

Union Of India & Ors vs Ghulam Mohd. Bhat on 20 October, 2005

Equivalent citations: AIR 2005 SUPREME COURT 4289, 2005 AIR SCW 5228, 2005 LAB. I. C. 3629, (2005) 9 JT 212 (SC), 2005 (9) JT 212, (2005) 7 SUPREME 177, 2005 (10) SRJ 565, 2005 (8) SLT 299, (2006) 1 JCR 109 (SC), (2006) 38 ALLINDCAS 129 (SC), 2005 (8) SCALE 509, 2005 (13) SCC 228, (2005) 107 FACLR 822, (2006) 1 JLJR 91, (2006) 1 CURLR 247, (2006) 1 LAB LN 87, (2006) 1 PAT LJR 123, (2006) 3 SCT 178, (2006) 8 SERVLR 4, (2005) 8 SCALE 509, (2005) 8 SCJ 164

Author: Arijit Pasayat

Bench: Arijit Pasayat, Ar. Lakshmanan

CASE NO.:

Appeal (civil) 4950 of 1999

PETITIONER:

Union of India & Ors.

RESPONDENT:

Ghulam Mohd. Bhat

DATE OF JUDGMENT: 20/10/2005

BENCH:

ARIJIT PASAYAT & Dr. AR. LAKSHMANAN

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is by the Union of India and its functionaries to the judgment rendered by a learned Single Judge of the Jammu and Kashmir High Court holding that the order of removal from service passed by the departmental authorities in terms of Section 11(1) Central Reserve Police Force Act, 1949 (in short the 'Act') read with Rule 27 of the Central Reserve Police Rules, 1955 (in short the 'Rules') is without jurisdiction.

The background facts need to be noted in brief:

The respondent as a Constable in Central Reserve Police Force (in short 'CRPF') joined the duty at Srinagar after being detailed for duty from Assam along with a group of fresh trainees. He applied for leave on 18th January, 1992 which was sanctioned. He reported for duty long after the sanctioned leave period was over on

8th December, 1992. Departmental proceedings were initiated for misconduct on account of overstay beyond sanctioned leave for 315 days without prior permission or sanction from the competent authority. On 21.6.1993 on the basis of the report of the inquiry officer, the competent authority passed order of removal from service. The same was challenged by the respondent by filing a writ petition in the Jammu and Kashmir High Court. By impugned order dated 5.8.1997 a learned Single Judge held that since the respondent was proceeded against in terms of Section 10(m) of the Act read with Rule 27 of the Rules, the order of removal is without jurisdiction. It was observed that Section 10(m) only provided for minor punishment and did not provide for the punishment of removal from service. Accordingly the order of removal was quashed but, however, liberty was given to proceed in accordance with the provisions of the Act and the Rules.

Learned Additional Solicitor General appearing for the appellants submitted that the view taken by the High Court is clearly indefensible. It was submitted that Section 11 did not provide for only minor punishment. It provided that the enumerated punishments were in lieu of or in addition to order of suspension or dismissal as the case may be. Rule 27 clearly permitted the order of removal from service and no interference by the High Court was called for. There is no appearance on behalf of the respondent in spite of service.

The scope and ambit of Section 11 and Rule 27 has been called for determination in this appeal. A few provisions having relevance need to be noted. Undisputedly, overstay without sanctioned leave is dealt with in Section 10(m) of the Act. It relates to lesser offences. Section 11(1) and Rule 27 read as follows:-

"Section 11 - Minor Punishment:

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, 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) reduced in rank;

b) fine of any amount not exceeding one month's pay and allowances;

c) confinement to quarter, 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.

(Underlined for emphasis) Rule 27: Procedure for the Award of Punishment (a) The punishment shown as items 1 to 11 in column 2 of the table below may be inflicted on 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.

Sl.. No Punishment Subedar (Inspector) Sub-

Inspector Others except Const. & enrolled followers Const. & enrolled followers Remarks Dismissal or removal from the Force DIGP DIGP Comdt.

Comdt.

To be inflicted after formal departmental enquiry.

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

Comdt.

To be inflicted after formal departmental enquiry.

Reduction to a lower stage in the time- scale of pay for a specified period. DIGP DIGP Comdt.

Comdt.

-do-

Compulsory retirement DIGP DIGP Comdt.

Comdt.

-do-

Fine to pay amount not exceeding one month's pay and allowances. DIGP DIGP Comdt.

Comdt.

-do-

Confinement in the Quarter Guard exceeding seven days but not more than twenty eight days with or without punishment drill or extra guard fatigue or other duty.

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Comdt.

-do-

Stoppage of increment.

DIGP DIGP Comdt.

Comdt.

-do-

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

DIGP DIGP Comdt.

Comdt.

May be inflicted without a formal departmental enquiry.

Censure Comdt.

Comdt.

Asst.

Comdt. Or Coy Comdr.

A Comdt.

Or Coy Comdr.

Confinement to Quarter Guard for nor more than seven days with or without punishment or extra guard fatigue or other duty.

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Comdt.

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

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Com dt.

..... "

A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the force. According to the High Court the only punishments which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

The use of words 'in lieu of, or in addition to, suspension or dismissal', appearing in sub-section (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded.

It may be noted that Section 9 of the Act mentions serious or heinous offences and also prescribes penalty which may be awarded for them. Section 10 deals with less heinous offences and clause (m) thereof shows that absence of a member of the force without leave or without sufficient cause or overstay without sufficient cause, is also mentioned as less heinous offence and for that also a sentence of imprisonment is provided. It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent is not prosecuted for an offence under Section 9 or Section 10.

It is fairly well settled position in law that removal is a form of dismissal. This Court in Dr. Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.) v. Municipal Corporation of Greater Bombay (AIR 1992 SC 786) 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 Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. 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.

This Court had occasion to deal with the cases of overstay by persons belonging to disciplined forces. In *State of U.P. v. Ashok Kumar Singh* (1996 (1) SCC 302) the employee was a police constable and it was held that an act of indiscipline by such a person needs to be dealt with sternly. It is for the employee concerned to show how that penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterized as disproportionate and/or shocking. (See *Mithilesh Singh v. Union of India and Ors.* (2003 (3) SCC 309). It has been categorically held that in a given case the order of dismissal from service cannot be faulted. In the instant case the period is more than 300 days and that too without any justifiable reason. That being so the order of removal from service suffers from no infirmity. The High Court was not justified in interfering with the same. The order of the High Court is set aside. The appeal is allowed but under the circumstances there shall be no order as to costs.