' have the meanings assigned to them respectively in the Indian Penal Code (Act XLV of 1860).'

'3. Constitution of the Force.--(1) There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force ;

(2) The Force shall be constituted in such manner, and the members of the Force shall receive such pay, pension and other remuneration, as may be prescribed ;

'4. Appointment and powers of superior officers.--(1) The Central Government may appoint to the Force a Commandant and such other persons as it thinks fit to be Assistant Commandants and company officers.

(2) The Commandant and every other officer so appointed shall have, and exercise such powers and authority as may be provided by or under this Act.

'5. Not quoted.

'6. Not quoted.

'7. General duties of members of the Force.--(1) it shall be the duty of every member of the Force promptly to obey and to execute all orders and warrants lawfully issued to him by any competent authority to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist.

(2) Every member of the Force shall be liable to serve without and beyond, as well as within, the territory of India.

'8. Superintendence, control and administration of the Force.--(1) The Superintendence of and control over the Force shall vest in the Central Government ; and the Force shall be administered by the Central Government in accordance with the provisions of this Act and of any rules made thereunder, through such officers as the Central Government may from time to time appoint in this behalf.

(2) The headquarters of the Force shall be at Neemuch or at such other place as may from time to time be specified by the Central Government.

(3) While on active duty outside its headquarters, the Force shall be subject to the general control and direction of such authority or officer as may be prescribed or as may be specially appointed by the Central Government in this behalf.

8. Having quoted the provisions up to Section 8, Sections 9, 10 and 11 have to be noted here :

Section 9 of the Act talks of more heinous offences under the heading 'Offences and Punishments'. It provides that every member of the Force who begins, excites, causes or conspires to cause or join in any mutiny, etc. and commits misconduct of the types as defined in sub-clauses (a) to (1) of this Section shall be punishable with transportation for life for a term of 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 10 deals with less heinous offences. It provides that every member of the 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, etc. and commits the type of misconduct as defined in clauses (a) to (p) shall be 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.

Section 11 then has the heading 'Minor punishment'. It reads as under :

'11. Minor Punishment.--(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 remission 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.

(2) Any punishment specified in clause (c) or clause (d) of subsection (1) may be awarded by any Gazetted Officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The Assistant Commandant, a company officer or a subordinate officer, not being below the rank of Subedar or Inspector, commanding a separate detachment or an outpost, or in temporary command at the Head-quarters of the Force, may without a formal trial, award to any member of the Force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require prosecution before a criminal court, that is to say :

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance ;

(b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters, lines or camp ;

(c) censure or severe censure ; provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A Jamadar or Sub-Inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in clause (b) of subsection (3) for not more than fifteen days.'

9. Section 12 provides for the place of imprisonment and liability to dismissal on imprisonment. It reads as under :

'12. Place of imprisonment and liability to dismissal on imprisonment :

(1) 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.

(2) Every such person shall, if he is 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.'

10. Sections 13 and 14 deal with 'deductions from pay and allowances' and 'Collective fines' while Section 15 authorises arrest of any member of the Force who commits any offence specified in Section 9 or Section 10. Section 16 describes the powers and duties conferable and imposable on members of the Force. Section 17 talks of protection for acts of members of the Force and Section 18 deals with power to make rules for carrying out the purposes of this Act. Its sub-sections (2) and (3) provides as under :

'18. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

(a) regulating the classes and grades of, and the pay, pension and other remuneration of, members of the Force, and their conditions of service in the Force ;

(b) regulating the powers and duties of officers authorised to exercise any functions by or under this Act ;

(c) fixing the period of service for members of the Force ;

(d) regulating the award of minor punishments under Section 11 and providing for appeals from, or the revision of, order under that section, or the remission of fines imposed under that section, and the remission of deduction made under Section 13 ;

(e) regulating the several or collective liability of members of the Force in the case of the loss or theft of weapons and ammunition ;

(f) for the disposal of criminal cases arising under this Act and for specifying the prison in which a person convicted in any such case may be confined ;

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the sessions or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.'

11. Having thus quoted the relevant provisions of the Act, the ratio following from Giriraj Sharma's case (supra) may now be found. After discussing the averments in the writ petition as made by Giriraj Sharma and the various charges framed against him, the conclusion of the Division Bench on the factual basis is summed up in paragraph 8 :

'Thus, after the charge-sheet was issued to the petitioner, an enquiry was held against the petitioner. In the departmental enquiry, it was held that all the charges against the petitioner had been established. He pleaded guilty. Ultimately by an order, dated May 7, 1983, the petitioner was dismissed from service. The petitioner thereafter filed an appeal against the said order of dismissal. The appeal was also dismissed. The petitioner thereafter filed a revision against the appellant's order. The revision was also dismissed and consequently, the petitioner challenged these orders by means of the said writ petition.

'..... It is apparent that only punishments specified in subsection (1) of Section 11 of the Act could have been

awarded to a person against whom an enquiry is instituted under Section 11(1) of the Act. The punishments do not include a punishment by way of dismissal. In the instant case, it is not disputed that the enquiry was conducted under Section 11(1) of the Act. That was for a minor punishment.

'.... From a reading of the answer given by the petitioner. It is apparent that what the petitioner intended to mean was that though he admitted that he could not complete the course in the E.M.E. Centre at Bhopal, but it was because of unexpected circumstances. His statement cannot possibly be construed to be an unequivocal acceptance of the charges framed against him. It was only a conditional acceptance'.

12. In view of the two aforesaid findings, the Division Bench allowed the writ petition and quashed the dismissal order. On the legal aspect, the Division Bench has assumed that any member of service who is proceeded with departmentally under Section 11 of the Act would be awarded the punishment delineated under sub-section (1) of Section 11. Assuming for a moment that it may be so, it cannot be denied that punishments noted against clauses (a) to (e) may be awardable 'in lieu of, or in addition to, suspension or dismissal'. There is no warrant for proposition that wherever sub-section (1) of Section 11 is applied, suspension or dismissal order cannot be passed. The language in Section 11 is more than clear. The type of punishment narrated in clauses (a) to (e) may be 'in lieu or, or may be 'in addition to' suspension or dismissal.

13. It has already been noted above that Section 11 specifically provides the exercise of the powers therein subject to the Rules made under the Act. It is significant to note that Rule 27 provides a complete procedure for initiating a disciplinary proceedings against non-gazetted officers and members of the other ranks. Therefore, Section 11 and Rule 27 read together leave no manner of doubt that the power of dismissal and suspension can be tracked to the Act and Rules. The relevant portions of Rules 27 and 27A are quoted below for ready reference :

'27. Procedure for the award of punishments.--(a) The punishments shown as items 1 to 11 in column 2 of the table below may be inflicted on non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7 :

TABLE

Sl. No.

Punishment

Subedar (Inspector)

Sub-Inspector

Other except Const, and enrolled followers

Consts and enrolled followers

Remarks

1

2

3

4

5

6

7

1.

Dismissal or removal from the Force

DIGP

DIGP

Comdt.

Comdt.)

2.

Reduction to a lower time-scale of pay grade, post orservice

DIGP

DIGP

Comdt.

Comdt.)

3....Not quoted

4....Not quoted

5....Not quoted

6....Not quoted

7....Not quoted

8....Not quoted

9....Not quoted

10....Not quoted

11....Not quoted

Note 1...Not quoted

Note 2...Not quoted

(b)

not quoted

(c)

not quoted

(1)

not quoted

(2)

not quoted

(3)

not quoted

(4)

not quoted

(5)

not quoted

(6)

not quoted

(7)

not quoted

27A. Suspension.--The suspension of any of the non-gazetted officers and men of the ranks specified in column (1) on the table below may be ordered pending enquiry into any serious misconduct against such person by the authority specified against his rank in column (2) of the said table.

Rank

Authority empowered to suspend

1

2

1. Subedar (Inspector)

(i) Commandant

2. Sub-Inspector

(ii) In the absence Commandant Incharge at Detachment. 27B. Not quoted.'

The legal proposition is well-settled that Rules are part of the Act unless the context and reference otherwise provides. The aforesaid Rules have not been noted in the decision of Giriraj Sharma and had they have been placed in all likelihood the decision even in Giriraj Sharma may have been otherwise.

14. In Giriraj Sharma (supra), it has been held that it is possible to distinguish a case of a member of the service against whom an enquiry is instituted under Section 11(1) of the Act and a member of the service against whom such disciplinary proceeding is not instituted and, therefore, this factual distinction has been held to attract only the punishment narrated in clauses (1) to (e) of Section 11. The distinction between a misconduct and offence has been fully recognised by the aforesaid provisions of the Act and the Rules. Therefore, with respect to the Division Bench, the aforesaid proposition is contrary to the language used in Rules 27. 27A and Section 11 and the other provisions contained in the Act.

15. It has been noted above that under the heading 'Offence and punishments' the provisions under Section 9 immediately follow and that Section 9 carries the heading 'More heinous offences'. Any member of the Force who indulges in the type of offences described in clauses (a) to (1) shall be 'punishable with imprisonment for life for a term of 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'. The following provisions are contained in Section 10 which has the heading 'Less heinous offences.' Any member of the Force who commits the offences described in clauses (a) to (p) shall be '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.'

16. The next important provision is contained in Section 11 which has the heading 'Minor punishment' followed immediately by the provisions contained in Section 12 which have been quoted above.

17. It may be pointed out that the effect and the resultant of the provisions contained in Section 12 were not placed by the contending parties before the learned Division Bench deciding Giriraj Sharma (supra). Sub-section (1) of Section 12 provides 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, etc. 'Sub-section (2) of Section 12 provides that 'Every such person shall, if he is 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.'

18. The aforesaid provisions contained in Section 12 obviously relate to the type of imprisonment envisaged by Sections 9, 10 and 11. Section 12, therefore, permits dismissal of the person concerned to follow on awarding of the imprisonment to such person. Such dismissal may also be followed by forfeiture of pay, etc. By sub-section (2) of Section 12. It has been provided that if dismissal does not follow such an order of imprisonment, still such a person can be confined in the quarter-guard or at such other place as the Court or Commandant may consider suitable.

19. It is already noted above that under Section 15, any member of the Force who commits an offence under Section 9 or 10 may be placed on open or close arrest by any officer of the Force. By Section 16, any member of the Force may be conferred or imposed upon under the general or special order of the Central Government powers or duties of a police officer of any class or grade. By the provisions contained in Section 16(2). Commandant or Assistant Commandant may be invested with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the Force and punishable under this Act, or any offence committed by a member of the Force against the person or property of another member. The proviso to Section 16 has said that when the offender is on leave, or when the offence is not connected with the offender's duties or when it is a petty offence, the offence may be enquired into or tried by any ordinary criminal Court if the prescribed authority concerned so directs. A combined reading of the aforesaid provision would not leave any manner of doubt that dismissal may be permissible in case of commission of offence by a member of the force whether it be more heinous offence described under Section 9 or less heinous offence described under Section 10 of the Act. Likewise, minor punishment described in clauses (a) to (e) of Section 11 may be in lieu of or in addition to, suspension or dismissal depending on the nature of the offence and the view about the misconduct which may be taken by the Commandant or the authority concerned.

20. Therefore, the only distinction sought to be made by the Division Bench in Giriraj Sharma (supra) between a member of the Force whose alleged misconduct is departmentally enquired into and a member of the Force whose alleged misconduct is not departmentally enquired does not follow from the language of Section 11 and, therefore, the view expressed in Giriraj Sharma (supra) cannot be supportable by the law as provided under the Act and has to be confined only to the facts of the case of Giriraj Sharma and cannot be followed for deciding any other case.

21. Before closing this aspect of the matter, it may be added that in fact it is Section 11 which may empower the Commandant or any authority to initiate disciplinary proceedings against a member of the Force. That has to be a power over and above the consequences which follow from the commission of the offence and the resultant of the said commission of the offence. In a given case, a departmental proceeding may be held where a criminal trial has not taken place for whatever reason, and likewise, the punishment awardable as per the provisions contained in Section 11 can be imposed even after a criminal trial is held. Both the powers are independent of each other and are not overlapping.

22. To conclude, it may be repeated that Section 11 provides that punishments delineated in clauses (a) to (e) of sub-section (1) of Section 11 may be awarded 'in lieu of, or in addition to, suspension or dismissal', which words clearly carry intention of the Legislature that the authorities mentioned in Section 11 are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and punishments in (a) to (e) may be in addition to or in lieu thereof. From the provisions contained in Section 12, it is obvious that the punishment of dismissal may be given to the delinquent in addition to the sentence of imprisonment awardable to him under the law. If the authority proceeds under Section 12, it may not be necessary to observe the formalities of a regular disciplinary enquiry/proceedings and action may be taken on the person's conviction and punishment of imprisonment under the Act. Neither the provisions of Section 12 nor Section 11 convey that a person may not be liable to dismissal if he is not convicted or sentenced under the Act. The provisions make it absolutely clear that a punishment of dismissal can be awarded under Section 11 even if delinquent is not prosecuted for an offence under Section 9 or Section 10. The aforesaid view finds support from the reported Division Bench decision in *Shyam Singh v. Deputy Inspector General of Police*, AIR 1965, Raj 140.

23. In view of what has been discussed above, the argument that respondents did not have the power to dismiss the petitioner advanced by Dr. Padia by relying upon Rules 107 and, 110 framed under the Act read with Section 18 and the provisions of C.C.A. Rules cannot be accepted and is hereby rejected because the decision in *Giriraj Sharma* shall have to be confined to the facts of the said case and cannot be held to be laying down the law correctly.

24. With the aforesaid answer, the matter may now go to the learned single Judge for orders.

P.K. Jain, J. (Concurring)

25. Petitioner Madan Tiwari was constable in Central Reserve Police Force. A disciplinary enquiry was held against him on various charges and on being found guilty of the charges, he was dismissed from service w.e.f. 17.8.91 by an order dated 17.8.91. The petitioner challenged the dismissal order as confirmed by appellate authority on 21.12.91 on the grounds that the findings of guilty were not based on the evidence on record and further that charge-sheet was served upon him under Section 11 of the Central Reserve Police Act, 1949 (hereinafter called the Act) which provides for minor punishment. Therefore, the punishment of dismissal was not permissible as it did not fall within the purview of Section 11(1) of the Act, in support of the second contention, reliance was placed upon following observations of a Division Bench of this Court in *Giriraj Sharma v. Union of India and others*. (1989) (1) UPLBEC 351 :

'From a reading of Section 11(1) of the Act, it is apparent that only the punishments specified in sub-section (1) of Section 11 of the Act could have been awarded to a person against whom an enquiry is instituted under Section 11(1) of the Act. The punishments do not include a punishment by way of dismissal. In the instant case it is not disputed that the enquiry was conducted under Section 11(1) of the Act. That was for a minor punishment. In the circumstances, it is apparent that the authorities could not have dismissed the petitioner on the basis of a charge-sheet issued under Section 11(1) of the Act. The petitioner has rightly submitted that the order of dismissal passed against him is wholly without jurisdiction. The first submission made by the learned counsel for the petitioner in our opinion, is well founded.'

26. The petition came up for hearing before Hon'ble single Judge of this Court who on consideration of the

provisions of the Act was of the view that reconsideration of the decision of Division Bench in Giriraj Sharma's case (supra) was necessary. Hon'ble single Judge, therefore, by order, dated 10.2.98 directed as follows :

'.....let the papers of this case be laid before Hon'ble the Chief Justice for constituting a larger Bench for reconsidering the observations made in paragraph 12 in Giriraj Sharma's case (supra) that Section 11 of the Act does not permit dismissal.'

27. By an order dated 13.4.98 passed by the Hon'ble Chief Justice, the case was directed to be listed before the Division Bench presided over by one of us, Hon'ble R.R.K. Trivedi, J. Thereafter the petition came up for hearing before a Division Bench comprising of one of the Hon'ble R.R.K. Trivedi, J., and Hon'ble M. Katju, J. The Division Bench on consideration of the submissions made before it was of the view that the judgment in Giriraj Sharma's case (supra) requires consideration by a Full Bench as the judgment in Giriraj Sharma's case was also of a Division Bench and directed that the papers be laid before the Hon'ble Chief Justice for nominating larger Bench. The Hon'ble the Chief Justice by order dated 7.11.98 nominated the Full Bench and the matter has come up before this Full Bench. We are, therefore, required to answer the limited question if observations made in Paragraph 12 in Giriraj Sharma's case (supra) as quoted above correctly interpretes Section 11(1) of the Act.

28. We have heard at length Dr. R.G. Padia assisted by Sri M.K. Singh, learned counsel for petitioner and Sri Ajit Kumar Singh has appeared for the respondents. Sri Ashok Mehta, learned Chief Standing Counsel has intervened and argued on behalf of respondent No. 1 on the ground that the question involved is of importance and may also affect similar provisions in other similar enactment. Dr. Padia, learned counsel for the petitioner, has submitted that Section 11 provides for minor punishment. Charge-sheet against the petitioner was framed under Section 11 of the Act. Therefore, the punishment which could have been awarded could be one as have been enumerated in sub-section (1) of Section 11 to reinforce his submission, he also refers to provision of Section 18(2)(d) of the Act. His submission is that Sections 9 and 10 of the Act provide for punishment for 'more heinous offences', 'less heinous offences' respectively whereas Section 11 provides for minor punishment. His further submission is that the punishment of dismissal is provided under Section 12 of the Act. Referring to the provisions as contained in Sections 3 to 6 of the Act and Rules 4 and 5 of the Central Reserve Police Force Rules, 1955 (hereinafter called the Rules), he submits that the term 'Force' used in Rules includes :

(a) Superior officers

(b) Rank and file for a battalion of four companies ; and

(c) Enrolled Followers.

29. Again referring to Rules 27 and 110 of the Rules, it is submitted that they are discriminatory in their application to superior officers of the Force and other members of the Force inasmuch as in the case of Superior Officers, the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1957 are made applicable whereas in the case of other members of the Force Rule, 27, is made applicable. It is also submitted that under Article 311 of the [Constitution of India](#) read with Central Civil Services (Classification, Control and Appeal) Rules major and minor punishments are classified and punishment of dismissal is a major punishment whereas the Section 11 of the Act provides for minor punishments.

30. Sri Ashok Mehta, learned Chief Standing Counsel has submitted that Article 311 of the Constitution applies to Civil Servant and in case of Armed Forces, the different Rules may be framed and the same are protected by Article 33 of the [Constitution of India](#). It is submitted that Rule 27 provides for disciplinary enquiry before awarding punishment in cases of punishment of dismissal or removal, reduction in rank or time scale of pay, compulsory retirement, fine of any amount not exceeding one month's pay and allowances and confinement in quarter guard exceeding seven days but not more than 28 years whereas the punishment of stoppage of increment, removal from any office distinction Censure. Confinement to not more than seven days and

confinement to quarters lines can be awarded without any departmental enquiry.

31. Sri Ajit Kumar Singh, learned counsel for the respondent has submitted that Section 11 provides that the punishment as categories under sub-heading (a) to (e) under sub-section (1) of Section 11 of the Act can be awarded in lieu of or in addition to, suspension or dismissal which means that punishment of dismissal is permissible under Section 11 and it is only in addition to or in lieu of punishment of dismissal that punishments provided under sub-heading (a) to (e) of Section 11(1) as may be applicable may also be awarded. Therefore, it is wrong to say that punishment of dismissal cannot be awarded when charges are framed under Section 11(1) of the Act.

32. Before we proceed to deal with, and consider the arguments advanced by the learned counsel, it is necessary to reproduce certain provision of the Act and Rules. Section 11(1) of the Act which provides for punishing 'any members of the Force' reads as follows :

'11. Minor punishment.--(1) The Commandant or any other authority or officer as may be prescribed may, subject to any rules made under the 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 remission 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.

(2) Any punishment specified in clause (c) or clause (d) of subsection (1) may be awarded by any Gazetted Officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant.'

32. Section 2(4) of the Act defines 'Members of the Force' which reads as follows :

'(d) 'member of the Force' means a person who has been appointed to the Force by the Commandant, whether before or after the commencement of this Act, and in Sections 1, 3, 6, 7, 15, 17, 18 and 19. Includes also a person appointed to the Force by the Central Government whether before or after such commencement';

33. Section 12 reads as follows :

'12. Place of imprisonment and liability to dismissal on imprisonment.--(1) 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.

(2) Every such person shall, if he is 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.'

34. It may be observed here that definition of 'member of Force' doesnot include Superior OfficersCommandants, AssistantCommandants and Company Officerswho are appointed by CentralGovernment under Section 4 of theAct.

35. Section 18 provides for rule making power of the Central Government. Section 18(d) is relevant for purpose of this writ petition which reads as follows :

'(d) regulating the award of minor punishments under Section 11, and providing for appeals from or the revision of order under that Section, or the remission of lines imposed under that section, and the remission of deduction made under Section 13':

36. Rule 4A of the Rules relates to composition of force. According to Rule 4A, Central Reserve Police Force shall be constituted as follows :

(a) Central Reserve Police Force (Regular) ;

(b) Central Reserve Police Force (Auxiliary). Rule 5 provides that the Force shall include (a) Superior Officers, (b) Rank and file for a Battalion of four companies and

(c) Enrolled followers as described in the Rule. Though Rule 6 provides that all the officers and men mentioned in Rule 5 shall be deemed to be the 'members of the Force' but this rule is in conflict with the definition of 'member of the force' as provided in Section 2(d) as reproduced above. It may be further pointed out that Section 4 of the Act as reproduced above provides for appointment of Superior Officers whereas Rule 7 of the Rules provides for appointments of other than that of Superior Officers and this rule reads as follows :

'7. Appointments other than that of Superior Officers.--(a) Officers and men mentioned in Rule 5 (b) and 5 (c) shall be appointed :

(1) by direct recruitment ;

(2) by deputation from Army or State Police Forces ;

(3) by promotion as laid down in Chapter IX.

(b) The authority to make appointments to the various non-gazetted ranks shall be the Commandant, provided that, in the case of Sub-Inspectors and Subedar (Inspectors) prior approval of the Deputy Inspector-General of Police and of the Inspector-General respectively shall be obtained.

(c) Non-gazetted Officers and men of all ranks shall be enrolled subject to sub-rule (b) above by the Commandant in the manner prescribed in Section 5, and be appointed by him as members of the Force after such period of training as he may consider necessary.'

37. Then there is Rule 27 under Chapter VI under the heading columns. This Rule provides for procedure for the award of punishment. Punishment of various descriptions has been provided in all categories. For the 1 to 6 categories which include (i) dismissal or removal from Force and (ii) Reduction to a lower time-scale of pay grade, post or service it is provided that the punishment provided in these six categories can be inflicted after formal departmental enquiry and for constables and enrolled followers the Commandant is authorised to inflict punishment whereas for Subedar Inspectors and Sub-Inspectors the punishing authority is D.I.G.P. The remaining 5 categories of punishment from Sl. Nos. 7 to 11 the punishment may be inflicted without a formal departmental enquiry. Rule 7 (cc) (i) provides that notwithstanding anything contained in this Rule viz., Rule 27 where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge, it is not reasonably practicable to hold an enquiry in the manner provided in these Rules and the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.

38. Chapter XIV of the Rules, from 103 to 110, provides for the Rules and Regulations for recruitment, appointment and other conditions of service of Superior Officers. Rule 310 provides that the Superior Officers of the Force shall be subject to the provisions of the Central Civil Service (Classifications, Control and Appeal) Rules 1957, as amended from time to time. These are the various provisions of the Act and the Rules which

are relevant for the purposes of disposal of the controversy in question.

39. A combined reading of Sections 11 and 12 of the Act shows that though Section 11 of the Act is under the heading of 'Minor punishment', it provides for punishment of dismissal, under Section 12 punishment of dismissal may be awarded only when a person is sentenced to imprisonment under the Act. If the contention of the learned counsel for the petitioner is accepted that Section 11 of the Act does not provide the punishment of dismissal as it is not included under clauses (a) to (e) of sub-section (1) of Section 11 of the Act, then a fallacious situation will arise and no member of the Force could be awarded punishment of dismissal if he has not been convicted and sentenced to imprisonment under Sections 9 or 10 of the Act, however, grave may be his misconduct. Power of dismissal is a necessary incident to or consequence of power of appointment. A power to terminate may in the absence of restrictions express or implied can be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint. Section 16 of the Central General Clauses Act is relevant in this regard which provides that a power to make any appointment includes the power to suspend or dismiss unless a different intention appears from the Central Act or Regulations. By a catena of judicial pronouncements, it is now firmly established that the power to terminate or dismiss from service is a necessary adjunct of the power of appointment. Such power is to be exercised subject to the restrictions imposed by the Central Act or the Regulations whereby power to make any appointment is conferred upon any authority. Section 11 of the Act provides that subject to the Rules made under the Act, the Commandant or any other authority or Officer as may be prescribed may award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any members of the Force whom he considers to be guilty of disobedience, neglect of duty, or remission in the discharge of any duty or of other misconduct in his capacity as a member of the Force.

The use of the words 'In lieu of, or in addition to, suspension or dismissal' appearing in sub-section (1) of Section 11 of the Act before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension the member of the Force who is found guilty and in punishment as mentioned in clauses (a) to (e) may be awarded in addition to or in lieu of such punishment. Learned counsel has submitted that if this interpretation of Section 11 is accepted, then there may be anomalous or paradoxical situation. He submits that if a person is dismissed from service, question of awarding sentence in clause (a), i.e., reduction in rank does not arise. It may be pointed out that the words used in Section 11 are 'in lieu of or in addition to' which means that the punishment of reduction in rank can be awarded in lieu of punishment of dismissal and not in addition to the punishment of dismissal. A well-settled rule of interpretation is that the provisions of an Act should be interpreted harmoniously so as to prompt the object and purpose of enactment. It is well-established that while doing so. It is open to the Court to depart from the normal rule and that the plain words should be interpreted according to their plain meanings. The object and purpose of an Act become positive guide to interpret purposefully with the provisions of an Act.

40. The distinction between Section 11 and Section 12 of the Act is that under Section 11 a member of the force can be awarded punishment of dismissal and 'In lieu of or in addition to' such punishment or any of the punishments provided in clauses (a) to (e) of sub-section (1) of Section 11 of the Act may be awarded as may be applicable : such punishment of dismissal can be awarded after following procedure laid down by Rule 27 by the authority competent. Such punishment for dismissal under Section 11 can be for grave misconduct which may also amount to an offence but without members of the Force being convicted and sentenced to imprisonment under Section 9 or 10 of the Act whereas under Section 12 a member of the Force may invite punishment of dismissal if he has been sentenced to imprisonment. Reading of Section 27 (1) (cc) shows that where punishment of dismissal is awarded under Section 12, the enquiry which is necessary under Section 27 (1) may be waived. Another special feature is that Sections 9 and 10 provide for punishment for offences which may also amount to misconduct whereas Section 11 of the Act provides for punishment for misconduct. The Act does not provide the procedure for trial and punishment for commission of offences under Sections 9 and 10 of the Act and no Officer of the Force is clothed with the power of awarding punishment under

Sections 9 and 10 of the Act. Section 16(2) of the Act simply provides that the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the force and punishable under this Act may be conferred by the Central Government upon the Commandant or an Assistant Commandant notwithstanding anything contained in the Code of Criminal Procedure. Such Officer after being invested with the powers of the Magistrate can award punishment to the extent which can be awarded by such class of Magistrate under the Code of Criminal Procedure. Chapter VI-A which consists of Sections 36F to Section 36 (F) provides for the procedure for the trial of a person subject to the Act. Under Rule 36E before proceeding with the trial the Magistrate is restrained from trying a person unless he is of the opinion that he should proceed without being moved : thereto by the Commandant or he is moved thereto by the Commandant. Thus, where the Commandant or Assistant Commandant is empowered under Section 16(2) for enquiring into or trying any offence what theMagistrate is required to do is that to give notice in writing to the Commandant and until expiry of period of 21 days from the date of service of such notice not to proceed with the trial unless he is of the opinion that he should proceed without being thereto moved by the Commandant. In other cases he can proceed with the trial where he is moved thereto by the Commandant. Thus, there is vital difference between the procedure for awarding punishment for offences under Sections 9 and 10 of the Act and for awarding punishment for misconduct under Section 11 of the Act. There is also distinction between the procedure for punishment of dismissal provided under Section 12 of the Act and the punishment of dismissal and other punishment provided under Section 11 of the Act.

41. In the case of *Shyam Singh v. Deputy Inspector General of Police, Central Reserve Police, Ajmer and others*, AIR 1965 Raj, 140, a question had arisen before the Division Bench of the Rajasthan High Court whether punishment of dismissal could be awarded under Section 11 of the Act. The Rajasthan High Court after considering the provisions of Section 11 and Section 12 of the Act has held that the use of the words 'in lieu of, or in addition to, suspension or dismissal' appearing in sub-section (1) of Section 11 before clauses (a) to (e) show that the authorities mentioned therein are empowered to punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the minor punishments mentioned in clauses (a) to (e) may also be awarded.'

42. Learned counsel then argued that under the Central Civil Service (Classifications, Control and Appeal) Rules, 1957, punishments of dismissal, removal or/and reduction in rank have been categorised as major punishment and under Article 311(2), no person could be dismissed or removed or reduced in rank unless there is an enquiry in which he has been informed of the charges against him and he has been given a reasonable opportunity of being heard in respect of those charges. He submits that Rule 110 of the Rules provides that the Superior Officers of the Force shall be subject to the provisions of the Central Civil Service (Classifications, Control and Appeal) Rules, 1957, as amended from time to time. Referring to the heading of Section 11 read with Section 18(d) of the Act as reproduced above, learned counsel submits that Section 11 deals with minor punishment only and the punishment of dismissal cannot be termed as minor punishment. His submission is that if it is so treated, then there will be discrimination between the members of the Force so far as the disciplinary proceedings and award of punishment are concerned. Learned Chief Standing Counsel has, however, submitted that the Central Reserve Police Force Act has been enacted for providing for the constitution and regulation of an Armed Central Reserve Police Force which is a para-military force and the various sections of the Act authorised and imposed a strict military discipline for the members of the Central Reserve Police Force and the object of its creation appears to be the performance of the functions performable by the police in a more efficient manner. Taking into consideration the provisions of Sections 3 and 7(2) of the Act, there can hardly be any doubt that the object of the Act is to raise an Armed Force to be maintained by the Central Government, every member of which Force shall be liable to serve beyond the territorial limits of India and also within any part of the territory of India. The duties assigned to the members of the Force are much more different than the ordinary and normal duties of the Civil Police.

43. Now adverting to the contention of the learned counsel for the petitioner, it may be pointed out that the heading of Section 11 may be a misnomer. It is not the heading but the contents of the Section from which

power of punishment emerges. The use of the words 'In lieu of, or in addition to suspension or dismissal', cannot be redundant or superfluous. The words on the other hand, recognise the well established powers of the appointing authority to suspend or dismiss. The punishment provided in clauses (a) to (e) of subsection (1) of Section 11 is only in addition to and as may be applicable to a particular case or in lieu of punishment of dismissal. It has already been found above that so far as the procedure for awarding punishment of dismissal from service or reduction in rank is concerned, there is no discrimination with regard to the procedure adopted while awarding punishment to the members of the Force excluding Superior Officer as defined above and the procedure provided under Article 311(2) of the [Constitution of India](#) and Central Civil Service (Classifications, Control and Appeal) Rules, 1957. In both the cases, punishment of dismissal or reduction to a lower post or to a lower time scale of pay can be inflicted only after formal departmental enquiry and after following procedure provided under the relevant rules. There is, thus, no discrimination so far as the procedure for disciplinary enquiry and award of punishment of dismissal or reduction in rank is concerned. Besides this, as has been rightly pointed out by the learned Chief Standing Counsel that Article 33 of the [Constitution of India](#) read with Article 35 provides for a different legislation by the Parliament in respect of the Armed Forces or the members of the Force charged with the maintenance of public order, etc. Therefore, under Article 33 of the [Constitution of India](#), Parliament is empowered to modify the rights in relation to military and para-military forces, police forces and analogous Forces. What is required by Article 16 of the [Constitution of India](#) is that the Parliament may make reasonable class or classes of employment or an appointment to an office. Article 16(3) of the [Constitution of India](#) reads as follows :

'(3) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes or employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory) prior to such employment or appointment.'

In a recent case of Union of India and ' others v. I.M. Haviller/Clerk Bagari, JT 1999 (3) SC 124, the Hon'ble Supreme Court has held at page 127 that--'broadly speaking, concept of equality has an inherent limitation arising from very nature of the guarantee under the Constitution and those who are similarly circumstanced are entitled to equal treatment. If there is a rational classification consistent with the purpose for which such classification was made, equality is not violated. Article 16 of the Constitution does not bar a reasonable classification of employees or reasonable tests for selection. Equality of opportunity of employment means equality as between members of the same class of employees and not equality between members of separate independent classes.'

44. In another case Jagannath Prasad Sharma v. State of U. P. and others, AIR 1961 SC 1245, the Apex Court has held in paragraph 15 that 'equal protection of the laws does not postulate equal treatment of all persons without distinction. It merely guarantees the application of the same laws alike and without discrimination to all persons similarly situated.'

45. In the earlier case Union of India and others v. I. M. Havildar/Clerk SC Bagari (supra). It was argued before the Hon'ble Supreme Court by drawing attention to clauses XII, XV and XVIII of Section 3 of the Army Act that these clauses define 'Junior Commissioned Officer, Non-Commissioned Officer and Officer, while defining the term 'Officer' has clearly stated that the Officer does not include a Junior Commissioned Officer, Warrant Officer, Petty Officer or Non-Commissioned Officer. The Hon'ble Supreme Court has held that relying on the above definitions Mr. Mishra has rightly pointed out that Legislature has classified the personnel of the Armed Forces into different categories and this classification has not been challenged. We are of the opinion that Legislature while creating different classes of officers has classified them on the basis of the requirement of armed forces and thus this classification cannot be said to be arbitrary.' In the case in hand before us, it has already been pointed out above that the procedure for appointment of Superior Officers is provided under Section 4 of the Act which provides that the appointment on the post of Commandant and Assistant Commandant and Company Officers is to be made by the Central Government whereas the appointment of 'members of the Force' as defined in clause 2 (d) of the Act is to be made by the Commandant. Perusal of the

various provisions of the Act and of the Rules also shows that different duties are assigned to Superior Officers and other 'members of the Force' which does not include Superior Officer. It may be pointed out here that the petitioner has not challenged the validity of the Rules or various provisions of the Act which according to him discriminate between the Superior Officers and other members of the Force. There is nothing to show that the classification made by the Act and the Rules is not founded on an intelligible differentia or that it was arbitrary and not rational classification consistent with the purpose for which such classification is made. Therefore, the argument made by the learned counsel for the petitioner is of no help to the petitioner.

46. With profound respect to the view expressed by the Division Bench in Giriraj Sharma's case (Supra), it may be pointed out that all the relevant provisions of the Act and the Rules were not placed before the Court and, therefore, the view expressed by the Division Bench cannot be followed for deciding the present case or any other case in which similar question arises.

47. For the foregoing reasons, the arguments for the petitioner as advanced by Dr. Padia that when the charges were framed under Section 11(1) of the Act, the respondents did not have the power to dismiss the petitioner from service has to be rejected and decision in case of Giriraj Sharma's case has to be treated as decision per-in-curium and the law interpreted therein cannot be held to have been correctly interpreted.

48. I, therefore, agree with the Judgment and order proposed by Hon'ble Palok Basu, J., on behalf of himself and on behalf of Hon'ble R. R.K. Trivedi, J., but have written this separate judgment in order to incorporate the additional grounds which have struck me.

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