
entitled for protection under the proviso to Section 13(2) of the East Punjab Urban Rent Restriction Act. It was further held in the said authority that where the rent has been deposited along with interest and costs before the first date of hearing, the proviso to Section 13(2) of the Rent Act stand complied with and it could not be said that the deposit must be made only on the date of first hearing.

(10) In view of the law laid down by the Hon'ble Supreme Court, in the above mentioned authorities, in my opinion, it could not be said that the deposit made by the petitioner tenant before the Civil Court, in the interpleader suit was to be ignored, nor it could be said that the petitioner-tenant was required to deposit the rent again in the present ejectment petition to avoid his eviction. On the other hand, in my opinion, the deposit of arrears of rent in the interpleader suit would be deemed to be valid deposit and the tenant cannot be ordered to be ejected from the house in question, on the ground of non-payment of rent.

(11) For the reasons recorded above, in my opinion, the Courts below had erred in law in ordering the ejectment of the petitioner-tenant from the house in question on the ground of non-payment of rent. Accordingly, the present revision petition is allowed. The ejectment order passed by the Courts below are set aside and the ejectment petition filed by the landlord is dismissed. No order as to costs.

R.N.R.

Before S.S. Saron, J

EX. 720080444 L/NK RAM SINGH RAI—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 6845 of 1993

13th September, 2002

Constitution of India, 1950—Art. 226—C.R.P.F. Act, 1949—Ss. 9, 10 & 11—C.R.P.F. Rules, 1955—Rl. 27—Charges against a member of the force of disobedience, neglect of duty & remissness in discharging duties—Disciplinary authority issuing memo of charges

u/s 11(1) of the Act for imposing minor penalty but passing order of removal from service—S. 11 deals with minor punishments—Removal from service not a minor punishment—Where procedure adopted for imposing minor punishment u/s 11(1), a major penalty of removal from service could not be imposed—Impugned orders of removal from service set aside being not sustainable while granting liberty to the authorities to impose one of the minor punishments u/s 11(1).

Held, that in case a member of the force is to be suspended or dismissed he may in addition to suspension or dismissal be also imposed the various punishments indicated in Section 11(1) of the C.R.P.F. Act, 1949. However, it cannot be that where procedure is adopted for imposing minor punishment under Section 11(1) of the Act, a major penalty of removal from service could be imposed. This is not the intent of section 11(1) of the C.R.P.F. Act, 1949. The disciplinary authority issued memo for imposing minor punishment and on receipt of the reply from the delinquent official, passed the impugned order imposing major penalty. In this view of the matter, prejudice has been caused to the petitioner as he was always under the impression that he is to be subjected to a minor punishment only. Thus, the impugned orders are unsustainable in law to the extent that the petitioner has been removed from service. The writ petition is partly allowed and the impugned orders are set aside to the extent that the removal of the petitioner from service has been ordered. The respondents—authorities will, however, be at liberty to impose one of the minor punishments as indicated in Section 11(1) of the C.R.P.F. Act, 1949.

(Paras 19, 20 & 21)

Rameshwar Sharma, Advocate, with

Baljit Pathania, Advocate, for the petitioner.

P.C. Goyal, Advocate for the UOI.

JUDGEMENT

S.S. SARON, J.

(1) The present petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ in the nature of *certiorari* for quashing the orders dated 18th January, 1990

(Annexure P-3) and the Appellate Order dated 11th November, 1992 (Annexure P4), whereby the petitioner has been removed from the Central Reserve Police Force (C.R.P.F. for short) with immediate effect.

(2) The petitioner was enrolled in the C.R.P.F. on 1st March, 1972. During his services, he served at various places and was promoted as Lance Naik. It is alleged that while he was deployed in the 41 Bn. of the C.R.P.F. on 22nd/23rd September, 1989, a special operation was conducted against the terrorists at Sarahali Mand Area, at Patti, District Amritsar. The petitioner was also a part of the said operation. It is alleged that an encounter ensued with the terrorists after which one round of 303 was accidentally fired by the petitioner from his G.F. Rifle. He was held liable for loading of Rifle without permission and firing the same. The Commandant 41 Battalion of the C.R.P.F. situated at Patti (Amritsar) directed to hold a departmental enquiry under Section 11(1) of the C.R.P.F. Act, 1949. The petitioner was issued a memorandum dated 28th October, 1989 (Annexure P-2) by the office of Commandant 41 Battalion, C.R.P.F., Patti (Amritsar), indicating therein that the Commandant proposed to hold an enquiry against the petitioner under Rule 27 of the C.R.P.F. Rules 1955. The substance of imputation of mis-conduct was also enclosed as also a list of documents by which and list of witnesses by whom the articles of charge were proposed to be substantiated. As per the statement of imputation of mis-conduct in support of the articles of charge framed against the petitioner, it was alleged that before proceeding for operation at 'A' Coy location Durga Sahib, Coy personnel were ordered to charge chamber of their weapons with safety catch locked except G.F. rifle and L.M.G. However, the petitioner himself charged his G.F. rifle chamber some time during the operation on 23rd September, 1989 and kept it so. He has handled his rifle in neglectful manner which resulted in accidental and unintentional firing of one round. Constable K.C. Naik, who was sitting on his left side in a vehicle was seriously injured and subsequently he succumbed to his injuries. Besides constable P.K. Karjee also received minor injuries. The petitioner, thus, committed an offence of disobedience of orders, neglect of duty and remissness in the discharge of duties under Section 11(1) of C.R.P.F. Act, 1949.

(3) After inquiry the petitioner was served with the impugned office order dated 18th January, 1990 (Annexure P-2). It was held in respect of the first article of charge that the petitioner kept a live round in the chamber of G.F. rifle even after unfixing the discharge cup in utter dis-regard of the order on the spot. Besides, in his capacity as a member of the force, he committed an offence of disobedience of orders and that the same was proved against him. It was observed that the petitioner admitted in his statement that he himself charged his G.F. rifle chamber without any orders and that he admitted his guilt in writing while replying to the articles charge memo dated 28th December, 1989. In respect of the second article of charge, it was observed that the petitioner was sitting in the vehicle and ready to move to Coy location, one round 303 went off from the rifle held by him, on account of which, Constable K.C. Naik sustained serious bullet injuries on his spine and Constable P.K. Karjee sustained minor injuries and that Constable K.C. Naik, succumbed to his injuries. Whereas Constable P.K. Karjee fully recovered from the injuries that he sustained. It was observed that death of Constable K.C. Naik was caused due to accidental fire from the G.P. rifle of the petitioner. As a result of the offences committed, the Commandant 41 B.N., C.R.P.F., Patti, in terms of the aforesaid order dated 18th January, 1990 (Annexure P-3) held that the petitioner had committed serious offence of negligence, in his capacity as a member of the force, under Section 11(1) of the C.R.P.F. Act 1949 and that he deserved a severe punishment. Accordingly, he ordered that the petitioner be removed from service with immediate effect i.e. 18th January, 1990 itself. His suspension period from 25th September, 1989 to 18th January, 1990 was ordered to be treated as period spent on duty. However, he was not to be paid any more, whatever he had already received as subsistence allowance during the period of suspension.

(4) Against the order dated 18th January, 1990 (Annexure P-3), the petitioner filed an appeal in terms of Rule 28 (a) of C.R.P.F. Rules, 1955, before the Deputy Inspector General of Police C.R.P.F. The Deputy Inspector General of Police, C.R.P.F. H.C. block Sector III **Salt Lake Calcutta**, in terms of his order dated 11th November, 1992 (Annexure P-4) dismissed the same and held that the petitioner was guilty of the charges framed against him and he did not consider any mitigating fact to interfere with the orders passed by the disciplinary authority. The punishment imposed upon the petitioner by the

disciplinary authority was held to be just and commensurate with the gravity of offence.

(5) It may be mentioned that during the pendency of the appeal pending before the Deputy Inspector General, C.R.P.F. , the petitioner had filed one Civil Misc. Writ Petition before Hon'ble the Allahabad High Court, which was dismissed, *vide* order dated 1st May, 1990 (Annexure P-1), with the observation that the impugned order dated 18th January, 1990 had been passed by the authorities in Amritsar and that the said Court had no jurisdiction. It is after the dismissal of the said writ petition by the Hon'ble Allahabad High Court, that the appeal before the D.I.G., C.R.P.F. was taken up, which as noticed above, was dismissed on 11th November, 1992,—*vide* annexure P-4.

(6) Upon notice written statement has been filed by the respondents. It is stated that the petitioner was detailed for special operation against anti-terrorists on 22nd September, 1989 at Sarhali Manda Area, Police Station Patti, District Amritsar, alongwith other jawans. He was issued G.F. Reifle No. K. 44642. Before proceedings for operation all jawans were asked to charge chamber of their weapons except G.F. Rifle chamber and L.M.Gs. In spite of clear instructions of his Superior Commandar, petitioner himself charged his G.F. Rifle chamber with a live round .303 during some time in operation. It is further added that the capacity of G.F. Magazine is ten rounds and not 20 rounds. Besides, it is admitted that the petitioner has been dealt with under Section 11(1) of the C.R.P.F. Act. 1949 and removed from service and that his removal is in accordance with law. In the departmental enquiry full opportunity was given to the petitioner to produce his defence to disprove the charges framed against him but he failed to do so. He was also given more 15 days time for submitting his written statement along with list of witnesses. However, the petitioner had voluntarily submitted his written statement that he has no documentary evidence and defence witnesses. He requested to the enquiry officer to close the enquiry. The allegations of malice have been denied emphatically.

(7) I have considered the respective contentions urged by the learned counsel for the parties.

(8) The petitioner has contended that the proceedings initiated against him under Section 11(1) of C.R.P.F. Act 1949, were in relation to minor punishment whereas he has been awarded a major punishment, which is *per se* illegal. Besides he has contended that he was not given an opportunity of hearing. As against this, the learned counsel for the respondents contended that the petitioner himself has pleaded his guilt and that perusal of the impugned orders show that he was given a hearing at the initial stage, as also at the appellate stage.

(9) It is not disputed that the petitioner was served with the charge memo dated 28th October, 1989 (Annexure P-2) along with the statement of article of charge, the statement of imputations of such misconduct in support of articles of charges, the list of documents by which the article of charge was proposed to be substantiated under Section 11(1) of the C.R.P.F. Act, 1949. Sections 9 to 14 of the C.R.P.F. Act, 1949 fall under the heading "Offences and Punishments" of the said Act. Section 9 deals with more heinous offences. Section 10 deals with less heinous offences and Section 11 deals with Minor Punishment. Sections 12, 13 and 14 relate to place of imprisonment and liability to dismissal on imprisonment, deductions from pay and allowances and Collective fines respectively.

(10) Sections 9, 10 and 11 of the C.R.P.F. 1949 Act read as under:—

- (9) More heinous offences—Every member of the Force who—
- (a) begins, excites, causes or conspires to cause or join in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to the superior officer ; or
 - (b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off-duty, knowing or having reason to believe him to be such ; or

- (c) shamefully abandons or delivers up any post or guard which is committed to his charge, or which is his duty to defend ; or
 - (d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge ; or
- who, while on active duty,—
- (e) disobeys the lawful command of his superior officer ;
or
 - (f) deserts the Force ; or
 - (g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave ; or
 - (h) leaves his commanding officer, or his post or party, to go in search of plunder ; or
 - (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
 - (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind ; or
 - (k) intentionally causes or spreads a false alarm in action or in camp garrison or quarters ; or
 - (l) displays cowardice in the execution of his duty,

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 extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment.”

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- (10) **Less heinous offences.**—Every member of the Force who—
- (a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march ; or
 - (b) strikes or attempts to force any sentry ; or
 - (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or without proper authority releases any person or prisoner placed under his charge, or negligently suffers any such prisoner or person to escape ; or
 - (d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority ; or
 - (e) is grossly insubordinate or insolent to his superior officer in the execution of his office ; or
 - (f) refuses to superintend or assist in the making of any field-work or other work of any description ordered to be made either in quarters or in the field ; or
 - (g) strikes or otherwise ill-uses any member of the Force subordinate to him in rank or position ; or
 - (h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition of accoutrements, or any such articles entrusted to him or belonging to any other person ; or
 - (i) malingers or feigns or produces disease or infirmity in himself ; or intentionally delays his cure, or aggravates his disease or infirmity; or
 - (j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself, or any other person ; or

- (k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Force forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accoutrements or other property issued or supplied to him or in his custody or possession as such member ; or
- (l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or the Government or to any member of, or any person attached to, the Force, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid ; or
- (m) absents himself without leave, or without sufficient cause overstays leave granted to him ; or
- (n) is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and discipline ; or
- (o) contravenes any provision of this Act for which no punishment is expressly provided ; who while not on active duty,
- (p) commits any of the offences specified in Cls. (e) to (l) (both inclusive) of Section 9,

shall be 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."

"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,

or remission 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 Cl. (c) or Cl. (d) of subsection (1) may be awarded by any gazetted officer when in command of any detachment of the Force away from headquarters, provided he is specially authorized 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 outpost, or in temporary command at the Headquarters of the Force, may, without a formal 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 of 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 out post 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 Cl. (b) of sub-section (3) for not more than fifteen days.

(11) A perusal of the aforesaid sections 9, 10, 11 of the C.R.P.F. Act, 1949 clearly spell out the more heinous offences, the less heinous offences and the minor punishment. The petitioner admittedly has been proceeded against for punishment under Section 11(1) of the C.R.P.F. Act, 1949 i.e. for minor punishment. The counsel for the petitioner contends that the charge memo has been issued for minor punishment, the petitioner could not have been subjected to major punishment of removal from service. As against this, learned counsel for the respondents contends that the wording of Section 11(1) of the C.R.P.F. Act, 1949, envisages that the Commandant may subject to any rules made under the said Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the punishments indicated in the said section to the member of the Force. Where any of the member whom the Commandant considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other mis-conduct in his capacity as a member of the force. It may be noticed that Section 9 of the C.R.P.F. Act, 1949 provides for serious or heinous nature of offence and also prescribes the punishment which amongst others include transportation for life for a term of not less than seven years or with imprisonment for a term which may extend to three months pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

(12) Section 10 deals with less heinous offences and the punishment prescribed therein is imprisonment for a term which may

extend to one year or with fine which may extend to three months pay, or with both.

(13) The petitioner admittedly has not been proceeded under Sections 9 or 10 of the C.R.P.F. Act, 1949, i.e. for more heinous or less heinous offences respectively. Rather the petitioner has been proceeded against under Section 11(1) of the C.R.P.F. Act, 1949, i.e. for minor punishment.

(14) Rule 27 of the C.R.P.F. Rule 1955 provides the procedure for awarding of punishment.

(15) Rule 27 of the C.R.P.F. Rules, 1955, reads as under :—

CHAPTER VI

Discipline

27. **Procedure for the Award of Punishment.**—(a) The punishments 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. Insp led	Punishment except & lled	Subed- (Insp- foll-	Sub Other ector Const	Consts enrol- foll-	Remarks No. ector) & owers	Darenr- wers
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	
2.	Reduction to a lower time-scale of pay grade, post or service	DIGP	DIGP	Comdt.	Comdt.	
3.	Reduction to a lower stage in the time scale of pay for a specified period	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry

1	2	3	4	5	6	7
4.	Compulsory retirement	DIGP	DIGP		Comdt. Comdt.	
5.	Fine of any amount not exceeding one month's pay and allowances	DIGP	DIGP		Comdt. Comdt.	
6.	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				Comdt. Comdt.	
7.	Stoppage of increment	DIGP	DIGP		Comdt. Comdt.	
8.	Removal from any office of distinction or special emolument in the Force	DIGP	DIGP		Comdt. Comdt.	May be inflicted without a formal departmental enquiry
9.	Censure	Comdt.	Comdt.	Asstt. A.	Comdt. Comdt. or Coy or Coy Comdr. Comdr.	
10.	Confinement to not more than seven days with or without punishment or extra-guard fatigue or other duty		—	—	Comdt.	
11.	Confinement to quarters lines, camp, punishment drill, fatigue duties etc. for a term not exceeding one month.	—	—	—	Comdt.	

Note 1.—When the post of Deputy Inspector General remains unfilled for a period of over one month at a time the commandant shall

exercise the powers of punishing the Subedars (Inspectors) and Sub-Inspectors except the powers of ordering dismissal or removal from the Force.

Note 2.—When the post of Commandant remains unfilled for a period of over one month at a time consequent on the incumbent proceedings on leave or otherwise, the Assisstant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.

Explanation.—(a) 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.

- (b) When non-gazetted officers or men of the various ranks are to be punished for any offence, a departmental enquiry, if necessary under clause (a), shall be held by the Commandant or other superior officer under the orders of the Commandant, provided that when the charge is against an officer of the rank of Subedar (Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar (Inspector) or a Sub-Inspector considers that a punishment [under items (1) to (5) and (7)] of the Table is called for, he shall complete the departmental proceedings and forward the same to the Deputy Inspector General for orders.
- (c) The procedure for conducting a departmental enquiry shall be as follows :
- (1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

- (2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary if oral ;
 - (i) it shall be direct ;
 - (ii) it shall be recorded by the officer conducting the enquiry himself in the presence of the accused ;
 - (iii) the accused shall be allowed to cross examine the witnesses.
- (3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.
- (4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement, and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.
- (5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may

refuse to call such witness or to allow such documents to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on records, the proceedings shall be closed for orders.

- (6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his findings and pass orders, where he has power to do so.

[(7) [***]]

(cc) Notwithstanding anything contained in this rule :

- (i) where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge ; or
- (ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules ; or
- (iii) where the Director-General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.
- (ccc) when a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence, cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General.

- (d) (1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General [or any other authority competent to impose the penalty of dismissal from service on all such members of the Force] may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note.—Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

- (2) Such order shall specify-

- (i) the authority which may function as the disciplinary for such a common proceeding ;
 - (ii) the penalties specified in the table of sub-rule (a) about which such disciplinary authority shall be competent to impose ;
 - (iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose ; and
- (i) that the enquiry shall be held in accordance with the provisions of sub-rule (a) and sub-rule (c).

(16) The perusal of the above table in Rule 27(a) of C.R.P.F. Rules 1955, shows the various punishments which are to be inflicted after departmental enquiry and punishments which may be inflicted without departmental enquiry. Dismissal or removal from the force as indicated at Serial No. 1 of the table in Rule 27(a) is to be inflicted after formal departmental enquiry. However, the minor punishment as indicated in the said table and mentioned in Section 11 of the C.R.P.F. Act 1949, may be inflicted without a formal departmental enquiry. In the case hand, as already noticed above, the petitioner was as per the statement of imputations of mis-conduct in support of the articles of charge informed that he committed an offence of disobedience of orders, neglect of duty and remissness under Section

11(1) of the C.R.P.F. Act 1949. This is also the position in the impugned office order dated 18th January, 1990 (Annexure P-3). However the petitioner has been removed from service despite the fact that he was issued notice for minor punishment only under Section 11(1) of the C.R.P.F. Act, 1949. The perusal of Section 11 of C.R.P.F. Act, 1949, shows that it deals with minor punishments as compared to the heinous offences as provided under sections 9 and 10 of the C.R.P.F. Act. Section 11 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 in lieu of one or more of the 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.

(17) Apart from the above, it may be noticed that Section 12 of the C.R.P.F. Act deals with liability of dismissal on imprisonment. Section 12 of the C.R.P.F. Act, 1949 reads as under :—

“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 money due to him as well as of any medals and decorations received by him.

(2) Every such person shall, if he is dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court or the Commandant so directs, be confined in the quarter-guard or such other place as the Court or the Commandant may consider suitable.”

(18) The perusal of the above Section 12 of the C.R.P.F. Act shows that every person sentenced under this Act to imprisonment may be dismissed from the Force and shall further be liable for other penalties as indicated therein.

(19) The intent of Section 12 is that in case of imprisonment under sections 9 and 10 for more heinous offence and less heinous offences respectively, the person sentenced to imprisonment may be dismissed from the force. However, Section 11(1) deals with the minor punishment. The fact that the Commandant/ Disciplinary authority had issued the memorandum of charges under section 11(1) of the

C.R.P.F. Act, 1949, would pre-suppose that for the acts of omission and commission on the part of the delinquent official a minor punishment was intended to be imposed on him. The minor punishment are those which have been reproduced above. Removal from service is definitely not minor punishment. Besides, in an allegation which entails severe punishment the nature of defence that an employee might take is quite different. It is possible that had the petitioner known that he would not be dismissed from service, he would in all probability not confessed his guilt. Even the possibility of his being given a minor punishment on the pretext of his pleading guilty cannot be ruled out. Therefore, the authorities having proceeded against for minor punishment under section 11(1) of the C.R.P.F. Act, it was improper on their part to have imposed major punishment of removal from service. Therefore, keeping in view all the above provisions, in my view, the punishment of removal from service was not liable to be inflicted upon the petitioner and he was to be subjected to minor punishment as indicated under section 11(1) of the C.R.P.F. Act. The contention of the learned counsel for the respondents that the punishments indicated under section 11(1) of the C.R.P.F. Act may be in addition to suspension or dismissal and that therefore, removal from service can be imposed under section 11(1) of the Act, in my view is not tenable. As already discussed above, the correct position would be that in case a member of the force is to be suspended or dismissed he may in addition to suspension or dismissal be also imposed the various punishments indicated in Section 11(1) of the C.R.P.F. Act, 1949. However, it cannot be that where procedure is adopted for imposing minor punishment under section 11(1) of the Act, a major penalty of removal from service could be imposed. This is not the intent of the Section 11(1) of the C.R.P.F. Act, 1949. The disciplinary authority issued memo for imposing minor punishment and on receipt of the reply from the delinquent official passed the impugned order imposing major penalty. In this view of the matter, prejudice has been caused to the petitioner as he was always under the impression that he is to be subjected to a minor punishment only. In this view of the matter, the impugned orders are unsustainable in law to the extent that the petitioner has been removed from service.

(20) Resultantly, the writ petition is partly allowed and the impugned orders are set aside to the extent that the removal of the petitioner from service has been ordered.

(21) The respondents—authorities will, however, be at liberty to impose one of the minor punishments as indicated in Section 11(1) of the C.R.P.F. Act, 1949.

(22) It is hoped that while considering the imposition of minor punishment, if any, the respondents would keep in mind the length of service of the petitioner, who was enrolled in C.R.P.F. on 1st March, 1972. The incident, which occurred on 25th September, 1989 and also the fact finding that there was no mensrea on the part of the petitioner. Besides, the writ petition has been pending in this Court since 1993. The petitioner will be entitled to the consequential benefits as a result of the impugned orders being set aside to the extent that he has been removed from service. The same would of course be subject to any minor punishment that may be inflicted upon the petitioner.

(23) The writ petition is accordingly disposed of. No costs.

R.N.R.

Before J. S. Narang, J

MANMOHAN SINGH—*Appellant*

versus

ANEETA PREET—*Respondent*

F.A.O. No. 145/M OF 1999

4th October, 2002

Hindu Marriage Act, 1955—S. 13—Allegations of physical as well as mental cruelty against the husband—Wife living separately for the last about 9 years — Husband or his family making no effort to bring about reconciliation— Husband filing petition for seeking custody of the children—Custody of the children settled by compromise— Wife not willing to come to the matrimonial home — No possibility of reconciliation of marriage— Order of the trial Court accepting the petition of the Wife & annulling the marriage upheld — Husband's appeal dismissed.