

Court No. - 8

Case :- WRIT - A No. - 3322 of 2011

Petitioner :- Pradeep Kumar Jaat

Respondent :- Commandant 196 Battalion Central Reserve Police Force And Or

Counsel for Petitioner :- Indra Prasad Yadav, Pankaj Kumar Pandey, Ravi Singh, Yogendra Mishra

Counsel for Respondent :- A.S.G., Ambrish Rai, Ashok Kumar Verma, Depanshu Dass, Srinivas Bajpai, Sudhanshu Chauhan

Hon'ble Dinesh Kumar Singh, J.

1. Heard Mr. Yogendra Mishra, learned counsel for the petitioner, as well as Mr. Sudhanshu Chauhan, learned counsel for the respondents.
2. The present petition under Article 226 of the Constitution of India has been instituted being aggrieved by the order dated 23.06.2010 whereby the petitioner got compulsorily retired. The appeal filed against the order dated 23.06.2010 got dismissed on 20.12.2010 by the appellate Authority and the revision also got dismissed vide order dated 08.04.2011.
3. The petitioner got recruited as Constable/General Duty in Central Reserve Police Force (for short "CRPF"), a Para-Military Force of the Union on 10.10.1997; he was posted in March, 2010 with 196 Battalion, Duguni, Saraikala, Jharkhand; on 17.03.2010, it is alleged that the petitioner, in heavily intoxicated state, had used abusive language with the Guard Commander and Battalion Havaldar Major, and indulged in physical violence with the Battalion Havaldar Major; medical examination of the petitioner and Battalion Havaldar Major was conducted on the same day.
4. The medical report of the petitioner would disclose that the petitioner had consumed alcohol, and was in state of intoxication. However, in the medical examination of the Battalion Havaldar Major,

no such report of him having been in the state of intoxication was found. The medical report of the Battalion Havaldar Major discloses that he had sustained injuries.

5. In respect of the said incident, F.I.R. under Sections 341, 323, 427, 504, 506 and 353 IPC was lodged on the next day i.e. 18.03.2010 at Police Station Saraikala, Jharkhand.

6. On 20.03.2010, memorandum of charges was issued, containing two charges along with list of documents etc. The charges were that the petitioner was guilty of disobedience and dereliction of duty.

7. Mr. Nikhil Rastogi, 2-IC of 196, Battalion CRPF was appointed as inquiry officer.

8. After conclusion of the inquiry, the inquiry officer submitted his report to the disciplinary authority, which issued show-cause-notice to the petitioner on 20.06.2010, calling upon him to submit his report within a period of 15 days.

9. The petitioner, in his reply, admitted that he had been supplied copy of the inquiry report, and no witness of defence was produced by him. However, the petitioner said that he was dissatisfied with the inquiry.

10. The disciplinary authority, vide impugned order dated 23.06.2010 awarded the punishment of compulsory retirement to the petitioner against which, as mentioned above, appeal and revision got dismissed.

11. Mr. Yogendra Mishra, learned counsel for the petitioner has submitted that the petitioner was in jail since 18.03.2010, and the charge-sheet was served upon him on 20.03.2010 with a direction to submit reply within 48 hours. Therefore, the petitioner was not afforded adequate opportunity to defend himself. The whole inquiry has been conducted in a haste manner, in violation of principle of natural justice and, therefore, the impugned orders of punishment are liable to be set-aside.

12. On behalf of the petitioner, it has been next contended that the charge-sheet was served upon the petitioner under Section 11(1) of the Central Reserve Police Force Act, 1949 (for short "Act, 1949"). Section 11 of the Act, 1949 provides for inflicting minor penalty. The petitioner, however, has been inflicted with the major penalty of compulsory retirement and, therefore, the punishment order of compulsory retirement is illegal, beyond jurisdiction and void ab initio.

13. On the other hand, Mr. Sudhanshu Chauhan, learned counsel for the respondents, has submitted that the petitioner was told about the imputation 48 hours before commencement of inquiry as per rule-27 (c)(1) of the Central Reserve Police Force Rules, 1955 (for short "Rules, 1955"), and it does not make any difference whether the petitioner was in jail or outside the jail. The petitioner, in his statement recorded on 25.03.2010, had admitted that complete memorandum of charges had been supplied to him, and there was no letter of the petitioner, demanding any document, rather in his statement recorded on 16.06.2010, the petitioner had admitted that all the documents had been supplied to him. The petitioner had requested that he did not want to give his statement while he was in jail vide letter dated 29.04.2010. The petitioner was asked to submit his reply and defence only after he was released on bail vide letter dated 20.05.2020, and by the said letter dated 20.05.2020 the petitioner was granted 15 days time to submit his reply to the memorandum of charges. The learned counsel for the respondents, therefore, submits that the petitioner was afforded sufficient opportunity of filing reply to the charge-sheet after he was released from jail. As many as nine witnesses had been examined during the inquiry, who had supported the allegation against the petitioner.

14. Mr. Sudhanshu Chauhan, learned counsel for the respondents has further submitted that power of inflicting punishment of compulsory

retirement can be traced out from the provisions of Section 11(1) of the Act, 1949 and Rule-27 of the Rules, 1955. He has submitted that Section 11(1) of the Act, 1949 itself provides that subject to any rule made thereunder, the competent authority, in lieu of or in addition to suspension or dismissal, provides for any one or more punishment, as prescribed under the Act, 1949. Rule-27 of the Rules, 1955 provides procedure for award of punishments and table no. 2, item no. 4, pertains to punishment of compulsory retirement. Though Section 11 of the Act, 1949 provides for minor punishment but same is subject to the Rules, 1955 and, therefore, under Section 11(1) read with Rule-27 of the Rules, 1955 punishment of compulsory retirement is one of the punishments, which could be inflicted upon a delinquent member of the Force.

15. Considering the submission, it is evident that the petitioner was awarded full opportunity to defend himself; he did not get any defence witness produced; his statement was recorded on 16.06.2010, which was duly signed by him; after conclusion of the inquiry, he was afforded an opportunity to submit his reply to the show-cause-notice, which he submitted and, therefore, I am of the view that there has been no infraction of the procedure or the principle of nature justice in conducting the disciplinary inquiry against the petitioner. In his statement recorded on 16.06.2010, the petitioner had admitted that he had consumed beer and not alcohol and there was an incident of verbal abuse. This statement was signed by the petitioner himself. The petitioner is a member of disciplined Para-Military Force of the Union. He is expected to obey the orders of his seniors.

16. In respect of the second submission of the learned counsel for the petitioner, it would be apt to take note of provision of Section-11 of the Act, 1949 and Rule-27 of the Rules, 1955, which read as under:-

"Section 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 considered 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 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 (b) of sub-section (l) 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 headquarters 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 quarterguard 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 several cesure:

Provided that this punishment may be awarded to a subordinate office only by the Commandant.

(4) A Jemadar 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 punishment specified in clause (b) of sub-section (3) for not more than fifteen days."

"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 F

<i>Sl . No</i>	<i>Punishment</i>	<i>Subedar (Inspector)</i>	<i>Sub-Inspector</i>	<i>Other except Const. & enrolled followers</i>	<i>Consts. & enrolled followers</i>	<i>Remarks</i>
<i>1.</i>	<i>Dismissal or removal from the force</i>	<i>DIGP</i>	<i>DIGP</i>	<i>Comdt.</i>	<i>Comdt.</i>	<i>To be inflicted after formal departmental enquiry</i>
<i>2.</i>	<i>Reduction to a lower</i>	<i>DIGP</i>	<i>DIGP</i>	<i>Comdt</i>	<i>Comdt.</i>	<i>To be inflicted</i>

	<i>Comdt time-scale of pay, grade post or service</i>					<i>after formal departm ental enquiry</i>
3.	<i>Reduction to a lower C stage in the time scale of pay for a specified period</i>	<i>DIGP</i>	<i>DIGP</i>	<i>Comdt.</i>	<i>Comdt.</i>	
4.	<i>Compulsory retirement</i>	<i>DIGP</i>	<i>DIGP</i>	<i>Comdt.</i>	<i>Comdt.</i>	
5	<i>Fine of any amount not exceeding one month's pay and allowance</i>	<i>DIGP</i>	<i>DIGP</i>	<i>Comdt.</i>	<i>Comdt.</i>	
6	<i>Confinement in the Quarter Guard exceeding seven days but not more than 28 days with or without punishment drill or extra guard fatigue or other duty.</i>	<i>----</i>	<i>-----</i>	<i>----</i>	<i>Comdt.</i>	
7.	<i>Stoppage of increment</i>			<i>Comdt.</i>	<i>Comdt.</i>	
8	<i>Removal from any office of distinction of special emolument in the Force</i>			<i>Comdt.</i>	<i>Comdt.</i>	

9.	<i>Censure</i>	<i>Comdt.</i>	<i>Comdt.</i>	<i>A Comdt. or Coy Comdr</i>	<i>A Comdt. or Coy Comdr</i>	
10.	<i>Confinement to Quarter Guard for not more than 7 days with or without punishment or extra guard fatigue or other duty</i>	---	---	---	<i>Comdt.</i>	
11.	<i>Confinement to quarters lines, camp, punishment drill, fatigue duties, etc., for a term exceeding one month</i>	---	---	---	<i>Comdt.</i>	

Notes:1 When the post of Deputy Inspector General remains unfilled for a period of over one month at a time the Commandant shall exercise the powers of punishing the Subedar and Sub Inspectors except the powers of ordering dismissal or removal from the Force.

Note:-2 When the post of Commandant remains unfilled for a period of over one month at a time consequent on the incumbent proceeding on leave or otherwise, the Assistant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.

Explanation:- (a) Dismissal of member of the Force precludes him from being re-employed in Government service while removal of any such member from the Force shall not be disqualification for any future employment (other than an employment in the Central Reserve Police Force) Under the Government.

(b) When non-gazetted officers or men of the various ranks are to be punished for any offence; a departmental enquiry, if necessary under clause(a) shall be held by the

Commandant provided that when the charge is against an officer of the rank of Subedar(Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar(Inspector) or a Sub-Inspector considers that a punishment under items (1) to (5) and (7) of the Table is called for, he shall complete the departmental proceedings and forward the same to the Deputy Inspector General for orders.

(c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty". he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the

officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so.

(cc) Notwithstanding anything contained in this rule:

(i) 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: or

(ii) Where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that is not reasonable practicable to hold an enquiry in the manner provided in these rules: or

(iii) Where the Director General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such order thereon as it deems fit.

(ccc) When a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General.

(d)(1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General or any authority competent to impose the penalty of dismissal from service on all such members of the Force may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note- Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

(2) Such order shall specify-

(i) the authority which may function as the disciplinary for such a common proceeding;

(ii) the penalties specified in the table of sub-rule (a) above which such disciplinary authority shall be competent to impose;

(iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose; and,

(iv) that the enquiry shall be held in accordance with the provisions of sub rule (a) and sub rule (c)".

27. A. Suspension:

The suspension of any of the non- gazetted officers and men of the ranks specified in column (1) of 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.

<i>Rank</i>	<i>Authority empowered to suspend</i>
<i>1</i>	<i>2</i>
(1) Subedar(Inspector)	(i) Commandant
(2) Sub-Inspector	(ii) In the absence of Commandant. Asstt Comdt Incharge at Detachment or Headquarters.
(3) Others	Any Gazetted Officer of the department.

27B. Responsibilities of Members of the Force during suspension: (1) *A member of the Force shall not by reason of his suspension cease to be a member of the Force, during the period of his suspension, the powers vested in him as such member shall be in abeyance, but he shall be subject to the same responsibilities, discipline and penalties to which he would have been subject if he were on duty.*

(2) *Every such member shall during the period of his suspension stay at Battalion Headquarters or Detachment Headquarters as the Commandant or suspending authority may direct:*

Provided that the Commandant or suspending authority may, for special reasons, grant permission in writing to the member to stay else-where.

(3) *A member under suspension shall deposit his arms and belt, if any, with the Quarter Master or suspending authority.*

(4) *A member under suspension shall not be employed on guard duty or any such duty which might entail exercise of his power as a member of the Force, nor shall be issued arms and ammunition. He shall not be detailed as motor transport driver or signal operator.*

(5) *A member of the Force under suspension shall be allowed reasonable facilities for the preparation of his defence."*

17. Section-11 of the Act, 1949 provides minor punishment, but it also provides power of inflicting minor punishment is subject to Rules, 1955. The provision of Section-11 of the Act, 1949 has to be read with provision of Rule-27 of the Rules, 1955, which provides for inflicting the punishment of compulsory retirement.

18. Therefore, I am of the considered view that the punishment of compulsory retirement of the petitioner is neither illegal nor beyond power of the competent Authority, as vested under Section-11 of the Act, 1949 read with Rule-27 of the Rules, 1955, Thus, I find no merit and substance in this petition, which is hereby **dismissed**.

[D.K. SINGH, J.]

Order Date :- 3.7.2023 MVS/-