

Factual Matrix

3. The respondent² was a Head Constable in Central Reserve Police Force³. He was charge-sheeted on allegations of assaulting and abusing his fellow colleague. In the ensuing enquiry, the charges were found proved against the respondent. As a result thereof, the respondent was compulsorily retired from service *vide* order dated 16.02.2006. Aggrieved therewith, the respondent filed a departmental appeal, which was dismissed by the Deputy Inspector General (P), CRPF *vide* order dated 28.07.2006.

4. Assailing the order of compulsory retirement and dismissal of his appeal, the respondent filed a Writ Petition (C) No.17398/2006 before a Single Judge Bench of the High Court. The learned Single Judge *vide* order dated 14.01.2020 allowed the writ petition, *inter alia*, on the ground that the punishment of compulsory retirement was not one of

² The original petitioner

³ CRPF

the punishments specified in Section 11 (1) of the Central Reserve Police Force Act, 1949⁴. The operative portion of the order of the learned Single Judge is extracted below:

“Thus, this court is of the opinion that the award of punishment by the order vide Annexure 5 not only remains bad, but in the circumstances, the consequential order vide Annexure 7 also becomes bad. In such view of the matter and as the Disciplinary Authority is to reconsider the question of punishment, this matter is relegated back to the Disciplinary Authority to hear the question of punishment, giving opportunity of hearing to the petitioner and pass the final order involving the disciplinary proceeding. For a remand of the matter to the Disciplinary Authority, this court observes, the Disciplinary Authority, while reconsidering the matter will also consider other grounds raised herein. For the setting aside of the order vide Annexure 5 and as the matter is relegated back to the authority, the position of the petitioner before passing of the final order shall be restored and for interference of this court with the order vide Annexures 5 and 7 release of the arrears, if any, involving the petitioner shall be dependent on the ultimate outcome involving fresh disposal of the proceeding by the Disciplinary Authority in terms of the directions of the apex court in paragraph 24 of the judgement in the case of Ranjit Singh versus Union of India as reported in (2006) 4 SCC 153.”

5. Aggrieved with the order of the learned Single Judge, the appellants preferred writ appeal (supra)

⁴ CRPF Act

before the Division Bench of the High Court, *inter alia*, on the following grounds:

(i) The charges against the respondent were found proved in the enquiry. They were of serious nature warranting penalty including that of dismissal or removal from service. Compulsory retirement is nothing but a species of removal from service and, therefore, being a lesser penalty than dismissal or removal from service, was an imposable punishment.

(ii) Section 11 of the CRPF Act provides that, subject to the rules made under the Act, the Commandant or any other authority or officer, as may be prescribed, award in lieu of, or in addition to, suspension or dismissal, anyone or more of the punishments specified therein 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. Sub-section (1) of Section 18 empowers the Central Government to notify rules for carrying out the purposes of the CRPF Act. Sub-section (2) of Section 18 provides that without prejudice to the generality of the foregoing power, rules may provide for all or any of the matters specified therein, which includes regulating the award of minor punishment under Section 11, and providing for appeals from, or the revision of, orders under that section, or remission of fines imposed under that section. Rule 27 of the Central Reserve Police Force Rules, 1955⁵, specifies the procedure for the award of punishments. Clause (a) of Rule 27 enumerates in a tabular form the punishments which could be imposed and the authority competent to impose such

⁵ CRPF Rules

punishments. At serial no.4, under column no.2, in the table, the punishment of compulsory retirement is mentioned as being one of the punishments that may be imposed by the Commandant after a formal departmental enquiry. Thus, in light of the provisions of Section 11 of the CRPF Act read with Rule 27 of the CRPF Rules, and by taking into consideration that charges were duly proved in the enquiry, the punishment of compulsory retirement was fully justified.

6. The Division Bench of the High Court, however, found no merit in the writ appeal and dismissed the same accordingly.

7. In these circumstances, the appellants are before this Court questioning the impugned judgment and order of the High Court.

8. We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the

appellants, and Mr. Anand Shankar, learned counsel, appearing for the respondent.

Submissions on behalf of the appellants

9. Ms. Bhati, learned counsel for the appellants, *inter alia*, submitted:

(i) The only ground pressed by the original petitioner was that the punishment of compulsory retirement is not imposable as it is not provided for in Section 11 of the CRPF Act, which is nothing but misconceived;

(ii) The High Court while accepting the above ground failed to consider:

(a) Section 11⁶ of the CRPF Act is expressly made subject to any rules made under the

⁶ 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.

Act. Section 18⁷ of the CRPF Act empowered
the Central Government to make rules for

(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 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 punishment 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 jemadar 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) of sub-section (3) for not more than fifteen days.

⁷ **18. Power to make rules: -**

1) The Central Government may by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) regulating the classes and grades of, and the pay, pension and other remuneration of, member of the force, and their conditions of service in the force;

(b) regulating the powers and duties of officers authorized to exercise any function by or under this Act;

(c) fixing the period of service for members of the force;

(d) regulating the award of minor punishment under section 11, and providing for appeals from, or the revision of, orders under that section, or the remission of fines imposed under that section, and the remission of deductions made under section 13;

(e) regulating the several or collective liability of member of the force in the case of the loss or theft of weapons and ammunition;

(f) for the disposal of criminal cases arising under this Act and for specifying the prison in which a person convicted in any such case may be confined.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the cases may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

carrying out the purposes of the Act and without prejudice to the generality of the foregoing power, rules could be made regulating the award of punishment under Section 11. CRPF Rules, 1955 were notified by the Central Government. Rule 27⁸

⁸ **27. Procedure for the award of punishments —**

(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.

[TABLE

Sl. No.	Punishment	Subedar (inspector)	Sub Inspector	Others except Const. & enrolled followers	Consts. & enrolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry
2.	Reduction to a lower time-scale of pay 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.	
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.	
7.	Stoppage of increment	DIGP	DIGP	Comdt.	Comdt.	

specifically provided for compulsory retirement as one of the punishments imposable on a non-gazetted officer, like the respondent. Thus, the impugned order of the High Court is in ignorance of the relevant provisions of the Act as well as the rules.

(b) Section 11 empowers the Commandant or any other competent authority to award in lieu of, or in addition to, suspension or

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. Comdt. or Coy Comdr.	A. Comdt. or Coy Comdr.	
10.	Confinement to quarter Guard for 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 proceeding on leave or otherwise, the Assistant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.

dismissal anyone or more of the specified punishments. The specified punishments include removal from any office of distinction or special emolument in the Force. Dismissal is the highest of those punishments. Removal is a lesser punishment. Section 11 uses the word removal as an expression of wide amplitude so as to include any punishment that has the effect of terminating the service. As compulsory retirement also entails in termination of service, it is nothing but a species of removal, which is permissible under the CRPF Rules. Therefore, once an enquiry is held, charge of gross indiscipline is found proved, bearing in mind that the original petitioner was a member of a disciplined force, the punishment awarded, being one of the punishments imposable, was not liable to be interfered with by the High Court.

10. In support of her submissions, Ms. Bhati relied on two decisions of this Court, namely, (a) **Union of India & Ors. v. Ghulam Mohd. Bhat**⁹; and (b) **Union of India & Ors. v. Diler Singh**¹⁰.

Submissions on behalf of the respondent

11. Mr. Anand Shankar, learned counsel for the respondent, defending the impugned order submitted:

(i) Punishment of compulsory retirement as specified in Rule 27 of the CRPF Rules is *ultra vires* the provisions of Section 11 of the CRPF Act, which is exhaustive, and no punishment beyond what is specified therein can be imposed;

(ii) Decision of this Court in **Ghulam Mohd. Bhat (supra)** is of no help to the appellants as it relates to the punishment of removal from

⁹ (2005) 13 SCC 228

¹⁰ (2016) 13 SCC 71

service and not compulsory retirement from service;

(iii) Rule 27 was framed in exercise of power delegated to the Central Government under clause (d) of sub-section (2) of Section 18 of the CRPF Act, which is only to regulate the award of minor punishment not to introduce any other species / kind of punishment. Therefore, a punishment which is not contemplated under the statute cannot be introduced by way of a rule, particularly in absence of specific delegation of power in this regard. Dismissal and compulsory retirement are two different kinds of punishment and cannot be treated as interchangeable. Thus, in absence of any delegation of power to frame rules introducing a new punishment, Rule 27, to the extent it introduces the punishment of compulsory retirement, is *ultra vires* the CRPF Act;

(iv) The charge levelled on the original petitioner was not established, as no eye-witness was presented to prove it. Otherwise also, Hawaldar M. Devnath, who was allegedly assaulted by the original petitioner, was inimical to the original petitioner and made a false complaint. The Disciplinary Authority and the Appellate Authority acted in a mechanical manner.

12. In support of his submissions, Mr. Anand Shankar relied on a decision of this Court in **General Officer Commanding-in-Chief & Anr. v. Subash Chandra Yadav & Anr**¹¹.

¹¹ (1988) 2 SCC 351

Issues

13. Having taken note of the rival submissions, the issues that arise for our consideration in this appeal are as follows:

(i) Whether the punishment of compulsory retirement from service could have been imposed upon the respondent by relying upon the provisions of Rule 27 of the CRPF Rules?

(ii) Whether Rule 27 of the CRPF Rules to the extent it provides for punishments other than those specified in Section 11 of the CRPF Act, *ultra vires* the CRPF Act and as such inoperable and void?

(iii) Whether the punishment of compulsory retirement imposed upon the respondent suffers from any procedural infirmity and / or is shockingly disproportionate to the proven misconduct of the respondent?

An Overview of the CRPF Act and the Rules

14. Before we address the above issues it would be useful to have an overview of the relevant provisions of the CRPF Act and the rules made thereunder. The CRPF Act is “an Act to provide for the constitution and regulation of an armed Central Reserve Police Force (for short the Force)”. Section 3 provides for constitution of the Force. Sub-section (2) of Section 3 provides that the Force shall be constituted in such manner, and the members of the Force shall receive such pay, pension and other remuneration, as may be prescribed. The word “prescribed” is defined in Section 2 (f) as prescribed by rules made under the Act. Section 8¹² vests the superintendence, control and administration of the

¹² **Section 8. Superintendence, Control and Administration of the Force.**--- (1) The superintendence of, and control over, the Force shall vest in the Central Government; and the Force shall be administered by the Central Government, in accordance with the provisions of this Act, and of any rules made there under, through such officers as the Central Government may from time to time appoint in this behalf.

(2) The headquarters of the force shall be at Neemuch or at such other place as may from time to time be specified by the Central Government.

(3) While on active duty outside its headquarters, the Force shall be subject to the general control and direction of such authority or officer as may be prescribed or as may be specially appointed by the Central Government in this behalf.

Force in the Central Government. It declares that the Force shall be administered by the Central Government in accordance with the provisions of the Act and of any rules made thereunder, through such officers as the Central Government may from time to time appoint in that behalf. Section 9 enumerates “more heinous offences”, whereas Section 10 enumerates “less heinous offences”, both punishable under the Act. For “more heinous offences”, the punishment is of transportation for life or for a term of not less than seven years or with imprisonment for a term which may extend to 14 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. The punishment for “less heinous offences” is imprisonment for a term which may extend to one year, or with fine which may extend to three months’ pay or with both. Section 11 deals with minor punishments. According to it, 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, or in addition to, suspension or dismissal anyone or more of the punishments specified therein 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. One of the minor punishments specified in Section 11, other than dismissal or suspension, is “removal from any office of distinction or special emolument in the Force”.

15. Section 18 confers rule-making power on the Central Government. Sub-section (1) of Section 18 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Sub-section (2) of Section 18 provides that without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters specified therein. Amongst other matters specified therein, clause (d),

inter alia, empowers the Central Government to make rules for regulating the award of minor punishment under Section 11, and providing for appeals from, or the revision of, orders under that section.

16. An overview of the CRPF Act would make it clear that the Central Government has overall superintendence and control over the Force and the Force is to be administered by the Central Government in accordance with the provisions of the CRPF Act and of any rules made thereunder through such officers as the Central Government may from time to time appoint.

Discussion/ Analysis

17. The rule-making power of the Central Government found in Section 18 is in broad terms. sub-section (1) of Section 18 empowers the Central Government to make rules for carrying out the purposes of the CRPF Act. Rule-making power under sub-section (2) of Section 18 is without prejudice to

the generality of the power conferred by sub-section (1) thereof. Thus, the Central Government is not only empowered to make rules for regulating the award of minor punishment under Section 11 but also to carry out the purposes of the Act which includes superintendence of, and control over, the Force as well as its administration.

Punishment of compulsory retirement is *intra vires* the CRPF Act

18. Ordinarily a person in service cannot be visited with a punishment not specified in the contract of service or the law governing such service. Punishments may be specified either in the contract of service or in the Act or the rules governing such service. In **State Bank of India and Ors. v. T.J. Paul**¹³ this Court had occasion to deal with a situation where, for a proven charge of gross misconduct, punishment of removal was not one of the punishments specified in the extant rules

¹³ 1999 (4) SCC 759

though, punishment of dismissal was imposable. This Court set aside the punishment of removal and remitted the matter to the Appellate Authority for considering imposition of one or the other punishment as specified in the extant rules.

19. In the case on hand the CRPF Rules provide for imposition of the punishment of compulsory retirement though the CRPF Act itself does not provide for it in specific terms. Therefore, the argument on behalf of the respondent is that the CRPF Rules are *ultra vires* the CRPF Act. In support of this submission reliance has been placed on a decision of this Court in **Subash Chandra Yadav (supra)** where it was observed:

“14..... It is well settled that rules framed under the provisions of a statute form part of the statute. In other words, rules have statutory force. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

(Emphasis supplied)

20. The CRPF Act while dealing with offences and punishments, categorizes offences in two parts. One “more heinous offences” (*vide* Section 9) and the other “less heinous offences” (*vide* Section 10). These two categories of offences entail a punishment of imprisonment and/or fine. The usual disciplinary action which befalls on a delinquent employee is envisaged as a minor punishment under Section 11 of the CRPF Act even though many of the punishments specified therein, such as dismissal, reduction in rank and removal from office of distinction, in common service jurisprudence are considered major punishment. That apart, Section 11 which describes minor punishments declares: (a) that the minor punishments specified in Section 11 may be awarded “*in lieu of, or in addition to, suspension or dismissal*”; and (b) that the power of the Commandant or any other authority or officer, as may be prescribed, to award the specified

punishment “*is subject to any rules made under the CRPF Act*”. Another important feature is that Section 11 does not use common expressions such as “dismissal from service” or “removal from service” while describing the punishments. Though, Rule 27 (*vide Table*) uses those expressions.

21. The question which would therefore arise for our consideration is whether Section 11 is exhaustive as far as minor punishments imposable under the CRPF Act are concerned or it merely provides for a skeletal framework to be supplemented by the rules framed under the Act.

22. In **Ghulam Mohd. Bhat (supra)**, a question arose whether punishment of removal from service could be awarded to a Constable in the Force. The argument against the award of punishment of removal from service was that it is not one of the punishments specified in Section 11 of the CRPF Act. The Union of India defended the said punishment on the ground that it is a species of dismissal and is

permissible under Rule 27 of the CRPF Rules. After examining the provisions of Section 11 of the CRPF Act and Rule 27 of the CRPF Rules, this Court observed:

“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 subsection (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.

8. It is fairly well-settled position in law that removal is a form of dismissal. This Court in *Dattatraya Mahadev Nadkarni (Dr.) v. Municipal Corpn. of Greater Bombay* [(1992) 2 SCC 547 : 1992 SCC (L&S) 615 : (1992) 20 ATC 275 : AIR 1992 SC 786] explained that **removal and**

dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. **In any event, Section 11(1) refers to the Rules made under the Act under which action can be taken. Rule 27 is part of the Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.”**

(Emphasis supplied)

23. The learned counsel for the respondent seeks to distinguish the above decision, *inter alia*, on the ground that removal may be a species of dismissal or *vice versa* but compulsory retirement is not, because in common service jurisprudence compulsory retirement is not considered a punishment. Therefore, according to him, Rule 27 prescribes an altogether new punishment which is not contemplated by the CRPF Act. Hence, according to him, Rule 27 to that extent is *ultra vires* the CRPF Act and as such void.

24. To determine whether the punishment of compulsory retirement prescribed in Rule 27 is *ultra vires* the CRPF Act, it would be apposite to first examine the scope of rule-making power conferred on the Central Government by the statute. The CRPF Act, *vide* sub-section (1) of Section 18, grant the power to make rules in general terms, that is, “to carry out the purposes of this Act”. And, *vide* sub-section (2) of Section 18, “in particular and without prejudice to the generality of the foregoing power”, to make rules for all or any of the matters enumerated therein. Interpreting such a rule-making provision, in **State of Jammu and Kashmir v. Lakhwinder Kumar and Ors.**¹⁴, a two-Judge Bench of this Court, relying on a Constitution Bench decision in **Rohtak & Hissar Districts Electric Supply Co. Ltd. v. State of U.P. & Ors.**¹⁵, held:

“23. In our opinion, **when the power is conferred in general and thereafter in respect of enumerated matters, as in the present case,**

¹⁴ (2013) 6 SCC 333

¹⁵ AIR 1966 SC 1471

the particularization in respect of specified subject is construed as merely illustrative and does not limit the scope of general power.

Reference in this connection can be made to a decision of this Court in Rohtak and Hissar Districts Electric Supply Co. Ltd. v. State of UP, in which it has been held as follows:

“18..... Section 15 (1) confers wide powers on the appropriate government to make rules to carry out the purposes of the Act; and Section 15 (2) specifies some of the matters enumerated by clauses (a) to (e) in respect of which rules may be framed. It is well settled that the enumeration of the particular matters by sub-section (2) will not control or limit the width of the powers conferred on the appropriate government by sub-section (1) of Section 15; and so, if it appears that the item added by the appropriate government has relation to conditions of employment, its addition cannot be challenged as being invalid in law.”

(Emphasis supplied)

This would imply that the intention of the legislature, as indicated in the enabling Act, must be the prime guide to the extent of delegate's power to make rules. However, the delegate must not travel wider than the object of the legislature rather it must remain true to it¹⁶.

25. In St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher

¹⁶ Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council & Ors., (2004) 8 SCC 747, para 13

Education and Anr.¹⁷, a three-Judge Bench of this

Court observed:

“10. The power to make subordinate legislation is derived from the enabling act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. **Rules cannot be made to supplant the provisions of the enabling act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.** The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy.....

12. **The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject matter, the scheme, the provisions of the statute including its preamble and the facts and circumstances in the background of which the statute is enacted.....It is also well settled that in considering the vires of subordinate legislation one should start with the presumption that it is *intra vires* and if it is open to two constructions, one of which would make it valid and the other invalid, the courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared *ultra vires*.”**

(Emphasis supplied)

26. Francis Bennion in his treatise on Statutory Interpretation (Fifth Edition, page 262, Section 69) has written:

¹⁷ (2003) 3 SCC 321

“There are various types of delegated legislation, but all are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it.”

27. As discussed above, since the rule-making power under Section 18 of the CRPF Act is in broad terms, that is to carry out the purposes of the Act as well as to regulate the award of minor punishment under Section 11, in order to determine whether Rule 27 of the CRPF Rules, insofar as it prescribes an additional punishment of compulsory retirement, is *intra vires* or *ultra vires* the CRPF Act, we would have to consider: (a) whether the intention of the legislature, as borne out from the provisions of the CRPF Act, was to leave it open for the Central Government to prescribe any other minor punishment than what has already been prescribed

in Section 11 of the Act; and (b) whether it is in conflict with any of the provisions of the CRPF Act.

28. As regards Section 11 being exhaustive of the minor punishments which could be imposed, the intention of the legislature appears to the contrary. Section 11 expressly uses the phrase “*subject to any rules made under this Act*” before “*award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments*”. Importantly, while prescribing punishment for “*more heinous offences*” and “*less heinous offences*” in Sections 9 and 10 respectively, the phrase “*subject to any rules made under this Act*” is not used. The expression “*subject to*” conveys the idea of a provision yielding place to another provision or other provisions subject to which it is made¹⁸.

¹⁸ P. Ramanatha Aiyer’s Advanced Law Lexicon 4th Edition Vol.4 at page 4640, see also Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447, paragraph 68.

29. G.P. Singh in his treatise “Principles of Statutory Interpretation” (13th Edition, Chapter 12 at page 1019, published by LexisNexis) writes: *“The delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. But when the enabling Act itself permits its modification by rules, the rules made prevail over the provision in the Act. When provision A in the Act is subject to other provisions of the Act, a valid notification issued under any other provision in the Act would in case of conflict with section A override its provisions.”*

30. In light of the discussion above, we are of the view that while enacting the CRPF Act the legislative intent was not to declare that only those minor punishments could be imposed as are specified in Section 11 of the CRPF Act. Rather, it was left open for the Central Government to frame rules to carry out the purposes of the Act and the punishments

imposable were subject to the rules framed under the Act.

31. In that context, one of the purposes of the Act could be gathered from Section 8, which vests the superintendence and control over the Force in the Central Government. The concept of “*control*”, as per P. Ramantha Aiyer’s Advanced Law Lexicon (4th Edition), *inter alia*, implies that the controlling authority must be in a position to dominate the affairs of its subordinate¹⁹. In **State of West Bengal v. Nripendra Nath Bagchi**²⁰, a Constitution Bench of this Court had occasion to explore the true import of the expression ‘control’ as used in Article 235 of the Constitution of India. After considering the submissions, it was held that the word ‘control’ must include disciplinary jurisdiction. In **Madan Mohan Choudhary v. State of Bihar & Ors.**²¹ it was reiterated that the expression ‘control,’ as used in

¹⁹ See also Prasar Bharti & Ors. v. Amarjeet Singh & Ors., (2007) 9 SCC 539, paragraph 20

²⁰ AIR 1996 SC 447

²¹ (1999) 3 SCC 396, paragraphs 25 and 26

Article 235 of the Constitution, includes disciplinary control. It was also observed that transfers, promotions, and confirmations including transfer of District Judges or the recall of District Judges posted on ex-cadre post or on deputation or on administrative post etc. is also within the administrative control of the High Court. So also, premature and compulsory retirement is within the control of the High Court.

32. From above, it is clear that 'control' is a word of wide amplitude and includes disciplinary control. Therefore, in our view, if the CRPF Act envisages vesting of control over the Force in the Central Government and the various punishments imposable under Section 11 are subject to the rules made under the Act, the Central Government in exercise of its general rule-making power, to ensure full and effective control over the Force, can prescribe punishments other than those specified in that

section, including the punishment of compulsory retirement.

33. It cannot be gainsaid that compulsory retirement is a well-accepted method of removing dead wood from the cadre without affecting his entitlement for retirement benefits, if otherwise payable. It is another form of terminating the service without affecting retirement benefits. Ordinarily, compulsory retirement is not considered a punishment. But if the service rules permit it to be imposed by way of a punishment, subject to an enquiry, so be it. To keep the Force efficient, weeding out undesirable elements therefrom is essential and is a facet of control over the Force, which the Central Government has over the Force by virtue of Section 8 of the CRPF Act. Thus, to ensure effective control over the Force, if rules are framed, in exercise of general rule-making power, prescribing the punishment of compulsory retirement, the same cannot be said to be *ultra vires* Section 11 of the

CRPF Act, particularly when sub-section (1) of Section 11 clearly mentions that the power exercisable therein is subject to any rules made under the Act. We, therefore, hold that the punishment of compulsory retirement prescribed by Rule 27 is *intra vires* the CRPF Act and is one of the punishments imposable. Issues (i) and (ii) are decided in the above terms.

Punishment of compulsory retirement suffers from no other infirmity.

34. The charge against the respondent has been that on 18.06.2005, during Forest Camp Training, he abused M. Devnath, Forest Camp Training Haw/B.H.M. and assaulted him with a stick. M. Devnath was medically examined. The medical examination report confirmed that he suffered injuries. P.K. Sahu (PW-1), who was the Camp Commander, proved that M. Devnath came to him and complained to him about being beaten by the respondent. PW-2, G D Bhukara, initially supported the case against the

respondent but during cross-examination stated that no third person was present during the incident. PW-3, T.K. Hajra, stated that M. Devnath had complained to him about the conduct of the respondent, and he could also notice presence of injuries on his body. Similar is the statement of PW-4 Heera Lal Yadav. PW-5 Liyakat Ali, stated that he saw them fighting and saw respondent striking a stick blow to M. Devnath. He also stated that M. Devnath went to his tent saying that he would commit suicide, though he was rescued. The statement of M. Devnath (the victim) was also recorded. He supported the charge. After considering the statement of the witnesses, including the victim, and perusing the documents, including the medical report, the charges were found proved. In consequence, after considering the defence of the respondent and the tenure of his service, the Commandant imposed punishment of compulsory

retirement on the respondent and preserved his right for pension and gratuity.

35. The learned counsel for the respondent made a feeble attempt to challenge the finding returned in the enquiry by claiming that the enquiry officer and the disciplinary authority did not meticulously consider the respondent's defence and the weaknesses in the evidence led against him. To test the above submission, and to find out whether there is any perversity in the enquiry report, we went through the materials on record and found that there is no such perversity in the enquiry report, which is, in fact, founded on the evidence on record as noticed in the preceding paragraph. Further, no palpable error in the conduct of the enquiry was brought to our notice. The punishment awarded is also not shockingly disproportionate to the proven misconduct. Rather, considering his past service, already a sympathetic view has been taken in the matter and no further latitude need be shown to the

respondent who was part of a disciplined force and has been found guilty of assaulting his colleague. Consequently, we find no good reason to interfere with the punishment awarded to the respondent.

36. For the foregoing reasons, the appeal is allowed. The impugned order of the High Court is set aside. The writ petition filed by the respondent (original petitioner) shall stand dismissed. The punishment of compulsory retirement awarded to the respondent is affirmed. There is no order as to costs.

.....**CJI.**
(DR. D. Y. CHANDRACHUD)

.....**J.**
(J. B. PARDIWALA)

.....**J.**
(MANOJ MISRA)

New Delhi;
May 8, 2024.