

GAHC010153842022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./135/2022

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI. PIN- 110001.

2: THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE

CENTRAL GOVERNMENT OFFICE COMPLEX
NEW DELHI. PIN- 110001.

3: THE INSPECTOR GENERAL OF POLICE

NORTH EASTERN SECTOR
CENTRAL RESERVE POLICE FRCE
SHILLONG
MEGHALAYA
PIN- 793001.

4: THE DEPUTY INSPECTOR GENERAL OF POLICE

CENTRAL RESERVE POLICE FORCE
DAYAPUR
P.O. UDHARBAND
SILCHAR
DISTRICT- CACHAR
ASSAM PIN- 788001.

5: THE COMMANDANT
136 BATTALION
CRPF
C/O. THE DEPUTY INSPECTOR OF POLICE
CENTRAL RESERVE POLICE FORCE
DAYAPUR
P.O. UDHARBAND

SILCHAR
DISTRICT- CACHAR
ASSAM
PIN- 788001

VERSUS

EX-CT/GD FORCE NO. 9612400098 KANAK DAS
S/O- LATE THANESWAR DAS, VILL.- RANG MAHAL, P.O. KERAPAVITHA,
DIST. KAMRUP, ASSAM, PIN- 781030.

Advocate for the Petitioner : MR. R K D CHOUDHURY

Advocate for the Respondent : MR. M KALITA

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 13-02-2024

Heard Mr. R.K.D. Choudhury, learned counsel for the petitioners and Mr. A.C. Sarma, learned senior counsel, assisted by Mr. J. Hatimuria, learned counsel for the respondent.

- 2) This review petition is directed against the order dated 08.06.2022, passed by this Court in W.P.(C) No. 486/2019.
- 3) The petitioners herein are the respondents in W.P.(C) 486/2019, which was filed by the respondent herein. In this order, the parties are referred to as per the cause title of this review petition.
- 4) The respondent in this review petition had filed the said writ petition to assail the legality of the order dated 11.08.2016, passed by the Commandant, 136 Bn., CRPF (petitioner no.5 herein) by which he was awarded

the penalty of removal from service.

5) The facts of the case, in short, is as follows:-

- a. The respondent was a Constable (General Duty) in Central Reserve Police Force (CRPF for short). He was on earned leave from 09.07.2015 to 18.07.2015. However, on the night of 15.07.2015, he was allegedly caught by the villagers in a compromising position with the wife of another member of the CRPF and he was brought to the police station on 16.07.2015 and he was arrested in connection with Salbari P.S. Case No. 82/2015 under section 448/497 IPC. The respondent was granted bail on 17.07.2015. A departmental inquiry was initiated against him due to his alleged misconduct and he was served with a memorandum of charges dated 09.02.2016, *inter alia*, charging him under section 11(1) of the CRPF Act, 1949. He had admitted having physical relationship with the said lady. On conclusion of the inquiry, by an order dated 11.08.2016, the Commandant of 136 Bn., CRPF (petitioner no.5) held the petitioner guilty of the charges levelled against him and he was awarded with the penalty of 'removal from service' w.e.f. 11.08.2016.
- b. The respondent had preferred an appeal before the appellate authority i.e. Deputy Inspector General of Police, Silchar Range, CRPF (petitioner no.4). By an order dated 25.04.2017, the appellate authority had altered the punishment of removal from service with the punishment of compulsory retirement w.e.f. 11.08.2016.
- c. The respondent had filed a revision before the Inspector General of Police, NES, CRPF, Shillong (petitioner no.3). The said Revisional

Authority, by an order dated 28.01.2018, upheld the order of compulsory retirement awarded to the respondent.

6) In the writ petition, this Court, vide impugned order dated 08.06.2022, passed in W.P.(C) No. 486/2019, had held that having proceeded against the respondent under section 11(1) of the CRPF Act, 1949, the Commandant of 136 Bn., CRPF (petitioner no.5) and the Appellate Authority (petitioner no.4) could not have passed an order for removal of the respondent from service by way of compulsory retirement. Accordingly, the Court was inclined to set aside the Office Order bearing Sl. No. P-Eight-3/2016-136-Estt-two dated 11.08.2016, passed by the Commandant of 136 Bn., CRPF (petitioner no.5), by which the respondent was awarded with the punishment of removal of service, which was later on modified by the appellate authority i.e. the Deputy Inspector General of Police, CRPF, Silchar Range (petitioner no.3) by Office Order No. R.Thirteen-136/2017-Silchar-Local-3 dated 25.04.2017, by which the punishment was modified to compulsory retirement w.e.f. 11.08.2016. Resultantly, the Commandant of 136 Bn., CRPF (petitioner no.5) was directed to pass an appropriate order to undo the effect of his order dated 11.08.2016.

7) The respondent was also granted liberty to produce the judgment and order of acquittal dated 27.05.2019, passed by the learned Judicial Magistrate First Class, Baksa, Mushalpur in the proceedings of GR. Case No.541/2018, arising out of Salbari P.S. Case No.82/2015 before the petitioner no.5 and it was further directed that on the receipt of the same, the Commandant of 136 Bn., CRPF (petitioner no.5) shall pass an appropriate order pursuant to the inquiry report as forwarded by letter dated 30.06.2016, strictly within the scope and ambit of section 11(1) of CRPF Act, 1949. It was further

directed that an appropriate order shall be passed within a period of 2(two) months from the date of receipt of the certified copy of the order. The writ petition was thus, allowed.

8) The learned DSGI had submitted that when the writ petition was heard, he had inadvertently failed to cite a decision of the Supreme Court of India in the case of *Union of India v. Diler Singh*, (2016) 13 SCC 71: (2016) 0 Supreme(SC) 474 /2016. It was also submitted that in the case of *Union of India v. Dalbir Singh*, (2021) 11 SCC 321: (2021) 0 Supreme(SC) 562, the Supreme Court of India had approved of dismissal of the appellant on account of misconduct in his capacity as a member of the force under section 11(1) of the CRPF Act, 1949 by holding to the effect that it was not a case of “no evidence”, which alone would warrant interference by the High Court in exercise of power of judicial review.

9) It was submitted that the High Court of Orissa, in the case of *Collector, Cuttack & Ors. v. Bharat Chandra Bhuyan*, (2014) 0 Supreme(Ori) 404, had held that failure to take into consideration an existing decision of the Supreme Court of India and taking a contrary view on a point covered by its judgment would amount to an error apparent on the face of the record and thus, review was maintainable.

10) Per contra, the learned senior counsel for the respondent had submitted that if the existing judgment of the Supreme Court of India was not cited at the time when the writ petition was heard, it was not a sufficient reason to entertain a review petition. Hence, it was submitted that the decision of the High Court of Orissa in the case of *Collector, Cuttack (supra)* would not have a persuasive value over this Court.

11) Considered the rival submissions as well as the decisions cited at the Bar.

12) In the case of *Diler Singh (supra)*, the relevant observations of the Supreme Court of India was as follows:-

1. *The respondent, a constable in Central Reserve Police Force (CRPF), was enrolled as such on 1.4.1990. He was posted in the 23 Battalion where he served continuously approximately for fourteen years. Subsequently, he was transferred to 61 Battalion where he served for two years. During the second posting a charge-sheet was served on him alleging that on 22.06.2001 about 11.30 hrs. he left the campus without permission of the competent authority and went to the bazaar and consumed liquor and quarrelled with some civilians. On being informed, S.I. Sheoji Ram, HC Mahabir Singh and Captain Fiyaz Ahmed brought him from bazaar to the campus. On the advice of the competent authority, a medical examination was conducted on the respondent and as per the medical report given by the assistant surgeon, District Hospital, Medak at Sangareddy, it was found that the respondent had consumed liquor.*

2. *On the basis of the aforesaid report, a departmental enquiry was ordered by Commandant 61-Bn. vide Memo No. P-VIII-8/01-61-EC-II dated 6.7.2001 and the respondent was also placed under suspension with effect from 6.7.2001. The enquiry officer conducted an enquiry and on the base of the material and testimony of the witnesses came to hold that the charges had been proved.*

3. *The disciplinary authority concurred with the findings recorded by the enquiry officer and came to hold that the charges levelled against the respondent had been proved beyond doubt. Recording concurrence with the findings returned by the enquiry officer, the disciplinary authority opined that the respondent was not fit to continue any more in the Force and accordingly in exercise of power conferred under Section 11(1) of the Central Reserve Police Force Act, 1949 (for brevity, 'the Act') read with Rule 27-A(1) of the Central Reserve Police Force Rules, 1955 (in short 'the Rules') ordered the respondent to be removed from the service. It was further stipulated in the order that except the pay and allowances given to the respondent during suspension period from 7.7.2001 to 12.9.2001, he would not be entitled to any pay or allowances and the period of suspension shall be treated as such. That apart, it was directed that medals and awards, if any, that had been received by the delinquent employee during service period shall be forfeited under the provision of Section 12(1) of the Act.*

* * *

19. *The core issue that emerges for consideration is dismissal can be imposed. The controversy is no more res integra. In Union of India v. Ghulam Mohd. Bhat (2005) 13 SCC 228, while interpreting Section 11 of the Act, it has been held thus:-*

“5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may subject to any rules made under the Act, award any one or more of the punishments to any member of the Force who is found guilty of disobedience, neglect of duty or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the Force. According to the High Court the only punishments which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. 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) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.”

And again

“7. ... It is, therefore, clear that section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.”

20. *We respectfully agree with the said view and opine that under the scheme of the Act, in exercise of power under Section 11(1) of the Act punishment of dismissal can be imposed. ...”*

13) Thus, it is observed that the Supreme Court of India had held that under the scheme of the CRPF Act, 1949, punishment of dismissal can be imposed in exercise of power under Section 11(1) of the said Act.

14) This Court, in the case of *Dhanani Shoes Ltd. v. State of Assam & others.*, 2008 (3) GLT 361, had held to the effect that sufficient reasons for review is wide enough to include misconception of fact or law by a Court.

15) In the case of *Palani Roman Catholic Mission v. S. Bagirathi Ammal*, (2009) 16 SCC 657, the Supreme Court of India had held that review could be filed since no leave had been granted to file an appeal and until there is no appeal in the eye of law in the superior court, review can be preferred in High Court.

16) In the case of *Collector, Cuttack (supra)*, the Division Bench of the High Court of Orissa had held as follows:-

13. *Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Where there is a decision of the Supreme Court holding the field and the High Court takes a contrary view, it needs no elaborate argument to point to the error. The error is self-evident. It is held in M/s. Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh, AIR 1964 SC 1372 that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.*

14. *In view of the analysis made in the preceding paragraphs we hold that failure of the Court to take into consideration an existing decision of the Supreme Court taking a contrary view on a point covered by its judgment would amount to an error apparent on the face of the record.*

17) As the Supreme Court of India had already held in the herein before referred cases of *Ghulam Mohd. Bhat (supra)* and *Diler Singh (supra)* to the effect that under the scheme of the CRPF Act, 1949, in exercise of power under section 11(1) thereof punishment of dismissal can be imposed. The decision of the Supreme Court of India would be binding on this Court as per the provision of Article 141 of the Constitution of India. Hence, in this case, we

are inclined to respectfully agree with the decision of the Division Bench of the High Court of Orissa in the case of *Collector, Cuttack (supra)*, and it is held that non-consideration of the existing decision of the Supreme Court of India in the cases of *Ghulam Mohd. Bhat (supra)* and *Diler Singh (supra)*, and taking a contrary view on a point decided therein would amount to error apparent on the face of the record.

18) The said two decisions were not brought to the notice of this Court when the order under review was passed.

19) Hence, this review petition deserves to be and is accordingly, allowed. The order dated 08.06.2022, passed by this Court in W.P.(C) No. 486/2019 is hereby recalled and set aside. Resultantly, the connected W.P.(C) No. 486/2019 stands restored to file.

20) The Registry shall place the matter before the assigned Bench for final hearing.

JUDGE.

Comparing Assistant