

SUPREME COURT OF INDIA

Commandant & Ors.

Vs.

Surinder Kumar

C.A.No.2177 of 2006

(P.Sathasivam and A.K.Patnaik,JJ.,)

20.10.2011

JUDGMENT

A.K.Patnaik,J.,

1. This is an appeal against the order dated 12.02.2004 of the Division Bench of the Jammu and Kashmir High Court in L.P.A. No.600-A 1999 (for short 'the impugned order').

2. The facts very briefly are that the respondent was working as a Constable in the Central Reserve Police Force (for short 'the CRPF'). A complaint was lodged against the respondent. It was alleged in the complaint that he was detailed with vehicle no.25 to carry patrolling party on Chandel Palel Road but he left the vehicle unattended and absented himself without permission of his superior officer and reported on his own after 20 minutes. It was also alleged in the complaint that while he was on duty, he consumed illicit alcohol and in an inebriated state of mind misbehaved with his superior officer H.N. Singh, snatched his AK-47 rifle and pointed the barrel of the rifle to him and on the intervention of Lachhi Ram, Assistant Commandant, the barrel of the rifle was pointed upward and an untoward incident was avoided. A copy of the complaint was served on the respondent and a disciplinary enquiry was conducted and the Assistant Commandant-cum-Magistrate First Class in his order dated 10.06.1993 found the respondent guilty of charges and convicted him and sentenced him to imprisonment till the rising of the Court. By a separate order dated 10.06.1993, the Commandant also dismissed the respondent from service.

3. Aggrieved, the respondent challenged the order dated 10.06.1993 passed by the Assistant Commandant-cum-Magistrate First Class as well as the order of dismissal dated 10.06.1993 passed by the Commandant in Writ Petition No.555 of 1994 before the High Court. The Learned Single Judge dismissed the writ petition on 09.11.1998. The respondent challenged the order of the learned Single Judge in L.P.A. No. 600-A 1999 and by the impugned order, the Division Bench held that the punishment of dismissal of the respondent was disproportionate in as much as his conviction was till the rising of the court for having committed a less heinous offence. By the impugned order, the Division Bench of the High

Court directed the appellants to reconsider the nature and quantum of punishment awarded to the respondent and accordingly grant him consequential benefits.

4. Mr. Ashok Bhan, learned counsel for the appellants, submitted that the respondent was punished with imprisonment for one day by the judgment dated 10.06.1993 of the Assistant Commandant-cum-Magistrate First Class for having committed a less heinous offence under Section 10(n) of the Central Reserve Police Force Act, 1949 (for short 'the Act'). He submitted that Section 12(1) of the Act provides that every person sentenced under the Act to imprisonment may be dismissed from the CRPF and in exercise of this power the Commandant 22 Battalion, CRPF, dismissed the respondent from service by order dated 10.06.1993. He submitted that the findings in the judgment of the Assistant Commandant-cum-Magistrate in the order under Section 10(n) of the Act would show that the respondent was guilty of grave charges of indiscipline and therefore the Division Bench of the High Court was not right in coming to the conclusion in the impugned order that the punishment of dismissal from service was disproportionate.

5. Mr. J.P. Dhanda, learned counsel appearing for the respondent, on the other hand, submitted that Section 10 of the Act is titled 'Less heinous offences' and it is under Section 10(n) that the respondent has been punished for imprisonment till the rising of the court. He argued that for a less heinous offence and for an imprisonment till rising of the Court, the respondent could not have been dismissed from service. He submitted that in *Union of India vs. Parma Nanda* this Court has held that even in cases where an enquiry is dispensed with under the proviso (b) to Article 311(2) of the Constitution if the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Administrative Tribunal may step in to render substantial justice and may remit the matter to the competent authority for reconsideration or itself substitute one of the penalties. He submitted that the High Court has relied upon the decision in *Union of India vs. Parma Nanda* (supra) and has set aside the order of dismissal without going into the merits of the findings of the Assistant Commandant-cum Magistrate on the charges against the respondent.

6. We have considered the submissions of the learned counsel for the parties and we find that the respondent has been imprisoned by the judgment of the Assistant Commandant-cum Magistrate under Section 10(n) of the Act and has been dismissed from service by a separate order of the Commandant, 22 Battalion, CRPF passed under Section 12(1) of the Act. Sections 10(n) and 12(1) of the Act are extracted herein below:

"10. Less heinous offences:- Every member of the Force who (n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline; or shall be punishable with imprisonment for a term which may extend to one year, or with the fine which may extend to three months' pay, or with both.

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."

It will be clear from Section 10(n) of the Act that a member of the CRPF who is guilty of any act or omission which is prejudicial to good order and discipline is 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.

Section 12(1) of the Act provides that every person sentenced under this Act to imprisonment may be dismissed from the CRPF. The word "may" in Section 12(1) of the Act confers a discretion on the competent authority whether or not to dismiss a member of the CRPF from service pursuant to a sentence of imprisonment under the Act and while exercising the discretion, the competent authority has to consider various relevant factors including the nature of the offence for which he has been sentenced to imprisonment.

7. In the present case, the acts of indiscipline of the respondent which have been established beyond doubt by the Assistant Commandant-cum-Magistrate are that the respondent left his party without permission while on duty in the operational area for 20 minutes and returned on his own and he got enraged when H.N. Singh, Assistant Commandant, decided to take him for medical examination when he found him to be in a state of intoxication and he snatched the AK-47 rifle of H.N. Singh and pointed the barrel towards him and due to the intervention of Lachhi Ram, Assistant Commandant, an untoward incident was avoided. These acts of indiscipline were obviously prejudicial to the good order and discipline and when committed by a member of a disciplined force like the CRPF were serious enough to warrant dismissal from service.

8. The Division Bench of the High Court has taken a view in the impugned order that as the respondent has been punished for imprisonment for a less heinous offence and only till the rising of the court, the punishment of dismissal was disproportionate. The Division Bench of the High Court failed to appreciate that for less heinous offences enumerated in Section 10 of the Act, a person was liable for punishment with imprisonment and under Section 12(1) of the Act every person sentenced under the Act to imprisonment was liable to be dismissed from the CRPF. In other words, the legislative intent was that once a member of the CRPF was sentenced for imprisonment under the Act, he was also liable for dismissal from service. The Division Bench of the High Court, in our considered opinion, should have looked into the acts of indiscipline proved against the respondent for which he has been sentenced to imprisonment and then decided whether the dismissal of the respondent from service was disproportionate to the gravity of acts of indiscipline. As we have already held, the acts of indiscipline for which the respondent had been sentenced for imprisonment were serious and grave for a disciplined force. Therefore, the competent authority was right in imposing the punishment of dismissal from service.

9. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it

was disproportionate. In *Union of India vs. R.K. Sharma*² this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was 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. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service.

10. We, accordingly, allow this appeal and set aside the impugned order of the Division Bench of the High Court. No costs.

Judgment Referred.

¹*AIR 1989 SC 1185*

²*AIR 2001 SC 3053*