

(2015) 02 DEL CK 0134
In the Delhi High Court
Case No : Writ Petition(C) 6549/2013

Amitabh Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 DEL CK 0134

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Rekha Palli, Punam Singh and Garima Sachdeva, for the Appellant;
Ankur Chhibber, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—The petitioner assails the order dated August 19, 2013 whereby he has been dismissed from service. He prays to be reinstated in service with consequential benefits.

2. Brief facts giving backdrop of the petitioner being dismissed from service are that while working as a Deputy Commandant in the Central Reserved Police Force (CRPF) , in May, 2007 the petitioner was nominated as a Member of a Recruitment Board for appointing ASI (Stenographer) and HC(Min.) at the Group Centre of CRPF in Muzaffarpur. Dr.Bhavna Kumari in the medical cadre of CRPF was a Member Medical in the Board. The petitioner claims that on May 08/09, 2007 he caught Dr.Bhavna Kumari copying on a loose sheet a passage on which the candidates would be subjected to the typing test. It appears that rather than bring the incident to the notice of the superior officers, cautioning Dr.Bhavna Kumari not to indulge in illegal practice, the petitioner destroyed the sheet of paper on which he claims he saw Dr.Bhavna Kumari copying the passage. On May 12, 2007 a candidate was caught with a pre-typed paper of the passage in question. On May 19, 2007 the petitioner detected a case of impersonation during the recruitment process. FIR No. 5/2007 and FIR No. 6/2007 were

registered. The investigation was taken over by CBI because of the wide ramification of the scam. Investigation revealed involvement of many officers.

3. The petitioner received summons to depose as a witness in FIR No. 6/2007, for which he was granted three days' casual leave from September 15, 2009 to September 17, 2009, with permission to avail restricted holiday on September 18, 2009. The parents and the family of the petitioner were residing in Muzaffarpur, and as per the petitioner being conscious of the recruitment mafia operating in the area and that he would not be provided with any protection or vehicle, he claimed to have attended the Court of the CJM, Muzaffarpur armed with a personal licensed revolver and travelled in a Maruti Alto vehicle owned by his younger brother Abhik Singh. During Court proceedings, on September 14, 2009, Dr.Bhavna Kumari who was examined as a prosecution witness turned hostile and did not identify the accused. On that day, at about 14:00 hrs, Dr.Bhavna Kumari received a call on her mobile from her husband who extended invitation to the petitioner for a get-together at the Station Officers Mess (SOM). While returning from the Court, Dr.Bhavna Kumari and one Mr.M.G.Nair accompanied the petitioner in his car. The petitioner claims to have dropped Dr.Bhavna Kumari at her official residence at Jhaphan Camp and alongwith Mr.M.G.Nair he went to the Stations Officers Mess where they remained in the lounge for about two hours.

4. At a get-together in the evening of the same day, Dr.S.K.Rai, husband of Dr.Bhavna Kumari joined them and all had a peg or two of liquor at the SOM. Dr.S.K.Rai accompanied by his wife Dr.Bhavna Kumari left the get-together at about 19:30 hours. The petitioner and Dr.S.K.Rai spoke at around 20:39 hours, using their respective mobile phones having number 9968885333 and 9955676272. The petitioner claims that after about 15 minutes Dr.Bhavna Kumari contacted him on his mobile phone and insisted that he should visit their residence, but the petitioner refused. At about 21:35 hours, the petitioner received a call from the DIG of the Group Centre who asked the petitioner to leave the SOM immediately. One Constable Driver Manoj Kumar also communicated this direction of the DIG to the petitioner. As the petitioner was leaving the SOM, he claims that his car did not start. At that point of time, he was called by someone by giving a signal through his finger. The petitioner went towards that person who introduced himself as S.P.Pokhriyal, DIG of the Group Centre. As per the petitioner the DIG misbehaved with him and directed him to go home in a minibus. The petitioner requested that a mechanic should be arranged to rectify the defect in his car. But DIG S.P.Pokhriyal continued to misbehave with him, which was witnessed by many officers. At that time Assistant Commandant K.P.S.Elango arrived and with the help of Constable Driver Manoj Kumar got the car to start. As per the petitioner he was deprived of his licensed revolver forcibly as also his mobile phone and was locked in a room in the SOM. As per the petitioner, the next day i.e. September 15, 2009, he was called to the office of the DIG and in presence of the Commandant he was abused and pressurized to either withdraw his complaints regarding recruitment

under threat of being booked for creating nuisance at the residence of the DIG using a loaded revolver. As per the petitioner he was informed of a complaint being made against him by Dr.Bhavna Kumari and was coerced by the DIG to right a written note of apology. As per the petitioner whereas his mobile phone was returned but the revolver was kept in custody by the DIG.

5. The family members of the petitioner filed a complaint in the Court of the CJM concerning his alleged illegal confinement and even the petitioner filed a written complaint with PS Ahiya Pur and returned to Delhi on September 20, 2009.

6. On September 22, 2009 the petitioner was served with a suspension order dated September 16, 2009. The presidential memorandum dated October 30, 2009 alleging following four Articles of Charge of misconduct against the petitioner was served upon him on November 07, 2009.

Article-1

"That Shree Amitabh Singh, Dy.Commandant of 103 RAF while on attachment and functioning as Dy.Commandant in Central Police Canteen, New Delhi was sent on Govt. duty to Muzaffarpur (Bihar) on 10/09/09 to attend a Court case, committed an act of serious misconduct, in that, on 14/09/2009 at about 2055 hrs, in a drunken state he misbehaved with Dr.(Mrs.) Bhawna Kumari, SMO, GC Muzaffarpur on her mobile using obscene language. Thus, the said officer failed to main absolute devotion to duty being an Officer and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules 1964.

Article-2

That during the aforesaid period, Shree Amitabh Singh, Dy.Commandant of 103. RAF while on attachment, functioning as Dy.Commandant in Central Police Canteen, New Delhi and sent on Govt. duty to Muzaffarpur(Bihar) committed an act of serious misconduct, in that, on 14/09/2009 at about 2245 hrs to 2250 hrs, after consuming liquor and in an inebriated state, he entered the residential premises of DIG Muzaffarpur in a highly agitated manner by pointing a loaded revolver (No. 32 17-3.25 bore) at No. 940110464 CT/GD George Bara, security-aide of DIG and took him as hostage and compelled him to call the DIG, GC, Muzaffarpur using abusive language. Thus, the said officer failed to maintain absolute devotion of duty being a responsible officer and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-3

That during the aforesaid period Shree Amitabh Singh, Dy. Commandant of 103 RAF while functioning as Dy. Commandant on attachment in Central Police Canteen, New Delhi while on Govt. duty to Muzaffarpur (Bihar) on 14/09/2009 committed an act of serious misconduct, in that, on 14/09/2009 after 2245 hrs, he without any provocation and in an inebriated state, holding private revolver in

his hand, used abusive language and threatened the DIG, GC, Muzaffarpur of dire consequences and thereby forced DIG to come out of his residence in the thick of night and insulted him. Thus, the said officer failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS(Conduct) Rules, 1964.

Article-4

That during the aforesaid period, Shree Amitabh Singh, Dy. Commandant of 103 RAF while functioning as Dy. Commandant on attachment with Central Police Canteen and while on Govt. duty at Muzaffarpur committed an act of serious misconduct, in that, on 14/09/2009, after 2245 hrs, compelled Shree S.P. Pokhriyal, DIG, GC, Muzaffarpur to come out from his residence at GC Muzaffarpur using abusive language and made false and ill conceived allegations against Shree S.P. Pokhriyal, DIG, GC, Muzaffarpur without any basis that his car No. BR-06-R-0863 was damaged while he was consuming liquor in the GO's mess. Thus, the said officer failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964."

7. The petitioner denied the charges and hence an inquiry officer was appointed to record evidence and submit a report. The prosecution examined 14 witnesses and the petitioner 6 in defence. The inquiry officer submitted the inquiry report dated July 10, 2012 opining that no charge had been proved against the petitioner.

8. The disciplinary authority did not agree with the report giving tentative reasons in a note of disagreement, copy whereof was sent to the petitioner for his response.

9. The petitioner submitted a detailed point-wise response dated January 08, 2013 to the disciplinary authority which examined the response of the petitioner in the light of evidence produced during inquiry proceedings and on forming an opinion that the petitioner had not been able to bring any material evidence to refute the charges levelled against him or put forth any new fact, tentatively decided to impose suitable penalty in consultation with UPSC on quantum of penalty to be imposed.

10. On receiving the advice of UPSC vide Letter No. F.3/161/2013-SI dated July 10, 2013 and considering the evidence adduced against the petitioner during inquiry proceedings, vide impugned order dated August 19, 2013 passed in the name of President of India penalty of dismissal from service was imposed on the petitioner.

11. Since the punishment awarded to the petitioner was by President of India and as per Rule 22(1) of CCS Rules, no appeal lies, hence this writ petition.

12. Written submissions have been filed by learned counsel for the parties.

Record of disciplinary proceedings has also been relied upon by the respondents, which we have perused.

13. At the outset, we may mention that in the writ petition, the petitioner has taken the plea (Ground No. U) that the impugned order is liable to be set aside as he had not been furnished with the copy of UPSC advice before passing the order of dismissal. In the written submissions filed by the petitioner on January 21, 2015 and January 29, 2015, the petitioner has not pressed this ground giving to an impression that the petitioner is not desirous of disposing of this writ petition on technical grounds by remanding the matter to be reconsidered by the competent authority and expect a verdict from this Court touching the merits of his claim.

14. We are conscious of the legal position laid down by Supreme Court in Union of India (UOI) and Others Vs. R.P. Singh, . Had this point been pressed by the petitioner the matter would have required remanding the same to the concerned authorities to provide an opportunity to the charged officer to submit representation if he so desired and on consideration of representation, if any, given by the charged officer to pass necessary orders.

15. Thus we have undertaken the mammoth task of perusing the voluminous record of disciplinary proceedings.

16. Ms.Rekha Palli, Advocate appearing on behalf of the petitioner while claiming it to be a dismissal passed on no evidence, raised following issues:-

(i) Petitioner who was complainant in two FIRs No. 5/2007 and 6/2007 did not accede to the request of Dr.Bhavna Kumari not to pursue his complaints hence charges were fabricated against him at the instance of Dr.Bhavna Kumari to divert attention from the ongoing cases (FIR No. 5/2007 and FIR No. 6/2007).

(ii) The alleged eye witness Ct.George Bara PW-9 was not even present at the site or on duty and other eye witness Ct.Deen Dayal Singh PW-10 bore grudge against the petitioner for his misconduct in the year 2008 with the wife of the petitioner.

(iii) DIG S.P.Pokhriyal PW-1 coerced the petitioner to write an apology letter (DEx-II/PEX-VIII) which also carries correction with pencil by DIG himself.

(iv) The get-together at SOM was organized by S.K.Rai husband of Dr.Bhavna Kumari and as per PW-6, 7 and 8 who were in the get-together, the petitioner was in his senses.

(v) The petitioner was called by DIG S.P.Pokhriyal PW-1 to his residence.

(vi) When the petitioner was harassed, he called up the emergency number of CRD, CRPF Directorate from his mobile is established from the CDR (page No. 405) of the petitioner showing outgoing call of 147 seconds to CRD and incoming calls of 435 seconds from CRD to his mobile.

(vii) Unusual conduct of K.P.S.Elango, Assistant Commandant PW-2 of not disclosing the fact of the petitioner being locked and about the seizure memo being prepared as well his (PW-2) entering the DIG's house without informing DC (Administration) or taking armed Sentry on coming to know about the petitioner being present there with fire arm.

(viii) The Daily Report given by DC (Administration) does not refer to any such instance on the night of September 14, 2009 nor any entry was made in GD Register about any such instance.

(ix) The order by Commissioner, Tirhut Division, Muzaffarpur observing that about the charge of misuse of weapon by the petitioner was concocted.

(x) Submissions of Presenting Officer that three out of four charges were not proved against the petitioner and reasons by the inquiry officer for arriving at the conclusion that the charges were not proved.

(xi) Disagreement note dated November 30, 2012 was motivated to somehow punish the petitioner and the reasons given in the disagreement note by disciplinary authority with respect to the report of inquiry officer were without any basis. Dr.Bhavna Kumari and DIG S.P.Pokhriyal PW-1 being resident of the same Complex, the DIG was swayed by the first complaint made by Dr.Bhavna Kumari. The DIG not only illegally confined the petitioner but also made him to confess nuisance by him at the residence of DIG by making him to write an application for return of his mobile and car keys.

17. Mr.Ankur Chhibber, learned counsel for the Respondents has submitted that the Disciplinary Authority was within its power to record a disagreement note and thereafter call upon the charged officer to submit representation, if any. The petitioner did submit the representation and after taking into account the material on record against the petitioner and the plea taken in the representation and in consultation with UPSC the penalty of dismissal has been imposed. Learned counsel for the respondents has submitted that since there is neither any violation of rules nor principles of natural justice and in view of the serious misconduct proved against the petitioner, even the punishment awarded to him also cannot be termed as not commensurating with the gravity of offence, hence no interference is warranted by this Court in exercise of its power of judicial review.

18. The rival contentions shall be considered in the light of legal position on the power of Disciplinary Authority after the inquiry report has been submitted, the standard of proof required in the disciplinary proceedings and the scope of jurisdiction of the High court for judicial review on the findings of Disciplinary Authority and the Appellate Authority.

19. It is well settled that the Disciplinary Authority can disagree with the finding of the inquiry officer provided that on the basis of material on record, reasons for disagreement with the finding of the inquiry officer are recorded. The findings of

inquiry officer are his opinion on the material which has no binding effect on the Disciplinary Authority. As a decision making authority, the Disciplinary Authority can come to its own conclusion on the basis of material available as well taking note of the opinion expressed by the inquiry officer. The Disciplinary Authority need not contest the conclusion of the inquiry officer for each charges. It was so held in The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, as under :

"19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the Inquiry Officer it is imperative to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer's report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in some inquiry as well as the views expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the Disciplinary Authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the Disciplinary Authority should "discuss materials in detail and contest the conclusions of the Inquiry Officer". Otherwise the position of the Disciplinary Authority would get relegated to a subordinate level.

21. Thus the Division Bench of the High Court has not approached the question from the correct angle which is evident when the Bench said that it is imperative for the Disciplinary Committee to discuss materials in detail and contest conclusions of the Inquiry Officer. The interference so made by the Division Bench with a well considered order passed by the High Court on the administrative side was by overstepping its jurisdiction under Article 226 of the Constitution."

20. As the disciplinary proceedings against the petitioner culminated into his dismissal, in order to satisfy ourselves, we have considered the statement of the prosecution witnesses as well defence witnesses recorded by the inquiry officer as well the documents exhibited by the parties during inquiry proceedings. We have also considered the inquiry report as well the note of disagreement given by the Disciplinary Authority and the advice received from UPSC. We find that the conclusion arrived at by the Disciplinary Authority in the disagreement note are based on evidence available in the disciplinary inquiry against the petitioner. Though not necessary we note hereunder certain material facts which were established during inquiry and not controverted by the petitioner in his statement:

(i) The petitioner had gone to the Court of CJM, Muzzafarpur armed with a

weapon in a private vehicle owned by his brother and during return journey Dr.Bhavna Kumari accompanied him and dropped by him at her residence.

(ii) There was a get-together at SOM on the evening of September 14, 2009 where petitioner as well other participants consumed liquor and Dr.S.K.Rai, husband of Dr.Bhavna Kumari was also participating till he left at about 7.30 pm to join some other commitment.

(iii) The petitioner had called from his mobile to the mobile of Dr.S.K.Rai and had also talked to Dr.Bhavna Kumari.

(iv) While in SOM the petitioner received a message from DIG S.P.Pokhriyal PW-1 at 2132 hours to leave the SOM in view of the complaint of misbehavior made by Dr.Bhavna Kumari against the petitioner.

(v) There was an incident at the residence of DIG S.P.Pokhriyal PW-1 on the night of September 14, 2009. When hot words exchange was going on between the petitioner and DIG S.P.Pokhriyal PW-1, K.P.S.Elango PW-2 intervened, the petitioner was armed at that time and had consumed liquor at the SOM.

(vi) The petitioner was removed from there by K.P.S.Elango PW-2. The vehicle was driven by K.P.S.Elango PW-2 and he had also taken away the weapon, mobile and car keys of the petitioner and kept the petition in a room in SOM.

(vii) On the next day i.e. on September 15, 2009 the petitioner was taken to the office of DIG S.P.Pokhriyal PW-1 where Commandant was also present. The petitioner had given a written application referring to the unpleasant incident at the residence of DIG S.P.Pokhriyal on the previous night with request to return his mobile, car and weapon.

(viii) While car keys and mobile were ordered to be returned, the weapon was not returned for reasons of safety.

(ix) On September 15, 2009 itself the inquiry was ordered into the incident and all concerned were asked not to leave the station/camp without the permission of DIG.

(x) DIG S.P.Pokhriyal PW-1 was not even known to the petitioner prior to that date and whatever communication was made by him asking the petitioner to leave the SOM was by calling on his mobile and subsequently when the petitioner came out of SOM and his car did not start at the residence of DIG S.P.Pokhriyal which was a few meters away from SOM separate by hedge only.

(xi) K.P.S.Elango PW-2 happened to be present there to clear the mess charges as he alongwith his unit was set to leave early in the morning on September 15, 2009. He happened to notice the incident between two senior officers i.e. DIG S.P.Pokhriyal and Deputy Commandant Amitabh Singh i.e. the petitioner and tried to defuse the situation.

21. We may record here that the motive for false implication being attributed to

Dr.Bhavna Kumari and DIG S.P.Pokhriyal to pressurize the petitioner to withdraw the two cases being FIR No. 5/2007 and FIR No. 6/2007 or he being falsely implicated at the instance of Dr.Bhavna Kumari whom he caught red handed while copying a passage meant for typing test, is not established. This is for three reasons :

(i) Both the FIRs being State cases and status of Dr.Bhavna Kumari as well as of the petitioner being that of prosecution witnesses only, the petitioner had no power to withdraw the above State cases.

(ii) When the petitioner did not make complaint against Dr.Bhavna Kumari and destroyed the passage copied by her, this gesture of the petitioner rather saved the profession career of Dr.Bhavna Kumari. So she had hardly any reason to nurture any grudge against the petitioner.

(iii) Travelling alongwith Dr.Bhavna Kumari, dropping her at her residence and taking liquor with her husband at the get-together at SOM, invitation by Dr.Bhavna Kumari to visit her residence are indicating cordial relations between them.

22. No doubt, from the call details record of the mobile of the petitioner the only inference can be about some talk between the petitioner and Dr.S.K.Rai or Dr.Bhavna Kumari contents of which are neither quoted by Dr.Bhavna Kumari or her husband nor by the petitioner. But the fact that Dr.Bhavna Kumari called DIG S.P.Pokhriyal through intercom (they were residing in the same campus) and only thereafter the petitioner was asked to leave the SOM taking offence of his conduct towards Dr.Bhavna Kumari stand established.

23. A plea has been taken by the petitioner that he was coerced to write the letter dated September 15, 2009 which as per him is confirmed by two lines scribbled by DIG on the back of DEx-II. This letter was written by the petitioner on September 15, 2009 and on the same day an order was passed to return the keys of the car and mobile phone but revolver to be kept in Kote for safety reasons till inquiry was completed. The petitioner was permitted to leave SOM on September 17, 2009, thereafter the petitioner never informed his Superior Authorities about he being coerced to write this "confession" by DIG S.P.Pokhriyal. DIG S.P.Pokhriyal when appeared as PW-1, the question No. 23 put to him in this regard and answer given by him reads as under:

"Q.23 : Kindly see this application (showing an application to PW-1) and tell whether two phrases written with pencil on the back side of this application have been written by you or by some other person?

Ans : Mr.Amitabh Singh is an officer of a disciplined force. He had entered into my residence alongwith loaded revolver and not only created nuisance but also put my life as well as life of CT/GD Bara in danger. The application which is being shown was initially submitted by Mr.Amitabh Singh to get his private car, mobile phone and licensed revolver released. But the correction was made by me on the

back side of the application with pencil to bring out the facts on record."

24. The jurisdiction of the High Court for judicial review of the finding of Disciplinary Authority and also the Appellate Authority in exercise of writ jurisdiction under Article 226 of the Constitution of India has been considered by the Apex Court in Apparel Export Promotion Council Vs. A.K. Chopra, observing as under :

"The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of facts, based on appreciation of evidence recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as appellate authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speak to substitute its own conclusion, with regard to the guilt of delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is considered, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty."

25. When the case of the petitioner is examined in the light of above settled legal position governing the scope of judicial review, the inescapable conclusion is that the dismissal of the petitioner was based on consideration of material in right perspective and can by no stretch of imagination be termed as perverse.

26. The writ petition is dismissed.

27. No costs.