
(1998) 10 DEL CK 0063
In the Delhi High Court
Case No : CWP No. 1624 of 19897

B.R. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Citation : (1998) 47 DRJ 723

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : F.C. Sharma, for the Appellant; Y.D. Nagar, for the Respondent

Judgement

Vijender Jain, J.—The charges framed against the petitioner were | -

1. Unauthorised entry into the Quarter No. VIII/61 of 7121143/ N K Sandil, on 20.9.83.
2. Misbehaviour with Smt. Kamla Devi, w/o Naik N K Sandil at about 1000 hrs. on 20.9.83.
3. Threatening Smt. Kamla Devi, w/o Naik N K Sandil on 20.9.83.

On the basis of. the aforesaid charges, the petitioner was dismissed vide order of the respondent dated 19.3.1984. The Appellate Authority also upheld the order of dismissal and dismissed the appeal of the petitioner on 16.7.1985. The fate of the petitioner was sealed by the the Reviewing Authority which also dismissed the petition of the petitioner on 8.5.1986.

2. Learned counsel for the petitioner has contended that the order passed by the respondent was whimsical, arbitrary and showed complete non-application of mind to the facts and circumstances of the case. This Court while exercising writ jurisdiction is not sitting in appeal over the orders passed by the respondents, however, from the facts stated before this Court by the learned counsel for the petitioner and perusal from the material placed on record, there are grave discrepancies which have resulted in mis-carriage of justice .It has been pointed

out by the counsel for the petitioner that in the statement of charge framed against the petitioner by the Commandant, which was issued on 25.10.1983, the date of occurrence was 20.9.1983 and the time was 1000 hrs. whereas in the statement of imputation of misconduct, which is at page-23 of the paper book, the Commandant has taken the date to be of 20.8.1983 instead of 20.9.1983.

3. Another infirmity, which has been pointed out by the learned counsel for the petitioner is that in the statement of PW-1, Smt. Kamla Devi, who deposed before the Enquiry Authority the date of incident is mentioned as 20.10.1983. One can presume that being a housewife she did not remember the date correctly, however, in the testimony N K Sandil, who was the husband of PW-1 and who deposed as PW-2 before the Enquiry Authority, the date of occurrence was 20.10.1983 whereas in the statement of imputation of misconduct the date was 20.9.1983. Even there was variation of timings, as per the charge sheet the time of alleged misbehaviour was 1000 hrs. whereas in the testimony of both PW-1 and PW-2 the time was 1100 hrs.

4. Counsel for the petitioner has also shown to the Court the copy of the complaint, which was delivered to the petitioner not at the time of issuing of the show cause/charge memo but at the time of conducting the enquiry by the Enquiry Authority, the same is not signed by either the complainant or his wife. This was main document which was the basis of initiation of proceedings by the respondent and why the same was not given to the petitioner at the earliest opportunity. That complaint lacks credence.

5. Mr. Nagar, learned counsel for the respondents, has contended that the court should not go into the minor discrepancy with regard to the dates. Due opportunity was granted to the petitioner to defend himself and, as a matter of fact, the petitioner cross-examined the witnesses, who were produced before the Enquiry Authority. He has further contended that the , order of dismissal was passed by the respondent in order to give exemplary punishment so as to avoid re-occurrence of these kind of cases in respondent-Organisation.

6. I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties. Discrepancy regarding the alleged date of occurrence as shown the charge sheet and the testimony of PW-1 and PW-2 is not controverted by the respondent yet even if this Court assumes that it was on account of a bona fide mistake the PW-1 and PW-2 mentioned wrong dates, however, report of the Enquiry Authority recommended that the first charge of Unauthorised entry into the Quarter No. VIII/61 of 7121143/ N K Sandil was not proved, the order of dismissal gives an interesting reading. The Commandant vide his impugned order dated 19.3.1984, while admitting that the Enquiry Officer opined that the charge No. 1 was not proved as the delinquent was a paying guest of PW-2 NK Sandil, still held that the Enquiry Officer's stand could not be accepted.

7. If the charge No. 1, which pertained to unauthorised entry into the house of

NK Sandil was not proved, there was no other material available before the Commandant to come to a finding that the entry of the petitioner into N K Sandil, PW-2's quarter was without permission. More so, in view of the fact that the evidence was before him, according to the same evidence Smt. Kamla Devi PW-1, had herself served the food to the petitioner on the fateful day. The Commandant had transgressed his jurisdiction by substituting his own opinion without any cogent material before him and that, amounts to mis-carriage of justice ;which cannot be sustained in the eyes of law. This aspect of the mailer has also been overlooked by the Appellate Authority and, Therefore, the orders of dismissal as well as that of Appellate Authority need to be quashed. Even otherwise, the order of dismissal seems to be disproportionate to the charges leveled against the petitioner. I, Therefore, quash the orders dated 19.3.1984, 16.7.1985, 8.5/1986 and 12.2.1987. being illegal. The petition is allowed. Rule is made absolute. The petitioner shall be entitled for reinstatement with all consequential benefits.

8. There will be no order as to costs.