IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM No.6057-C of 2012 in/and
RA No.28 of 2022 in/and
RSA No.3618 of 2011 (O&M)
Date of Decision : 21.03.2023

Hira Lal **...Appellant**

Versus

Union of India and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ramesh Goyat, Advocate for the appellant.

Mr. S.K. Sharma, Advocate for the applicants-respondents.

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Harsimran Singh Sethi J. (Oral)

RA No.28 of 2022

The present review application has been filed by stating that the facts recorded by the Co-ordinate Bench while passing the order dated 03.03.2022 are incorrect as it has been noticed therein that the order of dismissal was passed without waiting for the outcome of the appeal filed under Rule 28 of the Central Reserve Police Force Rules, 1955 hence by passing the order of dismissal, statutory departmental remedy available to the appellant was circumvented.

Learned counsel for the review applicant submits that the appeal filed by the appellant under Rule 28 was against the order of

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dismissal. Learned counsel for the review applicant submits that how can an order of dismissal passed and that too where it is being noticed that the appeal is pending against that very order of dismissal.

Learned counsel for the appellant does not dispute the said fact and concedes that the fact recorded by the Co-ordinate Bench is not correct.

Keeping in view the above, the order dated 03.03.2022, the review of which is sought, based on incorrect facts is recalled and the Regular Second Appeal is restored to its original number and status.

RSA No.3618 of 2011 (O&M)

In the present Regular Second Appeal, the judgment and decree of the lower Appellate Court dated 28.05.2011 is impugned by which, the appeal filed by the Union of India against the judgment and decree of the trial Court dated 23.01.2009 vide which the suit filed by the appellant-plaintiff was accepted, has been set aside and the suit filed by the appellant-plaintiff was dismissed.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

The appellant-plaintiff was recruited as Constable in the Central Reserve Police Force (in short 'CRPF) on 01.01.1982 (wrongly mentioned in the impugned order as 01.01.1992). In the year 1999, a chargesheet was issued to the appellant-plaintiff under the CRPF Act alleging two allegations. The first allegation alleged in the charge-sheet was that on 16.06.1999 while working as Constable, he misbehaved with Sub Inspector/Steno Shobha while sitting in a recreation room in the mess during the lunch time so as to waive his hand which amounted to indecent gesture towards a senior lady official. The second allegation alleged was that he was

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under the influence of the liquor at the relevant time while present in the mess area, which is also not permissible to the members of the disciplinary force and that too, during the duty hours.

The enquiry was conducted and both the allegations were proved against the appellant-plaintiff by the enquiry officer. Rather the allegation of consumption of liquor during the duty hours and being under the influence of the same was accepted by the appellant-plaintiff.

Keeping in view the said admission and the finding of the enquiry officer, an order dated 13.01.2000 dismissing the appellant from service was passed by the competent authority, copy of which have been placed on record as Ex.P-6. Even the appeal and the revision petition filed against the order of punishment were also dismissed and feeling aggrieved against the orders of the authorities imposing punishment and dismissal of appeal and revision, the appellant availed remedy of Civil Suit to challenge the order of punishment as well as orders dismissing his appeal and revision. The Civil Court vide judgment and decree dated 23.01.2009 held that once the procedure under Section 11 of the CRPF Act was initiated for imposing the minor punishment, the major punishment could not have been imposed upon the appellant and suit was decreed.

Aggrieved against the said decision, Union of India filed an appeal before the lower Appellate Court which came to be decided vide judgment and decree dated 28.05.2011. The Lower Appellate Court keeping in view the settled principles of law by Hon'ble Supreme Court of India in **Union of India and others Vs. Ghulam Mohd. Bhat, 2006(3) SCT 178** held that under Section 11(1) of the CRPF Act, the major punishment can also be imposed after the charges are proved. The judgment and decree of

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the trial Court was set aside and the suit filed by the appellant-plaintiff was dismissed. Hence, the present Regular Second Appeal.

The arguments which have been raised by learned counsel for the appellant in the present appeal is that once the proceedings were initiated under Section 11 of the CRPF Act for imposing the minor punishment, major punishment could not have been inflicted as Section 11 (1) of the CRPF Act, 1949 does not give the power to impose major punishment. The said argument is to be tested keeping in view the settled principles of law settled by Hon'ble Supreme Court of India in Civil Appeal No.4950 of 1999 titled as **Union of India and others Vs. Ghulam Mohd. Bhat**, decided on 20.10.2005.

Hon'ble Supreme Court of India while interpreting the Section 11 held that under Section 11 of the CRPF Act, 1949, held that the punishment of dismissal can be awarded. The relevant para of the judgment is as under:

> "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.
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> The use of 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

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are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded.

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.

It is fairly well settled position in law that removal is a form of dismissal. This Court in Dr. Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.) v. Municipal Corporation of Greater Bombay (AIR 1992 SC 786) explained that removal and dismissal from service stand on the same footing and both bring about 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 Rules made under the Act under which action can be taken. Rule 27 is part of 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.

This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In State of U.P. V. Ashok Kumar Singh (1996 (1) SCC 302) the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterized as disproportionate

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and/or shocking. (See Mithilesh Singh V. Union of India and Ors. (2003 (3) SCC 309). It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside. The appeal is allowed but under the circumstances there shall be no order as to costs."

Learned counsel for the appellant has not been able to distinguish the said judgment so as to be made applicable upon the facts and circumstances of the present case upon the appellant.

Even otherwise also, no perversity is pointed out in the judgment and decree of the lower Appellate Court by the learned counsel for the appellant either on facts or on law so as to require any interference by this Court.

At this stage, learned counsel for the appellant submits that the appellant had 17 years of service to his credit and charges alleged against the appellant are such that the punishment of dismissal imposed upon him is not commensurate to the charges alleged and proved. Hence, the respondents are under an obligation to reconsider the said punishment of dismissal.

The appellant is a member of disciplinary force. The allegations against the appellant is for misbehaving with a senior lady official. Further allegation is that at the time of said misbehaviour, the appellant was under the influence of the liquor and that too, during the duty hours. The member of the disciplinary force cannot act in a manner in which the appellant had acted even if there was no other blot in the service career of the appellant but misbehaving with a senior lady official and that too, under the influence of liquor is to be dealt with in a stringent manner so as to set an example for

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others. In the facts and circumstances, it cannot be said that the punishment imposed upon the appellant is disproportionate to the charges alleged and proved.

Hon'ble Supreme Court of India in Civil Appeal No.2707 of 2022, decided on 20.04.2022, titled as **Anil Kumar Upadhyay Vs. The Director General, SSB and others** held that a member of the disciplined force is 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 a fancy. In the said case, the appellant therein had entered Mahila Barrack in the midnight, due to which misconduct, the punishment of removal from service was imposed upon the appellant by the disciplinary authority, which punishment was upheld by the Court. The relevant para 9 of the judgment is as under:

> "In the present case, the appellant was imposed the penalty of 'removal from service' after the charges levelled against him stood proved by the disciplinary authority in an enquiry held against him after following the procedure prescribed under the SSB Rules. The nature of allegations against the appellant are grave in nature. He entered the Mahila Barrack in the midnight at around 00:15 hours, may be to meet his alleged friend Rupasi Barman, but such an indisciplined conduct leading to compromising the security of the occupants of the Mahila Barrack cannot be tolerated. As a member of the disciplined force-SSB, he was expected to follow the rules. He was apprehended inside the Mahila Barrack by six female constables. As observed by this Court in the case of Diler Singh (supra), a member of the disciplined force is 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 a fancy. The Nature of misconduct which has been committed by

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the appellant stands proved and is unpardonable. Therefore, when the disciplinary authority considered it appropriate to punish him with the penalty of 'removal from service', which is conformed by the appellate authority, thereafter it was not open for the learned Single Judge to interfere with the order of punishment imposed by the disciplinary authority."

The case of the appellant herein also falls within the parameters of the law settled in **Anil Kumar Upadhyay's case (supra)** and deserves no leniency by the Court.

Keeping in view the above, no ground is made out for interference by this Court in the judgment and decree of the lower Appellate Court dated 28.05.2011 as no perversity could be pointed out either on facts or on law.

Dismissed.

<u>CM No.6057-C of 2022</u>

Application is disposed of.

March 21, 2023 **(HARSIMRAN SINGH SETHI)**
jt **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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