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Court : Delhi

Decided On : Apr-27-1995

Reported in : 1995IIAD(Delhi)541; 1995(33)DRJ397

Judge : M.J. Rao, C.J. and; D.K. Jain, J.

Acts : Central Reserve Police Force Act - Sections 12; Central Reserve Police Force Rules, 1955

Appeal No. : Civil Writ Appeal No. 4767 of 1994

Appellant : Anil Kumar

Respondent : Union of India

Advocate for Pet/Ap. : N.N. Gupta, Adv

Judgement :

D.K. Jain, J.

(1) The challenge in this writ petition, filed under Article 226 of the Constitution of India, is to the order dated 29 February 1989 passed by respondent No.3 viz., the Commandant 33 Bn, Central Reserve Police Force (for short the CRPF), in exercise of powers con- ferred by Section 12(1) of the Central Reserve Police Force Act, 1949 (for short the Act), dismissing the petitioner from service as he was not considered fit to be retained as a member of the Force for having been: (i)

convicted for committing offences under Section 10(a) and (n) of the Act and sentenced to undergo seven days simple imprisonment from 21 February 1989 to 27 February 1989 by the Assistant Commandant of the same Battalion acting as Magistrate 1st Class - respondent No.2 herein, (ii) awarded ten days confinement to lines from 26 February 1988 to 6 March 1988 and forfeiture of his pay and allowances under Section 11(3) of the Act, for consuming liquor and leaving the camp without permission and misbehaving with Platoon Commander and others and (iii) 'severely censured' by the Commandant during 1988. The petitioner seeks a writ of certiorari and/or any other writ, order or direction quashing the order passed by respondent No.2, convicting the petitioner, as also the order dated 29 February 1989, passed by respondent No.3, dismissing the petitioner. A further writ in the nature of mandamus is sought directing the respondents to restore the petitioner back in service and treat him in service with all consequential pay and allowances.

(2) In all there are four respondents. As noted above, Assistant Commandant and Commandant, 33 Bn, C.R.P.F. Srinagar are respondents 2 and 3 respectively. Union of India through Secretary, Ministry of Home Affairs New Delhi and Deputy Inspector General of Police, C.R.P.F., Ajmer, being respondents No.1 and 4 respectively.

(3) The petitioner joined the C.R.P.F. as a Constable. It appears that the petitioner was prosecuted for having committed two offences viz., (1) under Section 10(a) of the Act - being in a state of intoxication while on a sentry duty and (2) under Section 10(n) - being guilty of an act or omission, which though not specified in the Act is prejudicial to good order and discipline. He was tried by the Assistant Commandant acting as Magistrate 1st Class. Though the final order of conviction and sentence has not been placed on the record but from the show cause notice, issued by the 3rd respondent before passing the impugned order, it appears that the petitioner was found guilty and was sentenced to undergo seven days simple imprisonment w.e.f. 21 February 1989. As a result of the said conviction and for the other two reasons, mentioned above, the Commandant, respondent No.3, found the petitioner to be indisciplined and character less and thus issued a notice dated 21 February 1989 to him to show cause in his defense within three days, so

that a final decision regarding his detention in the Force could be taken. Finding the Explanationn furnished by the petitioner, vide his application dated 24 February 1989, to be unconvincing, as noticed above, the Commandant directed dismissal of the petitioner from the Force.

(4) There is a passing reference in the petition that the trial of the petitioner by the 2nd respondent is null and void because correct procedure of trial has not been followed but it was not explained how and the point was not touched in submissions before us. Mr. N.N.Gupta, learned counsel for the petitioner has restricted the arguments to the legality of the dismissal order. Mr. Gupta has urged two points viz., (i) the trial of the petitioner under Section 10 of the Act by respondent No.2 was for a less heinous crime, for which he was awarded a sentence of ten days confinement to lines, which sentence does not tantamount to 'imprisonment' as contemplated in Section 12 of the Act and, thereforee, no action could be taken against the petitioner under Section 12 of the Act and (ii) the Assistant Commandant of the same Battalion having tried the petitioner but not recommended his dismissal from service, which he was competent to do, the Commandant was not competent to issue a fresh show cause notice for taking action under Section 12 of the Act on the basis of the same punishment awarded by his junior officer under Section 10 of the Act.

(5) In our view there is no merit in either of the contentions. Insofar as the first submission is concerned, the show cause notice dated 21 February 1989 and the impugned order dated 29 February 1989 record in clear terms that the petitioner was sentenced to undergo seven days simple imprisonment and, thereforee, the submission is factually incorrect.

(6) In order to deal with the second contention, it would be proper to refer to Section 12 of the Act, which 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 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.'

(7) A perusal of Sub-section (1) shows that it empowers the authority concerned to dismiss any person/convict if he is sentenced under the Act to imprisonment. It further renders him liable to forfeiture of pay, allowance and any other moneys due to him, as well as any medal or decoration received by him. It is evident that the punishment of dismissal under this Section may be given to a delinquent personnel in addition to the sentence of imprisonment awarded to him under Section 10 of the Act, which Section, as noted above, deals with punishment for less heinous offences. Sentence of imprisonment is also provided in Section 9 of the Act, which deals with more heinous offences. From a plain reading of Section 12 of the Act it is clear that power under Section 12 to dismiss any person from the Force depends only on a sentence of imprisonment awarded under the Act and is independent of power under Section 10 of the Act to award sentence for less heinous offences. For the same reason the argument that the Assistant Commandant, a junior officer, having not recommended dismissal from service while convicting the petitioner under Section 10 of the Act, the Commandant cannot initiate action for dismissal under Section 12 of the Act is also fallacious. The powers of the Assistant Commandant, who was invested, under Section 16 of the Act, with the powers of the 1st Class Magistrate to try an offence under Section 10, were restricted to the trial under the said Section and no further. He was to act within the four corners of Section 10 and could not, thereforee, recommend dismissal of the petitioner while sentencing him under the said Section, the maximum sentence prescribed for an offence under the Section being imprisonment for a term not exceeding one year or with fine or with both. Of course being equal in rank and status to the Commandant, in terms of Rule 5 of C.R.P.F. Rules, 1955, for the purpose of exercising, inter alia, administrative and disciplinary powers, the Assistant Commandant could perhaps also initiate and take action under Section 12 of the Act after conclusion of the trial under Section 10.

(8) That apart, we find that the petitioner's dismissal took place on 29 February 1989 but the instant writ petition, challenging this order was filed in May 1994, after a lapse of more than five years. The only Explanationn furnished for this inordinate delay that 'the petitioner was at Kerala in a village remote from civilisation and when he came to Delhi he on consultation came to know that he could have filed his petition even earlier' is far from satisfactory. The writ petition, thereforee, badly suffers from the vice of laches.

(9) There is no merit in the writ petition and it is hereby dismissed in liming.