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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th November, 2020

+ **WP (C) No. 8984/2020, C.M. Appl. No. 29000/2020**

HARJINDER SINGH

..... Petitioners

Through: Mr. Anilendra Pandey, Advocate

versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Mr. Raj Kumar Yadav Sr. Panel
Counsel for UOI

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

ASHA MENON, J.

C.M. Appl. No. 28832/2020 (for Exemption from filing the certified copy of the Annexures) in WP (C) No. 8984/2020

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

WP (C) No. 8984/2020

3. The petitioner has filed this petition under Article 226 and

227 of the Constitution of India seeking the following prayers:

“(i) Issue a Writ, Order or Direction in the nature of Certiorari quashing thereby the Office Order No. R Thirteen-04 (117)/2020-Ddn dated 15.09.2020, Office Order No. R.XIII-117/2020-EC-3 dated 19.02.2020 and the Office Order No. P.VIII-117/2020-EC-3 dated 03.10.2019 passed by the Respondent Nos. 2, 3 and 4 respectively;

(ii) Issue a Writ of Mandamus directing the Respondents to reinstate the Petitioner in the service in the interest of justice;

(iii) For the issuance of any other order, direction or relief which this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the case.”

4. The facts as are relevant for the disposal of this petition are that the petitioner had joined the Central Reserved Police Force (CRPF) as Constable/General Duty (CT/GD) on 11th March 2011. He remained posted in 45 Battalion for 7 years and thereafter was posted with 117 Battalion, CRPF at Srinagar, (J&K) where he remained from 20th December 2018 till 3rd October 2019, on which date he was dismissed from service.

5. The petitioner was issued a Memorandum of Charge for Departmental Enquiry by Commandant 117 Battalion CRPF vide Memo No. P.VIII-3/2019-117-EC-2 dated 5th April 2019 on two charges. The Enquiry concluded holding him guilty of the two charges framed against him, which were as follows:

“POINT – ONE

That the Force No.115319687 Harjinder Singh, E/117, Battalion, deputed on the post of Sepoy/G.D. in the Central Reserve Police Force has been acted and violated the discipline being the member of the force under Section 11(1) of the Central Reserve Police Force Act, 1949, wherein the said personnel in the midnight of the 18.03.2019 to 19.03.2019 time 12.00 hrs to 3.00 hrs having his duty on the Headquarter /117 at the front No.06 but did not reach within time. Thus, the guard commander Hav./G.D. Anil Kumar Yadav sent to the Urgan Kalson Sepoy/G.D. to call him from the line but the Sepoy/G.D. Harjinder Singh was continued to sleep under the intoxication of the liquor and despite waking him up twice he reached the front about half an hour late. By this act of him the image of the force has been faded, which is against the rules of the force and the punishable office under Rule 27 of the C.R.P.F. Rules 1955.[sic]

POINT – TWO

That the Force No.115319687 Harjinder Singh, E/117, Battalion, deputed on the post of Sepoy/G.D. in the Central Reserve Police Force has been acted and violated the discipline and performed the misconduct being the member of the force under section 11(1) of the Central Reserve Police Force Act, 1949, wherein by the Force No. 115319687 Sepoy/G.D. Harjinder Singh not reaching within time on his duty and when asking and shouting by the guard commander Hav. /GD Anil Yadav for the reason of late coming, he on the guard commander tried to attack by cocking the rifle which was foiled by the standing nearby force No. 110045606 Sepoy/G.D. Kamlesh Pal by his promptness who did the barrel upwards and snatched the weapon from him and by detaching the magazine from the rifle and put the same on the safety catch “S’

and save by a big mishappening. That of the misconduct of the Force No. 115319687 Sepoy/G.D. Harjinder Singh faded the image of the force, which is against the rules of the force and a punishable offence under Section 27 of the C.R.P.F. Rules 1955.”[sic]

6. Vide order dated 3rd October 2019, (Ann. P-2), the findings of the Enquiry Officer were affirmed by Commandant-117 Battalion and the following order was passed, *inter alia*;

“08. ...(a)...Thus, for his serious misconduct/ atrocity I punish him by dismissing from the service to the Force No.115319687 Sepoy/G.D. Harjinder Singh from the issuance of this date means dated 03.10.2019. Accordingly he remains out from this date from the unit of this battalion.” [sic]

7. As the petitioner was entitled to appeal against this decision, he submitted his appeal to the Deputy Inspector General of Police, CRPF, Rampur Range, U.P. which was also rejected vide order dated 19th February 2020 (Annexure P-3 Colly). Thereafter, he submitted a revision petition under Rule 29 of the CRPF Rules 1955 (Annexure P-4 Colly) which was also rejected by Shri Subhash Chandra I.P.S. Inspector General of Police, CRPF, Dehradun Sector.

8. Having exhausted all the remedies, the petitioner has come up before this Court seeking quashing of the orders of dismissal from service and reinstatement in the Force.

9. We have heard learned counsel for the petitioner and the counsel for the respondents appearing on advance notice and have

carefully perused the record.

10. The main arguments pressed on behalf of the petitioner are that under Section 11(1) of the Central Reserve Police Force Act, 1949, ('Act', for short) the major penalty of dismissal could not be imposed and secondly, the punishment of dismissal was disproportionate to the alleged misdemeanor. It was submitted on behalf of the petitioner that he was anxious about his mother's health due to which he was stressed out and had misbehaved after taking liquor but that he had apologized sincerely for this misdemeanor and had assured that it would never recur. Therefore, this Court should set aside the order of dismissal and reinstate the petitioner to his service.

11. There is no merit in either of these two submissions. The question whether after an enquiry under Section 11(1) of the Act major penalty can be imposed is no longer *res integra*. Reference may be made to the decision of the Supreme Court of India in ***Union of India vs. Diler Singh*** (2016) 13 SCC 71: 2016 SCC Online SC 647. The Supreme Court quoted with approval its decision in ***Union of India vs. Ghulam Mohd. Bhat***, (2005) 13 SCC 228 and held as follows:

“20. The core issue that emerges for consideration is whether under Section 11(1) of the Act, punishment of dismissal can be imposed. The controversy is no more res integra. In Ghulam Mohd. Bhat 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.”

“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.”

21. 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.”

12. It is thus clear that Section 11(1) vests in the Commandant the powers to, as a consequence of the disciplinary proceeding, in addition to imposing major punishment of suspension or dismissal also impose certain other punishments which are described in this section as ‘minor’. It does not limit the power of the Commandant or any other Authority or Officer to or prevent them from imposing major punishment in circumstances that warrant it. Additionally, they have the power to impose punishments prescribed under Section 11(1) of the Act. For instance, while dismissing a delinquent from service, he could also be confined in the quarter-guard for not more than 28 days.

13. We had occasion to deal with this question in slightly different factual context in ***Dharampal Singh vs Union of India & Ors W.P.(C) 6409/2020*** , where having noticed the decisions of the Supreme Court in ***Diler Singh’s*** case and ***Ghulam Bhat’s*** case, we turned down the argument that a punishment would be “minor” if it was imposed by exercise of power vested under Section 11(1) of the Act as it was bearing the title “Minor Punishments”. Repelling such a contention we held:

“15. Section 11 titled “Minor Punishments”, in the absence of any corresponding provision in the Act titled “Major Punishments”, cannot, in our view, be treated as a repository of classification of punishments into minor and major. Even otherwise, though the title of Section 11 is “Minor Punishments” but else in the body of the Section there is no reference to the punishments enlisted thereunder being minor or major. Once the words ‘minor punishment’ are not to be found in the content/body of Section 11, the Rule of interpretation of Statutes, that in the absence of any ambiguity the title of the Section cannot influence the interpretation of the substantive part of the Section, would apply and merely because Section 11 is titled “Minor Punishments” would not lead us to interpret the punishments listed thereunder to be intended to be treated as a minor punishments.”

14. We reaffirm the view taken by us in Dharampal’s case that Section 11(1) of the Act empowers the competent official to impose certain other penalties described as “minor” penalties along with or instead of the “major” penalty of suspension or dismissal from service but in no way limits the power to impose such major penalties in accordance with the prescribed procedure.

15. With regard to the arguments on proportionality, it is evident from the Articles of Charge that the conduct of the petitioner does not behove a member of the Armed Forces/Police Forces. At the time when he was required to attend to his guard duty at the Camp, he was asleep under the intoxication of the liquor. When he was forced to get up by a duly deputed Sepoy, he misbehaved with him and thereafter reached the place of duty half an hour late. When he

was questioned, he abused and shouted at Commandant Hawaldar/GD Anil Kumar Yadav and went to the extent of attempting to shoot the guard commander. It was the swiftness of the Sepoy/G.D. Kamlesh Pal and his promptness of turning the barrel upwards and snatching the weapon from the petitioner and removing the magazine that saved the day, nay, the night, so to speak. He has not been charged for the criminal offence of attempt to murder. After due process was adopted, the petitioner has been punished with dismissal from the service, which by no means can be described as disproportionate. Such a person would be a great liability on the Force and there can be no justification available for directing his reinstatement in the CRPF.

16. In fact, while dismissing the revision petition filed by the petitioner, the Inspector General of Police, CRPF, Dehradun Sector, recorded the views of the Force in the following words:

“The act of the petitioner is serious in nature and grossly reprehensible crime. In this way the personnel having a Criminal thought and not controlling over his anger again in some awkward condition and incident is possible by him for firing without any reason, which can be harmful for the armed force like C.R.P.F., thus, the petitioner is not found (fit) to (be) keep (kept) in the service and the punishment of dismissal from service given for the serious misconduct/ arrogance is well under proportion of the seriousness of his act. Thus, the case of the petitioner is liable to be dismissed.”

17. It is apposite to quote from **Diler Singh** (supra) in this regard, for it could not have been said better:

“26. We are inclined to think so as a member of the disciplined force, the respondent was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in fancy. It is not a mild deviation which human nature would grant some kind of lenience. It is a conduct in public which has compelled the authority to think and, rightly so, that the behaviour is totally undisciplined. The respondent, if we allow ourselves to say so, has given indecent burial to self-control, diligence and strength of will power. A disciplined man is expected, to quote a few lines from Mathew Arnold:

*“We cannot kindle when we will
The fire which in the heart resides,
The spirit bloweth and is still,
In mystery our soul abides:
But tasks in hours of insight will'd
Can be through hours of gloom fulfill'd.”*

Though the context is slightly different, yet we have felt, it is worth reproducing.

18. We too have like-wise felt it worth reproducing! In the facts of the case at hand, when the act of the petitioner could have resulted in the loss of life, to retain him in the CRPF would be

simply dangerous for the members of the Force, it would be a liability to the public also.

19. The present petition is completely devoid of merit and is accordingly dismissed.

**ASHA MENON
(JUDGE)**

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 12, 2020
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