

UNION OF INDIA & ORS.

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v.

CONST SUNIL KUMAR
(Civil Appeal No. 219 of 2023)

JANUARY 19, 2023

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

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Service law – Dismissal from service – Allegation that respondent consumed liquor while on duty and threatened senior officers – CRPF dismissed the respondent from service – Order confirmed by the Appellate Authority – Single Judge of the High Court dismissed the writ petition filed by the respondent – However, the Division Bench of the High Court reinstated the respondent – It held that dismissal was disproportionate as when the misconduct was committed the respondent was not on active duty – On appeal, held: The charges and misconduct proved against the respondent was of misbehaving with superior and giving threats of dire consequences to the superior, may be under the influence of intoxication – Misconduct was of very serious nature – Charges and misconduct of indiscipline and insubordination proved – The penalty of dismissal is not disproportionate to the gravity of the wrong – Reasoning given by the Division Bench of the High Court cannot be accepted – Thus, the impugned judgment and order of the High Court dismissing the penalty and reinstating the respondent set aside.

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Allowing the appeal, the Court

HELD 1. At the outset, it is required to be noted that the disciplinary authority imposed the penalty of dismissal after holding the departmental enquiry and after following the due procedure as required under Rule 27 of the CRPF Rules, 1955 and after having held the charges and misconduct proved. The charges and misconduct held to be proved against the respondent who was serving in CRPF – a disciplined force can be said to be a grave and serious misconduct. The charges and misconduct proved against the respondent is of misbehaving with superior and giving threats of dire consequences to the superior, may be under the influence of intoxication. He also misbehaved and gave threats to the colleagues. The misconduct committed by the respondent is of insubordination also. The misconduct of misbehaving with the superior/senior officer and of insubordination can be said to be a very serious misconduct and cannot be tolerated in a disciplined force like CRPF and therefore, as such the Division Bench of the High Court is not

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A justified in observing that on the proved charges and misconduct penalty of dismissal can be said to be disproportionate. [Para 6][966-G-H; 967-A-C]

2. While holding that the penalty of dismissal can be said to be disproportionate to the gravity of the wrong, what is weighed with the Division Bench of the High Court is that as the respondent was found to be in a state of intoxication when not on duty and considering Section 10, he is deemed to have committed a less heinous offence. Whether a member of the force has committed a heinous offence or a less heinous offence as per Sections 9 and 10 of the CRPF Act, 1949 would have bearing on inflicting the punishment as provided under Sections 9 and 10 but has no relevance on the disciplinary proceedings/departmental enquiry for the act of indiscipline and/or insubordination. [Para 6.1][967-C-E]

3. Applying the law laid down by this Court to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent. [Para 6.3][968-B-D]

4. At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable. [Para 6.4][968-E-F]

H *Union of India vs. R.K. Sharma; (2001) 9 SCC 592 : [2001] 3 Suppl. SCR 664; Commandant, 22nd*

Battalion, CRPF vs. Surinder Kumar; (2011) 10 SCC 244 : [2011] 12 SCR 1189 – referred to. A

Case Law Reference

[2011] 12 SCR 1189 referred to Para 6.1, 6.2

[2001] 3 Suppl. SCR 664 referred to Para 6.2

CIVIL APPELLATE JURISDICTION : Civil Appeal No.219 of 2023. B

From the Judgment and Order dated 01.09.2017 of the High Court of Judicature for Rajasthan Bench at Jaipur in D. B. Special Appeal Writ No.303 of 2005.

Mrs. Madhavi Diwan, A.S.G. R. Balasubramanian, R Bala, Sr. Advs., Mrs. Nidhi Khanna, Vimla Sinha, Mrs. Praveena Gautam, C K Sucharita, Arvind Kumar Sharma, Advs. for the Appellants. C

Abhishek Gupta, Ajatshatru, Nikhil Kumar Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J. D

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.09.2017 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal Writ No. 303/2005, by which, the High Court has allowed the said appeal preferred by the respondent herein and has set aside the penalty imposed by the disciplinary authority and has directed the appellant(s) to reinstate him in service with notional benefits without any back wages, the Union of India and others have preferred the present appeal. E

2. The facts leading to the present appeal in a nutshell are as under: -

2.1 That the respondent was serving in disciplined force – CRPF. A departmental enquiry was initiated against him and was served with a chargesheet alleging the charges as under: - F

“That No. 911120421 CT/GD Sunil Kumar Jat of F/118 CRPF while functioning as CT/GD committed an act of gross misconduct and disobedience of orders in his capacity as a member of the Force under section 11(1) of CRPF Act, 1949 in that he misbehaved, in subordinated with Shri Ajay Mishra, Dy. Comdt. (Adjutant), Dr. J.N. Trivedi, SMO and Sub Inspector Ramesh Chandra of 94 Bn. then attached with 118 Bn. CRPF by consuming country liquor while on Govt. duty and threatened Senior Officers with dire consequences on 26th G

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A August, 02 and thus committed an act which is pre-judicial to good orders and discipline of the force.”

2.2 On conclusion of the departmental enquiry and after following the due procedure as required under Rule 27 of the Central Reserve Police Force (CRPF) Rules, 1955 and in exercise of powers under Section 11 of the CRPF Act, 1949, the disciplinary authority/CRPF passed an order dismissing the respondent from service. The order of dismissal came to be confirmed by the Appellate Authority. That thereafter, the respondent filed a writ petition before the learned Single Judge of the High Court challenging the penalty order of dismissal being Writ Petition No. 2195/2004. The learned Single Judge by judgment and order dated 07.01.2005 dismissed the writ petition. Then, the respondent preferred D.B. Special Appeal Writ No. 303/2005 before the Division Bench of the High Court and by the impugned judgment and order the High Court has set aside the order of penalty of dismissal by observing that considering Sections 9 and 10 of the CRPF Act, 1949 and when the misconduct was committed the respondent was not on active duty and therefore, the offences committed by the respondent can be said to be less heinous offence which does not warrant the extreme penalty of dismissal. Therefore, by observing that the order of penalty of dismissal can be said to be disproportionate to the gravity of the wrong, denying the back wages, the High Court has ordered reinstatement of respondent in service with notional benefits. The impugned judgment and order passed by the Division Bench of the High Court is the subject matter of present appeal.

3. Ms. Madhavi Diwan, learned ASG, appearing on behalf of the Union of India and others – appellant(s) has vehemently submitted that in the facts and circumstances of the case the Division Bench of the High Court has committed a very serious error in setting aside the order of penalty of dismissal and reinstating the respondent in service.

3.1 It is vehemently submitted by Ms. Diwan, learned ASG that the penalty of dismissal from service inflicted upon the respondent was after conclusion of the departmental enquiry and after holding the charges and misconduct proved against the respondent – delinquent. It is submitted that the charges and misconduct proved against the respondent – delinquent were very serious and not befitting a soldier working in the disciplined force – CRPF. It is submitted that while under the influence of intoxication he misbehaved with senior and threatened him of dire consequences, thus, committed an act of insubordination. It is submitted

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that therefore, the order of penalty of dismissal which was passed after following the due procedure as required under Rule 27 of the CRPF Rules, 1955 cannot be said to be disproportionate to the charges and misconduct proved.

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3.2 It is further submitted by Ms. Diwan, learned ASG, that order of penalty of dismissal was imposed upon the delinquent – respondent in exercise of powers under Section 11 of the CRPF Act, 1949. It is submitted that Section 11 of the CRPF Act, enables the authority to impose minor penalties/punishments other than suspension or dismissal. It is submitted that reliance placed upon Sections 9 and 10 of the CRPF Act, 1949 by the Division Bench of the High Court while interfering with the order of penalty of dismissal imposed by the disciplinary authority on the ground that the respondent – delinquent was not on active duty when he committed the misconduct and therefore, the same can be said to be a less heinous offence and therefore, the order of penalty of dismissal is disproportionate, is absolutely misplaced. It is submitted that as such the consideration of heinous offence or less heinous offence would have bearing on order of imprisonment as provided under Sections 9 and 10 of the CRPF Act, 1949. It is submitted that it would not have any bearing on the imposition of penalty of dismissal under Section 11 in an appropriate case after holding the disciplinary proceedings. Reliance is placed upon the recent decision of this Court in the case of **Union of India Vs. Ram Karan; (2022) 1 SCC 373** (paragraphs 16 to 21 and 30).

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3.3 It is further submitted by Ms. Diwan, learned ASG, that even on merits also the Division Bench of the High Court has committed a very serious error in observing that penalty of dismissal imposed was disproportionate to the proved charges and misconduct. It is submitted that the respondent was working in a disciplined force – CRPF and he misbehaved with the superior and he threatened the senior officers with dire consequences and the act of respondent was of insubordination. It is submitted that therefore, the misconduct of disobedience of the orders of the superior and insubordination and giving threats to the senior officers for dire consequences cannot be tolerated in a disciplined force.

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3.4 It is further submitted by learned ASG that in the case of **Commandant, 22nd Battalion, CRPF Vs. Surinder Kumar; (2011) 10 SCC 244**, it is observed and held by this Court that even in a case when a CRPF personnel is awarded imprisonment under Section 10(n) for an offence which though less heinous he can be dismissed from

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- A service after holding departmental enquiry if his conduct is found to be prejudicial to good order and discipline of CRPF. It is submitted that in the aforesaid decision, it is observed and held by this Court that the High Court in exercise of powers of judicial review, Courts should be slow in interfering with the punishment of dismissal on the ground that it was disproportionate. It is submitted that punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution of India and it is only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution of India.
- C 3.5. Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal.
4. Present appeal is vehemently opposed by Shri Abhishek Gupta, learned counsel appearing on behalf of the respondent – delinquent.
- 4.1 It is submitted that in the present case the offences and misconduct was committed by the respondent while he was not on active duty. It is submitted that therefore, as per Section 10 of the CRPF Act, 1949, a member of the force who is in a state of intoxication when not on duty is deemed to have committed a less heinous offence. It is submitted that therefore, the Division Bench of the High Court is absolutely justified in interfering with the order of penalty of dismissal imposed by the disciplinary authority by observing that the penalty of dismissal for committing a less heinous offence can be said to be disproportionate to the gravity of the wrong.
- 4.2 It is further submitted by the learned counsel appearing on behalf of the respondent that looking to the fact that the respondent had worked for 11 years, a lenient view may be taken and any other punishment lessor than the penalty of dismissal may be imposed. Therefore, it is prayed to take a lenient view looking to his past 11 years of service.
5. We have heard learned counsel appearing on behalf of the respective parties at length.
6. At the outset, it is required to be noted that the disciplinary authority imposed the penalty of dismissal after holding the departmental enquiry and after following the due procedure as required under Rule 27 of the CRPF Rules, 1955 and after having held the charges and misconduct proved. The charges and misconduct held to be proved against

the respondent who was serving in CRPF – a disciplined force can be said to be a grave and serious misconduct. The charges and misconduct proved against the respondent is of misbehaving with superior and giving threats of dire consequences to the superior, may be under the influence of intoxication. He also misbehaved and gave threats to the colleagues. The misconduct committed by the respondent is of insubordination also. The misconduct of misbehaving with the superior/senior officer and of insubordination can be said to be a very serious misconduct and cannot be tolerated in a disciplined force like CRPF and therefore, as such the Division Bench of the High Court is not justified in observing that on the proved charges and misconduct penalty of dismissal can be said to be disproportionate.

6.1 While holding that the penalty of dismissal can be said to be disproportionate to the gravity of the wrong, what is weighed with the Division Bench of the High Court is that as the respondent was found to be in a state of intoxication when not on duty and considering Section 10, he is deemed to have committed a less heinous offence. Whether a member of the force has committed a heinous offence or a less heinous offence as per Sections 9 and 10 of the CRPF Act, 1949 would have bearing on inflicting the punishment as provided under Sections 9 and 10 but has no relevance on the disciplinary proceedings/departamental enquiry for the act of indiscipline and/or insubordination. In the case of **Surinder Kumar** (supra), it is observed that even in a case when a CRPF personnel was awarded imprisonment under Section 10(n) for an offence which though less heinous, he can be dismissed from service, if it is found to be prejudicial to good order and discipline of CRPF. Under the circumstances, the reasoning given by the High Court that as the respondent is deemed to have committed a less heinous offence, the order of penalty of dismissal can be said to be disproportionate is not required to be accepted.

6.2 Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of **Surinder Kumar** (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of **Union of India Vs. R.K. Sharma; (2001) 9 SCC 592** that in exercise of powers of judicial review interfering with the

A punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.

B 6.3 Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and
C circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the
D High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.

6.4 At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed
E by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and
F order passed by the Division Bench of the High Court is unsustainable.

As observed hereinabove as the order of penalty/punishment cannot be said to be disproportionate, there is no question of remanding the matter back to the disciplinary authority.

G 7. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order passed by the High Court setting aside the order of penalty of dismissal and reinstating the respondent is hereby quashed and set aside. No costs.