
(2011) 02 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18036 of 2010

Chand Shah and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2011) 02 AP CK 0042

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for G. Pavana Murthy, for the Appellant; J.P. Srikanth, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The Petitioners were working in different capacities in the Central Reserve Police Force (C.R.P.F.) at various stations by July, 1994. A startling development has taken place on 22.07.2004. An order purporting to transfer as many as 12 members of the C.R.P.F. including the Petitioners, has emanated from the Office of the Director General of Police, C.R.P.F., New Delhi, Respondent No. 1 herein. Except Petitioner Nos. 3 to 7, rest of them were transferred to the Group Centre of C.R.P.F. at Hyderabad. Some of them joined at the places to which they were transferred. However, hardly within one month, it emerged that the order of transfer was a fake one. An enquiry was conducted immediately and it was found that three persons transferred under the said order have resorted to objectionable means and procured the same. While one of them, by name P. Prasad, was dismissed from service, other two i.e. Jaibir Singh and Mohd. Sabir, were permitted to take voluntary retirement.

2. In the year 2009, the Petitioners were served with charge sheets alleging that they have committed acts of misconduct and misbehavior as defined u/s 11(1) of the C.R.P.F. Act, by colluding with one and other and brought into existence, a fake order of transfer. It was also alleged that they have adopted illegal methods

by offering bribe or resorted to other malpractices or unfair means. A charge sheet was served against the Petitioners and one Sri D. Hari Krishna.

3. The Enquiry Officer submitted a report on 28.01.2009 holding that charge Nos. 1 and 2 were proved against Sri D. Hari Krishna, but are partially proved against the Petitioners. The disciplinary authority, the Director Inspector General of Police, Group Centre, Respondent No. 4 herein, differed with the findings recorded by the Enquiry Officer against the Petitioners. Straightaway, he issued a show cause notice to the Petitioners, proposing punishment; duly enclosing the copies of enquiry report and disagreement report. The Petitioners submitted their explanations, raising several objections. Respondent No. 4 issued proceedings, dated 03.06.2009, imposing the punishment of compulsory retirement.

4. Feeling aggrieved by the same, the Petitioners filed an appeal before Respondent No. 2. Respondent No. 2 passed an order, dated 26.09.2010, enhancing the punishment to the one of removal from service. The Petitioners filed W.P. No. 22911 of 2009 challenging the orders passed by Respondent Nos. 2 and 4. The writ petition was allowed and the proceedings were set aside mainly on the ground that Respondent No. 4 did not issue the show cause notice to the Petitioners before he differed with the findings of the Enquiry Officer. The matter was remanded to Respondent No. 4 for fresh consideration and disposal.

5. The Petitioners were reinstated into service. Respondent No. 4 addressed a letter, dated 14.05.2010, together with disagreement report, to the Petitioners, giving them 15 days of time, to submit their defiance. The Petitioners submitted their explanation/defiance on 27.05.2010. This time, Respondent No. 4 imposed the punishment of removal from service upon the Petitioners by himself, through proceedings, dated 30.06.2010. Hence, this writ petition.

6. The Petitioners have also filed an appeal against the order of dismissal even while approaching this Court. During the tendency of the writ petition, the appeal was dismissed. By filing a miscellaneous petition, the Petitioners sought amendment of the prayer in the writ petition, to include the challenge to the order passed by the appellate authority also.

7. The Petitioners contend that the incumbent holding the office of Respondent No. 4 was prejudiced against them. They submit that they are not at all responsible for the issuance or emergence of the order of transfer, dated 22.07.2004, and that the persons, who were found guilty in that connection, were either given punishment or were permitted to take voluntary retirement. The Petitioners contend that four and half years, after the matter was given a quietus; Respondent No. 4 has reopened the issue vindictively and had subjected them to untold hardship by violating the prescribed procedure and established principles of law. They submit that the very fact that he disagreed with the findings recorded by the Enquiry Officer straightaway, exhibited his prejudice and after this Court has set aside the orders passed by him as well as those passed by the appellate authority, he acted in a further vindictive manner by imposing

the punishment of removal from service. They further plead that the appellate authority did not take into account, any of the points urged by them.

8. On behalf of the Respondents, a detailed counter-affidavit is filed by Respondent No. 4 on 29.11.2010. Various developments that have taken place ever since the fake orders of transfer have emerged, are referred to. It is stated that the tentative disagreement report was served, together with a copy of the enquiry officer's report to the Petitioners, as directed by this Court. Personal hearing is said to have been given to the Petitioners. It is pleaded that the Petitioners did not bring anything new in the matter and on consideration of the relevant facts, the punishment of removal from service was imposed. The allegations made by the Petitioners as to the prejudice etc., are denied.

9. The writ petition was heard at length, on 29.12.2010 and 27.01.2011. A docket order was passed on 27.01.2011 referring to the factor of the difference of approaches on the part of Respondent No. 4 when the orders of punishment were imposed on two different occasions by the same Officer. Respondent No. 4 was directed to explain as to why adverse comments be not made against him regarding his functioning as disciplinary authority. In response to this, Respondent No. 4 filed an affidavit. Most of it is devoted to the nature of services rendered by him to the Force, the type of discipline that is required to be maintained in the Force, etc. It appears that the Officer, who filed the affidavit, became a bit emotional and stated certain things, which are outside the scope of the writ petition. For example, in para 14 of the affidavit, he referred to certain instances and said that there has been serious erosion in the value system of this country and everyone is ruthlessly trying to exploit things to their unfair advantage. According to him, the security scenario of the country has drastically deteriorated, putting extra pressure on the armed forces like C.R.P.F.

10. Sri B. Adinarayana Rao, learned Counsel argued for the Petitioners. He submits that an order of transfer involving 12 members of the service of a disciplined Force like C.R.P.F. cannot emanate at the instance of the members of the Force, at the rank of Head Constables. He contends that an order directing transfer of even a Constable from one place to another has to be issued by the competent authority and signals are to be sent not only to the place from which the member is transferred to the one to which he is transferred, but also to the superior Offices in the hierarchy. He submits that unless some higher officials are involved in the matter, it is just impossible to imagine that an order of transfer pertaining to 12 members of service can be issued or enforced.

11. The learned Counsel further submits that in the enquiry that was caused immediately, responsibility was fixed on three members of the C.R.P.F. and that they have either been permitted to take voluntary retirement or were imposed punishment. He submits that there was absolutely no justification for reopening the issue four and half years after it reached finality and to harass the Petitioners by imposing punishments, even after the Enquiry Officer found that there is nothing direct against the Petitioners. According to him, the observation made by

the Enquiry Officer is vague and without basis and even that was differed by Respondent No. 4 initially without notice and thereafter, with utmost prejudice. He submits that in all fairness, the incumbent holding the office of Respondent No. 4 ought to have excluded himself from the proceedings.

12. Sri J.P. Srikanth, learned Additional Standing Counsel for the Central Government, on the other hand, submits that being the probable beneficiaries under the fake transfer orders, the Petitioners were liable to be proceeded against. He submits that though certain steps were taken on the basis of the preliminary enquiry, it took quite some time for the authorities to go deep into the matter and after thorough verification, charge sheets were issued to the Petitioners. Learned Counsel further submits that a detailed enquiry was conducted and though there existed adequate material to hold that the Petitioners are guilty of the charges leveled against them, the Enquiry Officer did not record a definite finding, but held that the charges are partly proved.

13. The learned Counsel contends that the mistake committed by Respondent No. 4 in straightaway disagreeing with the findings of the Enquiry Officer was rectified by giving opportunity to the Petitioners to explain as to why the findings be not differed. He submits that the exercise undertaken by Respondent No. 4 is completely in accordance with the directions issued by this Court in W.P. No. 22911 of 2009. He contends that it is competent for a disciplinary authority to impose any punishment in accordance with law, depending on the facts and circumstances and there is no prohibition against the imposition of higher penalty compared to the one imposed earlier, once the matter is remanded to the disciplinary authority.

14. It is rather unfortunate that fraudulent means were practiced for transfers in the paramilitary and disciplinary force like C.R.P.F. On 22.07.2004, an order emerged, which is to the effect that 12 members of the C.R.P.F. including the Petitioners herein were transferred to various places and it is said to have been issued by the Head Office. In these days of improved communications, it should not have been a difficult task for the Agencies concerned to verify the genuinely of the orders, before acting upon them. The enquiry caused into the matter revealed that about three or four persons have resorted to objectionable means in procuring the orders of transfer. Obviously to give a semblance of genuinely to the orders, the names of the members who were in no way connected with the episode were included.

15. Since the matter is very serious in nature, the authorities ought to have commenced the proceedings instantly. The findings recorded in the preliminary enquiry, could certainly have constituted the basis. However, those named in the enquiry were permitted to seek voluntary retirement and one member is said to have been imposed the punishment. For four and half years, there was no move in the matter. Respondent No. 4 thought it fit to re-examine the matter in detail and accordingly, issued charge sheets to the Petitioners. The first charge is that the Petitioners have resorted to acts of misconduct and the second is that they

are guilty of misbehavior. In their explanations, apart from denying any involvement in the episode, the Petitioners raised objection for the reopening of the issue, after lapse of four and half years, that too, after permitting those who were found guilty to walk out of the C.R.P.F.

16. Elaborate enquiry was conducted by the Enquiry Officer appointed by Respondent No. 4. The Enquiry Officer was clear about the involvement of one member by name Hari Krishna. As regards others, i.e. the Petitioners herein, no definite finding was recorded. The typed part of the conclusions in the report read: "the charges against the Petitioners are proved in some manner". The words "in some manner" were struck off and the word "partially" was written with pen.

17. The findings on the charges framed against the Petitioners can be, one way or the other, and not halfway through. An employee can be held guilty of misconduct or not guilty at all. There is no question of his being held "partly" guilty of misconduct. Such equivocal findings present a serious difficulty in the matter of choosing punishment to be imposed.

18. Realizing that no punishment can be imposed against the Petitioners on the basis of the findings recorded against them by the Enquiry Officer, Respondent No. 4 has chosen to disagree with the findings and to take the view that the charges are proved. However, before doing so, Respondent No. 4 did not give an opportunity to the Petitioners, to explain. He proceeded to impose the punishment of compulsory retirement. In the appeal preferred by the Petitioners against the order of compulsory retirement, the appellate authority, Respondent No. 2 herein, has enhanced the punishment of compulsory retirement to the one of removal from service; of course, by issuing a show cause notice under the relevant provisions of law.

19. In W.P. No. 22911 of 2009 filed against the orders passed by Respondent Nos. 4 and 2, this Court held that Respondent No. 4 committed serious procedural irregularity in differing with the findings of the Enquiry Officer issuing show cause notice to the Petitioners, in that behalf. Therefore, the writ petition was allowed and the matter was remanded to Respondent No. 4 for fresh consideration and disposal.

20. Respondent No. 4 issued a show cause notice to the Petitioners directing them to explain as to why the findings recorded against them by the Enquiry Officer, be not differed. The Petitioners submitted their explanations, raising several grounds. After making reference to various events, they raised the plea that Respondent No. 4 is determined, somehow to impose punishment, against them. It appears that Respondent No. 4 has taken the grounds urged by the Petitioners as slander and false allegations against him. He also took the view that it was an unwarranted assault on his personal integrity and that the explanation was arrogantly framed. This is evident from the contents of the affidavit filed by Respondent No. 4 in response to a docket order passed on

27.01.2011. Paras 12 to 16 of the affidavit read as under.

12. On 27.05.2010 all the eight (08) accused personnel submitted their replies containing common contents to the tentative note of disagreement. Their written replies contained slander and false allegations against the Disciplinary Authority, thus making an unwarranted assault on personal integrity of the officer and were also arrogantly framed, defying all norms of decorum required to be observed in official communication.

13. Discipline (with a human face) in the Armed Forces like the C.R.P.F. (where the Officers and the Men are often called upon to put their lives in jeopardy for the integrity of their country), is the foundation on which the system operates. Any dilution of this important aspect will be debilitating to the C.R.P.F.

14. In January 2008, in this very campus a Senior Addl DIG was shot dead by his own sentry. In November, 2010 a CT/Driver who was posted in 5 Bn, C.R.P.F., New Delhi and keeping his family in this campus had kidnapped a school going boy and brutally murdered him on the same day on monetary issues. It can thus be seen that there has been serious erosion in the value system of this country, with every one ruthlessly trying to exploit things to their unfair advantage. On the other hand, the security scenario of the contrary has drastically deteriorated putting extra pressure on the armed forces like C.R.P.F.

15. In the above scenario, the task of the Disciplinary Authority becomes even more difficult, as on the one hand (by leading from the front), he has to continuously inspire and motivate his men to give their best, even to the extent of sacrificing their lives in the call of their duties. And on the other hand, to award without fear and favour, exemplary punishment to defaulting personnel, which meets the ends of justice.

16. Punishments in an armed force like the C.R.P.F. are used as a means of rectifying and rehabilitating undisciplined personnel, particularly when the accused person has genuine remorse and feelings of guilt in relation to the misconduct committed. They are also exemplary, so that a right message goes out to the force personnel, who are tasked to defend the integrity of the country.

21. The fact that Respondent No. 4 has become emotional is evident from para 20 of the affidavit, which reads as under:

I am 59 years old and have put in almost 35 years of service, which includes duties in almost all the extremely difficult and sensitive war-zones of the country. On several occasions in different theatres, the Officer had miraculously escaped the bullets fired at him by the terrorists.

I have done my duty for my beloved country and for my beloved C.R.P.F, as faithfully as humanly possible. I have never shirked away from the call of duty. On the day of reckoning, when I will finally lay down my arms, there will be no qualms bearing down heavily on my conscience.

22. A disciplinary authority is conferred with the power to impose the punishment, which he treats as appropriate in the context of the charges proved against an employee. Any anomaly in this regard can certainly be cured or rectified by the appellate authority or by a Court of law. It is also fairly well settled that whenever a matter is remanded to a lower authority by a Court of law or by a superior authority, a different view altogether can be taken. However, much would depend upon the type of evidence that is adduced before it; after such remand.

23. Initially, Respondent No. 4 has imposed the punishment of compulsory retirement upon the Petitioners, after differing with the findings recorded by the Enquiry Officer. The procedure adopted by him was found to be incorrect and the matter was remanded for fresh consideration and disposal. In case no explanation worth its name was forthcoming from the Petitioners or that the explanation submitted by them was found to be not satisfactory, Respondent No. 4 could have, at the most, reiterated his earlier stand, both, as regards the findings, and imposition of punishment. It is only when additional facts, which added to the gravity of the charges framed against the Petitioners, were brought on record, that he could have thought of imposing a more severe punishment.

24. When Respondent No. 4 has chosen to impose the punishment of compulsory retirement based upon the record and without hearing any explanation from the Petitioners, it is just un-understandable as to how he thought it fit to impose the punishment of removal from service after the Petitioners submitted their explanation. At the cost of repetition, it needs to be observed that no additional material or fresh facts from the department, were placed before Respondent No. 4 after the matter was remanded. The only plausible explanation for such an anomaly is that Respondent No. 4 got offended by the points urged by the Petitioners in their defiance to the disagreement report. The affidavit filed by Respondent No. 4 bears testimony for this.

25. Being a very Senior Officer, with vast experience behind him, Respondent No. 4 would certainly be justified in expressing concern about the discipline in the organization, which he has served over the decades. Equally, his concern for the decline in the values and discipline is understandable. However, he cannot direct his ire or dissatisfaction against the Petitioners, unless the charges against them were proved as required under law. What is at stake for the Petitioners is their career and livelihood, not only for them but also for their family members.

26. The Petitioners felt that they were unnecessarily dragged into a controversy, and that disciplinary proceedings were initiated against them about half a decade, after the matter was given a quietus. They were found not guilty of any charge framed against them. They cannot be expected to be delightful or thankful to an Officer, who has straightway imposed the punishment, but has issued a show cause notice in compliance with the directions issued by this Court. It is not as if the Petitioners have used any abusive language in their explanations. They wanted to make out a case that they were not being given a

fair treatment at any stage, in the proceedings. Respondent No. 4 ought to have dealt with the case in dispassionate manner, duly addressing the concern of the Petitioners. However, he took the defiance pleaded by the Petitioners as a slander and an attack on his personality.

27. Here itself, it must be noted that in case the defiance pleaded by the Petitioners was derogatory, that itself could have constituted the basis for framing fresh charges. The approach adopted by Respondent No. 4; viz., treating the explanation offered by the Petitioners to the show cause notice as a personal attack upon him and still proceeding with the matter, is opposed to settled principles of administrative and quasi judicial adjudication. Respondent No. 4 ought not to have proceeded in the matter on such personal level. If he felt that his self-respect was hurt or that the Petitioners were expressing want of confidence in him, fairness demanded that he ought to have excused himself.

28. Bias, if found to be existing in the course of exercise of administrative or quasi judicial powers by an authority, adversely effecting the rights of the citizens; would vitiate such proceedings. It is treated as one of the important facets of the principles of natural justice. Broadly classified, the bias can be personal and pecuniary. Personal bias in turn has several facets. It may range from an authority being related to, or inimically indisposed to a party to the proceedings; to his entertaining predetermined notions and inclination to hold on to a particular view point, in utter disregard of the evidence or material before him.

29. I.P Massey, in his treatise on Administrative Law, has, inter alia, this, to say about bias:

... The dictionary meaning of the word "bias" also suggests "anything which tends or may be regarded as tendering to cause such a person to decide a case otherwise on evidence must be held to be biased". In other words, a predisposition to decide for or against one party without regard to the merit of the case is "bias". Therefore, if a person, for whatever reason, cannot take an objective decision on the basis of evidence on record he shall be said to be biased....

30. It is not necessary that bias must be proved beyond any pale of doubt, as is required under the proceedings before a Court of law. It is enough that "reasonable suspension of bias", or "real likelihood of bias", are shown to be existing". In B.B. Rajwanshi Vs. State of U.P. and Ors, the Supreme Court held that the apprehension as to existence of bias must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vague suspicion of whimsical, capricious and unreasonable people. Almost on the same lines, is the judgment of the Supreme Court in Jiwan Kumar Lohia and another Vs. Durgadutt Lohia and others,

31. If these principles are applied to the instant case, it emerges that the exercise undertaken by the 4th Respondent is biased, though not for his personal

benefit or interest. Even if his inclination and determination was to ensure that the discipline in the organization is protected, the manner in which he has handled the matter from the stage of reopening the case to the imposition of punishment, despite absence of any specific finding against the Petitioners, and adopting an unwarranted approach after remand, suggests "bias".

32. The sequence of events and contents of the affidavit filed by Respondent No. 4 clearly disclose that the conclusions arrived at by him were accentuated more by his personal feeling towards the Petitioners than a dispassionate assessment of the material on record. At his level, Respondent No. 4 was required to act in a just and impartial manner. One of the fundamental principles of deciding the matters is that justice must not only be done, but also must seem to have been done. Though an adjudicating agency may not have done anything harmful advertently, once the person who is facing the proceedings gathers such impression, remedial steps must be taken, to ensure that the fairness in the process, is preserved.

33. For the foregoing reasons, the writ petition is allowed and the order, dated 30.06.2010, passed by Respondent No. 4 and upheld by Respondent No. 2 in the appeal, are set aside. The matter shall be examined independently at the level of Respondent No. 1 and if he feels that the issue pertaining to the order of transfer, dated 22.07.2004, requires further examination, he shall entrust the matter to any Officer of the appropriate rank, other than the present incumbent of Respondent No. 4. It is also directed that in case Respondent No. 1 decides to proceed further, the enquiry shall be directed not only against the Petitioners but also against every Officer who acted upon the orders, dated 22.07.2004, and those who dealt with the same on earlier occasions.

34. There shall be no order as to costs.