(2007) 11 GAU CK 0027

Gauhati High Court

Case No: Writ Petition (Civil) No. 4093 0/2001

Shivanand Mishra		APPELLANT
	Vs	
Union of India and Ors.		RESPONDENT

Date of Decision: Nov. 30, 2007

Citation: (2008) 2 GLR 527

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: A.Baruah, K.N.Choudhury, Advocates appearing for Parties

Judgement

1. An order dated 23.11.2000 passed by the Commandant, 114 Battalion CRPF dismissing the petitioner from service in exercise of power under section 12(1) of the CRPF Act, 1949 has been assailed in this writ petition. The facts relevant to the present adjudication may briefly be outlined at this stage.

2. The petitioner who joined the Central Reserve Police Force (the Force'') as a Constable was, at the relevant point of time, serving as Head Constable. In connection with an incident that had occurred on 13.11.2000, an allegation of commission of an offence under section 10(n) of the CRPF Act, 1949 Cthe Act'') was levelled against the petitioner and he was committed to face trial before the Chief Judicial MagistratecumCommandant, 128 Bn. CRPF, Goalpara. The charge on which the petitioner was put to trial may now be noted :

"No. 820630025 H.C. Shivanand Mishra and No. 903010755 Constable Mukesh Tyagi quarrelled in the mess at D/114 Bn. CRPF Chandrapur (Guwahati) under the influence of liquor on 13.11.2000 at about 1945 hrs. No, 913101111 C. Vithal Kokde mediated and sent them to their lines. Above said H.C. Shivanand Mishra went in the lines and took out his Carbine Butt No. 38 Body No. 15404024 from his bed and fired one round from his weapon in the air which struck on the roof. After firing one shot he went to the other lines with intention to assault Constable Mukesh Tyagi No. 881134392 HC/RO C.H. Peeriah persuaded and took over his Carbine and deposited

in the Kote. Thus the said No. 820630025 HC Shivanand Mishra has committed an act of gross misconduct/criminal conspiracy punishable under section 10(n) of CRPFAct, 1949.".

3. The petitioner virtually admitted the charge, though he had offered a an explanation for the incident of quarrel as well as firing of one round from his service weapon. In the trial held by the Commandant of the Battalion several witnesses were examined. Thereafter, by judgment and order dated 23.11. 2000 the petitioner was found guilty of the charge levelled and commission of the offence under section 10(n) of the Act. The petitioner was, accordingly, sentenced to suffer imprisonment for a period of 30 days. On the same day, by invoking the power under section 12(1) of the Act, the petitioner was dismissed from service. Aggrieved, this writ petition has been filed.

4. Mr. K.N. Choudhury, learned senior counsel for the petitioner, in the course of long and elaborate argument,, has contended that under the provisions of the Act, the offences committed by the members of the Force are enumerated in section 9 of the Act, which deals with more heinous offences and section 10, which deals with less heinous offences. Under section 16 of the Act, power has been vested in the Central Government to invest a Commandant or Assistant Commandant with the powers of a Magistrate for the purse of enquiring into or trying offences committed by the members of the Force. According to Mr. Choudhury, commission of which offences should invite a trial and those which should invite disciplinary action is not specifically indicated by any provision of the Act. Mr. Choudhury further submitted that under section 12 of the Act, a person sentenced to suffer imprisonment for commission of any offence may be dismissed from the Force. However, which particular offences should invite invocation of the power of dismissal under section 12 have not been spelt out by the Act. Mr. Choudhury has contended that the offence in respect of which the petitioner has been found to be guilty in the criminal trial, being under section 10(n) of the Act, is a specie of less heinous offence. Therefore, according to Mr. Choudhury, there could have been no justification for invoking the power under section 12 of the Act in the present case. Mr. Choudhury has also argued that use of the word ''may'' in section 12 makes it abundantly clear that the power conferred by the aforesaid provision of the Act is highly discretionary and good reasons must exist for exercise of the discretion in any particular manner. Merely because a member of the Force has been sentenced to suffer imprisonment, the power under section 12 cannot be invoked. The learned counsel has further submitted that in the present case, there is no indication of any consideration of the circumstances in which the decision to exercise the power under section 12 was arrived at, in the absence whereof, such exercise of power would be arbitrary. Lastly, it is argued by Mr. Choudhury that in view of the highly discretionary nature of the power under section 12, an opportunity should have been given to the petitioner to pursuade the authority that the facts of the present case did not justify resort to the exercise of the power of dismissal. In support of the contentions

advanced, Mr. Choudhury has relied on the decision of the Apex Court in the case of Divisional Personnel Officer, Southern Railway & Anr. v. T.R. Chellappan, (1976) 3 SCC 190 as well, as in the case of Union of India & Anr. v. Tulsiram Patel, (1985) 3 SCC 398. Another decision of the Apex Court in the case of ShankarDass v. Union of India & Anr., (1985) 2 SCC 358 has also been pressed into service.

5. The arguments advanced on behalf of the petitioner have met with stiff resistance offered by Mr. N. Bora, learned Central Government counsel. Mr. Bora submitted that the petitioner is a member of a disciplined Force and he has been charged with commission of serious misconduct which arose out of the actions of the petitioner in quarrelling with a colleague and, thereafter, in firing one round of , ammunition from his service rifle. Mr. Bora has also pointed out that the charge levelled against the petitioner makes it amply clear that the petitioner had come out of the barrack armed with his service rifle in search of his colleague with whom he had earlier quarreled. Such conduct can find no place in a disciplined Force like the CRPF and, therefore, in the aforesaid circumstances, invocation of the power of dismissal under section 12 of the Act is fully justified.

6. Before proceeding to consider the rival contentions advanced, it will be apposite to notice the specific provisions of the Act which could have a bearing to the issue arising for determination in the present case.

Sections 9, 10 12 and rule 27 of the Rules being relevant are extracted hereinbelow :

"OFFENCES AND PUNISHMENTS

9. More heinous offences. Every member of the Force who

(a) begins, excites, causes or conspires to cause or joins in any mutiny, or being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention of conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his supper officer ; or

(b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such ; or

(c) shamefully abandons or delivers up any post or guard which is committed to his charge or which it is his duty to defend ; or

(d) directly or indirectly holds correspondences with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge; or who, while on active duty,

(e) disobeys the lawful command of his superior officer ; or

(f) deserts the Force ; or

(g) being a sentry, sleeps upon his post or quits it without being regularly, relieved or without leave ; or

(h) leaves his commanding officer, or his post or party, to go in search of plunder; or

(i) quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or

(j) uses criminal force to, or commits an assault on any person brining provisions or other necessaries to camp or quarters, or forces safeguard or breaks into any house or other place of plunder, or plunders, destroys or damages property of any kind ; or

(k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters ; or

(1) displays cowardice in the execution of his duty, shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months'' pay or with fine to that extend in addition to such sentence of transportation or imprisonment.

10. Less heinous offences. Every member of the Force who

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march ; or

(b) strikes or attempts to force any sentry ; or

(c) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or without proper authority releases any person or prisoner placed under his charge, or negligently suffers any such prisoner or person to escape ; or

(d) being under arrest or in confinement, leaves his arrest of confinement, before he is set at liberty by lawful authority ; or

(e) is grossly in subordinate or insolent to his superior officer in the execution of his office ; or

(f) refuses to superintend or assist in the making of any fieldwork or other work of any description ordered to be made either in quarters or in the field ; or

(g) strikes or otherwise illuses any member of the Force subordinate to him in rank or position ; or

(h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accoutrements, or any such

articles entrusted to him or belonging to any other person ; or

(i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity ; or

(j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Force forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accoutrements or other property issued or supplied to him or in his custody or possession as such member ; or

(1) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of, or any person attached to the Force, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid ; or

(m) absents himself without leave, or without sufficient cause overstays leave granted to him ; or

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

(o) contravenes any provision of this Act for which no punishment is expressly provided ; or who, while not on active duty,

(p) commits any of the offences specified in clauses (e) to (1) (both inclusive) of section 9, 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.

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12. Place of imprisonment and liability to dismissal on imprisonment.

(1) Every person sentenced under this Act to imprisonment may be dismissed from the Force and shall further be liable to forfeiture of pay, allowance and any other moneys due to him as well as of any medals and decorations received by him.

(2) Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the court or the Commandant so directs, be confined in the quarterguard or such other place as the court of the Commandant may consider suitable.

27. Procedure for the Award of Punishments, (a) The punishments shown as items 1 to 11 in column 2 of the table below may be inflicted on nongazetted 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

SI.

No.

Punishment Subedar (Inspector) enrotted

Sub Others except Consts & fnspe Const & enrotted ctor enrolled followers followers

Remarks

2 3

45

1.

Dismissal or DIGP removal from the Force

DIGP Comdt. Comdt.

To be inflicted after formal departmental enquiry

2.

Reduction to a DIGP lower time scale of pay, grade, post or service

DIGP Comdt. Comdt,

To be inflicted .after formal departmental enquiry

3.

Reduction to a DIGP lower stage in the timescale of pay for a specified period

DIGP Comdt. Comdt.

To be inflicted after formal departmental enquiry

4.

Compulsory DIGP retirement

DIGP Comdt. Comdt.

To be inflicted after formal departmental enquiry

5.

Fine of any DIGP amount not exceeding one month''s pay and allowances

DIGP Comdt. Comdt.

To be inflicted after formal departmental enquiry

6.

Confinement in the Quarter

Comdt.

To be inflicted after formal

Guard exceeding seven days but not more than twentyeight days with or without punishment drill or extra guard fatigue or other duty.

7. Stoppage of DIGP increment

8. departmental enquiry

Removal from any office of distinction or special emolument in the Force.

DIGP

DIGP Comdt.

DIGP Comdt.

9. Censure

10. Confinement to Quarter Guard for not more than seven days with or without punishment or extra guard fatigue or other duty.

11. Confinement to quarters lines, camp, punishment drill, fatigue duties etc. for a term not exceeding one month.

Comdt. Comdt. Asstt. Coy

Comdt. To be inflicted after formal departmental enquiry

Comdt. Maybe inflicted without a formal

departmental enquiry.

Comdt. A. Comdt. or

Or Comdr. Coy Comdr.

Comdt.

Comdt.

NOTE. 1.

NOTE. 2…….

Explanation. (a).

(b)

(c) The procedure for conducting a departmental enquiry shall be as follows :

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs, before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary; if oral;

(i) it shall be direct;

(ii) it shall be recorded by the Officer conducting the enquiry himself in the presence of the accused ;

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his

findings and pass orders, where he has power to do so.

(cc) Notwithstanding anything contained in this rule

(i) where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge ; or

(ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules ; or

(iii) where the DirectorGeneral is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit,

(ccc) when a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General.

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7. A scrutiny of the provisions of the Act would go to show that the offences that may be committed by a member of the Force have been categorized under section 9 as more heinous offences and under section 10 as less heinous offences. More heinous offences are punishable with transportation for life or for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years along with fine. Less heinous offences covered by section 10 of the Act are punishable with imprisonment for a term which may extend to one year along with fine. Section 16 of the Act vests in the Commandant or Assistant Commandant of the Force the powers of a Magistrate, as prescribed under the Code of Criminal Procedure, to try any of the offences that may be committed by a member of the Force. However, the Act is silent as to the circumstances in which a member of the Force may be sent to face a criminal trial and those in which he may be asked to face departmental action by way of a disciplinary proceeding under rule 27 of the Rules. The aforesaid facet of the Act has relevance to the, provisions contained in section 12, inasmuch as, in the event a member of the Force is convicted and sentenced to imprisonment following a criminal trial, he can still be visited with the further penalty of dismissal from service. However, in a situation where instead of a criminal trial, departmental action is initiated, any of the punishments prescribed in rule 27 of the Rules may follow.
Though under rule 27(cc) following the conviction of an employee on a criminal charge, penalty, at the discretion of the employer is imposable, the said Rule, however, requires the employer to exercise the power on a consideration of the circumstances of a given case. The discussion will remain incomplete unless the

court takes note of the fact that though rule 27(cc) authorises the imposition of any penalty (emphasis is mine) by dispensing with the requirement of a detailed enquiry contemplated by the earlier part of the Rule, such penalty must necessarily be what has been contemplated in article 311(2) of the Constitution. The aforesaid position under the provisions of the Act and the Rules has been felt necessary to be noticed to enable the court to better appreciate the nature of the power that has been conferred by section 12 of the Act. The provisions contained in rule 27fcc) having imposed a duty on the employer to consider the circumstances of the case in the event it is decided to impose a penalty following a conviction on a criminal charge, such a requirement though not specifically laid down in section 12 of the Act must necessarily be read in the said provision of the Act. That apart, the power under section 12 being a highly discretionary power and there being no prescribed yardstick as to in what situations and for which offences leading to conviction and imprisonment, a member of the Force can be dismissed, there is necessity for strict judicial vigil of the circumstances and the manner of exercise of such power.

8. A number of illuminating judicial precedents on the subject are available, the core of which have been placed before the court by Mr. Choudhury, learned counsel for the petitioner. In Divisional Personnel Officer, Southern Railway & Anr. (supra) relied upon by Mr. i Choudhury, the Apex Court was considering the scope and ambit of rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968 which empowered the disciplinary authority to impose a penalty following the conviction of an employee on a criminal charge. Such power was to be exercised after due consideration of the circumstances of the case. Rule 14(i) coincidentally is pari materia to rule 27(cc)(i) of the CRPF Rules. Two propositions of law were laid down by the Apex Court in the aforesaid decision. The first is that the decision of the authority to impose a punishment following a conviction on a criminal charge would require due consideration of the relevant circumstances of the case so as to obviate the possibility of any arbitrary exercise of power. The second proposition laid down in the aforesaid case is that before the decision to invoke any punishment is arrived at, the principles of natural justice would require some kind of summary enquiry as to the nature and extent of the punishment to be imposed wherein the employee may be required to be heard. The matter came up for a consideration before a Constitution Bench in Tulsiram Patel (supra). The Apex Court in the said latter case reiterated the first proposition of the Apex Court in the case of Divisional Personnel Officer, Southern Railway (supra), but disagreed with the second proposition on the ground that when the provisions contained in the proviso to article 311(2) of the Constitution had clearly excluded the necessity of any further enquiry in the event punishment as contemplated by the said constitutional provision is to be imposed following a conviction in a criminal case, the requirement of any further opportunity should not be brought in through the back door. It must also be noticed that in Tulsiram Patel (supra), the Apex Court agreed with the views expressed in Divisional Personnel Officer, Southern Railway & Anr. (supra) to the effect that the proviso to

article 311(2) does not lay down any constitutional mandate but is merely an enabling provision.

9. A careful reading of the pronouncements of the Apex Court in the , aforesaid two cases would leave no room for doubt that it can be taken as a wellsettled proposition of law that before punishment is imposed on an employee following his conviction in a criminal charge, it is not necessary to give any further notice as has been contended by Mr. Choudhury. The aforesaid two judgments of the Apex Court, however, make it abundantly clear that exercise of the power to inflict penalty following a criminal charge, either by invoking the provisions contained in proviso to article 311(2) or any pari materia provision in the service rules, being capable of being judicially scrutinized, in the event a challenge is made before the court such an order has to be justified by detailing the facts and circumstances which had necessitated exercise of the power. Exercise of the power to impose punishment without holding an enquiry is confined to only three categories of punishment, i.e., dismissal, removal or reduction in rank. This very fact would suggest that exercise of the power to impose any one of the aforesaid punishments without holding an enquiry must have & reasonable relevance and connection to the gravity of the situation which necessitated exercise of the power. What is being sought to be emphasized is that exercise of the power must be justified by strong and compelling circumstances that had existed and had compelled the authority to resort to the exercise of the said power. In this regard, the decision of the Apex Court in Shankar Dass (supra) relied upon by Mr. Choudhury would be of particular significance wherein in para 7 the aforesaid position of law has been reemphasized by the Apex Court.

10. In the present case, the impugned order dated 23.11.2000 passed by the Commandant does not recite as to why the punishment of dismissal under section 12 of the Act was felt to be necessary following the conviction and imprisonment suffered by the petitioner under section 10(n) of the Act. A reading of the order is capable of sustaining the opinion that the Commandant felt that merely because the petitioner had been convicted and sentenced to undergo imprisonment, the punishment of dismissal should follow, as a matter of course. This is not the scope and ambit of the power conferred by section 12. The appellate authority did try to improve the situation by recording in its order dated 22.2.2001 that the CRPF is a disciplined Force and the conduct of the petitioner for which he has been tried and found guilty is incompatible to the conduct expected of the members of a disciplined Force. Beyond that there is no indication of any compelling necessity or any extraordinary circumstance for which the power under section 12 of the Act was invoked.

11. The need to maintain discipline in a highly disciplined Force and impermissible deviations from the conduct expected are indeed relevant circumstances, but there are other relevant circumstances which must go into the decisionmaking process.

What is the previous conduct of the petitioner ? Whether in the nearly two decades of service rendered, the petitioner had ever deviated from the conduct expected ? Whether the petitioner is a person who has a chance of reforming himself and coming to the mainstream, if he is not to be dismissed from service ? Whether deviation that had occurred had occasioned remorse and repentance in the wrongdoer ? These are some of the other relevant circumstances. The list can by no means be exhaustive. A fair decisionmaking process is one where all such relevant circumstances are taken into account. The decision making process in the present case, by application of the aforesaid standards, would fail and, therefore, the action taken against the petitioner has to be considered legally fragile requiring interference at the hands of the court.

12. The question that is now required to be answered is what relief the petitioner would be entitled to. The court has thought it proper to interfere with the decision of the authority on the ground that the relevant circumstances were not taken into account in the decisionmaking process. If that be so, logically the matter would need reconsideration by the authority in the light of what has been illustratively observed as the other relevant circumstances. I am, therefore, of the view that reinstatement of the petitioner at this stage, without giving the respondents an opportunity to reconsider their decision in the light of the relevant facts, will not be justified and the just and proper order would be to direct the respondents to reconsider the matter and pass fresh orders in the light of the observations contained in the present order. As the petitioner had been dismissed from service in the year 2000, the court is of the view that the respondents should be directed to redo the exercise as expeditiously as possible and in any case, within a period of three months from today.

13. The writ petition is consequently allowed, as indicated above.