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(2012) 3 JCR 616 : (2012) 3 JLJR 228

Jharkhand High Court

Case No: L.P.A. No. 162 of 2010

Modiholli Alappa		APPELLANT
	Vs	
The Union of India and Others		RESPONDENT

Date of Decision: May 1, 2012

Acts Referred:

- Central Reserve Police Force Act, 1949 - Section 10, 11(1), 12(1), 9
- Constitution of India, 1950 - Article 14

Citation: (2012) 3 JCR 616 : (2012) 3 JLJR 228

Hon'ble Judges: Prakash Tatia, J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: Sunil Kumar, for the Appellant; Faizur Rahman, CGC, for the Respondent

Judgement

Aparesh Kumar Singh, J.
Heard learned counsel for the parties. The appellant is aggrieved against the order dated 24.02.2010 passed in W.P. (S) No. 3747 of 2003 by which appellant''s writ petition, in which he had challenged his dismissal order passed u/s 12(1) of the C.R.P.F. Act, 1949, has been dismissed.

2. According to learned counsel for the appellant, charge levelled against the petitioner/appellant was not of serious nature and was not falling in Section 9 of the Act of 1949 and, therefore, was not heinous offence. It is submitted that punishment order has been passed u/s 12(1) which can be passed only upon imprisonment to any person. It is also submitted that the appellant/petitioner was not given full opportunity of hearing nor he has been given second show cause notice before inflicting punishment of dismissal from service Learned counsel for the appellant relied upon two judgements of the Hon''ble Supreme Court delivered in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, wherein it has been held that in a case where principle of natural justice violated, that vitiates the departmental proceeding. It is also held in that case that the punishment

must be proportionate to the gravity of the misconduct. Learned counsel also relied upon another judgement delivered in the case of R. Indira Saratchandra Vs. State of Tamil Nadu and Others, . With the help of the judgement in this case, learned counsel for the appellant submitted that the writ petition is maintainable even in a case where departmental appeal has not been preferred.

3. In view of the above reasons, according to learned counsel for the appellant, the learned Single Judge committed error of law by dismissing the writ petition of the petitioner/appellant.

4. Learned counsel for the respondents submitted that the writ petitioner was found abusing his senior and he was taken to the hospital for medical examination upon which also it was confirmed that he was in high intoxicated condition. A departmental enquiry Was ordered and Enquiry Officer was appointed and the petitioner was given full opportunity to appear in the departmental proceeding and petitioner did not submit any defence. After appreciation of the evidence, the Enquiry Officer found the charge proved. Thereafter, the Disciplinary authority considered the matter and passed the order. Therefore, this was a case of full and fair trial of the misconduct of the writ petitioner by complying the principle of natural justice to the fullest extent. It is also submitted that as per Section 11(1) of the C.R.P.F. Act, 1949, the punishment of dismissal could have been passed even as minor punishment and so has been provided in the Act of 1949 because of the special reason of maintaining discipline in armed forces which requires the harsh action if needed, but in accordance with law.

5. We have considered the submission of the learned counsel for the parties and perused the facts of the case. The allegation against the petitioner is of abuse of superior officer in the state of intoxication. This question of fact now cannot be disputed by the petitioner in view of the fact that he was given full opportunity and he did not dispute and the petitioner was subjected to medical examination also. Now the question which survives is with respect to the allegation of violation of principle of natural justice as well as departmental enquiry being not fair and the punishment being harsh and not proportionate to the guilt.

6. Learned counsel for the appellant with the help of the judgements of Bhagat Ram''s case, more relying upon paragraph 15, submitted that the penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

7. We are of the considered opinion that the abuse of superior officer, that too, in intoxicated state by a person of armed force, is a serious matter and in this case since full opportunity was granted to the writ petitioner wherein he did not take any defence and when the petitioner was medically examined and found to be in intoxicated state, therefore, we are of the considered opinion that the petitioner, was rightly held guilty, has been rightly punished by exercising power u/s 11(1) of the Act of 1949.

At this juncture, it would be relevant to mention here that Section 10 of the Act of 1949 gives the illustration of less heinous offences and mere remaining in intoxicating state after warning is a less heinous offence but the petitioner''s case is not mere remaining in intoxicated state rather, the petitioner abused his superior in intoxicated state. In these facts and circumstances, we cannot hold that the punishment awarded to the petitioner was disproportionate. Contention of the learned counsel for the appellant that he was not given second show cause notice whereas in fact he himself did not participate in the departmental proceeding is admitted fact and he even submitted one application which fact has been taken not of, therefore, in such circumstances, it cannot be said that any principle of natural justice has been violated.

This L.P.A., having no merit, is dismissed.