
(2011) 05 DEL CK 0161
In the Delhi High Court
Case No : Writ Petition (C) 283 of 1998

Chand Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0161

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : U. Srivastava, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—As recorded in the order dated 19th May 2011 when after hearing arguments we had reserved the matter for judgment only 2 submissions were urged. The first was that there was no evidence to establish that the Petitioner abused the instructor and the JCC staff. Second was that the penalty levied was disproportionate to the gravity of the offence.

2. Though the arguments advanced were brief, we were constrained to reserve the matter for writing our opinion inasmuch as the Record of Evidence was in Hindi and being handwritten, we thought it better to peruse the same in chamber, although learned Counsel for the parties had highlighted relevant portions thereof during hearing. Since Petitioner had lost his job we thought it prudent to re-assure ourselves that justice was done to the Petitioner.

3. Petitioner was charge-sheeted for having committed an act of misconduct, in that, it was alleged that while undergoing JOC course at GC-II CRPF Ajmer, on 11.8.1991, Petitioner consumed alcohol which was not authorized, and abused instructor and JCC staff.

4. The statement of imputation highlighted that Petitioner was undergoing the course which commenced on 19.7.1991. He was issued out-pass by the SO in-

charge of the course. He went out and unauthorizedly consumed alcohol and returned to the camp at about 17:30 hours and abused the instructor and JCC staff in full view. Taken to the CRPF hospital at 16:00 hours on being medically examined Petitioner was found under the influence of alcohol.

5. At the outset we may note that the Petitioner had joined service as a Constable with CRPF on 14.4.1982. Penalty of dismissal from service was levied on 3.3.1992. Appeal filed was rejected vide appellate order dated 17.3.1993 and the revision was rejected vide order dated 29.4.1994.

6. The instant writ petition has been filed in the year 1998 i.e. after nearly 4 years of the revision being rejected and it is apparent that if Petitioner were to file a civil suit challenging the penalty imposed the same would be dismissed as barred by limitation.

7. It is settled law that a good measure to determine whether a writ petition is hit by delay and laches is to see the period of limitation for filing a suit if challenge was by way of a suit and if the suit was barred by limitation, the same would be a measure to hold that the writ petition suffers from delay and laches.

8. Prima facie, the writ petition is barred by delay and laches but since we had heard the matter on merits we proceed to decide the issue on merits.

9. Record shows that the Petitioner was served with the charge memo and he appeared before the Inquiry Officer on 6.9.1991. Proceedings recorded on 6.9.1991 would reveal that the Petitioner accepted having received the charge-memo and along therewith the list of relied upon documents as also the list of witnesses. He understood the charges against him. He gave a No Objection to the Inquiry Officer being appointed and pertaining to the charge admitted being drunk but denied the remainder i.e. abusing the instructor and the JCC staff.

10. Record shows that 4 witnesses were examined at the inquiry.

11. Himmat Singh PW-1 deposed that on 14.7.1991 he was deputed to the Centre to train JC Os and that on 5.8.1991 Dy. Cmdt. Nand Kishore Sharma of the 85th Bn. took charge as the Course Commander. Dy. Cmdt. Nand Kishore left on urgent work on 9.8.1991 and was to return on 13.8.1991, during which period he i.e. Himmat Singh was entrusted with the duties of the Course Commander. 11.8.1991 was a Sunday and thus some jawans on training were issued out-pass at 12:00 noon with a direction that they should return by 16:00 hours. Petitioner was also issued an out-pass. He did not return. His absence was noted when at 17:00 hours the attendance was marked. At 17:30 hours after the attendance was over, he was informed by Hav. Inder Sen Singh that the Petitioner was lying dead drunk and in a state of loss of self-control near a tent next to the 123rd Auxiliary Canteen. He reached there and saw a crowd of force personnel having gathered. He saw the Petitioner who was so drunk that he could hardly speak. He i.e. Himmat Singh feared that the Petitioner may have consumed some drug and therefore he decided to rush him immediately to a

doctor. With the assistance of force personnel he rushed the Petitioner to the hospital. The doctor was summoned from his residence and the Petitioner was medically examined. The doctor opined in the medical report Ex.A that Petitioner was drunk. When Petitioner was being examined he started abusing the instructor and the JCC staff. He created a nuisance. The doctor told him to remove the Petitioner to the Civil Hospital. He brought the Petitioner to the camp and on 12.8.1991 submitted a written report pertaining to the incident in question.

12. Relevant would it be to note that in-spite of opportunity granted, Petitioner did not cross-examine PW-1.

13. Ct. Mangal Singh PW-2 and Ct. Ramesh Chand PW-3 deposed that the Petitioner was found absent at the roll call at 17:00 hours taken on 11.8.1991. Hav. Inder Sen Singh PW-4 deposed in sync with the testimony of PW-1.

14. Relevant would it be to note that in-spite of opportunity granted the Petitioner did not cross-examine PW-2, PW-3 and PW-4.

15. The medical opinion Ex.A tendered by PW-1 records that the Petitioner was drunk and was unable to talk coherently.

16. After the prosecution witnesses were examined the Petitioner made a defence statement in which he admitted having purchased alcohol when he was issued out-pass and he visited the market. He stated that he consumed alcohol at 16:00 hours and that he consumed excessive alcohol as a result of which he lost control of his senses and thus he did not remember what happened on 11.8.1991.

17. The defence statement made by the Petitioner is his admission that he was drunk to such an extent that he had lost control over his senses and thus he did not remember anything.

18. Thus, the plea raised by learned Counsel for the Petitioner that there was no evidence to establish that the Petitioner abused the instructor and the JCC staff is incorrect. The testimony of PW-1 and PW-4 establish the said fact.

19. On the issue of proportionality of the penalty it may be argued that it was Sunday and thus it was an act of indiscretion on the part of the Petitioner to consume excessive alcohol and that if he abused his senior officer under the influence of alcohol it should not invite the extreme penalty of dismissal from service.

20. On the other hand, it can be argued that the Petitioner was required to maintain discipline as he was undergoing a training course and he knew fully well that persons undergoing the training course have to keep themselves perfectly fit. The Petitioner was aware that though it was a Sunday, all persons have to assemble at 5:00 PM and mark their attendance inasmuch as those who were undergoing course were required to report and mark their attendance in the

morning and evening even on Sundays. It can be argued that it is an act of gross indiscipline for the Petitioner to have brought alcohol in the training centre which he knew he could not do. Not only that. The alcohol brought was not a small quantity. The alcohol brought was excessive and so drunk was the Petitioner that he lost complete control over himself.

21. Having weighed the two rival submissions we cannot lose sight of the fact that the Petitioner has approached this Court belatedly. It is unfortunate that docket explosion in Courts has kept the instant petition pending for nearly 14 years. Even if we were to grant some relief to the Petitioner and levy a lesser penalty requiring Petitioner to be reinstated in service, the period post levy of penalty till reinstatement would have to be treated as dies-non i.e. period not spent on duty and this would mean that the Petitioner would have hardly any service to his credit. Further, we wonder what would be left as a jawan in the Petitioner. These 14 years would have rendered him absolutely useless to serve as a constable in a Central Para-Military Force.

22. Be that as it may, it is only when the Court finds that a penalty levied is shockingly disproportionate to the gravity of the offence could alone corrective action be ordered.

23. For what the Petitioner did it certainly cannot be said that the penalty levies is grossly disproportionate to the gravity of the offence, in that, the conscience of the Court is shocked.

24. In a case of Force Personnel being found to be intoxicated, in the decision dated 9.9.2001 dismissing WP(C) No. 3908/1994 Sayed Ahmed v. UOI and Ors. penalty of dismissal from service was not interfered with.

25. Having dealt with 2 submissions which were urged we dismiss the writ petition but refrain from imposing any costs.