(2001) 03 GAU CK 0025

Gauhati High Court

Case No: Civil Rule No. 610 of 1994

Deep Chand		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: March 15, 2001

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 15(1), 16(4)
- Central Reserve Police Force Act, 1949 - Section 11(1)
- Central Reserve Police Force Rules, 1955 - Rule 27
- Constitution of India, 1950 - Article 311

Citation: (2001) 2 GLT 97

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: Mr. R.P. Sarma and Mr. T.N. Srinivasan, for the Appellant; Mr. K.K. Mahanta, for the Respondent

Final Decision: Allowed

Judgement

1. Heard Mr. R P Sarma, learnes counsel for the petitioner as well as Mr. K K Mahanta, learned Sr. CGSC for the respondents.

1. Petitioner Sri Deep Chand bearing No. 690523581 was employed under the CRPF establishment and was working as Tailor of Group Centre at the relevant time. By memorandum dated 10.8.1999, he was charged with the following articles of charge -

ARTICLE -1

That the said No. 690523581 SI/Tlr.Deep chand while functioning as SI/Tlr. In GC, CRPF, Gauhati committed an act of misconduct in that he gave his VCP to Shir B Bhatta, Radiographer of BH-3 CRPF Gauhati on hire basis @ Rs. 700/- per month for screening

films thus violated the provision of rule 15(l)(a) of CCS (Conduct) Rules - 1964.

ARTICLE II

That the said No. 690523581 SI/Tlr. Deep Chand while functioning as in charge of Tailor shop GC, CRPF, Gauhati was guilty of neglect of duly/remissness in the discharge of his duties in his capacity as member of the force u/s 11(1) of CRPF Act, 1949 in that he failed to maintain proper discipline/ orders of he personnel working in Tailor shop of GC Gauhati. It was known to him that late N K /Tlr. Prahlad Sahai and others working under his direct control and supervision were indulging in money lending/borrowing business which is strictly prohibited as per para 7.23 of GC and BN Officers Mannual. He not only failed to stop this un-authorised business of this subordinate but also encouraged them by indulging himself.

ARTICLE- III

That the said No. 690523581 SI/Tlr. Deep Chand while functioning as SI/Tlr. In GC CRPF Gauhati committed an act of misconduct in that he had borrowed a um of Rs. 2000 on 5% interest per month from late NK/Tlr. Prahlad Sahai which is prohibited under rule 16(4)(a) & (b) of CCS (Conduct) Rules, 1964 and para 7.23 of GC and Bn Officers Manual.."

2. An Inquiry Officer has been appointed and after the completion of the enquiry elaborate and lengthy enquiry report has been submitted by enquiring officer dated Nil to the Disciplinary authority. The Disciplinary authority after examining and considering the report submitted by the enquiring officer has compulsorily retired the Petitioner with immediate effect by an order dated 4.5.1991. This was challenged by the Petitioner on earlier occasion by filing Civil Rule No. 3982/91 which was disposed of by this Court on 20.12.1993 inter alia with the following observations :

".. In my opinion, it is the duty of the appellate Authority to give proper reasons for the punishment imposed on the charges being proved. In case of compulsory retirement removal or dismissal from service, asit(sic) involves livelihood of persons, the punishment has to be awarded keeping in view the gravity of offence and whether it was sufficient. Though the Appellate authority has ignored the past services of the Writ Petitioner, I am of the opinion that it has also to be considered while awarding punishment.

In view of the above position the order of the appellate Authority namely the Inspector General of Police NE, CRPF, Shilliong dated 16.8.1991 is set aside and Inspector General of Police, CRPF is directed to dispose of the appeal by a speaking order regarding punishment within a period of 2 months form the date of receipt of the order.."

By the aforesaid order this Court has quashed the order of appellate Authority dated 16-8.1991 and directed the appellate authority to dispose of the appeal by a speaking order regarding punishment. It would appear that this Court on earlier occasion did not interfere with the finding of the enquiry officer. This Court interfered with the order of the

authority only on quantum of punishment. Pursuant to the aforesaid direction the appellate authority again re-examined the Appeal filed by the Petitioner and by its order dated 24.1.1994 after making elaborate discussion came to the finding that the order of compulsory retirement could meet the ends of justice. It is to be noted that while doing so, the appellate authority also referred to the provision of Rule 27 of CPRF Rule, 1955 which provides procedure for imposing major penalties including compulsory retirement. Being aggrieved, this 2nd Petition has been preferred by the Petitioner.

3. There is no dispute that the nature of the offence under which the Petitioner has been charge-sheeted is minor offence and by no stretch of imagination such offence can he treated as major or attract the major penalties. Apart from that, the Article -1 of charge has not been established but enquiring Officer has found the Article II & III of the charges well established against the Petitioner. Let us accept that Articles II & III well established against the Petitioner. The next question is that how serious it is inviting compulsory retirement of the Petitioner from service which is admittedly a major punishment. The case in hand is not a case of a compulsory retirement as provided under FR 56J. In that case no speaking order need to be passed an the Respondents have absolute power to retire an incumbent compulsorily by invoking power of FR 56J. In the instant case, as already said, since the disciplinary proceeding has been initiated against the Petitioner, the respondents cannot now go back and say that they have exercised the power under FR 56J. Once an enquiry is held the punishment must be imposed on the basis of enquiry report submitted, commensurate with the gravity of charges of misconduct proved against the Petitioner.

4. By now it is well settled principle of law that the punishment imposed after enquiry, must be commensurate with the gravity of the offence proved against the delinquent officer. The gravity of the offence is necessarily measured with the nature of the offence. In the instant case Article II of the charge which has been proved against the Petitioner relates to that he failed to maintain proper discipline or order of the personals working in Tailor shop of GC Guwahati. It was also stated that personnel namely NK/Tailor Prahlad Sahai, who was working under this direct control and supervision was indulging in money lending/borrowing business which is strictly prohibited as per paragraph 7.23 of GC and BN officer Manual. It may be pointed out that the Petitioner is a mere constable and in normal procedure of the disciplinary force he has no authority to control over a Naik, who was supposed to have indulging in money lending and borrowing business. This apart, if any offence is made out, it was against Naik Prahlad Sahai and the said offence cannot be attributed to the Petitioner. I am only pointing out this to draw the nature of the offence which is a minor offence, even it is proved.

5. The next Article proved against the Petitioner which relates to misconduct committed by the Petitioner that he had borrowed a sum of Rs.2,000 on 5% interest per month from late NK/Tlr. Prahlad Sahai which is prohibited under CCS conduct rules. To this Article the Petitioner has replied that he borrowed Rs.2000 from Prahlad Sahai for incurring expenditure during his daughter''s marriage. To that extent the Petitioner fairly admits that

he has borrowed money of Rs.2000 from Naik Prahlad Sahai to bear expenditure during his daughter''s marriage. It is an offence for borrowing money from his fellow friend to bear the expenses of the daughter''s marriage grave enough to have his services retired compulsorily?

6. The sole contention of Mr. R P Sarma is that the Petitioner has been charge-sheeted u/s 11(1) of the CRPF Act, 1949 which is minor punishment, but after completion of the enquiry the petitioner has been punished under the procedure prescribed under Rule 27 of the Rules, 1955 which is a major punishment.

7. Section 11(1) of the Act deals with the punishment and empowers the commandant or any other prescribed authority, to impose punishment for mis-conduct upon the members of the force with the following punishment:

(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 of extra-guard, fatique or other duty, and

(e) removal from any office of distinction or special emolument in the force.''

8. In the present case, admittedly the punishment of compulsory retirement imposed upon the Petitioner has been made under the procedure prescribed under Rule 27 of the CRPF Rules, 1955, which is a major punishment. Rule 27 of the CRPF Rules only prescribed procedure for award of major punishment. It is not a penal provision itself. This apart, the Petitioner has been charge-sheeted under the Provision of Section 11(1) of the Act, the disciplinary proceeding initiated against him under that section, he was allowed to defend himself by cross-examining the prosecution witnesses under that section and therefore the disciplinary authority is not permitted to convert a charge u/s 11(1) which is a minor penalty to that of a major penalty after the completion of the enquiry. The amounted to denial of reasonable opportunities to defend himself and is hit by Article 311 of the Constitution.

9. I am also of the view that the appellate authorities'' order dated 24.1.1994 has been passed contrary to the observation made by this Court while disposing Civil Rule deprecating imposition of compulsory retirement considering the nature of the offence.

10. Having said so, I am of the view that the Petitioner deserves minor punishment as provided u/s 11(1) of the CRPF Act, 1949 under which he has been charge-sheeted. To that extent, the impugned order of disciplinary authority as well as appellate authority are hereby quashed and set aside. The Appellate authority is directed to mould the

punishment commensurate with the gravity of the offence proved. In the result the Petitioner is allowed. No order as to costs.

I leave it to the appropriate authority to decide the seniority of the Petitioner and other consequential relief to be decided in accordance with rules.