

(2023) 12 CAL CK 0085
In the Calcutta High Court
Case No : W.P.A. No. 8580 Of 2008

Bikash Sarkar

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Central Industrial Security Force Rules, 2001 — Section 19(1), 32, 32(1), 34(ii), 36

Citation : (2023) 12 CAL CK 0085

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Shuvro Prakash Lahiri, Rajesh Naskar, Tithi Mazumder, Rahul Sarkar, Dipika Sarkar

Final Decision : Dismissed

Judgement

Hiranmay Bhattacharyya, J

Writ petitioner has prayed for quashing the chargesheet, the enquiry report dated 31.03.2008 and the order of the disciplinary authority dated 28.04.2008 by filing this writ petition.

While the writ petitioner was performing his duties as a constable in the Central Industrial Security Force (for short "CISF") and was working at CISF Unit, Farakka Barrage Project, Farakka, a memorandum of charges dated 22.10.2007 was issued whereby the petitioner was charged with the following misconduct.

i) On 12.10.2007 at about 5 p.m., the petitioner, while he was deployed at Bansloi out-post, allegedly misbehaved with one N.P. Laskar, ASI and he sustained injuries on his left ear and the back of his skull. Therefore, by misbehaving and assaulting a senior, the petitioner committed an act of gross indiscipline and misconduct.

ii) On 12.10.2007, between 5 p.m. and 6 p.m., while he was deployed at Bansloi outpost, he threatened to kill ASI Laskar, who was the post commander, one B.N.

Soumondal and one M. Unnikrishnan by holding a Hasua, which is a sharp edge weapon allegedly under the influence of liquor.

Petitioner submitted his reply to the memorandum of charges. An enquiry officer was appointed for inquiring into the charges leveled against the petitioner. The Inquiry Officer submitted his report dated 31.03.2008. In the said report the Inquiry Officer concluded that the first charge was proved and with regard to the second charge the Inquiry Officer concluded that the allegation against the petitioner that under the influence of liquor he threatened to kill N.P.Laskar and B.N.Soumondal by holding a "hasua" was also proved.

Thereafter, the disciplinary authority passed an order dated 28.04.2008 awarding the punishment of "removal from service" to the petitioner with immediate effect.

Being aggrieved by the order of the disciplinary authority inflicting the punishment of removal from service, the petitioner approached this court by filing the instant writ petition.

Mr. Shuvro Prakash Lahiri, learned Advocate appearing in support of the writ petitioner submitted that the order of punishment was passed by the Commandant as the disciplinary authority. By referring to Rule 34 (ii) of the Central Industrial Security Force Rules, 2001 (for short "the 2001 Rules") read with Schedule I, Mr. Lahiri contended that the Commandant was not competent to initiate the disciplinary proceeding and pass the order of the punishment. He further contended that there has been a gross violation of the principles of natural justice by the authorities while conducting the disciplinary proceedings. He also submitted that sub rule 19(1) of Rule 36 of the 2001 Rules were also violated while conducting the disciplinary proceedings. He also contended that the Inquiry Officer without making a proper assessment of evidence arrived at a wrong conclusion.

Per contra, Ms. Sarkar learned Advocate appearing for the Union of India seriously disputed the contentions raised by Mr. Lahiri. She submitted that the Commandant was competent to initiate the disciplinary proceeding and to pass the order of punishment. She further submitted that the enquiry proceedings were conducted by following the principles of natural justice. She submitted that the disciplinary authority after considering the enquiry report as well as the other materials on record fully agreed with the findings of the Inquiry officer. She submitted that since the offence committed by the petitioner is very serious in nature, the disciplinary authority imposed the punishment of removal of service with immediate effect. She concluded by submitting that the instant writ petition is liable to be dismissed.

Heard the learned advocates for the parties and perused the materials placed.

Before entering into the factual aspect it would be beneficial to recapitulate the proposition of law laid down by the Hon'ble Supreme Court in its judgment in the case of Union of India and ors. Vs. P. Gunasekaran reported at (2015) 2 SCC 610

wherein it was held that the jurisdiction of the High Court is supervisory one and the High Court cannot act as a second court of first appeal and also should not venture into re-appreciation of the evidence adduced in a disciplinary proceeding to alter the findings of the enquiry authority. In exercise of its powers under Articles 226/227 of the Constitution of India, 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.”

The Hon’ble Supreme Court, however, gave a note of caution by observing that the High Court shall not –

- “(i) re-appreciate 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.”

Keeping in mind the limited scope of interference in exercise of the powers of judicial review, this Court shall now proceed to decide as to whether the writ petitioner has made out any ground for interference with the order passed by the disciplinary authority.

The learned Advocate for the writ petitioner submitted that the Commandant lacked jurisdiction to initiate the disciplinary proceedings and to pass the order of punishment. Since the question of jurisdiction has been raised, this Court shall decide the same prior to deciding the other issues.

Rule 32(1) of the 2001 Rules states that the disciplinary authority in respect of an enrolled member of the Force for the purpose of imposing any particular penalty or the passing of any disciplinary order shall be the authority specified in that behalf in Schedule I under whose administrative control the enrolled member is serving and shall include any authority mentioned in the said Schedule superior to such authority.

In order to decide as to whether the Commandant was competent to initiate the disciplinary proceeding and to pass the order of punishment of removal from service, it would be relevant to take note of Schedule I under Rule 32 of the 2001 Rules.

Schedule of disciplinary authorities and their powers to pass different disciplinary orders in respect of different classes and grades and ranks of members of the Force have been mentioned in a tabular form in Schedule I.

In Schedule I, the nature of the disciplinary orders has been mentioned under Column 2. Disciplinary authorities and the extent of their powers have been mentioned under Column nos. 3 to 8. Column 6 deals with the disciplinary authority viz Senior Commandant/ Commandant. In Column 6 the expression "Senior Commandant" has been inserted by GSR 533 (E) dated 31.07.2007 (w.e.f. 03.08.2007).

The punishment of "removal" falls under Serial no. 3. It appears from the Schedule I that the punishment of removal can be passed by the Senior Commandant or Commandant in respect of all member of the Force excepting Sub-Inspector and Inspector.

It is evident from Schedule I that the Senior Commandant/Commandant as a disciplinary authority has the power to impose punishment of removal in respect of all enrolled member of the Force excepting Sub-inspector and Inspector. Since the petitioner was a constable at the relevant point of time the Commandant was competent to act as the disciplinary authority and to pass the order of punishment of removal from service. It is not the case of the petitioner that he is not under the administrative control of the Commandant.

This court is therefore, of the considered view that the disciplinary proceeding was initiated by an authority who was competent to initiate such proceeding and pass the order of removal.

After going through the materials on record it is evident that the petitioner being the charged official received the charge memorandum dated 24.10.2007 and he submitted his written submission of his defense on 20.11.2007. The Inquiry Officer in his report dated 31.03.2008 specifically recorded that the charged

official did not name any defense assistance to defend his case.

After perusing the enquiry report this Court finds that the same is a detailed one. The Inquiry Officer in his report took note of the evidence of the prosecution witnesses as well as the evidence of the charged official. The exhibited documents were also evaluated by the Inquiry Officer. The Inquiry Officer also took note of the submissions of the Presenting Officer and the reply of the charged official. The Inquiry Officer also noted that in course of preliminary hearing the charged official pleaded guilty partially.

It also appears from the record that the charged official/ petitioner herein in spite of being afforded the opportunity to cross examine the prosecution witnesses, declined to cross examine them.

The Inquiry Officer after assessing the evidence on record, assigned cogent reasons in support of his ultimate conclusion. The Inquiry Officer concluded that while the petitioner was deployed at Bansloi Outpost of the unit he misbehaved with N.P. Laskar (Post Commander) and assaulted him under the influence of liquor and as a result N.P.Laskar sustained injuries in his left ear and the back of his skull. The Inquiry Officer observed that by misbehaving and assaulting a Senior, the petitioner committed an act of gross indiscipline and misconduct. The Inquiry Officer observed that the first charge of the petitioner stands proved.

In so far as the second charge is concerned, the Inquiry Officer recorded that the petitioner, while he was deployed as Bansloi outpost of the unit, threatened to kill N.P. Laskar and B.N. Soumondal by holding a "hasua" (a sharp edged weapon) under the influence of liquor. The second charge, according to the Inquiry Officer, was proved only to that extent.

The enquiry report is a well-reasoned one.

The Disciplinary authority after taking into consideration the statement of PW-I, PW-II and PW-III that the charged official was under the influence of liquor and the medical certificate as well as the admission of the charged official that he gave a blow to N.P. Laskar due to which he fell on the floor, arrived at a finding that N.P.Laskar sustained injury due to assault by the charged official. With regard to the alleged discrepancy in the medical certificate issued by FBP about an old injury, the disciplinary authority noted that N.P.Laskar sustained injury on 12.10.2007 and he got treatment from a local doctor on 12.10.2007 near the outpost and then visited FBP Hospital on the next day i.e., on 13.10.2007 and, therefore, rightly rejected such allegation of the charged official. The disciplinary authority held that article of charge I was proved proved.

The disciplinary authority after taking into consideration the evidences produced by prosecution witnesses and the charged official, held that it has been proved that the charged official threatened to kill N.P.Laskar and B.N.Soumondal by holding a Hasua (a sharp edged weapon) under the influence of liquor. The disciplinary authority, however, observed that the charge against the charged

official that he threatened to kill M. Unnikrishnan could not be established due to insufficient evidence.

The disciplinary authority after considering the enquiry report as well as the evidences produced by the prosecution witnesses and the charged official passed a detailed order concluding that the disciplinary authority is in full agreement with the findings of the Inquiry Officer. The disciplinary authority after considering the gravity of the charges which have been duly proved in course of the disciplinary proceeding imposed the punishment of removal from service with immediate effect upon the petitioner for the best interest of the Force Discipline. The order of the disciplinary authority is also a reasoned order.

After going through the materials on record, it does not appear to this Court that Sub-Rule 19(i) of Rule 36 has been violated as urged by the learned Advocate for the petitioner.

This Court is, therefore, of the considered view that the enquiry was held by a competent authority in accordance with the procedure prescribed in that behalf. It does not appear to this Court that there has been any violation of the principles of natural justice in conducting the proceedings, It cannot also be said that the findings recorded by the disciplinary authority is based on no evidence. To the mind of this Court, the finding of the Inquiry Officer and the disciplinary authority are based on some legal evidence. It is well settled that in exercise of the powers of judicial review, the High Court shall not re-appreciate the evidence.

For all the reasons as aforesaid, this Court holds that the petitioner has failed to make out any ground for interfering with the order of punishment imposed by the disciplinary authority. Accordingly, the writ petition fails and the same stands dismissed. There shall be, however, no order as to costs.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.