

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 191 of 2010(O&M)
Date of decision:01.07.2015

Union of India and ors.

..... Appellants

Versus

Ex. Constable/GD Pramod Kumar

..... Respondent

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: - Mr.Sukhdeep Singh Sandhu, Advocate
for the appellants.

Mr. Anil Ghanghas, Advocate
for the respondent.

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HARINDER SINGH SIDHU, J.

This appeal under Clause X of the Letters Patent has been filed against the judgment and order dated 24.09.2009, whereby, the writ petition filed by the respondent challenging the order of termination dated 30.03.2007 and the orders dismissing the appeal and revision filed by him against the said termination order was allowed.

The respondent was enrolled in the Central Reserve Police Force as General Duty Constable on 12.05.1998. In the year 2006 he was posted in Battalion-124 at National Highway No.53 -Lamphelpat in Manipur which is a disturbed area on account of militancy/naxalite activities. On 4.12.2006 the Control Room of

Headquarter/124 informed the Company Commander A/124 on wireless that a telephone message had been received from the home of the respondent that his mother had expired. On 06.12.2006 he was asked by the Company Commander to contact his home telephonically to verify the information. As there was no telephone at the place of his posting, the respondent was allowed to go to C-Company at Sehjang in a force vehicle, but there also he could not make telephonic contact with his home. When he was, thus, unable to contact his home, he requested Company Commander to permit him to go to Kotland so that he could make telephonic contact at his residence but the said request was declined due to the disturbed conditions in the area. On 8.12.2006, the Commandant visited the Company and the respondent was produced before the Commandant before whom he narrated the information about his mother's death and requested for 20 days leave. As he had already availed his 60 days earned leave and 15 days casual leave for that year, the Commandant orally sanctioned leave of kind due (LKD) for ten days. Company Commander accordingly issued leave order for ten days to the respondent. Later, the respondent realized that availing 10 days leave would be of no help to him, inasmuch as it would take at least 7 days to reach his home and come back. Further, the petitioner had to wait for a convoy, which again took two days. In view of this, he decided not to avail ten days leave and instead to avail his 60 days earned leave w.e.f. 1.1.2007. As the respondent decided not to avail his ten days leave, C./G.D. Suresh Kumar who was living in the tent

with the respondent, in an intoxicated state, taunted him that he had concocted the story regarding his mother's death in order to avail of leave, whereas, in fact his mother had not died. The respondent complained about the conduct of said Suresh Kumar to his seniors but no action was taken. As the respondent at that point of time was not in a fit condition, he lost his mental calm on account of the repeated taunts and abuses at the hands of Suresh Kumar and on 12.12.2006 while he was picking up his rifle it accidentally got fired and the shot hit the earth. On this, the officials took into possession the rifle and inquiry was initiated against the respondent. Two charges were framed against him as follows:-

“1- That Constable/GD Pramod Kumar No. 981340453 A/124 Battalion, being posted in the CRPF and being member of the force under the CRPF Act, 1949 has committed an act of negligence in duty/AVCHAR and indiscipline in which on 8.12.2006, he presented himself before the competent authority and submitted that his mother has expired and he wants to go on leave. Despite his being availed 60 days earned leave, 15 days casual leave of this year (2006) and after sanctioning 10 days LKD by the undersigned he has not availed said leave. Later on, it was found that actually his mother has not expired and by falsely explaining his problem, he disobeyed the orders of competent authority which is an offence under Section 11(1) CRPF Act, 1949 and is violation of good discipline.

2- That Constable/GD Pramod Kumar No. 981340453 A/124 Battalion, being posted in the CRPF

and being member of the force under the CRPF Act, 1949 has committed an act of negligence in duty/AVCHAR and indiscipline in which on 12/12/06, at about 2115 hrs;, he fired a round in his tent by misusing his Govt. Arm Butt No. S/17 Body No. 8942 AK-47 Rifle given for discharge of duty, which is an offence under Section 11(1) CRPF Act 1949 and is violation of good discipline.”

The enquiry officer held the charges to be proved. Based thereon, the respondent was dismissed from service vide order dated 30.03.2007. The appeal and revision filed against the aforesaid order were also dismissed. Aggrieved thereby, the petitioner filed the Civil Writ Petition which has been allowed by this Court.

Hence, the present appeal.

Before learned Single Judge, two contentions were raised on behalf of the respondent:

- i) That the punishment of dismissal from service does not fall within the purview of Section 11 of the CRPF Act, 1949 and
- ii) That the punishment imposed is harsh and disproportionate.

Learned Single Judge did not agree with the first contention. By placing reliance on case **Ram Sran Vs. I.G. of Police, CRPF and others** 2006(2) SCC 541 and also a decision of the High Court of Jammu and Kashmir in 2006(3) SLR 250, it was held that a punishment of dismissal can be awarded under section 11(1) of the CRPF, Act, 1949.

However, the learned Single Judge agreed with the respondent that the punishment of dismissal imposed on him was

harsh and disproportionate. The order of dismissal dated 4.6.2007 and the subsequent order dated 12.5.2008 of the revisional authority were set aside. The case was remanded to the disciplinary authority to impose one of the minor punishments, contemplated under Section 11 of the CRPF Act. It was directed that the respondent would stand reinstated to face the punishment as may be imposed by the authorities. It was also directed that he would not be entitled to any financial benefit during the interregnum.

Learned counsel for the appellants, assailing the said judgment has stated that the extent of judicial review of an order of the disciplinary authority is very limited. He further argued that the respondent is serving in a disciplined force and it was expected of him to observe utmost precaution to guard against any misuse or mishandling of the service arms and ammunition. It was urged that members of the disciplined force are expected to maintain a calm mind even under extreme pressure and under adverse circumstances. An incident of the kind indulged in by the respondent needs to be viewed very seriously as such temperament/attitude is a threat to the safety of others.

On the other hand, learned counsel for the respondent argued that the fact that the respondent has not availed the leave despite being sanctioned, cannot be said to be a defiance of unlawful order and further even if it was found that the mother of the respondent had in fact not died, it could not be concluded that the message received by the commandant regarding the death of mother

of the respondent was sent at the instance of the respondent. He further states that even accepting the findings of the enquiry officer to the effect that the shot was not fired accidentally as pleaded by the respondent, the fact remains that it was not aimed at anybody and there was no intention to harm any person. He has further argued that considering the fact that the respondent at that time was under great stress on hearing the news of death of his mother, coupled with the extremely provocative and uncivilized taunts at the hands of C. Suresh Kumar, he lost his cool and fired from his firearm into the earth. He urged that in these circumstances, learned Single Judge has rightly held that the punishment awarded to the respondent is harsh and disproportionate to the charges levelled against him.

We have given thoughtful consideration to the arguments advanced by learned counsel for the parties and are of the view that in the circumstances of this case the punishment imposed upon the respondent is indeed harsh and disproportionate to the charges levelled against him and learned Single Judge has rightly held so while allowing the writ petition filed by the respondent. The Ld. Single Judge while holding the punishment to be harsh and disproportionate has observed as under:

“ The only question which can be considered is whether the punishment of dismissal is harsh and disproportionate on the basis of the charges framed against the petitioner. One of the contentions of the respondents is that the petitioner has falsely claimed that his mother has died. However, it has come on record that

a telephonic message was received by the Company Commander regarding the death of the mother of the petitioner. There is no evidence that the petitioner has managed this message. The other contention is that the petitioner has disobeyed the lawful orders and did not proceed on leave despite the formal orders. In my humble opinion, where a person does not avail the leave, it cannot be said to be defiance of lawful orders. The other charge against the petitioner is that he fired a shot from his rifle. There is no evidence on record that it was aimed to kill anybody. The shot was in the earth. Nobody has been injured. Petitioner was perhaps under the influence of liquor as has come in evidence. It has also come on record that when the petitioner was summoned by the competent authority, he tendered his apology and assured his good conduct in future. It cannot be lost sight that the petitioner was posted in a troubled and naxalite infested area, where the stress of duty is natural.

Under the aforesaid given circumstances, I am of the opinion that the punishment imposed upon the petitioner seems to be harsh and disproportionate to the alleged offences.”

We fully agree with the aforesaid conclusions of the Ld.

Single Judge.

Accordingly, this appeal is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 01, 2015

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