**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 1133 OF 2016**
(Arising out of S.L.P.(C) 21027 OF 2013)

**Union of India & Ors.** ... **Appellants**

**Versus**

**Diler Singh** ... **Respondent**

**J U D G M E N T**

**Dipak Misra, J.**

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The respondent, a constable in Central Reserve Police Force (CRPF), was enrolled as such on 1.4.1990. He was posted in the 23 Battalion where he served continuously approximately for fourteen years. Subsequently, he was transferred to 61 Battalion where he served for two years. During the second posting a charge-sheet was served on

him alleging that on 22.06.2001 about 11.30 hrs. he left the campus without permission of the competent authority and went to the bazaar and consumed liquor and quarrelled with some civilians. On being informed, S.I. Sheoji Ram, HC Mahabir Singh and Captain Fiyaz Ahmed brought him from bazaar to the campus. On the advice of the competent authority, a medical examination was conducted on the respondent and as per the medical report given by the assistant surgeon, District Hospital, Medak at Sangareddy, it was found that the respondent had consumed liquor.

2. On the basis of the aforesaid report, a departmental enquiry was ordered by Commandant 61-Bn. vide Memo No. P-VIII-8/01-61-EC-II dated 6.7.2001 and the respondent was also placed under suspension with effect from 6.7.2001. The enquiry officer conducted an enquiry and on the base of the material and testimony of the witnesses came to hold that the charges had been proved.

3. The disciplinary authority concurred with the findings recorded by the enquiry officer and came to hold that the charges levelled against the respondent had been proved beyond doubt. Recording concurrence with the findings returned by the enquiry officer, the disciplinary authority

opined that the respondent was not fit to continue any more in the Force and accordingly in exercise of power conferred under Section 11(1) of the Central Reserve Police Force Act, 1949 (for brevity, 'the Act') read with Rule 27-A(1) of the Central Reserve Police Force Rules, 1955 (in short 'the Rules') ordered the respondent to be removed from the service. It was further stipulated in the order that except the pay and allowances given to the respondent during suspension period from 7.7.2001 to 12.9.2001, he would not be entitled to any pay or allowances and the period of suspension shall be treated as such. That apart, it was directed that medals and awards, if any, that had been received by the delinquent employee during service period shall be forfeited under the provision of Section 12(1) of the Act.

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4. The respondent initiated a civil action by filing Civil Suit No.253/2002/05 in the Court of Civil Judge (Senior Division), Narnaul seeking a declaration that the orders passed against him by the authorities were illegal. The appellants contested the suit by putting forth a stand that due enquiry was held by the authorities and the charges levelled against the respondent were duly proved and there

was no procedural error in the enquiry.

5. Learned Civil Judge framed the following issues:

> "1. Whether the impugned order No. P-III-8/2001-61 Stha II dated 12 September, 2001 are wrong, illegal, against facts, arbitrary malafide, against principles of natural justice, null and void and ineffective against the rights of plaintiff?
>
> 2. Whether the plaintiff has no cause of action to file the suit?
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> 3. Whether the civil Court has no jurisdiction to try and entertain the present suit?
>
> 4. Whether the suit is not maintainable in the present form?"

6. While dealing with the issue number 1, the trial Court took note of the fact that the charges were issued against the delinquent officer under Section 11(1) of the Act, relied on the decision rendered in ***Ram Singh Rai v. Union of India***[1] and ***Rattan Singh v. Union of India & Others***[2] and came to hold that the disciplinary authority was not entitled in law to convert the charge under Section 11(1), a minor penalty to a major penalty and accordingly opined that the impugned order of dismissal was illegal, null and void. The trial Court further held that it had jurisdiction to try the suit and eventually decreed the suit with costs. It directed

[1] 2003 (1) SCT 523
[2] 2003 (1) SCT 59

for reinstatement of the respondent plaintiff in service with effect from 12.09.2001 along with arrears of pay and allowances and other consequential benefits.

7. Being aggrieved, the aforesaid judgment and decree was called in question by the department in Civil Appeal No.11 of 2009 before the Additional District Judge, Narnaul who by judgment dated 27.03.2010 reversed the judgment of the trial Court and held that the trial Court had no jurisdiction to try the suit, and further the judgment and decree passed by it were not sustainable in view of the decision in ***Union of India & others v. Ghulam Mohd. Bhat***[3].

8. The respondent assailed the defensibility of the judgment of the first appellate Court in Regular Second Appeal No.4578/2010. Learned single Judge noted the grounds of challenge, referred to the decision in ***Ram Singh Rai*** (supra) and reproduced a passage from the decision in ***Deputy Inspector General of Police, CRPF and another v. Akhilesh Kumar***[4] and came to hold that the controversy is covered by the judgment of the Calcutta High Court rendered in ***Akhilesh Kumar*** (supra) and accordingly

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[3] (2005) 13 SCC 228
[4] 2007 (6) SLR 438

opined that the allegations levelled against the respondent plaintiff were not of serious nature which would have attracted penalty of dismissal from the services. The aforesaid perception led to acceptance of the appeal and dislodgment of the judgment and decree of the first appellate Court and restoration that of the trial Court.

9. We have heard Mr. Maninder Singh, learned Additional Solicitor General for Union of India and Mr. J.S. Naik, learned counsel for the respondent.

10. To appreciate the controversy, it is relevant to refer to the relevant provisions of the Act. Section 2(c) defines "the Force" to mean the Central Reserve Police Force. Section 2(d) defines "member of the Force" to mean a person who has been appointed to Force by the Commandant, whether before or after the commencement of the Act and in Section 1,3,6,7,16,17,18 and 19, includes also a person appointed to the Force by the Central Government, whether before or after such commencement. Section 7 specifies in general duties of members of the Force. Section 8 provides for superintendence, control and administration of the Force. Section 9 stipulates about more heinous offences. It provides that a member who commits heinous offences shall

be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may be extended to three months' pay or with fine to that extent in addition to such sentence of transportation or imprisonment. Section 10 provides for less heinous offences. It states that a member of the Force who commits such offence shall be punishable within imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both. Thus, the aforesaid provision defines the offences and provides punishment for the same.

11. In the case at hand, we are concerned with the concept of minor punishments as postulated under Section 11 of the Act. Section 11 of the Act reads as follows:-

> "**11. Minor punishments.** – (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, 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.

(2) Any punishment specified in clause (c) or clause (d) of sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The assistant commandant, a company officer or a subordinate officer, not being below the rank of subedar or inspector, commanding a separate detachment or an output or in temporary command at the headquarters of the Force, may, without, a moral trial, award to any member of the Force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not a sufficiently serious nature to require prosecution before a Criminal Court, that is to say, -

(a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) punishment drill, or extra-guard, fatigue or other duty, for not more than thirty days, with or

without confinement to quarters, lines or camp;

(c) censure or severe censure: provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A jamadar or sub-inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in clause (b) or sub-section (3) for not more than fifteen days."

12. At a subsequent stage, we shall advert to the interpretation placed by this Court on the aforementioned provision. Prior to that, it is necessary to state in detail the misconduct or misbehaviour in support of charges framed against the respondent. The same is as under:

"<u>Article – 1</u>

That, on transfer of Force No.901342841 Constable Diler Singh, from 23 Battalion C.R.P.F. to 61 Battalion C.R.P.F., he reported on 28.09.2000 and was posted in C/61. Presently, Force No. 901342841 Constable Diler Singh is posted at Platoon No.7, Police Station Jinnaram, C.R.P.F. Narsapur, Medhak, Andhra Pradesh, which is a Naxalwadi Area. Therefore, keeping in view the sensitivity of the area, it was necessary for each personnel to take permission for leaving the camp. Despite applicability (implementation) of these orders, Force No.901342841 Constable Diler Singh, on 22.06.2001 at about 1330 hours, went outside the Camp without permission of any competent officer, which is against the discipline of force and good orders.

Article – 2

> That, Force No. 901342841 Constable Diler Singh, on 22.06.2001 at about 1330 hours left out from platoon No.7, Police Station Jinna Ram, C/61, C.R.P.F. Narsapur, Medhak, Andhra Pradesh, which is Naxalwadi Area, without permission of any competent officer and after going to the market, he consumed very much liquor (wine) and quarrelled there with many civilians. On receiving information about this at Platoon, witness No.2,5 and Constable Nawaj Ahmad brought him from the market under influence of liquor at about 1500 hours. At about 1800 hours, witness No.4 with one Section handed over it to C.H.M. in Company Headquarters. Thereafter at about 2030 hours, he was taken to .... Singa Reddy's Civil Hospital, where his medical examination was got conducted. According to the medical certificate, he had consumed liquor(wine). Therefore, the act on his part is against the worthy orders and discipline of the Force."

13. The enquiry officer, as is vivid from the enquiry report, found that all the witnesses had supported the fact that on 22.06.2001 the respondent had gone out of the camp and in the market he had consumed liquor and quarrelled with the local persons, and accordingly has proceeded to hold as under:-

> "Thus, it is also proved that on 22.06.2001, constable Diler Singh came out of his platoon post without obtaining permission from any one and consumed liquor, thereafter, he quarrelled with the local persons in the market and besides

> above, he by using indecent language hurled abuses to the personnel present in the camp and on reaching at company headquarters Narsapur against CRPF personnel and officers, which is totally against the conduct and behaviour of a civilized and good constable."

14. In this backdrop, the judgments of the Courts below and that of the High Court are to be scrutinised. The trial Court by placing reliance on the decisions in ***Ram Singh Rai*** (supra) and ***Rattan Singh*** (supra) has opined that the punishment of dismissal could not have been imposed on the delinquent employee under Section 11(1) of the Act. The first appellate Court while holding that the trial Court has no territorial jurisdiction also reversed the finding which was rendered in the context of Section 11(1) of the Act. In this context, learned appellate Judge relied on the decision in ***Ghulam Mohd. Bhat*** (supra). The High Court, as is evident, has not referred to the decision in ***Ghulam Mohd. Bhat*** (supra) but has adverted to a different aspect which is in the relam of proportionality.

15. It is submitted by Mr. Maninder Singh, learned Additional Solicitor General for the appellants that the High Court has not framed any substantial question of law under Section 100 of the Code of Civil Procedure which is

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absolutely mandatory. It has further been submitted that the High Court should have applied the ratio laid down by this Court in ***Ghulam Mohd. Bhat*** (supra) which defines the operational spectrum of Section 11(1) of the Act and also not followed the decision in ***Akhilesh Kumar*** (supra) to dislodge the judgment of the appellate Court.

16. Learned counsel for the respondent, per contra, would support the judgment passed by the High Court on the foundation that this High Court has ascribed adequate reasons to come to the conclusion and, in any case, the punishment of dismissal in the facts and circumstances is too harsh and shocks the conscience.

17. First, we shall deal with the submission with regard to framing of substantial question(s) of law. On a perusal of the judgment of the High Court, it is evident that it has not framed any substantial question of law. The Court in ***Santosh Hazari v. Purushottam Tiwari***[5], has held that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court. The

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[5] (2001) 3 SCC 179

existence of substantial question of law is the *sine qua non* for the exercise of the jurisdiction under the amended Section 100 of the Code. The said principle has been reiterated in many a decision including the one in the ***Govindaraju v. Mariamman***[6] which has been placed reliance upon by Mr. Maninder Singh. In the said case it has been laid down, the substantial question of law has to be framed for such a formulation is the *sine qua non* for exercise of power under Section 100 of the Code of Civil Procedure

18. It is necessary to state here that the High Court while admitting the second appeal should have framed the substantial question(s) of law which would have been adverted to at the time of final hearing. That is the command of the provision and has been clearly stated by this Court in number of occasions. We may unhesitatingly state that we do not remotely get a sprinkle of bliss by ingeminating or repeating the same. It has been done following the rigoristic concept of 'duty for duty sake' with the great expectation that this would be the last one.

19. The core issue that emerges for consideration is

[6] (2005) 2 SCC 500

whether under Section 11(1) of the Act, punishment of dismissal can be imposed. The controversy is no more *res integra*. In ***Ghulam Mohd. Bhat*** (supra) while interpreting Section 11 of the Act, it has been held thus:-

> "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 Fore 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.
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> 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."

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And again:-

> "7. … 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."

20. We respectfully agree with the said view and opine that under the scheme of the Act, in exercise of power under Section 11(1) of the Act punishment of dismissal can be imposed. As is seen from the impugned order, the High Court, to reverse the conclusion of the first appellate Court, has extensively quoted from the decision of the Calcutta High Court rendered in ***Akhilesh Kumar*** (supra). Be it stated that the charges levelled against the delinquent officer therein was the same. The Division Bench of the Calcutta High Court, analysing the Act, especially Section 10(m) and various clauses of the CRPF Manual, came to hold thus:-

> "It is an admitted position from the factual matrix of the departmental proceedings that the writ petitioner/delinquent was posted in a camp. As per rule of such positing in a camp/lines the concerned personnel is not free to move as per his choice even during the period when he is not on actual duty. The discipline of a camp is completely different in comparison with the

posting of an individual in an office and or in other places outside of the camp. It is true, by rotation of 8 hours duty is allotted to the respective personnel who are attached to the camp and staying in the camp but that does not mean that when he will not be in active duty, he would be allowed to go outside of the camp without prior permission. From the relevant provision of Clauses 7.2 and 6.23 as already quoted it appears that absence without leave or permission from the camp would invite initiation of judicial trial of the delinquent if there is a serious and grave situation or otherwise a departmental enquiry. Hence, finding of the learned trial judge that as the delinquent/writ petitioner was not on active duty, the aforesaid clauses got no effect, is not appealing us for its applicability to quash the order of dismissal. However, from the aforesaid provision of maintaining discipline while a personnel is posted in a camp which requires a prior permission to leave the camp even for a short period from the Company Commander, we are of the view that the charge under Article no.1 was proved. Now, on the question of quantum of punishment, namely, dismissal from service as imposed on such charge, we are of the view that as under clause 6.23 there is a provision for initiation of the departmental enquiry and as per decision only a minor punishment could be imposed and as Section 10(m) of CRPF Act provides the minor punishment issue in that field, we are of the view that dismissal being a major punishment should not have been passed by the Disciplinary Authority.

8. Considering all the issues, we are quashing the order of dismissal as well as the order of confirmation of such by the Appellate Authority and remanding the matter back to the Disciplinary Authority under the service regulation of the delinquent to decide the quantum of punishment as would be

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> commensurating with the charge of misconduct as admitted, which invites only minor punishment."

21. The aforesaid analysis reveals that the Division Bench has clearly held that the delinquent employee, being a member of the Force, could not have left the camp without prior permission. It has also opined when a personnel is posted in a camp, he is not free to move as per his choice even during the period when he is not on duty. However, as is manifest, the Division Bench has opined that the imposition of dismissal as a punishment, which is a major one, could not have been imposed by the disciplinary authority. The said opinion has been expressed without referring to the position of law that has been clearly laid down in the case of ***Ghulam Mohd. Bhat*** (supra). Thus, the basic premise is erroneous. In the impugned order, the writ court has, after reproducing the passage from ***Akhilesh Kumar*** (supra), opined that the controversy is covered by the judgment rendered by the High Court of Calcutta. It is extremely significant to note that the learned Single Judge has not even made an effort to appreciate the decision in ***Ghulam Mohd. Bhat*** (supra) though the same was relied

upon by the learned first appellate Judge. Thrust of reasoning of the first appellate court was that a major punishment of dismissal could be imposed in law. It is quite unfortunate that the High Court has dislodged the finding without any analysis but reproducing a passage from the Calcutta High Court which had not referred to the ratio laid down by a two-Judge Bench of this Court in ***Ghulam Mohd. Bhat's*** case. Thus, the conclusion arrived at by the High Court is wholly unsustainable.

22. The learned counsel for the respondent has submitted that even if the charges have been proven, the punishment of dismissal in the obtaining factual matrix is absolutely harsh and shocking to the conscience. It is his submission that the punishment is disproportionate. The respondent was a part of the disciplined force. He has left the campus without prior permission, proceeded to the market, consumed liquor and quarrelled with the civilians. It has been established that he had consumed liquor at the market place, and it has been also proven that he has picked up quarrel with the civilians. It is not expected of a member of the disciplined force to behave in this manner. The submission, as has been noted earlier, is that the

punishment is absolutely disproportionate. The test of proportionality has been explained by this Court in ***Om Kumar and others v. Union of India***[7], ***Union of India and another v. G. Ganayutham***[8] and ***Union of India v. Dwarka Prasad Tiwari***[9]. In ***Dwarka Prasad Tiwari*** (supra), it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.

23. We are inclined to think so as a member of the disciplined force, the respondent was expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in fancy. It is not a mild deviation which human nature would grant some kind of lenience. It is a conduct in public which

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[7] (2001) 2 SCC 386
[8] (1997) 7 SCC 463
[9] (2006) 10 SCC 388

has compelled the authority to think and, rightly so, that the behaviour is totally indisciplined. The respondent, if we allow ourselves to say so, has given indecent burial to self-control, diligence and strength of will-power. A disciplined man is expected, to quote a few lines from Mathew Arnold:-

> "We cannot kindle when we will
> The fire which in the heart resides,
> The spirit bloweth and is still,
> In mystery our soul abides:
> But tasks in hours of insight will'd
> Can be through hours of gloom fulfill'd.

Though the context is slightly different, yet we have felt, it is worth reproducing.

24. Consequently, the appeal is allowed, the judgment and decree passed by the High Court is set aside and that of the first appellate court is restored and the suit instituted by the respondent/plaintiff stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

..............................J.
[Dipak Misra]

.........................., J.
[N.V. Ramana]

New Delhi;
June 30, 2016