

CWP-1376-2024

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

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CWP-1376-2024

Date of Decision: 28.05.2024

Surender Kumar

...Petitioner

Versus

Union of India and others

...Respondents

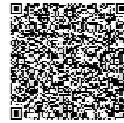
CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Mukesh Yadav, Advocate for the petitioner

Mr. Anil Chawla, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 28.12.2023 (Annexure P-19) whereby he has been dismissed from service.
2. The petitioner joined Central Reserve Police Force (for short 'CRPF') as Constable on 29.11.2010. He solemnized marriage with Babita daughter of Shimbhu Dayal on 24.01.2003 and from this wedlock two children were born. A matrimonial dispute, on account of alleged illicit relation of petitioner with another lady, erupted between the couple. His wife approached Court as well as CRPF authorities. The matter came up before Sub-Divisional Judicial Magistrate, Mahendergarh with respect to maintenance under Protection of Women from Domestic Violence Act, 2005

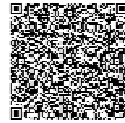


(for short '**DV Act**'). The petitioner was directed to pay maintenance of ₹10,000/- per month to his wife and children.

3. On account of complaints by petitioner's wife, the respondent-department initiated disciplinary proceedings against him. He was served charge sheet dated 24.10.2017. In the charge sheet, it was alleged that petitioner had disobeyed orders of higher authorities and he is not paying maintenance to his wife and children, thus, he has committed offence punishable under Section 10(n) as well as Section 11(1) of Central Reserve Police Force Act, 1949 (for short '**CRPF Act**') read with Rule 27 of Central Reserve Police Force Rules, 1955 (for short '**CRPF Rules**'). The respondent conducted inquiry and Commandant vide order dated 07.04.2018 (Annexure P-3) dismissed him from service. The petitioner unsuccessfully preferred an appeal as well as revision before higher authorities. The petitioner preferred *CWP No.16362 of 2021* before this Court seeking setting aside of punishment orders. This Court vide order dated 06.12.2023 disposed of said petition with a direction to respondent to re-consider quantum of punishment. The relevant extracts of order dated 06.12.2023 are reproduced as below:-

"3. Learned counsel for the respondents concedes that petitioner was removed from service on the sole ground that wife of the petitioner was repeatedly lodging complaints to the effect that petitioner is staying with another lady and misbehaving with her. He further concedes that there was no dereliction in duty except his indiscipline which was inferred on the basis of her extra marital relations.

4. The respondent had taken action against the petitioner as he was not taking care of his wife and children. He was not



paying them cost of maintenance. The removal of service has deprived the petitioner from salary as well as other benefits. The said action is not serving cause of the family of the petitioner rather it is going to make things worse. The respondent has deputed its one official to verify whether petitioner has resolved his disputes with his wife and whether he is staying with his wife and children. This shows that intent and purport of impugned order was to compel the petitioner to mend his behavior qua his wife and children. The petitioner has entered into compromise with his wife and both are staying together. The purpose of respondents stands achieved and further continuation of removal of petitioner from service would not be in the interest of petitioner as well as his family members.

5. In view of above facts and circumstances, the present petition stands disposed of with a direction to the respondents to re-consider case of the petitioner and pass a fresh order within four weeks from today.”

4. The respondent, in compliance of direction of this Court, has passed order dated 28.12.2023 (Annexure P-19) whereby it has upheld punishment of dismissal from service.

5. Mr. Mukesh Yadav, Advocate submits that punishment of dismissal from service is disproportionate to the alleged offence. There is no allegation of dereliction of duty which is evident from the fact that respondent had invoked Section 10(n) and 11(1) of CRPF Act. There was a family dispute and it has been resolved. The prime allegation against the petitioner was that he was not maintaining his wife and children and despite orders of Commandant, he was not paying maintenance. The petitioner, in terms of orders passed by SDJM, Mahendergarh, was paying maintenance, thus, he



was maintaining his family and in any case, matter has been amicably resolved. His wife has no grievance against him.

6. The petitioner and his wife are present in Court. Mr. Mukesh Yadav, Advocate on instructions from the petitioner submits that respondent may deduct and thereafter pay 50% of his salary to his wife.

7. Mr. Anil Chawla, Advocate submits that petitioner was removed from service on account of non-compliance of direction of Commandant to the effect that he should pay maintenance to his wife. He concedes that charge sheet was issued in terms of Sections 10(n) and 11(1) of CRPF Act read with Rule 27 of CRPF Rules. He further concedes that as per Office Memorandum dated 01.09.1959 if the matter is pending before Court with respect to maintenance, the department would not take any action.

8. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

9. The petitioner, as contended by respondent, was served charge sheet and thereafter dismissed alleging commission of offence punishable under Sections 10(n) as well 11(1) of CRPF Act. The relevant extracts Sections 10 and 11 are reproduced as below:

“10. **Less heinous offences-** Every member of the force who-

XXXX XXXX XXXX XXXX

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

XXXX XXXX XXXX XXXX

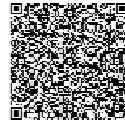


shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both."

"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."*

10. From the perusal of above quoted sections, it is evident that all the offences prescribed under Section 10 are less heinous and Section 11(1) provides for minor punishment. The minor punishment, in lieu of or in addition to suspension or dismissal, includes reduction in rank; fine; confinement to quarters; confinement in the quarter-guard for not more than 28 days and removal from any office of distinction or special emoluments in Force. Rule 27 of CRPF Rules provides for dismissal from service apart from other punishments. The petitioner was categorically issued charge sheet



alleging commission of less heinous offence. Dismissal from service is permissible in terms of Section 11 of CRPF Act read with Rule 27 of CRPF Rules. Existence of power and judiciously exercise of power are two different facets of punishment jurisprudence. The authorities are duty bound to consider nature of offence and mitigating circumstances. The punishment cannot be awarded in a mechanical manner. The petitioner was primarily guilty of not maintaining his wife. The respondent has placed on record office memorandum dated 01.09.1959 wherein it is provided that in case a member of Force does not maintain his family, the force would not take action if matter is pending before the Court.

11. In the case in hand, the matter with respect to maintenance of wife and children was pending in Court at the time of issuance of charge sheet and thereafter passing punishment order. The SDJM, Mahendergarh has granted maintenance of ₹10,000/- in favour of wife and children. Thus, in terms of office memorandum, the respondent was supposed to refrain from issuing any direction with respect to maintenance. There is prescribed procedure for execution of orders of maintenance passed by Court of competent jurisdiction.

12. The intent of punishment awarded by respondent was to compel the petitioner to pay maintenance whereas respondent has dismissed him from service, resultantly, the entire family is deprived from livelihood, thus, order of removal from service runs contrary to intent and purport of punishment.



13. In the wake of above discussion and findings, this Court is of the considered opinion that that impugned order of punishment is disproportionate to charge against the petitioner. The matter vide order dated 06.12.2023 passed in *CWP No.16362 of 2021* was remanded to authorities to reconsider quantum of punishment, however, respondent has reiterated its stand and upheld quantum of punishment. Left with no other option, this Court directs respondent to pass fresh order of punishment which would be other than removal from service.

14. Mr. Anil Chawla, Advocate, at this stage, submits that to avoid future litigation, it may be made clear that 50% of petitioner’s salary may be paid to his wife.

15. The petitioner, as noted above, has already agreed to pay 50% of his salary to his wife, thus, no order of this Court is warranted.

16. Disposed of in above terms. The needful shall be done within 8 weeks from today.

(JAGMOHAN BANSAL)
JUDGE

28.05.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>