

Ashok Kumar (Constable) and Another Vs. Union of India and Others

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Court : Delhi

Decided On : Aug-13-1999

Reported in : 2000IAD(Delhi)431; 2000(52)DRJ551

Judge : N.G. Nandi, J.

Acts : [Constitution of India](#) - Article 226; CRPF Act - Sections 11(1)

Appeal No. : C.W. No. 1831 of 1996

Appellant : Ashok Kumar (Constable) and Another

Respondent : Union of India and Others

Advocate for Def. : Mr. U. Hazarika, Adv.

Advocate for Pet/Ap. : Mr. S.C. Bhasin, Adv

Judgement :

ORDER

N.G. Nandi, J.

1. In this petition under Article 226 of the [Constitution of India](#), the petitioners have been challenging the order dated 14.12.1995 dismissing them from service under Section 11(1) of the C.R.P.F. Act, 1949 and attaching them in CRPFBN/HQ located at Delhi with consequential relief of pay and allowances due to them.

2. It is the case of the petitioners that they were posted in CRPF Company at Mukakchung, Nagaland; that the said Company was commanded by Deputy Comdt. N.R. Yadav, which was under command of 8 Bn. C.R.P.F with Headquarter at Jorhat (Assam); that the Commanding Officer of 8 Bn C.R.P.F. was Comdt., CCD P.L. Siwan; that on 5.2.1994, Deputy Comdt,. N.R. Yadav gave orders for move of a Convey of three vehicles with 19 C.R.P.F. personnel for collection of ration and repair of wireless equipments in Assam; that the Convey commanded by sub inspector R.K. Singh moved to Jorhat on 5.2.1994 and reached the headquarters of 8 Bn CRPF for collection of stores and repair of wireless equipments; that on 6.2.1994, the Commanding Officer along with other staff carried out a surprise check of the vehicles of the convey which had come with the petitioners on 5.2.1994 and large quantity of IMF liquor packed in suit cases, boxes, driver cabin and concealed under the ration bags was found; that the petitioners are alleged to have kept the following IMF liquor:

(a) No. 811180138 L/NK/Driver/I.K. Mishra 16 full bottles of IMF liquor in the driver cabin of the vehicle which the petitioner was driving.

(b) No. 850620098 Ct. Ashok Kumar - 54 bottles of IMF liquor i.e. 6 large bottles + 48 half bottles.

3. That the respondents filed counter affidavit inter alias contending that both the petitioners were found to have purchased IMF liquor from the Jorhat market in the State of Assam; that they unauthorisedly loaded the IMF liquor in the government vehicle with the intention to take it Mukakchung in the State of Nagaland; that both the petitioners were involved in smuggling of IMF liquor from a nondry State of Assam to a dry State of Nagaland ; that after joint departmental inquiry , the petitioners have been dismissed from service by commandant under Section 11(1) of the CRPF Act 1949 read with Rule 27(a) of CRPF Rules 1955;that the petitioners unsuccessfully preferred the appeal against the said dismissal order.

4. It is not disputed that the Convey of three vehicles moved to Jorhat (Assam) with 19 CRPF personnel including the petitioners for the collection of ration and repair of wireless equipments and in a surprise check on 6.2.1994 in Assam, the vehicles of the Convey, which had come with the petitioners on 5.2.1994, were

checked and that large quantity of IMF liquor was found packed in suitcases, boxes, driver cabin and some concealed under the ration bags. The petitioners admittedly were in possession of IMF liquor bottles. The petitioner No. 1 Constable Ashok Kumar is alleged to have unauthorisedly purchased and possessed 54 bottles of IMF liquor where as petitioner No. 2 Constable I.K. Mishra is alleged to have unauthorisedly purchased and possessed 16 bottles of IMF liquor.

5. It is submitted by Mr. Bhasin, learned counsel for the petitioners that the punishment of dismissal from service inflicted on the petitioners is unduly harsh and disproportionate and not commensurate with the gravity of the offence; that the petitioners could have been at the best inflicted a minor punishment and the punishment inflicted is unjustified in view of the recovery of 54 half bottles of RUM found from the petitioners.

As against this, it is submitted by Mr. Hazarika, learned Standing Counsel for the respondents, that in all 14 Constables have been removed from the service for their indisciplined act of unauthorisedly purchasing IMF liquor in bulk quantity noted against each of the constables as the said quantity was purchased from Assam for being smuggled into Nagaland which is a dry State. It is further contended that the quantum of punishment inflicted by the disciplinary authority cannot be gone into by the court in the petition under Article 226 of the [Constitution of India](#) and therefore, this is not a case for interference with the punishment inflicted on the petitioners.

6. The petitioners have been placed reliance on the decision in the case of Ranjit Thakur Vs . Union of India, : 1988 CriLJ158 wherein it is held that 'the choice and quantum of punishment is within the discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as a part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the CourtMartial, if the decision of the court even as to sentence is as outrageous defiance of logic, then the sentence would not be immune from correction. Irrationally and perversity

are recognised grounds of judicial review'.

On behalf of the respondents, reliance has been placed on the decision in the case of *State of U.P. & Others Vs. Nand Kishore Shukla & Another*, : (1996) IILLJ672SC wherein it is held that 'it is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based upon the misconduct proved against him. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with the part of the order'.

The sentence to be imposed has to be commensurate with the gravity of the offence and that of any penalty disproportionate to the gravity of the offence would be violative of Article 14 of the Constitution is, well accepted principle of law.

7. In the instant case, the Convey had come on 5.2.1994 from Nagaland which is a dry State, the petitioner No. 1 is proved to have unauthorisedly purchased and possessed 54 bottles of IMF liquor whereas the petitioner No. 2, the driver is proved to have unauthorisedly purchased and possessed 16 bottles of IMF liquor. it may be appreciated that the purchase of the said liquor is in Assam, which is a non dry State. the recovery of the same is in Assam in a surprise check on 6.2.1994. Obviously the number of bottles of IMF liquor found in surprise check on 6.2.1994 could not have been consumed in a day's time. The Convey was obviously to return to Nagaland and the liquor bottles purchased and possessed by the petitioners in Assam must have been for being smuggled to Nagaland. As far as petitioner No. 2 is concerned, besides the 16 bottles of liquor found and recovered from him, the other liquor bottles were also kept in driver's cabin, in boxes, suit cases etc. and also concealed below the ration bags. Thus, the gravity of the offence as far as petitioner No. 2 is concerned cannot be under rated in as much as he not only unauthorisedly possessed 16 bottles of liquor obviously for being smuggled into the dry State of Nagaland but he being in charge of the

vehicle as a driver could not have permitted, leaving aside his own possession of liquor bottles, the other bottles of liquor being kept not only in driver's cabin, In boxes, suit cases but also concealed below the ration bags, etc.

8. As far as petitioner No. 1 is concerned, he is found to have unauthorisedly purchased and possessed 54 bottles of IMF liquor. The same line of reasoning would apply in case of petitioner No. 1 also as far as the intention to purchase 54 liquor bottles is concerned.

9. Thus, in my opinion, the principle laid down in the case of Ranjit Thakur (supra) will not be of any assistance to the petitioners.

10. In the result, the petition, being devoid of substance, no judicial review of the sentence imposed is called for under Article 226 of the [Constitution of India](#).

11. Petition dismissed.