
(2020) 10 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition(S) No. 4120, 4123, 4124, 4127, 4132, 4134 of 2014

Balwant Singh

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 20-10-2020

Acts Referred:

Central Reserve Police Force, Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 226, 227

Citation : (2020) 10 JH CK 0084

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Prashant Pallav, Binod Singh, Rajiv Sinha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties through V.C.
2. All these writ applications are inter-connected; as such the same were heard together and disposed of by this common judgment.
3. In all these writ applications the petitioners have challenged the order of punishment imposed on the respective petitioners and also the respective orders passed by the Appellate Authority as well as Revisional Authority, who have upheld the order of punishment passed by the Disciplinary Authority.
4. Sans details, the brief facts relevant for disposal of these writ applications is that a joint enquiry was conducted against 23 personnel including these petitioners and a common memo of charge dated 31.07.2011 was served to all of them. Thereafter, the Inquiry Officer conducted a joint enquiry as per the existing instructions and charges levelled against the petitioners were proved. Subsequently, the Inquiry Officer submitted the enquiry report before the Disciplinary authority which was also handed over to the individuals to submit their representation on the report and after considering enquiry report as well as the representation submitted by the petitioners to the disciplinary authority, final

order of punishment was passed against all these petitioners.

Aggrieved with the order of punishment passed by the Disciplinary authority the petitioners preferred Appeal, however, the appeal filed by the petitioners were dismissed and even the revision application which were filed by the individual petitioners were dismissed and the order passed by the Disciplinary authority was upheld. Challenging the aforesaid orders of punishment, dismissal of appeal and revision, the petitioners have preferred these writ applications.

5. Mr. Prashant Pallav, learned counsel for the petitioners vehemently argued that the opportunity given to these petitioners by the disciplinary authority in most mechanical manner, inasmuch as the entire enquiry was conducted between 8th January 2012 to 10th January 2012. He further contended that the witnesses who were examined on behalf of prosecution were not the eye witnesses; as such, their statements ought not to have been given weightage. He further contended that more or less the charges against all the 23 persons including these petitioners were similar, however, the disciplinary authority, for the reason best known to him, had passed different punishments in case of different employees, inasmuch as the petitioners of W.P.(S) Nos. 4123 of 2014, 4134 of 2014, 4120 of 2014 and 4132 of 2014 were imposed punishment of dismissal from service, whereas petitioners of W.P.(S) Nos. 4124 of 2014 and 4127 of 2014 were given compulsorily retirement; as such, since the charges were common, charge-sheet was common and proceedings which has been conducted within two days, there should not be any disparity in the punishment. He further contended that the impugned orders are also bad on the ground of belated departmental proceeding. The cause of action was of 16th July, 2010, whereas the departmental proceeding was initiated on 31.07.2011 i.e. after more than a year and no reason has been assigned for such a belated departmental proceeding. In this regard learned counsel relied upon the judgment passed in the case of State of Punjab and Others Vs. Chaman Lal Goyal as reported in (1995) 2 SCC 570 wherein the Hon'ble Apex Court at para 9 has held as under:-

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the

said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

(a) That he was transferred from the post of Superintendent of Nabha Jail and had given (sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1-1-1987/2-1- 1987 the respondent had relinquished the charge of the said office on 26-12-1986. He was not there at the time of incident.

(b) The explanation offered by the Government for the delay in serving the charges is unacceptable. There was no reason for the Government to wait for the Sub-Divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-Divisional Magistrate was not so connected. In the circumstances, the explanation that the Government was waiting for the report of the Sub-Divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry."

6. Relying upon the aforesaid judgment, learned counsel contended that belated initiation of proceeding has definitely prejudiced the case of these petitioners.

7. Mr. Rajiv Sinha, learned A.S.G.I and Mr. Binod Singh oppose the prayer of the petitioners and submit that the departmental enquiry was conducted as per the existing procedure and the petitioners were given ample opportunities to defend themselves. In this case, principle of natural justice was fully adopted. After a detailed enquiry, the charges levelled against each petitioner in the light of statement and evidences, respective order of punishment was passed against these petitioners. The contention of the petitioners that the departmental proceeding is belated has been fully explained in the counter-affidavit. Since there was death of personnel, it was not possible to initiate the departmental proceeding within a couple of months. He further submits that the judgment relied upon by the petitioners are not applicable in these cases, inasmuch as in that case there was a delay of more than 5 years, however, in these cases there is a delay of one year; as such, it cannot be said that the belated initiation of departmental proceeding has prejudiced these petitioners. Learned counsel

further submits that there is no procedural impropriety and the entire proceeding has been conducted as per Rule 27 of Central Reserve Police Force, Rules, 1955. He further contended that the enquiry report itself transpires that the Inquiry Officer after looking to the charges levelled against each individual personnel; passed the punishment order and the petitioners are incorrect to say that the charges were common against all the personnel. He further contended that it is settled proposition of law that a Court cannot sit in appeal under Article 226 of the Constitution of India and the only scope of interference under writ jurisdiction is limited to decision making process. He reiterated that there is no procedural irregularity committed by the respondents. In order to buttress his argument he referred the Judgment passed by the Hon'ble Apex Court in the case of Union of India & Ors Vs P. Gunasekaran as reported in (2015) 2 SCC 610, wherein para 12, 13 and 14 the Hon'ble Apex Court has held as under;

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;

- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in *State of A.P. v. S. Sree Rama Rao*², many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7) "7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

8. Relying upon the aforesaid judgment he contended that all these writ applications deserve to be dismissed.

9. Having heard learned counsel for the parties and after going through the materials available on record, it appears that altogether 23 personnel were proceeded departmentally by the common charge-sheet. Out of 23 personnel, 8 personnel were given compulsorily retirement including two writ petitioners namely, Ramdhari Pal [W.P.(S) No. 4124/2014] and Dwarika Ram [W.P.(S) No. 4127 of 2014], seven personnel were given punishment of stoppage of increment

and four personnel have been dismissed from service being the petitioners, namely Shah Hanif [W.P.(S) No. 4123 of 2014], Om Prakash Prasad [W.P.(S) No.4134/2014], Balwant Singh [W.P.(S) No. 4120 of 2014] and Uma Shankar [W.P.(S) No. 4132 of 2014]. It further transpires that out of these six petitioners, only two petitioners' adduced defense evidence on 27.01.2012 and rest four petitioners did not produce any defense evidence/witness. It further transpires that all the prosecution witnesses were examined in the presence of writ petitioners and they were allowed to cross-examine them and further the evidence recorded was also supplied to all delinquent charged employees. Looking to the aforesaid facts, it cannot be said that any procedural irregularity has been committed by the Disciplinary Authority. After going through the enquiry report, it clearly transpires that the case of each writ petitioner has been dealt separately at internal pages of the enquiry report and finding of the guilt of respective petitioner has also been dealt separately which finds mentioned in page number 26, 29, 30, 31, 32 and 35 of the impugned order of punishment at Annexure-3 of the writ application.

From the record it also appears that the Appellate Authority as well as Revisional Authority have upheld the impugned orders of punishment by a reasoned and speaking order. Even the proportionality of punishment has been dealt with by both the Appellate and Revisional Authority and there is concurrent finding of fact in each case.

The contention of these petitioners that the opportunity has been given in most mechanical manner and the entire departmental enquiry was conducted in two days clearly transpires that it was an eye wash. This contention of the learned counsel prima facie appears to be impressive but from perusal of the enquiry report it appears that though the prosecution witnesses, total seven in number, were examined between 08.01.2012 to 10.01.2012 but all the twenty three charged personnel were given liberty to cross-examine them. From enquiry report, it further transpires that in order to follow the principle of natural justice, all the 23 charged personnel were given 15 days' time i.e. till 27th January, 2012 to produce their defense evidence/witness. However, among these petitioners, only Ramdhari Pal [W.P.(S) No. 4124/2014] and Om Prakash Prasad [W.P.(S) No. 4134/2014] have submitted defense evidences. Further, after going through the Rule 27 of Central Reserve Police Force Rules, 1955, it does not appear that there is any procedural impropriety and ample opportunity was given to each of the personnel and even two of the petitioners adduced their defense evidence and rest four refuses to produce any defense evidence; as such, the argument of the learned counsel for the petitioners that opportunity has been given in most mechanical manner does not appear to be correct.

The other grounds of the learned counsel for the petitioners that there is a disparity in a punishment when the charges are similar; also appears to be not impressive, inasmuch as, after going through the enquiry report it appears that the Inquiry Officer has dealt each and every case separately and the Disciplinary

Authority too has dealt all the issues separately. Further, after critically examining the charges leveled against 23 personnel, it clearly transpires that the charges were not similar in nature. In this view of the matter, this contention of the petitioners has no legs to stand.

So far as the contention of the petitioners that the witnesses who were examined were not the eye witnesses, as such their statements ought not to have been examined. In this regard, this Court is conscious with the writ jurisdiction and it cannot sit in appeal over and above the order passed by the Disciplinary authority and only scope of interference in writ jurisdiction is limited to the decision making process. At the cost of repetition, there is no procedural irregularity committed by the Disciplinary authority; as such, in view of the settled law laid down in catena of judgments, I refrain myself from interfering with the impugned orders of punishment passed against respective petitioners.

In this regard reference may be made to the judgment passed in the case of Central Industrial Security Force and Ors. vs. Abrar Ali, as reported in (2017) 4 SCC 507, wherein the Hon'ble Apex Court after dealing several other judgments held in paragraphs 13, 15 and 16 as under;

"13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappraisal of evidence. It is settled law that reappraisal of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

15. In Union of India v. P. Gunasekaran⁸, this Court held as follows: (SCC pp. 616-17, paras 12-13) "12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappraising even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

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- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

16. We are in agreement with the findings and conclusion of the disciplinary authority as confirmed by the appellate authority and revisional authority on Charge 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the respondent deserves to be punished suitably."

10. Even after going through the Appellate and Revisional order, it appears that the proportionality of punishment has already been dealt with by both the authorities and as such, I refrain myself from interfering with those orders also.

As a cumulative effect, the orders of punishment, all dated 08.11.2012, with respect to these petitioners, are hereby sustained, as the petitioners have failed to bring on record any point of law so as to interfere with the impugned Orders.

11. As a result, these writ applications are hereby dismissed. The interlocutory applications, if any, also stand disposed of.