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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2753-2009 (O&M)

Date of Decision: 22.05.2023

Union of India and others

...Appellants

Versus

Virender Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shiv Kumar Sharma, Senior Panel Counsel
for the appellants-UOI.

Ms. Anu Chatrath, Sr. Advocate with
Mr. Nishant Maini, Advocate
for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

1. The present Regular Second Appeal, has been filed by the appellants-defendants challenging the judgment and decree dated 10.03.2009 passed by the lower appellate court by which, the suit filed by the respondent-plaintiff, challenging the order dated 11.01.2001 passed by the appellants-defendants dismissing him from service, has been set-aside being contrary to the provisions to the CRPF Act, 1949.

2. In order to appreciate the issue raised in the appeal in correct perspective, certain facts needs to be mentioned.

3. The respondent-plaintiff was appointed on the post of a Driver in the Central Reserve Police Force (C.R.P.F.) on 21.11.1991. The Battalian where respondent-plaintiff was posted, was transferred from Tripura to Jammu & Kashmir and during re-location of the Government

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store on 24.04.1999, the vehicle being driven by the respondent-plaintiff met with an accident on a National Highway-40 in Meghalaya about 35 kms from Shillong. In the said accident, five personnel suffered injuries out of which, one personnel suffered grievous injuries and the vehicle was badly damaged.

4. A Court of Inquiry (COI) was conducted to enquire into the circumstances which led to the accident. After the enquiry, the respondent-plaintiff was held responsible for violating the convoy instructions on account of driving the vehicle rashly and negligently, which led to overturning of the vehicle while negotiating a 'U Shape' curve.

5. Keeping in view the finding given during Court of Inquiry, a departmental inquiry was initiated against respondent-plaintiff under Section 11(1) of CRPF Act, 1949 read with rule 27(c) of CRPF, wherein the allegations alleged were proved and ultimately, vide order dated 11.01.2001, the respondent-plaintiff was dismissed from the service.

6. Aggrieved by the order of dismissal from the service, an appeal was preferred by respondent-plaintiff which was rejected by the authorities on 01.05.2001 and accordingly, a civil suit was filed by the respondent-plaintiff challenging the order of punishment as well as rejection of appeal.

7. During the trial, keeping in view the evidence and facts which came on record, the trial Court came to the conclusion that in the disciplinary proceedings initiated under Section 11(1) of the CRPF Act, the major punishment of dismissal cannot be imposed and the said punishment was set aside and accordingly the suit filed by the

respondent-plaintiff was decreed in his favour.

8. Feeling aggrieved by the decision of the trial Court dated 20.11.2004, an appeal was preferred by appellant-respondent. In the said appeal, the Lower Appellate Court on 10.03.2009, dismissed the appeal filed by the Union of India holding that under Section 11 (1) of the CRPF Act, only minor penalty can be imposed, whereas, the major penalty of dismissal from service imposed upon the respondent-plaintiff was contrary to the Section 11(1) of the CRPF Act. Hence the present Regular Second Appeal.

9. Learned counsel for the appellant argues that the only reason given by the Courts below to allow the suit filed by the respondent-plaintiff qua the challenge to the order of punishment is that under Section 11(1) of the CRPF Act, only minor punishment can be imposed and not the major punishment, whereas, as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.4950 of 1999*** titled as ***Union of India Vs. Ghulam Mohd. Bhat*** decided on **20.10.2005**, while interpreting Section 11(1) read with Rule 27 of the Central Reserve Police Rules, 1955, it has been held that even major punishment can be awarded under the proceedings initiated under Section 11(1) of the CRPF Act, 1949. Hence, the reasons given by the Court below to set aside the punishment of dismissal, is contrary to the interpretation of Section 11(i) of CRPF Act of 1949 as settled by the Hon'ble Supreme Court of India and, therefore, the judgment of the Court below are liable to be set aside.

10. Learned counsel for the respondent-plaintiff, on the other hand, submits that in the present case, there were more than one grounds raised to challenge the punishment imposed and the ground with regard

to imposition of minor punishment under Section 11(1) of the CRPF Act, 1949 was only one of the ground raised. Learned counsel for the respondent/plaintiff further submits that the respondent/plaintiff had more than 11 years of service to his credit and that too without any blemish and the accident of vehicle occurred on sharpe U-turn and the same only happened due to the mechanical fault in the breaks of the truck and the said fact has not been taken into account while imposing the punishment of dismissal.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. At the outset, it may be noticed that the only ground which has been taken into consideration by both the Courts below is that the imposition punishment of dismissal from service is contrary to the Section 11(1) of the CRPF Act, 1949 as only minor punishment can be imposed under the said provision. Keeping in view the judgment of the Hon'ble Supreme Court in ***Ghulam Mohd. Bhat's*** case (supra), the law is clear that under Section 11(1) of the CRPF Act, even a major punishment can be imposed.

13. Learned Senior counsel appearing on behalf of the respondent-plaintiff has not been able to distinguish the judgment in ***Ghulam Mohd. Bhat's*** case (supra) as to how the said referred judgment is not applicable in the present case in order to save the claim of the respondent-plaintiff in his favour that under Section 11(1) of the CRPF Act, 1949, major punishment cannot be imposed. That being so, the only finding which has been recorded in the Courts below to allow the suit, is contrary to the settled principle of law and cannot be sustained and are

accordingly set aside.

14. At this stage, learned Senior counsel appearing on behalf of the respondent-plaintiff submits that as number of grounds were raised to challenge the order of punishment including the ground that the punishment imposed is without any application of mind to the facts and circumstances of the present case and is also disproportionate to the charges alleged and proved, therefore, the claim of the respondent-plaintiff needs to be considered in light of the said grounds raised.

15. Learned counsel appearing on behalf of the appellants submits that he has no objection that the other grounds raised to challenge the impugned order of punishment are considered by the competent Court of law.

16. Learned counsel for the respondent-plaintiff submits that the punishment was imposed in the year 2001 and 22 years have already elapsed and in case the case is remanded back to the trial Court, it shall take considerable time to decide the suit again and a prayer is made that those grounds, which were part of the pleading before the trial Court, may be decided by this Court rather than remanding back the case to the trial Court for a fresh consideration.

17. Learned counsel for the appellant submits that he has no objection in case, any of the ground raised to challenge the order of punishment is addressed before this Court for consideration rather than remanding the case back to the trial court for fresh order.

18. Keeping in view the joint request of the parties, the arguments of the plaintiff qua challenge to the impugned orders with regard to the imposition of punishment upon the respondent-plaintiff

being disproportionate to the charges alleged and proved, which is the only ground raised before this Court, is being considered.

19. For deciding the argument whether the punishment imposed is disproportionate to the charges alleged and proved, certain facts need to be adverted. At the time of the accident, which forms the basis for imposition of the punishment upon the respondent-plaintiff, the plaintiff already had more than 08 years of service to his credit. Prior to the occurrence of the said accident or even thereafter upto the date the punishment was imposed upon the respondent-plaintiff, there is no negligence or any dereliction attributed to him. Furthermore, it is conceded that respondent-plaintiff has blot-less service to his credit. Furthermore, whether the accident occurred due to the rash and negligent driving of the respondent-plaintiff or whether the said accident was due to the mechanical failure, requires consideration while imposing the punishment upon the plaintiff.

20. From the facts on record, it is clear that the accident occurred in a mountain terrain and that too while negotiating a sharp U-turn and that too while driving a truck, which was over loaded. Sometimes, even an error of judgment, can lead to an accident and same cannot be regarded as rash and negligent driving of the driver. Even the mechanical failures in the vehicles do contribute in the accidents. Furthermore, place and situation of the accident also requires due consideration while adjudicating as to whether, the accident in the present case falls under the category 'rash and negligent driving'.

21. In the reply filed on behalf of the appellants-Union of India to the civil suit, in Paragraph 7(i), it has been conceded by Union of India

that it cannot be ruled out that the accident in question was due to the mechanical failure of the vehicle.

22. Keeping in view the totality of the circumstances that the Truck was overloaded and was being driven in a hilly area and was negotiating a very Sharp U-turn when the accident occurred and in the light of the fact that the respondents themselves has stated that it cannot be ruled out that there was a mechanical failure with regard to the breaking system of the Truck in question coupled with the fact that the appellant- Union of Indian is also not confident that the accident occurred due to rash and negligent driving and there could be other reasons also for the accident, it can be very well said that the punishment of dismissal imposed was too harsh keeping in view the above stated facts and circumstances and also considering that track record of the plaintiff that in his whole career, there is no other negligence or dereliction attributed to him and there was no other similar complaint pending qua him. Once, there can be a possibility that the accident may have occurred due to any other inevitable circumstances and not due to negligence, therefore, merely on the basis that in the accident some personnel, who were traveling in the Truck, got injured or the truck was badly damaged, cannot be a ground for imposing the maximum punishment. Hence, keeping in view the above-stated facts, the punishment of dismissal, which is regarded as maximum punishment, which can be imposed on a delinquent official, is disproportionate to the charges alleged and proved in the present case and hence the same is accordingly set-aside.

23. Keeping in view the settled principle of law, the Courts have

no jurisdiction to impose or substitute punishment imposed, hence, the case is remanded back to the authorities concerned to re-evaluate the punishment imposed upon respondent-plaintiff by taking into consideration all the relevant facts stated herein before so as to pass a final order in the disciplinary proceedings. It may be noticed that during the hearing, the learned counsel for the respondent-plaintiff had submitted that in case the respondent-plaintiff is reinstated, he will forgo the 50% of the back wages, hence the said offer of the respondent-plaintiff be kept in mind while passing fresh order. It would be appreciated, in case the fresh order, if any, is passed within a period of eight weeks, from the receipt of the copy of this order.

24. The present regular second appeal is disposed of in above terms and the suit filed by the respondent-plaintiff is partly allowed in the terms and conditions mentioned hereinbefore.

25. Any civil miscellaneous application, which is pending, is also disposed of.

22.05.2023

ps-I

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No