

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on 12.09.2023  
Pronounced on :20.09.2023

SWP No. 975/2004

1. Jagdish Chander S/o Shri Tara Chand Sharma R/o H. No. 613, Mana Basti Sarwal, Jammu, aged 35 years. ....Appellant(s)/Petitioner(s)

Through: Ms. Rozina Afzal, Advocate

**Vs.**

1. Union of India, through Home Secretary, Ministry of Home, Govt. of India, New Delhi. .... Respondent(s)
2. Director General of Special Service Bureau, Ministry of Home Affairs, Govt. of India, New Delhi.
3. Inspector General of Special Service Bureau, Sashtar Sena Bal (SSB) Frontier Headquarter 11<sup>th</sup> Floor Kendriya Bhawan Abiganj Sector H, Lucknow UP.
4. Divisional Organizer, SSB J&K Division Headquarter, Jammu
5. Commandant, 7<sup>th</sup> Bn SSB, Jammu

Through: Mr. Vishal Sharma, DSGI

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1. Through the medium of instant petition, the petitioner has challenged order bearing No. 8959991/GCJ/02(E)16614-22 dated 14.12.2002 issued by

respondent No. 5, whereby the petitioner has been removed from service with effect from 21.11.2002. Challenge has also been thrown to the departmental proceedings and the charges framed against the petitioner vide memorandum No. Estt/8959991/GCJ/02(E)/10888 dated 08.08.2002. The petitioner has also sought a direction upon the respondents to reinstate him into service with all consequential benefits.

2. Briefly stated, the case of the petitioner is that he was appointed as a Constable on 09.06.1989, whereafter he was promoted as L/Naik in the year, 1998. It is averred by the petitioner that in January 2002, his wife was to be operated upon and he applied for leave when he was posted in Srinagar. The petitioner was granted 8 days casual leave with effect from 24.01.2002 to 03.02.2002. The petitioner joined his duties again at Srinagar and underwent a training course. As the wife of the petitioner was still under treatment, he again applied for leave and the Company Commander sent the petitioner on leave. During the leave period, the petitioner fell ill and he remained under treatment with effect from 12.02.2002 to 03.01.2004. It is submitted that the petitioner was mentally disturbed during this period and his domestic condition was also not good. On 25.09.2003, the wife of the petitioner is stated to have sent a communication to the Unit Commandant informing him that the health condition of the petitioner is not good. The father of the petitioner is stated to have sent another communication alongwith the medical certificate to the respondents and ultimately, in March, 2004 the petitioner went back to resume his duties but he was not allowed to join.

3. It has been submitted that the respondents issued order No. Estt/8959991/GCJ/02(E)/10888 dated 08.08.2002, whereby the charge that the petitioner has absented himself from duty without any intimation was framed. Besides this, another charge framed against the petitioner was that despite intimation, sent to him on his home address, he did not pay any heed to the communications, as such, he is guilty of disobedience of order/neglect of duty/remissness in discharging of his duties, which amounts to misconduct. It is claimed that the charges were framed under Section 11(1) of the CRPF Act.

4. According to the petitioner, the respondents without conducting any enquiry against him have issued the impugned order dated 14.12.2002, whereby punishment of removal from the service has been imposed upon him. It has been contended that the charges have been framed against the petitioner under section 11(1) of CRPF Act, which deals with only minor punishment but he has been removed from the service, which is a major punishment.

5. The respondents have contested the writ petition by filing reply thereto. In their reply, the respondents have submitted that the petitioner was granted eight days leave with effect from 24.01.2002 to 03.02.2002 by the Company Commander and thereafter, he did not join his duties. The respondents have denied receipt of any letter from wife of the petitioner. However, the respondents have admitted that they have received letter dated 03.02.2004 from father of the petitioner, whereby it was informed that the petitioner is not feeling well due to domestic problems and mental disorder but by that time the petitioner had already been removed from service in terms of order dated 14.12.2002.

6. According to the respondents, the petitioner was served memorandum of charges dated 08.08.2002 through registered post and Shri D. S. Verma the then Assistant Commander of the Battalion was appointed as the Enquiry Officer to conduct Enquiry into the charges framed against the petitioner. In this regard, intimation was sent to the petitioner through registered post in terms of communication dated 09.08.2002. The Enquiry Officer asked the petitioner to appear before him at 7<sup>th</sup> Bn SSB Headquarter on 23.09.2002 for preliminary hearing in terms of memo dated 17.08.2002 but despite receiving the same, the petitioner did not appear before the Enquiry Officer. The petitioner is stated to have been summoned again through registered letter dated 24.09.2002 intimating him that he should attend the preliminary hearing on 07.10.2002 and it was made clear that in case the petitioner did not appear, ex-parte proceedings will be initiated. It is stated by the respondents that the petitioner did not appear before the Enquiry Officer, whereafter a notice was issued to the petitioner for recording oral statements of the witnesses on 27.10.2002. This was done vide memo dated 16.10.2002. However, the petitioner vide his letter dated nil, which was received by the Enquiry Officer on 29.10.2002 admitted that he has received memo dated 08.08.2002 and communication dated 09.08.2002 and he further informed the Enquiry Officer that he does not want to respond to these communications. The petitioner is also stated to have conveyed to the Enquiry Officer that he may hold Enquiry in his absence and the same would be acceptable to him.

7. According to the respondents, the Enquiry was held ex-parte and a copy of the proceedings was sent to the petitioner vide communication dated 02.11.2002 and he was given another opportunity to make representation and

submissions in writing within 15 days. However, the petitioner did not respond and the Disciplinary Authority after considering the merits of the matter and report of the enquiry issued the impugned order dated 14.12.2002, whereby the petitioner has been removed from service. It has been submitted that the enquiry was held strictly in accordance with the rules and the petitioner has been removed from service after conducting a proper enquiry and after supplying him a copy of the report of enquiry in terms of communication dated 02.11.2002.

**8.** I have heard learned counsel for the parties and perused the record of the case.

**9.** The main thrust of arguments advanced by the learned counsel for the petitioner was on the contention that the respondents have not held an Enquiry before passing the impugned order of removal from service. Learned counsel for the petitioner has laid much emphasis on the contention that the charges against the petitioner have been framed under section 11(1) of the CRPF Act, which deals with minor punishment but he has been awarded major punishment of removal from the service. It has also been contended that the punishment imposed upon the petitioner is disproportionate to the alleged act of misconduct committed by him.

**10.** So far as the contention of the petitioner that he has not been given an opportunity to participate in the Enquiry proceeding and in fact no Enquiry has been conducted before passing impugned order of removal from service is concerned, the same is not borne out from the record. As per the record produced by the respondents, after the petitioner absented himself from

duties, the respondents have issued a series of communications asking him to resume his duties. I could find at least three AD cards in respect of these communications signed by the petitioner, which shows that he has received these communications asking him to resume his duties. The memorandum of charges dated 08.08.2002 has been served upon the petitioner through registered post. In fact, the petitioner has, in his communication that was received by the respondents on 09.08.2002, admitted that he has received communication dated 08.08.2002 as well as the memo of charges framed against him annexed to the aforesaid communication, from the respondents. He has stated in the said communication that he has nothing to say in the matter and that the respondents are free to take any action in his absence. In the said communication, the petitioner has conveyed to the respondents that his domestic condition is not good and it would not be possible for him to leave his home.

**11.** In the face of aforesaid material on record, it cannot be stated that the petitioner was not given an opportunity of presenting his case by the respondents before passing the impugned order of removal. The record clearly shows that the petitioner has been served with the memorandum of charges and he has been repeatedly asked by the respondents to participate in the enquiry proceedings that were being conducted at Jammu, the place to which the petitioner belongs. In spite of being a resident of the same locality, the petitioner chose not to appear before the Enquiry Officer, as a result of which, the enquiry was conducted in his absence. The record shows that the Enquiry Officer has examined the witnesses in support of the charges and on the basis of the statements of the witnesses and the record produced before him, he has

concluded that the petitioner has absented himself from duties with effect from 12.02.2002.

**12.** Even as per his own case, the petitioner did not resume his duties until April, 2004 meaning thereby that he had remained absent from duty for more than two years without any permission. The contention of the petitioner that he was suffering from some ailment and as such, he could not resume his duties, cannot make any difference because this fact has not been conveyed by the petitioner to the Enquiry Officer though he was given numerous opportunities to present his version. In fact, as already stated, the petitioner upon receipt of memo of charges addressed a communication to the Enquiry Officer that he has nothing to say in the matter and that he is not able to resume his duties because of his domestic problems. In the face of this situation, the Enquiry Officer had no option but to hold that the petitioner has absented himself from duties without permission and on the basis of this report, the impugned order of removal of service of the petitioner has been passed.

**13.** So far as the contention of the petitioner that he has been charged for minor offence but major punishment has been imposed upon him is concerned, the same is also without any merit. The petitioner was charged for unauthorized absence, which is an offence categorized as 'less heinous' offence in terms of section 10(m) of the CRPF Act. Such an offence, as per Section 10 of the Act, 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. The question that arises for determination is as to whether a person,

who has been charged and found guilty of offence under Section 10(m) of the CRPF Act, is liable to be awarded punishment of dismissal from service. In this regard, provisions contained in sub-section (1) of Section 11 of the CRPF Act are required to be noticed. The same are reproduced as under:

11. (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 considered to be guilty of disobedience, neglect of duty, or 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) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (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 or extra guard, fatigue or other duty; and
- (e) removal from any office of distinction or special emolument in the force

**14.** From a perusal of the afore-quoted provision, it is clear that once misconduct against a member of the Force is established, a Commandant, in exercise of his powers under Section 11(1) of the Act, is competent to award punishment of either suspension or dismissal and if he is satisfied that some additional punishment is required to be awarded against the delinquent, any of the punishments provided in Clauses (a) to (e), can be awarded but in case the Commandant does not find, misconduct to be of such a nature as would warrant awarding of punishment of dismissal from service, he can, instead of awarding the punishment of suspension or dismissal, award the punishment in terms of Clauses (a) to (e) of Section 11(1) of the Act.

**15.** The Supreme Court has, in the case of **Union of India and others vs. Ghulam Mohd. Bhat**, (2005) 13 SCC 228, after noticing the provisions of Section 11(1) of the CRPF Act, observed as under:



“5. 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.

6. The use of the 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 the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.

7. 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 Enquiry 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.”

**16.** Again, in the case of **Union of India and others vs. Ex. Constable Ram Karan**, (2022) 1 SCC 373, the Supreme Court interpreted the provisions of Section 11(1) of the CRPF Act in the following manner:

**16.** The scheme of Section 11 of the 1949 Act mandates that the competent authority may, subject to rules made thereunder, award in lieu of, or in addition to, suspension or dismissal any one or more punishment if found guilty of misconduct in his capacity as member of the Force.

**17.** The use of words “in lieu of, or in addition to, suspension or dismissal”, appearing in Section 11(1) clearly indicates that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.

**18.** It may be noted that more heinous offences or less heinous offences prescribe penalty of sentence of imprisonment if member of the Force is found guilty. At the same time, Section 11 is clear and unambiguous and prescribe those minor punishments which the competent authority may award in a departmental enquiry in lieu of or in addition to suspension or dismissal any one or more of the punishments to member of the Force as referred to under clauses (a) to (e) of Section 11(1) of the 1949 Act even if the member has not been prosecuted for an offence under Section 9 or Section 10 of the Act.

**19.** It is also well settled that removal and dismissal from service stand on the same footing and both terminate the relationship of employer-employee. The only difference between the two is that in the case of dismissal, it precludes the employee from seeking future employment in the Government while in the case of removal, he is not disqualified from any future employment. By virtue of an Explanation appended to Rule 27 of the scheme of 1955 Rules, the rule-making authority has made it clear that dismissal of a member of the Force precludes him from being re-employed in government service, while removal of any such member from the force shall not be disqualification, for any future employment (other than an employment in the Central Reserve Police Force) under the Government.

**17.** From the foregoing analysis of law on the subject, it is clear that the Commandant is well within his powers to pass an order of dismissal of service of a delinquent CRPF Personnel if he feels that the misconduct is of such a nature as would warrant aforesaid punishment. This can be done by him in exercise of his powers under Section 11(1) of the CRPF Act. Dismissal and removal from service are being considered to be minor punishments as per Section 11 of the CRPF Act. These punishments can be inflicted in addition to or in lieu of punishments provided under Clauses (a) to (e) of subsection (1) of Section 11 of the Act.

**18.** In view of the foregoing legal position, no fault can be found in the action of respondents in passing the order of dismissal of service against the petitioner after having found him guilty of the charge of unauthorized absence. It is a settled law that discretion vests with the Disciplinary Authority to impose punishment commensurate with the nature of offence

proved and the same cannot be interfered with by the Court. It is only in rare and exceptional cases that the Court may substitute its own view as to the quantum of punishment by assigning cogent reasons. In this regard, support can be had from the ratio laid down by the Supreme Court in the case of **State of Meghalaya vs. Mecken Singh N. Marak**, (2008) 7 SCC 580.

19. In the instant case, having regard to the fact that the petitioner had remained un-authorisedly absent for more than ten months and he had conveyed to the respondents that he is not interested to resume his duties, there is no reason, much less a cogent reason, for differing with the quantum of punishment that has been awarded by the Disciplinary Authority against the petitioner. The petitioner being a member of CRPF could not overstay without permission. Absence from duty without leave for a member of the Force is a gravest misconduct. Thus, the Disciplinary Authority was right in awarding punishment of removal from service. The punishment awarded against the petitioner is by no reason disproportionate.

20. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall stand vacated with immediate effect.

21. The record be returned to learned counsel for the respondents.

**(SANJAY DHAR)**  
**JUDGE**

Jammu  
20.09.2023  
Karam Chand/Secy.

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No.