
(2009) 11 GAU CK 0080
In the Gauhati High Court
Case No : Writ Petition (C) No. 5596 of 2005

Budhin Chandra Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 54

Citation : (2006) 1 GLT 798

Hon'ble Judges : Arun Chandra Upadhyay, J

Bench : Single Bench

Advocate : G.N. Sahewalla and D. Senapati, for the Appellant; None, for the Respondent

Judgement

A.C. Upadhyay, J.—Heard Mr. S. Senapati, learned Counsel appearing for the Petitioner. None appears for the Respondents.

2. By this writ petition, the Petitioner has challenged the order of dismissal issued by the Commandant, Central Industrial Security Force Unit (for short "CISF") dismissing the Petitioner from service.

3. The facts leading to filing of this writ petition may be stated in brief as follows:

The Petitioner, while posted at CISF Unit ECL, Seetalpur as Constable, was issued with a Memorandum of charge dated 01.10.2005, for alleged misconduct and negligence during his deployment in shift duty on 14.9.2003, from 13 hours to 20 hours at the main Gate of Dragline Erection Yard. It was further alleged that during duty hours from about 1930 hrs. the Petitioner allegedly followed 8-10 miscreants for taking out some heavy materials, which were ECL property, by dragging the articles out towards the Main Gate of Dragline I.S. Yard. During the period of Petitioner's shift duty on 14.9.2003 materials worth Rs. 9,60,000/- had been allegedly stolen through his duty post. On getting information from the Management, the CISF team raided nearby areas and recovered the above stolen materials from the godown of Shri Jugal Mudi of Chittaduga, Haripur on

15.09.2003. It was further alleged that the theft of the materials took place due to active connivance of the Petitioner. Accordingly, following charges were framed against the Petitioner in the enquiry proceedings:

Article of Charge No. I

An act of gross misconduct and negligence in that CISF No. 892291685 Const. B.C. Das of SBP Camp, CISF Unit ECL Seetalpur was deployed in "B" shift duty on 14.09.2003 from 1300 hrs. to 2100 hrs. at main gate of Dragline Erection Yard. During his duty hours at about 1930 hrs. he allowed 08 to 10 miscreants for taking out some heavy materials of ECL property by dragging out towards the main gate of Dragline Erection yard. Thus, he failed to prevent the theft of ECL property which was his prime duty. This act on the part of No. 892291685 Const. B.C. Das is gross indiscipline, negligence and unbecoming conduct being a member of disciplined Armed Force like CISF. Hence, the charge.

Article of Charge No. II

While on "B" shift duty from 1300 to 2100 hrs. on 14.09.2003 at main gate of Dragline Erection Yard some materials worth Rs. 9,60,000/- was stolen through his duty post. On getting information from the management the CISF team searched/raided nearby area and the above stolen material was recovered from the godown of Shri Jugal Mudi at Chhata Dunga, Haripur on 15.09.2003 and handed over to the ECL Management of SBP. It has established that due to his connivance the above theft was occurred from his duty post. This act on the part of No. 892291685 Const. B.C. Das tantamount of gross misconduct, dereliction and negligence on duty being a member of an Armed Force like CISF. Hence, the charge.

4. The Petitioner, on receipt of the Memorandum of charge, submitted written statement of defence on 10.10.03, denying all the charges levelled against him. Thereafter, the Disciplinary Authority appointed Shri Trilachan Saw and Shri R.K. Dwivedi as the Enquiry Officers to inquire into the charges levelled against the Petitioner. On conclusion of the Departmental enquiry, the Enquiry Officers submitted enquiry report on 21.2.04, holding that the charges were not proved against the Petitioner. Accordingly, the Departmental Authority by issuing a final order dated 22.03.04 treated the period of suspension of the Petitioner from 26.09.03 to 15.02.04 as on duty for all purposes and reinstated him in service.

5. Subsequently, in terms of the provision of Rules 54 of CISF, 2001, the order dated 22.03.04 was once again reviewed by the Deputy Inspector General, CISF, NEZ HQs, Kolkata and vide order dated 12.08.04, the order of re-instatement and withdrawal of suspension was set aside with a direction to conduct de novo enquiry on the same set of charges.

Findings and conclusion arrived at by the inquiry team after analysing the evidence of the witnesses may be depicted below:

Findings:

After going through the statement of PWs and relevant documents available in the case file as well as oral statement of the charged official and discussion on disputed fact I come to the conclusion that Budhan Majhi, Welder Helper of M/s Mining & Engineering Corporation is a prime prosecution witness of the case who has been absconded. Since Budhan Majhi has absconded, 8 other PWs have not seen the actual date of occurrence of theft; even time and place also could not be established. Hence the article of charge framed against No. 892291685 Const. B.C. Das vide memorandum No. V-15017/CISF/ECL/DISC/PA/BCD/2003/7548 Dated 01.10.03 are Not Proved.

6. Once again Enquiry Officer was appointed on 09.11.04 for suo motu review as ordered by the Dy. Inspector General. In the de novo enquiry on the same set of charge, in question, statements were recorded and the witnesses who had deposed earlier were once again examined by the Enquiry Officer. During the enquiry, however, those witnesses who had been absconding were also produced by the Disciplinary Authority. Thereafter, the Enquiry Officer submitted his Enquiry Report on 10.03.05, holding, inter alia, that the Petitioner was guilty of the charges levelled against him. The Petitioner was served with a copy of the enquiry report and accordingly the Petitioner submitted his representation on 29.3.05. Thereafter, on 13.04.05 the Disciplinary Authority issued an order imposing penalty of dismissal from service holding the Petitioner guilty of the charges of misconduct.

7. The Petitioner, being aggrieved by the said order of the Disciplinary Authority, preferred an appeal before the appellate authority, i.e. the Deputy Inspector General, CISF Unit. However, the appellate authority, vide order dated 13.06.05, rejected the appeal by upholding the penalty of dismissal imposed by the Disciplinary authority.

8. The learned Counsel for the Petitioner pointed out that the Petitioner was detailed for B shift duty in the NE Yard from 1300 hrs. to 2100 hrs. on 14.09.03 and there was no lock in the NE Yard main gate. Furthermore, there was no explanation whatsoever as to why PW -2 Budhan Majhi absconded during the previous enquiry. It was further pointed out on behalf of the Petitioner that as per the statements of PW-2 there was no corroborative evidence, the evidence of one Piyush Singha Roy having been withheld. There was no explanation as to why PW 2 did not raise any hue and cry immediately on the property being stolen away during the evening hours. There is no explanation as to the time of the occurrence and why PW 2 was present at the relevant time. Thereafter, PW 2 interestingly reported the matter only on the next date, i.e. after the recovery of the stolen items. Apparently as submitted by the learned Counsel for the Petitioner non examination of Piyush Singha Roy, prejudiced the Petitioner.

9. The learned Counsel for the Petitioner drawing the attrition of this Court to the statements of PW-2, who is a welder by profession, rightly expressed surprise regarding the manner in which he had divulged the in numerical figures of the parts of the stolen items running into 5 to 6 digits together, by quoting the price

of each such articles without any hitch. A welder by profession, who absconded on earlier occasion, surprisingly appeared in the subsequent enquiry would remember numerical figures inscribed on the parts of the stolen items, do not inspire confidence. To base the finding of guilt solely on the testimony of such a witness in a serious offence of alleged theft would not at all be safe. Further, even in spite of the commission of theft of heavy items allegedly by 7-8 persons from the yard, no FIR was lodged with the local police to bring the culprit to book and the FIR lodged was surprisingly withdrawn even after recovery of the stolen materials from the godown at Jugal Modi is nothing but suspicious. It is, however, interesting to note that upon recovery of the stolen materials, FIR could be withdrawn by the officials to save the culprits, who were found possessing stolen item immediately after the theft, that too without any explanation whatsoever in this regard. The learned Counsel for the Petitioner further pointed out that? W-2 himself was on duty from 1400 hrs to 2200 hrs. which implies that the petitioner was relieved from duty.

10. It is contended on behalf of the Petitioner that the surrounding circumstances in which the theft was allegedly committed appears to be most unusual going by the rules of human conduct. Apparently the circumstances leading to the theft of such heavy articles from a full proof and heavily guarded godown and immediate recovery supplements the suspicion and multiplies the vagueness of the truth of projecting the Petitioner as the culprit.

11. Ex facie, earlier enquiry conducted by the department was discarded by the Disciplinary Authority in terms of the provisions of Rule 54 of the CISF Rules, 2001 for the following reasons:

During DE, though the PE report along with written statement of Shri Budhan Majhi were available in the case file considering which article of charges were framed against Const. B.C. Das, but neither E.O. nor Disciplinary authority were enable to substantiate the fact taking into consideration the above important documents/statement. In my view, there are sufficient documents as well as circumstantial evidences that the theft of materials worth Rs. 9,60,000/- from Dragline Erection Yard took place and subsequently materials were recovered, available on record to establish the charges framed against Const. B.C. Das and considering the above shortcomings the Final Order issued by the Disciplinary Authority vide No. V-15017/CISF/ECL/Disc/PA/BCD/2003-2261 dated 22.03.04 is set aside with direction to conduct fresh enquiry providing reasonable opportunities to the charged official from the stage of appointment of Enquiry Officer. It is further directed that Disciplinary Authority will take appropriate action after obtaining the report from E.O.

12. In order to prove a charge of connivance with the theft of property belonging to the Respondent-department, the standard of proof required cannot be less. The star witness of the department, Budhan Majhi, fled away and absconded on the earlier occasion when the enquiry was carried out. In the second enquiry, on the same charge against the Petitioner, no reason whatsoever was shown as to

why on the last occasion Budhan Majhi fled away and absconded. Admittedly, Budhan Majhi was not a witness of the department, but was working in a private firm. Involvement of the Petitioner in the crime of conniving the theft alleged against him basically revolved around the evidence of Budhan Majhi. Except the statement of Budhan Majhi regarding removal of the items from the courtyard of the CISF at the particular time, no other circumstantial evidence has been adduced by the department to show that immediately after completion of shift duty of the Petitioner, items were found stolen. The stolen items removed by the miscreants were not smaller in size not to catch the eyes of person, who was put to guard them. No report regarding the theft or missing of such items from the courtyard whatsoever was submitted by the Constable, who happened to be in shift duty immediately after the change of the shift of the Petitioner.

13. Curiously enough, the police case, which was filed in the Police Station, was not allowed to be pursued for no reason/shown whatsoever by the Respondent department. The person from whom the stolen items were recovered was left off without any enquiry whatsoever. The person who received the stolen items did not divulge the time of the theft and persons who were involved in the commission of theft were not booked neither any effort seems to have been made to nab the actual culprit. The conduct of PW 2 in not informing the incident immediately and absconding during earlier occasion is suspicious. On careful analysis of the evidence laid by the department to prove the charges against the Petitioner, it transpires that the evidence laid could not establish with all certainty that the items were removed from the courtyard of CISF during the period of shift duty of the Petitioner.

14. On careful examination of the matter in its entirety, it transpires that the findings of the Inquiry Officer against the Petitioner is based on suspicion and not on proof. Suspicion, as a matter of fact, cannot replace requirement of proof of a fact, howsoever strong may be the suspicion. Apparently, genesis of charges of the kind framed against the Petitioner required stricter proof before holding the Petitioner guilty, however, in the instant case I am constrained to observe that the burden of proof of the charges was not discharged by the Respondent authority adequately thus leaving enough area for doubts and suspicion to multiply, which eventually laid foundation for giving appropriate relief to the Petitioner in this writ petition.

15. In view of the above discussion, after having given thoughtful consideration in the entire gamut of facts, I am of the considered view that the findings arrived at against the Petitioner is not based on sound reasoning and therefore punishment imposed by the department is not tenable in the eye of law. Accordingly, the impugned order terminating the service of the Petitioner stands set aside and quashed.

16. With the above observations and direction, this writ petition is disposed of.