

Pramod Kumar Sharma Vs. Union of India

Pramod Kumar Sharma Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/49329

Court : Jharkhand

Decided On : Mar-20-2015

Appellant : Pramod Kumar Sharma

Respondent : Union of India

Advocate for Def. : Mr. Prabhash Kumar

Advocate for Pet/Ap. : Mr. Delip Jerath

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4576 of 2007
----- Pramod Kumar Sharma, son of Panna Lal Sharma, resident of Careof
R.R.P. Singh, Aambagan Adarshnagar, P.O. and P.S. Dhurwa, District- Ranchi. ...
Petitioner Versus 1. Union of India, through Director General CRPF, CGO complex
Lodhi Road, N. Delhi.

2. Additional DIGP (CTC) (T & IT) CRPF, Dhurwa, Ranchi 3. DIG
(Communication) Directorate General, CRPF, CGO Complex, Lodhi Road, New
Delhi. ... Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH
PATNAIK ----- For the Petitioner : Mr. Delip Jerath., Advocate For the
Respondents : Mr. Prabhash Kumar, Advocate ----- CAV ON2002.2015
Pronounced On..../03/2015 Per Pramath Patnaik, J.

1. In the aforesaid writ application, the petitioner has inter alia prayed for
quashing/setting aside the order dated 05.01.2007 passed from the office of the

ADDL, DIGP CTC (T & IT) CRPF, Dhurwa, Ranchi whereby the petitioner has been removed from service w.e.f. 05.01.2007 vide Annexure 3 to the writ application and for quashing/setting aside the office order dated 16.3.2007 passed by Director General, CRPF, CGO Complex, Lodhi Road, New Delhi relating to rejection of the appeal and for direction upon the respondents to allow the petitioner to discharge his duty on the post from which he has been removed forthwith.

2. The factual exposition, as delineated and described in the writ application, is that the petitioner was appointed on the post of Constable (Driver) on 15.2.1992 C.R.P.F., Ajmer. Thereafter, the petitioner was transferred to several places. In the month of September, 2004, when he was posted at C.R.P.F. Camp, Tiril, 2 Ranchi, on 16.5.2006, a memorandum of charge was issued from the office of ADDL, DIGP, SIGNAL GROUP CENTRE, CRPF, Ranchi vide Annexure 1 to the writ application and on 16.5.2006 a letter was issued by Principal, Central Training University, C.T.C. (T & IT) C.R.P.F, Ranchi declaring him absconder with direction to join his duty otherwise appropriate action be taken against him vide Annexure 2 to the writ application.

3. After receiving information about declaring him as absconder, he rushed to the camp to join his duty on 30.5.2006 but he was not allowed to enter the camp due to which he could not enter the camp. Again on 13.6.2006 he came to join his service but he was not allowed to enter. Again he returned on 15.7.2006 to join his service, but this time also he was not allowed to enter the camp to join his duty. A departmental enquiry was held on 5.1.2007 vide memo No. P.VIII. 4/06 EC II passed from the office of the ADDL. DIGP, CTC (T & IT) CRPF, Dhurwa, Ranchi. Thereafter, the petitioner was removed from services from 5.1.2007 vide Annexure 3 to the writ application.

4. Being aggrieved, the petitioner preferred an appeal before the Director General, C.R.P.F.-respondent no. 3, C.G.O. Complex, Lodhi Road, New Delhi, which was rejected vide order dated 16.3.2007, Annexure 4 to the writ application.

5. Learned counsel for the respondents has filed counter affidavit controverting assertions made in the writ application. It has been stated in the counter affidavit

that the petitioner proceeded for 60 days E.L. from 1.2.2006 to 1.4.2006 with 3 permission to avail 2.4.2006 (Sunday). He was due to report for duty on 3.4.2006, whereas he reported for his duty on 8.5.2006 at 17.00 hours after overstaying for 35 days without any sanction/permission/intimation. He was reported for consuming liquor in an intoxicated condition. Many minor punishments awarded to him in the past has had little or no reformative effect on him. Hence, considering his past records as well as the gravity of offence of willful absence in the instant case, a departmental proceeding was initiated against him. Consequent on departmental proceeding, the charges having been proved beyond any shadow of doubt, he was removed from services w.e.f. 5.1.2007 vide office order no.P.VIII. 4/06, E.C. II dated 5.1.2007. Aggrieved with the order dated 5.1.2007, the petitioner has submitted an appeal dated 22.1.2007 to the D.I.G.P. (Comn.) C.R.P.F., who after considering all aspects of the case, rejected the appeal, vide dated 16.3.2007, being devoid of merit.

6. In the instant writ application, it has been submitted by learned counsel for the respondents that the petitioner has got alternative remedy to prefer revision under Rule 29 of The Central Reserve Police Force Rules, 1955 (in short 'C.R.P.F. Rules, 1955'). On that score, the instant writ application is liable to be dismissed in limine.

7. Heard Mr. Delip Jerath, learned counsel for the petitioner and Mr. Prabhash Kumar, learned counsel for the respondents.

8. Learned counsel for the petitioner has strenuously urged that the removal of the petitioner from services is violative of The 4 Central Reserve Police Force (in short 'C.R.P.F Act, 1949') and the impugned order of punishment i.e. removal from services has been passed without complying the principle of natural justice. Learned counsel for the petitioner has referred to Section 11 of the C.R.P.F Act, 1949. Relevant extract of the said provision reads 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 quarterguard for not more than twenty eight days, with or without punishment drill or extra guard, fatigue or other duty; and (d) removal from any office of distinction or special emolument in the Force. Learned counsel for the petitioner submits that the impugned order of punishment of removal from service does not come under the punishment under Section 11 of the C.R.P.F Act, 1949 which envisages minor punishment.

9. Learned counsel for the petitioner further refers Sections 10(a) and 10(m), which reads as under:- 10(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 10(m) Absents himself without leave, or without sufficient cause overstays leave granted to him; or 10. Learned counsel for the petitioner further refers Rule 27 of the C.R.P.F. Rules, 1955, which reads as under:- 5 Rule 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

SI.	Punishment	Subedar	Sub-	Others	Consts.	& Remarks	No.
1	Dismissal or DIGP	Inspector	except enrolled	Const. & followers	enrolled	followers	1
2	Reduction to a DIGP	DIGP	Comdt.	Comdt.	lower time-scale of pay, grade, post or service.		2
3	Reduction to a DIGP	DIGP	Comdt.	Comdt.	lower stage in the time-scale of pay for a specified period.		3
4							4
5							5
6							6
7							7
8							8
9							9
10							10
11							11

11. The further contention raised by the learned counsel for the petitioner is that the impugned order of punishment has been passed by the Additional District Inspector General of Police, Signal Group Centre, CRPF, Ranchi, who is superior to the appointing authority i.e. Commandant. Hence, the petitioner has been deprived of filing an appeal before the superior authority.

12. Learned counsel for the petitioner has placed reliance on the judgment rendered by Honble Apex Court in the case of Mohd. Yunus Khan Vs. State of Uttar Pradesh and Others as reported in (2010) 10 SCC539 specially paragraph nos.

17. 34 and 37 thereof. Learned counsel for the petitioner has also placed reliance on the judgment rendered in the case of 6 Pradeep Kumar Nishad Vs. The Union of India & Ors. as reported in 2013 (4) JLJR281 specially Paragraph nos. 2, 9, 10 and 11 thereof. Learned counsel for the petitioner has further referred to the judgment rendered by Honble Apex Court in the case of Secretary Ministry of Defence and Others Vs. Prabhash Chandra Mirdha as reported in (2012) 11 SCC565 specially paragraphs 4 and 5 thereof.

13. Learned counsel for the respondents has vehemently repelled the contention raised by the learned counsel for the petitioner by submitting that Section 11 of the C.R.P.F. Act, 1949 refers to minor punishment but the same is in addition to the order of suspension or dismissal. Therefore, the disciplinary authority has rightly resorted to Section 11(1) of the C.R.P.F. Act, 1949 read with Rule 27(a) of C.R.P.F. Rules, 1955 for imposing penalty of removal from service from 05.01.2007.

14. Learned counsel for the respondents has further urged before this Court that in the supplementary counter affidavit filed on behalf of the respondent-Union of India in paragraph 8 it has been stated that the post of ADIGP, SGC, CRPF, Ranchi is equivalent to the post of Commandant, CRPF. Therefore, the contention of the petitioner that the higher authority has passed the order of punishment, is not correct.

15. Learned counsel for the respondents has further submitted that so far as Section 11(1) of the C.R.P.F. Act, 1949 is concerned the Honble Apex Court, in the case of Union of India and others Vrs. Ghulam Mohd. Bhat as reported in (2005) 13 7 SCC228 has been pleased to hold thatIn any event, Section 11(1) refers to Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case, the Commandant, who had passed the

order of removal, was the competent authority to pass the order.

16. Counsel for the respondents further referred to the judgment rendered in WP (S) No. 15351 of 1999 dated 4.4.2003 by the Honble Andhra Pradesh High Court (D.B.) reported in 2003(4)SLR631 wherein at Paragraph 17 of the said judgment the Honble High Court has been pleased to hold in no uncertain terms that Section 11(1) of the Act empowers the authorities to impose suspension or dismissal from service in lieu of or in addition to the punishments mentioned under clauses (a) to (e). Therefore, the contention of the counsel for the respondent is that the order of punishment for removal or suspension or dismissal from service can be awarded under section 11(1) of the C.R.P.F. Act.

17. On perusal of the records, it is quite evident that there has been no procedural irregularity from the initiation of disciplinary proceeding till its culmination as the petitioner has been found guilty of the charges by the enquiry officer. The Hon'ble Apex Court in the case of State of U.P. and others Vs Raj Kishore Yadav and Another as reported in (2006) 5 SCC673 at paragraph 4 has held that:

8. /p>

4. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment or dismissal from service should not be disturbed..... The Hon'ble Apex Court further in the case of Krushnakant B. Parmar Vs. Union of India and Another as reported in (2012) 3 SCC178 has held that High Court under Article 226 cannot disturb the facts and findings given by the disciplinary authority.

18. Now the moot question which falls for determination by this Court is as to whether the impugned order of punishment can be interfered with by this Court on the ground of doctrine of proportionality or in other words on the question of quantum of punishment.

19. The Hon'ble Apex Court in the case of Union of India & Anr. Vs. G. Ganayutham as reported in (1997) 7 SCC463 held that in the matter of penalty imposed in a disciplinary case, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational, the punishment cannot be quashed.

20. The Hon'ble Apex Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra as reported in (1999) 1 SCC759 in paragraph 22 held as under:

22. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.....

21. The Hon'ble Apex Court further in the case of B.C. Chaturvedi Vs. Union of India & Others as reported in (1995) 6 SCC749 has held that the Court will not interfere with the order, unless the punishment order is one which shocks the conscience of the Court. Similar view has been expressed by the Hon'ble Apex Court in the case of M.P. Electricity Board Vs. Jagdish Chandra Sharma as reported in (2005) 3 SCC401. 22. The Hon'ble Apex Court in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others as reported in (1983) 2 SCC442 has held that it is equally true that the punishment imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct will be violative of Article 14.

23. After hearing the counsel for the petitioner and counsel for the respondents and after giving anxious consideration to the pleadings of the counter affidavit and supplementary counter affidavit and decisions and rivalised submissions, the impugned order of punishment appears to be justified as no illegality has been committed by the respondents in imposing the order of punishment vide Annexure 5. Therefore, the impugned order vide Annexure 5 to writ application does not call for any interference by this Court. Accordingly, the writ petition is dismissed being

devoid of any merit. (Pramath Patnaik, J.) RKM/- N.A.F.R/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com