

# **HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

**SWP No. 1877/2009**

**Date of Decision: 07. 07.2010**

**Ajay Shankar Panday vs. Union of India and ors.**

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**CORAM:**

**Mr. Justice J.P.Singh, Judge.**

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**Appearing counsel:**

For the Petitioner (s) : Mrs. Surinder Kour, Advocate

For the Respondent(s ) : Mr. Jatinder Choudhary, CGSC.

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- i) Whether approved for reporting  
in Press/Journal/Media : Yes
  - ii) Whether to be reported  
in Digest/Journal : Yes
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The petitioner, a Constable in the Central Reserve Police Force, was removed from service for absence from duty, in that, detailed to proceed to CWS, CRPF Rampur on 14.12.1996 for collection of ammunition along with four other personnel under the command of Sub Inspector Kripa Shanker Mishra, he had deserted the party from CWS, Rampur on 22.12.1996.

Appeal preferred by him against his removal from service having failed, he approached the High Court of Judicature at Allahabad by his Civil Miscellaneous Writ Petition No.41540 of 1997 questioning his removal from

service and the order dated 07.07.1997, passed by Commandant 20 Bn Central Reserve Police Force, in this respect.

Disposing of the Writ Petition, the Hon'ble High Court held his removal from service unsustainable for the punishment awarded was found excessive. The Commandant was, accordingly, directed to consider award of lesser punishment to the petitioner other than Removal or Dismissal from service.

On re-examination, pursuant to the judgment of the High Court, the punishment awarded to the petitioner was modified by the Commandant to "stoppage of two increments with cumulative effect", besides directing treatment of the period of absence from 10.07.1997 to 25.09.2005 as "Dies Non".

He filed Appeal against the Commandant's order which was disposed of by the Deputy Inspector General of Police, CRPF, Jammu Range, Bantalab, Jammu, modifying the Commandant's order treating the "Dies Non" period, as duty for all purposes, directing payment of full wages and allowances as due for the period, to the petitioner. The punishment of stoppage of two increments with cumulative effect, however, remained unaltered.

The petitioner has filed this Writ Petition questioning the Deputy Inspector General of Police, CRPF, Jammu Range Bantalab, Jammu's order No.R-13-20(2)/2005- EC-III dated 28.11.2006 whereby the punishment of stoppage of two increments with cumulative effect awarded to him by the Commandant, has been upheld .

Appearing for the petitioner, his learned counsel Mrs. Kour submitted that Section 11 of the Central Reserve Police Force Act, 1949 and the Central Reserve Police Force Rules, 1955 do not contemplate the punishment, which has been awarded to the petitioner, and the orders passed by the Commandant and the Deputy Inspector General of CRPF Police in this respect were liable to be quashed being illegal.

Mr. Jatinder Choudhary, the learned Union's counsel, on the other hand, justified the petitioner's punishment of stoppage of two increments with cumulative effect, relying on Rule 27 of the Central Reserve Police Force Rules, 1955, which prescribes the punishments which may be awarded to a member of the Force in addition to those appearing in Section 11 of the Central Reserve Police Force Act, 1949.

I have considered the submissions of learned counsel for the parties and perused the provisions of the Central

Reserve Police Force Act, 1949 and the Central Reserve Police Force Rules, 1955.

To deal with the issue that falls for consideration in this Petition as to the sustainability or otherwise of the punishment awarded to the petitioner, regard needs to be had to the provisions of Sections 8 and 11 of the Central Reserve Police Force Act, 1949, besides Rules 27 and 72 of the Central Reserve Police Force Rules, 1955, which, for facility of reference, are reproduced hereunder:-

**Section 8 “Superintendence, control and administration of the Force.—(1) The superintendence of, and control over, the Force shall vest in the Central Government; and the Force shall be administered by the Central Government in accordance with the provisions of this Act and of any rules made thereunder, through such officers as the Central Government may from time to time appoint in this behalf.**

(2) The headquarters of the Force shall be at Neemuch or at such other place as may from time to time be specified by the Central Government.

(3) While on active duty outside its headquarters, the Force shall be subject to the general control and direction of such authority or officer as may be prescribed or as may be specially appointed by the Central Government in this behalf.”

**Section-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.

(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 specifically authorized 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 for the time being subject to his authority any one or more of the following punishment 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 a 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."

**Rule 27. "Procedure for the Award of Punishment.-**(a) [The punishments shown as items 1 to 11 in column 2 of the table] below may be inflicted or non-gazetted officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.

[TABLE]

S.No.	Punishment	Subedar (Inspector)	Sub- Inspector	Others except Const & en- rolled fol- lowers	Consts & enro- llled fol- lowers	Remarks
1.	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry.
2.	Reduction to a lower time-scale of pay, grade, post or service.	DIGP	DIGP	Comdt.	Comdt.	
3.	Reduction to a lower stage in the time-scale of pay for a specified period.	DIGP	DIGP	Comdt.	Comdt.	
4.	Compulsory Retirement	DIGP	DIGP	Comdt.	Comdt.	
5.	Fine of any amount not exceeding one month's pay and allowances.	DIGP	DIGP	Comdt.	Comdt.	
6.	Confinement in --- the Quarter Guard exceeding seven days but not more than twenty-eight	---	----		Comdt.	To be inflicted after formal departmental enquiry.

	days with or without punishment drill or extra guard fatigue or other duty.				
7.	<b>Stoppage of Increment.</b>	DIGP	DIGP	Comdt.	Comdt.
8.	Removal from any office of distinction or special emolument in the Force.	DIGP	DIGP	Comdt.	Comdt. May be inflicted without a formal departmental enquiry.
9.	censure	Comdt.	Comdt.	Asstt. Comdt. or Coy Comdr.	A.Comdt. or Coy Comdr.
10.	Confinement To Quarter Guard for Not more than Seven days With or without punishment or extra guard fatigue or other duty.	---	---	-----	Comdt.
11.	Confinement to quarter lines,camp, punishment drill, fatigue duties etc. for a term not exceeding one month.”	-----	---	-----	Comdt.

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**Rule 72. “Withholding of increment.—If the increment of a member of the Force is withheld, the period for which it is withheld and the reason for withholding it, shall be stated in the Force Orders. Such period shall not exceed one year.”**

Perusal of the provisions of Section 11 and particularly the expression, ‘subject to any rules made under this Act’, appearing before the word ‘award’ in it, when read with the provisions of Sections 8 and 18 of the Act, **vesting power in the Central Government to make rules for carrying out the purposes of the Act, *inter alia*, regulating the powers and duties of the officers authorized to exercise any functions by or under this Act**, reveals that the

Parliament, in its wisdom, had, while prescribing award of one or more of the punishments appearing in Section 11(a) to (e), in lieu of, or in addition to, Suspension or Dismissal to those found guilty of disobedience, neglect of duty or remissness in the discharge of any duty or of other misconduct in the capacity as a member of the Force, **has left the rule making Authority free, *inter alia*, to provide punishment(s) in lieu of or in addition to Suspension or Dismissal other than those appearing in Section 11(a) to (e) of the Act to maintain discipline in the Force.**

Petitioner's learned counsel's submission that only those punishments as appearing in Section 11(a) to (e) may be imposed in lieu of or in addition to Suspension or Dismissal may not thus be sustainable, in that, such interpretation of Section 11 was likely to nullify the power of superintendence, control and administration of the Force, which the Parliament, had considered it fit to vest, in the Central Government, to be administered in accordance with the provisions of the Act and any rules made thereunder by enacting Section 8 of the Act and would thus be impermissible being destructive of the other provisions of the Act and the rules framed thereunder.

That apart, perusal of the Central Reserve Police Force Rules, 1955 and particularly Chapter VI thereof

indicates that the punishments appearing at item Nos.1 to 11 in column No.2 of the table, appearing in Rule 27, may be inflicted on a member of the Force, to maintain discipline. Rule 27(6), authorizes the Commandant in this behalf to pass such orders as may be permissible under rules, after recording requisite findings in support thereof; **meaning thereby that the Rules additionally authorize the Commandant to inflict punishments appearing in Rule 27 of the Rules for maintaining discipline in the Force, after following the procedure as prescribed in the Rules.**

The petitioner's counsel's submission that only those punishments which appear in Section 11 of the Act can be awarded to the member of the service in lieu of or in addition to suspension or dismissal is, thus, found without merit, hence rejected.

Her next contention that the punishment of 'stoppage of two increments with cumulative effect' was not countenanced by the Central Reserve Police Force Rules, 1955, is, however, found tenable because the provisions of the Central Reserve Police Force Rules, 1955 do not contemplate "stoppage of increment with cumulative effect", as one of the punishments, which may be imposed on the members of the service. The rules contemplate only

“stoppage of increments” and nothing beyond that. In terms of Rule 72 of the rules, the period of withholding of increment cannot be beyond **one year**.

In a nut shell, therefore, the stoppage of increment, **with cumulative effect**, is impermissible under the Rules and the learned counsel is right in saying that the punishment awarded to the petitioner for stoppage of two increments **with cumulative effect** was unwarranted.

The punishment of stoppage of two increments with cumulative effect, awarded by the Commandant and confirmed by the Deputy Inspector General of Police, CRPF is, therefore, found illegal and against the Central Reserve Police Force Rules, 1955.

This Petition, therefore, succeeds and is, accordingly, allowed quashing the punishment awarded to the petitioner vide Commandant’s order No.P.VIII-1/97-05-EC-II dated the October 2005 read with Deputy Inspector General, CRPF’s order No.R 13-20(2)/2005-EC-III dated 28.11.2006.

The respondents are, however, left free to pass such orders as warranted under law and rules to deal with the misconduct of the petitioner.

(J. P. Singh)  
Judge

**JAMMU**  
**07.07.2010**  
Vinod.