

CMA No. 110/2002

Union of India and Ors. v. Gurdeep Singh.

Coram:

Hon'ble Mr. Justice Tashi Rabstan, Judge.

Appearing counsel:

For the Appellant(s) : Mr. Sachin Gupta, CGSC.

For the respondent(s) : Mr. R.P.Sapolia, Advocate.

i.	Whether approved for reporting in Press/Media	: Yes.
----	---	--------

ii. Whether to be reported in Digest/Journal : Yes.

Tashi Rabstan, J:

1. This Letters Patent Appeal is directed against the judgment and order dated 27.12.2001 passed by the learned Writ Court in SWP No. 18/2000 titled *Gurdeep Singh v. Union of India and ors*, whereby, the learned Single Judge allowed the writ petition of petitioner-respondent herein by setting aside order dated 29.11.1999, impugned in the writ petition.

2. Before we come to the actual controversy, it is relevant to notice brief resume of the facts, as emerged from the pleadings of the parties.

3. On 31st July, 1995, at about 1330 hours, during surprise check roll call, writ petitioner/respondent herein was found absent from the Campus. He committed a grave mis-conduct under Section 10 (n) of CRPF Act, 1949. Writ petitioner/respondent was further involved in trying to outrage the modesty of a ten years old girl and committed an offence under Section 354 IPC. He was, accordingly, tried under Section 10(n) of CRPF Act, 1949 read with Section 354 IPC/Rule 36 of CRPF Rules, 1955 and sentenced to undergo one year rigorous imprisonment. Consequently, as a result of conviction, the writ petitioner/respondent was dismissed from service with effect from 07.08.1995 under Section 12 (1) of CRPF Act, 1949. Writ petitioner/respondent preferred a Criminal Appeal against his conviction before 2nd Additional Sessions Judge, Jammu and ultimately, learned 2nd Additional Sessions Judge, Jammu vide order dated 23.02.1998, set aside the conviction and sentence imposed upon the writ petitioner/respondent. Thereafter the writ petitioner / respondent was reinstated in service but placed

under suspension. A disciplinary inquiry was held against him. Disciplinary inquiry proceedings were completed and on the basis of the findings, the writ petitioner/respondent was removed from service.

4. Aggrieved by the same, the writ petitioner/respondent filed the writ petition in this High Court and the learned Writ Court vide order dated 27.12.2001, allowed the writ petition and set aside the impugned order dated 29.11.1999 with the observation that the provisions of Section 11 (1) of CRPF Act, 1949, provide only minor punishment. The punishment of removal is not a minor punishment and could not be inflicted by taking aid of the Rule 27 of CRPF Rules, 1955. Thus, as per Section 11 (1) of CRPF Act, 1949, only minor punishment can be imposed and removal from service is not a minor punishment, therefore, order of removal is held to be bad.

5. Heard learned counsel for both the sides and perused the record.

6. Learned counsel for Union of India argued that the punishment of removal imposed upon the respondent-writ petitioner was made under Rule 27 of CRPF Rules, 1956, which is a major punishment. Rule 27 clearly permits

removal by the competent authority. Even otherwise, the respondent-writ petitioner has been charge sheeted under the provisions of Section 11 (1) of CRPF Act, the disciplinary proceedings initiated against him under that Section and the respondent-writ petitioner, accordingly, participated in the proceedings and cross-examined the prosecution witnesses.

7. Mr. Sapolia, learned counsel for respondent-writ petitioner vehemently argued that the Union of India/appellants have violated Rule 27 (b) and 27 (ccc) of CRPF Rules because the Union of India/appellants have failed to obtain sanction from the Inspector General, therefore, the whole process initiated against the writ petitioner-respondent herein is vitiated and is without jurisdiction. Learned counsel for the respondent-writ petitioner argued that the only punishments which can be awarded under Section 11 of the Act are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, this interpretation of learned counsel for the respondent-writ petitioner is not correct because Section 11 says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

8. From the perusal of the writ record, it is crystal clear that the petitioner has not questioned the proceedings of the inquiry nor has contended in the writ petition about the violation of the above referred rules. Therefore, the arguments raised by Mr. Sapolia is beyond the pleadings before the Writ Court. Thus, the same cannot be permitted to be raised before this Letters Patent Bench.

9. It is appropriate here to reproduce Section 11 (1) of CRPF Act, 1949, as under:-

“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 allowance;
- (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. Perusal of Section 11 of the Act clearly shows that the punishment prescribed lays down that 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 above mentioned 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. The Section further reveals that the authorities mentioned therein are empowered to award the punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, punishments mentioned in Clauses (a) to (e) may also be awarded.

11. The Hon'ble Supreme Court in a similar case titled *Union of India and others v. Ghulam Mohd. Bhat*, reported as (2005) 13 SCC 228, in para Nos. 6 and 8, has also held as under:-

“6.The use of the words “In lieu of, or in addition to, suspension or dismissal”, appearing in subsection (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment or 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.

8. It is fairly well-settled position in law that removal is a form of dismissal. This Court in *Dattatraya Mahadev Nadkarni (Dr.) v. Municipal Corpn. Of Greater Bombay* 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 the Rules made under the Act under which 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.”

12. As a sequel to the above discussions, the Appeal is allowed and the judgment of the learned Single Judge is reversed. The writ petition filed by the respondent-writ petitioner –Gurdeep Singh is dismissed.

(Tashi Rabstan)
Judge

(M.M.Kumar)
Chief Justice

JAMMU
04.12.2014
Tilak, Secy.;

