

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.9005 of 2009

P. Swaminathan

..

Petitioner

Vs

1.The Officer Commanding,
D/2 Signal, CRPF,
Avadi,
Madras-65.

2. The Commandant,
2 Signal Battalion,
CRPF,
Hyderabad.

3. The Deputy Director (Communication)
CRPF,
C.G.O. Complex,
Lodhi Road,
New Delhi.

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Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent in his order No.J.II.1/1998-2009-EC-II dated 17.03.2009 and quash the same and to direct respondents to take the petitioner into the strength of the CRPF as Head Constable/Radio operator with all monetary benefits with effect from 11.12.1997 and pay the salary till date.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mrs.Sunita Kumari
CGSC

ORDER

This Writ Petition is filed challenging the order passed by the 2nd respondent in his order No.J.II.1/1998-2009-EC-II dated 17.03.2009 and to quash the same and further to direct respondents to take the petitioner into the strength of the CRPF

as Head Constable/Radio operator with all monetary benefits with effect from 11.12.1997 and pay the salary till date.

2. The brief facts putforth by the petitioner counsel is that the petitioner joined the CRPF as Constable on 10.05.1988, and he was posted at 51-Bn and 110-Bn at Chandigarh and Delhi, on promotion as NK/RO. Thereafter the petitioner seems to have been transferred to the 2nd Signal Bn under the control of the 2nd respondent herein. On 23.10.1996, the 2nd respondent in his Telex Message directed the 1st respondent to relieve the petitioner on 14.12.1996, immediately without further delay. After receiving the said relieving order, the petitioner had challenged the said Telex Message in W.P.No.18789 of 1996 in which, the Writ Petitioner had secured favourable interim injunction restraining the 1st and 2nd respondents from relieving the petitioner from Madras.

3. It is the further case of the petitioner that the 2nd respondent on 05.05.1997 seems to have decided and proposed to hold an enquiry under Rule 27 of CRPF Rules on a charge that the petitioner had committed misconduct under Section 11(1) of CRPF Act, 1949 that the petitioner removed two official radio communications bearing Registration No.3697 dated 23.10.1996 and No.1841 dated 12.12.1996, from the Signal centre records of the Coy without prior permission from the Competent Authority and later these were recovered from his possession on 23.12.1996. For the above said charges, the petitioner had stated that he has already submitted his written statement of defence through proper channel marking a copy to the Enquiry Officer concerned. In the said written statement the petitioner seems to have stated that only spare copies of the radio messages bearing Nos.3697 and 1841 dated 23.10.1996 and 12.12.1996 respectively were removed from the office and both messages are related to the order of transfer and hence, there is no malafide intention in removing those radio messages. In addition to the above submission, the petitioner in the written statement, has stated that the charges have been issued only because the petitioner had approached this Court challenging the Telex Message dated 23.10.1996.

4. The petitioner would also contend that the Enquiry Officer has conducted the enquiry in Hindi, which made the petitioner to represent to conduct the said enquiry in English by sending a representation dated 29.07.1997. In spite of the said request made by the petitioner, the Enquiry Officer proceeded to conduct the enquiry in Hindi, and the Enquiry Officer has not allowed the petitioner to bring the defence witness in the enquiry proceedings to substantiate his case.

5. The petitioner would further contend that the Enquiry Officer without following the procedures laid down in Rule 27 of the CRPF Rules has submitted the report to the second

respondent. Based on which report, the second respondent by his letter dated 05.11.1997 has directed the petitioner to file his explanation to the enquiry report. Thus the petitioner has submitted his explanation dated 01.12.1997 to the enquiry report. The second respondent, without even considering the grounds raised by the petitioner against the said enquiry report, has passed the order dated 11.12.2007 imposing the punishment of removal from service under Section 11(1) of CRPF Act read with Rule 27 of the CRPF Rules. Challenging the said order passed by the 2nd respondent, the petitioner filed the Writ Petition in W.P.No.18675 of 1997 before this Court and the Hon'ble single Judge by order dated 31.03.2003 has set aside the order of the second respondent dated 11.12.1997 and remanded the matter back to the respondents with a direction to take appropriate decision with respect to the punishment to be imposed, within thirty days from the date of receipt of a copy of that order.

6. The petitioner would also contend that in the said order in W.P.No.18675 of 1997 there was an observation by this Court regarding the punishment that, "the Court was of the considered opinion that the punishment imposed on the petitioner in this regard is shockingly disproportionate inasmuch as the copies of the proceedings were required to be filed before this Court W.P.No.18789 of 1996 as otherwise the petitioner would not have got an order of interim injunction against the order of transfer." The said order made in W.P.No.18675 of 1997 dated 31.03.2003 was challenged by the respondents in W.A.No.1819 of 2004 and the Hon'ble Division Bench of this Court, after considering the submissions of the learned counsel on either side, by its order dated 02.12.2008, while dismissing the Writ Appeal and remitting the matter back to the disciplinary authority for passing fresh orders on the quantum of punishment, has observed that no error apparent on the face of the record in the impugned order passed by the learned Single Judge.

7. The learned counsel for the petitioner would further point out that at the time of remitting the matter back to the disciplinary authority, this Court, in W.P.No.1819 of 2004, has made the observation that the petitioner has removed and used the spare copies of the radio messages relating to the order of transfer and the same was challenged in W.P.No.18789 of 1996 and the said misconduct is not a serious one to warrant his removal from service.

8. The second respondent, on remittance of the matter by this Court, had modified the order of removal from service into the order of 'compulsory retirement' by his order dated 17.03.2009 with effect from 11.12.1997. Aggrieved by the said order dated 17.03.2009, the present Writ Petition is filed.

9. The respondents have filed a counter, in which the respondents contended that the misconduct committed by the petitioner is very serious in nature even in the absence of any mala fide and hence it is liable to be dealt with appropriate punishment and if no serious punishment is imposed on the petitioner, it would definitely demoralize the members of the Force and would encourage the others also to indulge in nefarious activities to suit their purposes. As such, the offence committed by the petitioner is very grave and necessarily need to be handled appropriately. The respondent further contended in the counter that the procedures laid down under Rule 27 of the CRPF Rules and procedures laid down in the Act were scrupulously followed. In fact, in the counter, it is vehemently denied that the charges were not framed just because the petitioner approached this Court.

10. In the counter, the respondents also denied the allegations of the petitioner that his request for switching over to English was not considered and they stated that at the time of commencement of the enquiry, the petitioner himself agreed to conduct the enquiry in Hindi due to the reason that he experienced difficulties to understand the charge sheet served on him in English language. So the request for switching over to English is only a delaying tactics for prolonging the enquiry. The petitioner was accommodated for nearly one year and nine months with sympathy and compassion by the Competent Authority on all the three times when he made request for extension of service in the said area.

11. The learned counsel appearing for the respondents would also contend that there is an appeal remedy or further revision available before appropriate authority against his grievance and without filing the same, the petitioner has filed the Writ petition straight away. The learned counsel for the respondents would further contend that the procedure laid down in the Act were scrupulously followed. In these circumstances, the quantum of punishment awarded is only after considering the gravity and serious misconduct and demoralizing act committed by the petitioner. Hence, the learned counsel for the respondents seeks for dismissal of the Writ Petition.

12. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents and perused all the materials on record.

13. It is not in dispute that the petitioner had voluntarily removed two official Radio communications bearing Registration No.3697 dated 23.10.1996 and No.1841 dated 12.12.1996 respectively from the office in the 10th Bn which relates to the order of transfer of the petitioner herein. The Article of Charges against the petitioner is as follows Article-I:

"While functioning as NK/RO 'D' Coy 2 Signal Bn, CRPF, Avadi, Chennai, No.881162314 NK/RO P.Swaminathan has committed misconduct under Section 11(1) of CRPF Act, 1949 in that he removed two official radio communications bearing Registration No.3697 dated 23.10.1996 and No.1841 dated 12.12.1996 from the Signal Centre records of the Coy without prior permission from the Competent Authority and later these were recovered from his possession on 23.12.1996"

14.It is seen from the records, there is no doubt that the petitioner was charged with the above charge and enquiry was conducted and the 2nd respondent imposed a punishment of removal from service under Section 11(1) of CRPF Act read with Rule 27 of the CRPF Rules. Section 11 of CRPF Act deals with minor punishments and Rule 27 of CRPF Rules prescribes the procedures for the award of punishment.

Section 11 of CRPF Act reads as follows:-

"Rule 11. Minor punishments.-(1) The commandant or any order 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 anyone 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 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 the time being subject to his authority anyone 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 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 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."

15. The learned counsel appearing for the petitioner would vehemently contend that the order passed by the 2nd respondent is contrary to the directions issued by this court both in W.P.No.18675 of 1997 dated 31.03.2003 and W.A.No.1819 of 2004 dated 02.12.2008. He would also contend that in both Writ Petition and Writ Appeal, the learned Judges have considered that the punishment imposed on the petitioner is shockingly disproportionate and while holding so, remitted the matter back to the authorities/respondents to impose lesser punishment other than termination and respondents deliberately did not follow the directions issued by this Court in the Writ petition as well as in the Writ appeal.

16. The petitioner has also filed an additional typeset of papers containing the memorandum, written statement of defence, enquiry report, reply to the enquiry report filed by the petitioner. The learned counsel for the petitioner would further

contend that since order of removal dated 11.12.1997 was set aside by order dated 31.03.2003 in W.P.No.18675 of 1997, the respondents ought to have reinstated the petitioner, but the respondents vide the impugned order dated 17.03.2009, awarded the punishment of 'Compulsory Retirement' with effect from 11.12.1997 which is arbitrary and illegal and has to be set aside.

17. The learned counsel appearing for the respondents would vehemently argue that the Writ petition itself is devoid of merits and the Writ petition ought to have been dismissed even at the admission stage, since there was an Appeal remedy available to the petitioner under the Act, which the petitioner has not chosen, but filed the Writ Petition, which ought not to have been entertained.

18. The learned counsel for the respondents would further contend that there is no specific direction issued by this Court neither in the Writ Appeal nor in the Writ petition regarding the punishment. The learned counsel for the respondents would also rely upon the judgment of the Hon'ble Supreme Court reported in AIR 2016 Supreme Court 3131 (Union of India and others Vs. Diler Singh) on the proposition that as a member of the disciplined force, the petitioner was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, the order of dismissal is proper.

19. The learned counsel for the respondents would also rely upon a Judgment of the Hon'ble Supreme Court reported in (2005) 13 SCC 228 (Union of India and others Vs. Ghulam Mohamed Bhat) to emphasis the proposition of power of the High Court to interfere in service matters when permissible. It is also held that the punishment of dismissal can certainly be awarded even if the delinquent is not prosecuted for an offence under Section 9 or under Section 10 and Section 11(1) refers to the Rules made under the Act, under which action can be taken and Rule 27 is part of the Rules made under the Act which permits removal by the Competent Authority.

20. It could be seen from the entire records, especially the earlier orders passed by this Court in W.P.No.18675 of 1997, wherein this Court while setting aside the order of removal dated 11.12.1997 and remitting the matter back to the 2nd respondent, has certainly expressed the disproportionality of the punishment imposed on the petitioner when the petitioner was removed from service by the order dated 11.12.1997. When the said order came to be challenged by the respondents, the Hon'ble Division Bench of this Court in Writ Appeal W.A.No.1819 of 2004, upheld the order of the learned single Judge.

Thereafter the respondents have considered and modified the order of removal to an order of 'Compulsory Retirement' with effect from 11.12.1997. According to the respondents, the basis for passing the impugned Order is only the gravity of the charges, which has to be looked into.

21. It is no doubt, that the High Court under Article 226 cannot reappraise the facts and no interference with the proceedings is permitted. The charges on the member of the disciplined force should also be looked into. The charge against the petitioner was that the petitioner has removed two official Radio communications bearing Registration No.3697 dated 23.10.1996 and No.1841 dated 12.12.1996 from the Signal Centre records of the Coy without prior permission from the Competent Authority which was recovered from him at a later point of time i.e on 23.12.2016. A person, who is in the Telex Communication Department and is a member of the force and his post is a highly confidential segment 'Radio Telex Department', is expected to follow not only the rules but also expected to have high integrity and also discipline while holding such post.

22. On 23.12.1996, the respondents found some of the official documents were tampered and few papers were taken away by some un-known person on 22.12.1996, by entering in the Coy Office of D/2 Signal Bn at Avadi with a master key or so, as the lock was in tact. The complaint was lodged by the Station House Officer to the Police Station, HVF Avadi. Even after a thorough search, the missing papers were not traced out but radio communications bearing Registration Nos.3697 and 1841 were retrieved from the cupboard of the petitioner, which he also admitted having removed from the record message bundles dated 23.10.1996 and 12.12.1996. Since the petitioner himself has admitted that he has removed two telex messages as it were pertaining to the transfer order which came to his knowledge which is being communicated between one authority to other authority, the act of the petitioner and the explanation cannot be condoned merely because it is spare copy of the telex message pertaining to his own transfer.

23. It is seen from the records that there is no flaw in the record about the enquiry report, which is not the basis in the Writ petition challenging the impugned order. The gravity of the offence committed by the petitioner has to be seen as it is a telex message, a communication sent by one authority to another authority and the petitioner has committed a serious offence and the Department has prescribed an appropriate punishment and imposed such punishment as per the Rules, even though the persons may have held sophisticated post. All that it has to be looked into is whether the department while imposing punishment has followed the procedures contemplated and Rule 27 of the CRPF Rules. On mere perusal of Rule 27 of CRPF Rules under Section

11(1) of CRPF Act, it would be clear that the punishment has been imposed only after following the above rules.

24. The Hon'ble Supreme Court in (2005) 13 SCC 228 (cited supra) has held as follows:

"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.

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.

8. It is fairly well-settled position in law that removal is a form of dismissal. This Court in *Dattatraya Mahadev Nadkarni (Dr.) v. Municipal Corpn. of Greater Bombay* explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to the Rules made under the Act under which action can be taken. Rule 27 is part of the Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order."

The decision rendered by the Hon'ble Supreme Court in the above referred case squarely applies to the case in hand.

25. The petitioner has conveniently suppressed the fact of receiving the messages and respondents has imposed a punishment of 'Compulsory Retirement' as per the observation made by the Hon'ble Supreme Court in the case referred above (2005) 13 SCC 228 (cited supra). As per the same, this Court is of the view that the punishment imposed on the petitioner cannot be interfered with.

26. That apart, Rule 28 of CRPF Rules 1955, which deals with Appeal, is as follows:

"[(a) Every subordinate officer or personnel of any other rank below him against whom an order under serial number 1 to 7 of the table in Rule 27 or under clauses (d) and (e) of Section 13 is passed is entitled to prefer an appeal against such order to the Director-General, if the original order was passed by the Special Director-General or additional Director-General heading zone and to the Special Director-General or Additional

Director-General heading Zone, if the original order was passed by the Inspector-General and to the Inspector-General, if the original order was passed by the Deputy Inspector-General and to the Deputy Inspector-General, if the original order was passed by the Commandant.]

(b) No appeal shall lie against an order by the competent authority inflicting any of the punishments mentioned in-

(1)[Serial Nos.8 to 11 of the Table in Rule 27;]

(2)Clause (a), (b) and (c) of Section 13;

(3)Against an order discharging recruit before the termination of his period of training.

[(c) Every appeal preferred under these rules shall contain all material statements and arguments relied upon by the person preferring the appeal. It shall contain no disrespectful or improper language or irrelevant allegations and it shall be complete in itself. Petitions or appeals filed by members of the Force are not chargeable with stamp duty. Copies of other documents filed with the appeal shall be stamped under section 6 of the Court Fees Act, 1870, unless they have to be stamped under Article 24 of Schedule I of the Indian Stamp Act, 1899

(d) Every appeal, whether the appellant is still in the Force or not, shall be preferred through the Commandant and shall not be sent direct to the appellate authority.

(e) An appeal which is not filed within 30 days of the date of the original order, exclusive of the time taken to obtain a copy of the order or record, shall be barred by limitation:

Provided the appellate authority may entertain time barred appeal if deemed fit.

(f) The Commandant may withhold [an appeal to the appellate authority senior to him] in cases-

(1)Where under these rules no appeal lies;

(2)Where the appeal does not comply with the provisions of sub-rule (c), (d) or (e) above;

(3)Where it is a further appeal presented after a final decision has been given by the competent appellate authority and

no new facts have been brought out necessitating reconsideration of the case: Provided that in every case in which an appeal is withheld the person preferring the appeal shall be informed of the fact together with brief reasons therefor;

(g) No appeal shall lie against an order with holding of an appeal by a competent authority:

Provided that in cases of failure to comply with the conditions stated in sub-rule (c) or (d) above, the appeal shall not be withheld if it is preferred again in the prescribed form in conformity with the rules and is not time barred.

(h) A quarterly statement of all appeals withheld with brief reasons in respect of each appeal shall be furnished by the Commandant to the Deputy Inspector-General."

27. So, as per Rule 28 of CRPF Rules, if the order was passed by the Commandant, an appeal to the Deputy Inspector General is available to the petitioner and thereafter revision is also provided under Rule 29, which reads as follows:

"Rule 29-Revision:(a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed."

28. When the petitioner has not exhausted the alternative remedy available i.e., the appeal and the revision, the present Writ petition under Article 226 cannot be sustained on any ground. The petitioner has not made out any exceptional circumstances to interfere with the impugned order under Article 226 of the Constitution of India. When there is an appeal remedy available, the High Court cannot exercise its extraordinary jurisdiction under Article 226 of the Constitution of India except unless any exceptional circumstances warrants interference dehors appellate remedy.

29. Under these circumstances, the gravity of the offence committed by the petitioner cannot be taken lightly that too when the persons like the petitioner perform their duties in uniformed services are expected to be up-right and disciplined. Any violation of the same while in duty cannot be treated lightly. The uniformed force which guards the nation should be more vigilant and should be above the common man and when the

personnels in the uniformed force if transferred from one place to another has to immediately report for duty. Hence the petitioner's act of concealing the said message from the higher officials to whom the message has been sent cannot be condoned. Hence the punishment of removal as modified into 'Compulsory Retirement' by the second respondent, when the matter was remitted back by this Hon'ble Court to impose any other punishment, seems to be in consonance with Rule 27 of CRPF Rules 1955.

30. In view of the above facts, reasons and discussions, this Court is not inclined to pass any order interfering with the order of the respondents. Hence the Writ petition fails and accordingly, is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd/vji/mra
To

- 1.The Officer Commanding,
D/2 Signal, CRPF,
Avadi,
Madras-65.
2. The Commandant,
2 Signal Battalion,
CRPF,
Hyderabad.
3. The Deputy Director (Communication)
CRPF,
C.G.O. Complex,
Lodhi Road,
New Delhi.

+1 cc to Ms.Sunitakumari Advocate sr 68088

W.P.No.9005 of 2009

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