

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18705 of 2008

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Ajay Kumar Mishra, S/O Sri Ram Naresh Mishra, Resident of Village – Sarai Pakwan, P.O. – Keshavpur, District – Chandauli.

.... Petitioner

Versus

1. The Union of India through Secretary, Home (Special) being C.R.P.F. New Delhi.
2. The Director General of Central Reserve Police, C.R.P.F. Headquarters, New Delhi.
3. The Inspector General of Police, C.R.P.F. Patna.
4. The Deputy Inspector General of Police, Central Reserve Police Force, Patna-14, Bihar.
5. The Commandant, B/11 Battalion, C.R.P.F. Camp Airport, Agartalla, District Agartalla, Tripura.

.... Respondents

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Appearance :

For the Petitioner : Mr. Choudhary Shyam Nandan, Advocate.
Mr. Chakrapani, Advocate.
For the Respondents : Mr. S.D. Sanjay (ASG)
Mr. Anjani Kr. Saran (CGC)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

CAV JUDGMENT

Date: 26-04-2017

Heard Mr. Choudhary Shyam Nandan, learned counsel for the petitioner and Mr. S.D. Sanjay, ASG appearing on behalf of Union of India.

2. The petitioner preferred this writ petition for quashing the order dated 29.03.2000 by which the respondent no. 5, the Commandant, B/11 Battalion declared the petitioner unfit person to be retained in the Discipline force, like C.R.P.F. and to quash the order dated 30.03.2000 (Annexure-7) passed by the Commandant under Section 11(1) of C.R.P.F. Act, 1949 read with Section 27(a) of the



C.R.P.F. Rules by which the petitioner was dismissed from service. The petitioner further prayed to quash the order dated 02.08.2001 (Annexure-9) as contained in Letter No. P-8-AKM(11)/01-Establishment passed by the appellate authority, respondent no. 4 in appeal preferred by the petitioner against the order of dismissal dated 29.03.2000.

3. The petitioner was appointed as constable C.R.P.F. being Constable No. 901141907, C.T. B/11, Battalion. While the petitioner was posted in Agartalla on 01.11.1999 he was sent to doctor for examination and the doctor reported that the petitioner was under intoxication of wine. The petitioner was put under suspension vide order dated 03.11.1999 (Annexure-2) and he was departmentally proceeded. The articles of charge were given to the petitioner. According to articles of charge he was proceeded for following charges:

(a). For disobedience and misconduct in not doing the duty of orderly and for that he was confined to line from 02.11.1999 to 16.11.1999. During the period of imprisonment, the petitioner left the barrack from 13:30 to 18:30 without permission of any competent authority and went outside the premises of CRPF in terrorist affected area.



(b). The petitioner being constable of C.R.P.F. 11th Battalion committed misconduct and misbehaved with the superior officers, according to Section 11(1) of C.R.P.F. Act, 1949 and the petitioner without any provocation misbehaved, abused and used unparliamentary language against M.K. Sinha, the Deputy Commandant, DCO 11th Battalion, Maharani.

(c). The petitioner being on duty committed misconduct, as the petitioner did not obey the order of DCO 11th Battalion, C.R.P.F., Maharani who ordered him to go to the headquarter of 11th Battalion, C.R.P.F., Agartalla as he refused to receive the order nor obeyed the order.

4. The petitioner gave his explanation along with answer of questionnaire, on such, the departmental proceeding proceeded and Shri Dhaneshwar Jha, Assistant Commandant, 11th Battalion, C.R.P.F. was appointed as enquiry officer. The enquiry officer submitted report and found the petitioner guilty on different charges. The commanding officer dismissed the petitioner with effect from 30.03.2000 under Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as the 'Act') read with Rule 27 of the Central Reserve Police Force Rules, 1955 vide order as contained in Memo



No. P-VIII-1/2000-AC. II dated 29.03.2000.

5. The petitioner preferred the appeal before the Deputy Inspector General, C.R.P.F., Bihar Sector, Sheikhpura, Patna (Annexure-8) and the appellate authority dismissed the appeal of the petitioner confirming the dismissal of the petitioner.

6. Learned counsel for the petitioner firstly submits that the departmental proceeding was initiated against the petitioner under Section 11 (1) of the C.R.P.F. Act which refers to minor punishment. It is submitted that the dismissal from service can never be treated as minor punishment. It is further submitted that according to the charges the punishment imposed on the petitioner for the aforesaid charges as alleged in the proceeding is disproportionate and is fit to be set aside. Learned counsel for the petitioner in support of his contention placed reliance on the judgment in the case of *Sanjay Kumar Ojha vs. The Union of India* reported in **2013 (3) PLJR 312**.

7. In reply to the submissions made by the petitioner Sri S.D. Sanjay, the learned Additional Solicitor General appearing on behalf of Union of India has submitted that there is no illegality in proceeding against the delinquent under Rule 11(1) read with Section 27 of the C.R.P.F. Rules and the order of the dismissal can be passed even if the delinquent is not prosecuted for the offence under Sections 9 and 10 of the Central Reserve Police Force Act, 1949. Learned



counsel in support of his contention placed reliance on the judgment of the Supreme Court in the case of *Union of India and Others vs. Ghulam Mohd. Bhat* reported in (2005) 13 SCC 228.

8. After hearing the submissions of the learned counsel for the parties, it would be apt to reproduce Section 9, 10 and 11 of the Central Reserve Police Force Act, 1949 and Rule 27 of the Central Reserve Police Force Rules, 1955 as the scope and ambit of Section 11 and Rule 27 have been called for determination as it has been submitted on behalf of the petitioner that the major punishment such as dismissal cannot be inflicted under Section 11 which prescribes the minor punishment read with Rule 27 of the Central Reserve Police Force Rules, 1955. Section 9, 10 and 11 of the Central Reserve Police Force Act, 1949, being relevant, reads as follows:

“9. More heinous offences. – Every member of the Force who –

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be



such; or

(c) shamefully abandons or delivers up any post or guard which is committed to his charge or which it is his duty to defend; or

(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or

Who, while on active duty, -

(e) disobeys the lawful command of his superior officer; or

(f) deserts the Force; or

(g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or

(h) leaves his commanding officer, or his post or party, to go in search of plunder; or

(i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or

(j) uses criminal force to, or commits an assault on any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or

(k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters; or

(l) displays cowardice in the execution of his duty, shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for



a term which may extend to fourteen years or with fine which may extend to three months' pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

10. Less heinous offences. – *Every member of the Force who –*

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or

(b) strikes or attempts to force any sentry; or

(c) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or without proper authority releases any person or prisoner placed under his charge, or negligently suffers any such prisoner or person to escape; or

(d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or

(e) is grossly in subordinate or insolent to his superior officer in the execution of his office; or

(f) refuses to superintend or assist in the making of any field-work or other work of any description ordered to be made either in quarters or in the field; or

(g) strikes or otherwise ill-uses any member of the Force subordinate to him in rank or position; or

(h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accoutrements, or any such



*articles entrusted to him or belonging to any other person;
or*

(i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Force forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accoutrements or other property issued or supplied to him or in his custody or possession as such member; or

(l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of, or any person attached to the Force, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid; or

(m) absents himself without leave, or without sufficient cause overstays leave granted to him; or

(n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline; or

(o) contravenes any provision of this Act for



which no punishment is expressly provided; or

Who, while not on active duty, -

(p) commits any of the offences specified in clauses (e) to (1) (both inclusive) of section 9, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both.

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 considers 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 (d) of sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the



Force away from headquarters, provided he is specially authorized 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 punishment 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 quarter-guard 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 severe censure:

Provided that this punishment may be awarded to a subordinate officer 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 punishments



specified in clause (b) of sub-section (3) for not more than fifteen days.

9. From bare perusal of Sections 9, 10 and 11 it appears that Section 9 defines more heinous offences, Section 10 enumerates less heinous offences and Section 11 enumerates the minor punishments for the offences committed by the member of armed forces. But from perusal of Section 11 it shows that it deals with minor punishments as compare to the major punishments prescribed. The preceding Sections lays down that 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 considers 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.

10. Learned counsel for the petitioner submitted that Section 11 (1) of the Act read with Rule 27 of the Central Reserve Police Force rules, 1955 do not empower the disciplinary authority or not authorized under the law to inflict major punishments such as dismissal or removal from service but the wording of Section 11 of the Act, itself, made it clear that 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 considers 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; the words in lieu of, or in addition to, suspension or dismissal appearing in sub-section (1) of Section 11 before start of clauses of Section 11 connotes that the authorities mentioned therein are empowered to award punishments of dismissal or suspensions to member of the force who is found guilty of any offence in lieu thereof, or in addition to the punishments mentioned in clause (a) to (e) of Section 11(1). This view is fortified by the finding of the Supreme Court in the case of ***Union of India and Others vs. Ghulam Mohd. Bhat*** reported in (2005) 13 SCC 228.

11. The Supreme Court in the case of ***Ghulam Mohd. Bhat*** (supra) in paragraph -7 held as follows :

7. It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the Force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. 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.

12. Sri Choudhary Shyam Nandan, learned counsel for the petitioner further submits and assails the order of dismissal that Dhaneshwary Jha, Assistant Deputy Commandant 11th Battalion of the C.R.P.F. is the enquiry officer (Anneuxre-5), but no presenting officer was appointed to present the case of the department. The enquiry officer acted in dual capacity, as an enquiry officer as well as the presenting officer on behalf of the department. In such circumstances, the report of the enquiry officer cannot be fair and impartial and it carries the elements of biasness. Being enquiry officer he is to record the evidence of the witnesses presented on behalf of the presenting officer of the department and evidences of the delinquent but in absence of the presenting officer the discretion vested with the enquiry officer to chose or pick-up the evidence of the department in order to bring the charge home and therefore under such circumstances he cannot remain fair and impartial.

13. Learned counsel for the petitioner placed reliance on a Single Bench judgment of the Patna High Court in the case of ***Panchanand Kumar vs. Bihar State Electricity Board & Others***



reported in **1996 BLJ 501** in which it is held that if the enquiry officer, himself, took the work of presenting officer and then submitted report with regard to the guilty of delinquent, such procedure is not fair and the enquiry report is deemed to be vitiated and the order of dismissal is fit to be set aside.

14. In reply to the aforesaid submissions, learned counsel appearing on behalf of Union of India submits that Rule 27(c) of the C.R.P.F. rules does not prescribes for appointment of presenting officer or the defence assistants and there is no violation of natural justice and the non-appointment of presenting office does not cause any prejudice, unless any prejudice is shown to the delinquent. The order of dismissal does not require any interference. As it is relevant to the Armed Forces that the petitioner is alleged to have committed gross misconduct of taking wine during daytime and further misbehaved with the superior officer Deputy Commandant Sri Umashankar Singh and threatened him of dire consequences.

15. It is further submitted that in CWJC No. 1562 of 2000 dismissal of CRPF constable of para-military force was terminated. The Union of India preferred LPA No. 318 of 2016 on the ground that there is no such provision of appointment of presenting officer in the departmental proceeding in the case of constable of para-military force and Division Bench of this Court stayed the order passed in CWJC No.



1562 of 2000.

16. On submission of parties, the question arises as to whether non-appointment of the presenting officer vitiates the enquiry report even if it does not cause any prejudice to the delinquent? To decide the question it would be appropriate to reproduce Rule 27 (c) of the Central Reserve Police Force Rules, 1955 which reads 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 orders, where he has power to do so.

17. Rule 27 (C) of the Central Reserve Police Force Rules, 1955 manifests that there is no provision for appointment of presenting officer, but certain conditions for serving the charge and opportunity to the delinquent to file show cause of questionnaire or argument. From the records, it appears that the petitioner was suspended on 03.11.1999, contemplating a departmental enquiry and on 24.11.1999 (Annexure-3) he was served with articles of charge along with questionnaire. Having received the articles of charge and questionnaire, the petitioner submitted his representation along with reply of the questionnaire on 16.12.1999. The petitioner also cited names of the witnesses to be examined on his behalf. The petitioner also gave his reply to the Commandant with regard to the charges upon receipt of the enquiry report and an explanation. Shri Dhaneshwary Jha, Assistant Deputy Commandant 11th Battalion of the C.R.P.F. was made enquiry officer to hold enquiry under Rule 27 of the Central Reserve Police Force Rules, 1955. The enquiry officer after recording the evidence of the department and the delinquent submitted his report and thereupon the Commanding Officer inflicted punishment of dismissal, but the petitioner has not been able to show any prejudice caused to him on account of non-appointment of presenting officer. From the facts, it



appears that the sufficient opportunity was given to the petitioner and learned counsel for the petitioner could not be able to show that any prejudice was caused to the petitioner. Therefore, I find that on account of non-appointment of presenting officer, although there is no rule for appointing presenting officer, no prejudice was caused to the petitioner and the dismissal of the petitioner does not suffer from any illegality.

18. Lastly, learned counsel for the petitioner submits that while the petitioner was posted at Mathura in Battalion 11, he had made a complaint against the officer Sri Kripa Shankar Mishra, sub inspector, C.R.P.F. who was Mess in-charge about siphoning of money of the mess. On such complaint, the Commandant transferred the petitioner to Group Centre, but on representation to the higher authority the transfer of the petitioner was stayed and for that warning was given to the Commandant but the Commandant transferred the petitioner from A/11 Company to B/11 Company and Commandant Rajesh Rathore against whom the warning was given was transferred from Mathura to Nagaland but Rajesh Rathore asked his subordinates to teach a lesson to the petitioner. When the petitioner posted in active operation combat duty, Kripa Shankar Mishra, the Inspector in-charge and M. K. Singh, In-charge, commanding officer were also posted in Agartalla. The Deputy Commandant Uma Shankar Singh with ill motive and grudge, as the petitioner had raised voice against the



Commandant Rajesh Rathore, made allegation of different sorts. Therefore, the entire departmental proceeding is vitiated on account of mala fide intention, but I find no force in the submission of the learned counsel for the petitioner, as I find that no facts to this regard is mentioned in reply of the petitioner submitted to the commanding officer Uma Shankar Singh. Kripa Shankar Mishra on account of any incident happened earlier with regard to Rajesh Rathore is mentioned in the reply of the petitioner submitted to the commanding officer and not any fact was brought on behalf of the petitioner in evidence. During course of enquiry, the petitioner has not taken any plea before the appellate authority and for the first time the petitioner asserts that the intention is out of vengeance on account of malice and grudge.

19. Having considered the facts aforesaid and the discussions made above, I do not find any merit in this writ petition. Accordingly, this writ petition is devoid of any merit and the same is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
CAV DATE	15.02.2017
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