

CASE NO.:
Appeal (civil) 2313 of 2003

PETITIONER:
Smt. Kanta Devi

RESPONDENT:
Union of India and Anr.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

(Arising out of SLP(C) No. 4117 of 2002)

ARIJIT PASAYAT, J

Leave granted.

Ansuya Parshad, husband of the appellant (hereinafter referred to as 'deceased employee') was charged with misconduct and on the basis of a departmental enquiry held under the Central Reserve Police Force Rules, 1955 (in short 'the Rules') framed under Central Reserve Police Force Act, 1955 (in short 'the Act') was dismissed from service, in terms of an order dated 26.6.1980 passed by the Deputy Inspector General of Police (in short 'the DIG'). Said order of dismissal was challenged in a statutory appeal under Rule 28 of the Rules which was dismissed. Matter was taken by a writ petition to the Delhi High Court, and a learned Single Judge quashed the order of removal and directed re-instatement with consequential benefits. The sole ground on which interference was made by learned Single Judge was that the scheme of the Rules is such that either in the case of appointment or promotion, prior approval of the Inspector General of Police (in short 'the IG') is imperative. As a natural corollary any termination without approval of the IG, as in the present case, would be bad in law. It was, therefore, held that the order of dismissal passed by the DIG was non est. It was further observed that DIG could not have removed the respondent without prior approval of the IG. Matter was taken in appeal by the Union of India by a Letters Patent Appeal before the same Court. By the impugned order, the order of dismissal has been restored; on the ground that the construction put by learned Single Judge is unsound. Reference was made to Rules 7(b) and 27 to conclude that the IG is not the appointing authority; Commandant was the appointing authority; DIG being an officer superior to Commandant had authority to pass the order of dismissal.

In view of the aforesaid background it is unnecessary to deal into the factual aspects in detail, except noting that the deceased employee was appointed as a Naik in Central Reserve Police Force (in short 'the CRPF') on 28.9.1959. He was promoted as a Subedar (Inspector) on 30.1.1975, which was made by the Commandant with prior

approval of the IG as required under Rule 7(b) of the Rules. Since the employee had died on 10.7.1999 during the pendency of the appeal before the High Court, the present appellant was substituted in his place.

In support of the appeal, learned counsel for the appellant submitted that the Division Bench was not correct in its interpretation of Rule 27 of the Rules which prescribes the procedure for award of punishment. For the purpose of appointment or promotion, approval of the IG is necessary. Therefore, requirement of approval; in case of dismissal also is a natural corollary. It was further submitted that in view of unblemished service records of the employee, the punishment of dismissal was highly disproportionate looking into the allegations which led to the departmental proceedings. It was submitted that as a consequence of order of dismissal, even the pensionary benefits would not be available to the family of the deceased employee. That cannot be a just proposition if the unblemished service career of the deceased employee is taken note of. As noticed by the Division Bench, the records of the proceedings were not produced on fallacious premises that they were not available. Had the records been produced it could have been proved that the punishment of dismissal was disproportionate to the allegations made. In the proceedings, main allegations were against another person. The only allegation against the deceased employee was that he failed to keep proper watch over the other employees. The allegations were not of such grave magnitude as to warrant dismissal.

Per contra, Mr. R.N. Trivedi, Additional Solicitor General submitted that the view expressed by the Division Bench is on terra firma and on a plain reading of the relevant provisions, requirement of approval by the IG as a condition precedent to effectuate an order passed by the prescribed authority, is clearly not warranted. He further submitted that the disciplinary authorities after due consideration of the materials on record came to hold that order of dismissal would be proper. It has not been shown as to how the same is disproportionate to the proved charges.

Rules 7 and 27 of the Rules deal with appointment other than that of superior officers and procedure for the award of punishments respectively. They read as follows:

"Rule 7:

(a) Offices and men mentioned in Rules 5(b) and 5(c) shall be appointed:

(1) by direct recruitment;

(2) by deputation from Army or State Police Forces;

(3) by promotion as laid down in Chapter IX.

(b) The authority to make appointments to the various non-gazetted ranks shall be the Commandant, provided that in the case of Sub-Inspectors and Subedar (Inspector) prior approval of the Deputy Inspector General of Police and the Inspector General respectively shall be obtained.

(c) Non-gazetted officers and men of all ranks shall be enrolled subject to sub-rule (b) above by the Commandant in the manner prescribed in Section 5 and be appointed by him as members of the Force after such period of training as he may consider necessary.

Rule 27: Procedure for the award of punishment. (a) (The punishment shown as in 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 heading of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.

TABLE

S.No. Remarks	Punishment	Subedar (Inspector)	Sub-Ins. Inspector	Others except enrolled followers	Const. and enrolled followers
1. 5.	2.	6.	3.	7	4.
1. To be icted the Force after formal rtmental iry"	Dismissal or removal from the Force	DIGP	DIGP	Commandant	Commandant infl Depa enqu

A bare reading of the provisions show that while for the purpose of appointment, the approval of the DIG or the IG, as the case may be, is required to be obtained, that does not make the IG, the appointing authority. The punishments shown as items 1 to 11 in column 2 of the table can be imposed on non-gazetted officers and men of various ranks by the authorities named under headings at columns 3 to 6 in terms of the conditions mentioned in column 7. So far as item No.1 in Rule 27 is concerned, Subedar (Inspector) can be dismissed or removed from the Force by the Deputy Inspector General of Police, who is higher in rank than the Commandant. While considering an almost identical provision, this Court held that even when prior recommendation is necessary, it does not make the recommending/approving authority the appointing authority. (See State of Assam v. Kripanath Sarma and Ors. AIR 1967 SC 459). In that case, the question was whether the Deputy Inspector of Schools in his capacity as the Assistant Secretary of the State Board, could terminate the service of the concerned employees in view of Section 14(3)(iii) of the Assam Elementary Education Act (No.30) of 1962 read with

Section 18 of the Assam General Clauses Act (No.II) of 1915. It was held that as the Assistant Secretary did not have complete power to appoint teachers, he can do so on the advice of the Advisory Board. Even assuming that recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the committee which appoints and the appointing authority is the Assistant Secretary.

According to Rule 7(b), the appointing authority is the Commandant and since the DIG is of higher rank, there is no illegality in the order passed by him in passing the order of dismissal. Just because the IG's approval is required for the purpose of appointment or promotion, the position of the Commandant as the appointing authority is not changed and the IG does not become the appointing authority. If the submission made is accepted, it would mean addition of words or expressions in Rule 27. It is not a case of *casus omissus* as contended. A construction which requires for its support, addition of words has to be avoided. The words of a statute never shared, in interpretation, be added or subtracted from without almost a necessity. It is contrary to all rules of construction to read words into a statute unless it is absolutely necessary to do so. Courts cannot reframe the words used by the Legislature as it has no power to legislate. A matter which, for the sake of argument, should have been provided but has not been provided for in a statute cannot be supplied by the Courts as to do so will be legislation and not construction. (See *Johnson vs. Moreton* (1978) 3 All E.r. 37 (H.L.), *Dr. Baliram Waman Hiray vs. Mr. Justice B. Lentin and Ors.* (AIR 1988 SC 2267)). There is no presumption that a *casus omissus* exists, and language permitting the Courts should avoid creating a *casus omissus* where there is none. Therefore, the conclusion of the Division Bench in holding that the order of dismissal passed by the DIG was legal, does not suffer from any infirmity to warrant interference.

However, the other questions raised by the appellant need consideration. Undisputedly, the order of dismissal was passed in disciplinary proceedings. Referring to the nature of allegations, it was highlighted that when for more than 20 years the deceased employee had rendered unblemished service order of dismissal should not have been passed.

There is no scope for interference in a case where punishment is found not disproportionate to the proved charges that too in exceptional cases. It is to be noted that there was no consideration of these aspects by learned Single Judge or the Division Bench. Before learned Single Judge such a stand appears to have been taken. But only on the ground that DIG had no competence to pass the order of dismissal, the order was quashed. In appeal, Division Bench only dealt with legality of that conclusion. There is no definite material as to whether these pleas were pressed into service before the High Court. No other aspect was considered. But, as noted above, records of disciplinary proceedings are not available, but some particulars of the charges and the conclusions are available on record. They are not sufficient to conclude one way or the other. Taking into account past service records and non-availability of full records of the disciplinary proceedings, the interest of justice would be best served if on the peculiar facts Rupees 2.5 lacs is paid as *ex-gratia* payment by the respondents to the appellant within two months from today.

The appeal is disposed of accordingly.

JUDIS