

(2006) 08 DEL CK 0076

In the Delhi High Court

Case No : Writ Petition (C) No. 1061 of 1998

Ct. Dharamvir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 29(O)

Citation : (2006) 91 DRJ 425

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.S. Phoolka, Gurbaksh Singh and Siddhartha Shankar Ray, for the Appellant; Rajinder Nischal, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The petitioner who was working as a Constable was deputed by the Office on Morcha No. 4, D.G. Office, C.R.P.F. Headquarters on November 21, 1995 from 6.00 p.m. to 9.00.p.m. According to the petitioner, Hawaldar Rajinder Singh, who was not a Guard Commander and was intoxicated at the relevant time, came there in civil dress and asked the petitioner why he had not given up his charge. The petitioner replied that the guard to whom the charge was to be given had not come and unless and until the new guard come, he could not leave the Morcha. At this, Constable Rajinder Singh, respondent No. 4 , lost his temper and started abusing the petitioner. The petitioner requested him to report the matter to the higher authorities and return back to his home, as the said respondent No. 4 was under the influence of liquor and could not even stand properly. But the respondent No. 4 became more violent and started hurling abuses and used unparliamentary language against the petitioner. Meanwhile, the guard Altaf Mujawar, to whom the charge was to be handed over, came there and the petitioner after handing over the charge to him came back to his hut. It is stated by the petitioner that the said respondent No. 4 chased the petitioner to his hut, pulled him by the collar and started assaulting and abusing

him. During the scuffle, the respondent No. 4 lost his balance and fell on the ground and to avoid any further attack on himself, the petitioner tied up respondent No. 4. In the meanwhile, the other jawans and officers came to the spot to whom the petitioner narrated the whole incident and requested them to get respondent No. 4 medically examined as he was in an inebriated state. It is submitted by the petitioner that he was given assurance that action would be taken against respondent No. 4 after which he returned to his hut.

2. On 22.11.1995, the petitioner was summoned to the Office of the Commandant where he received an office order dated 22.11.1995 suspending him from the service w.e.f. 21.11.1995. It is further submitted that on 22.12.1995 the petitioner was given Memorandum whereby false and frivolous allegations of misconduct and disobedience were raised against the petitioner and in the statement of articles of charges, it was stated that the petitioner had assaulted respondent No. 4 as a result of which his right elbow and left cheek were injured and it was further stated in the statement of imputation that the petitioner had threatened the respondent No. 4 with dire consequences. An enquiry was held and vide order dated 30.7.1996, the petitioner was dismissed from the services of the Force. A copy of the said order is annexed to the petition as Annexure P-22. The petitioner preferred an appeal to the DIG, C.R.P.F., Ajmer, Rajasthan against the said order which was dismissed. Thereafter, the petitioner preferred a revision petition against the said order but the same was also dismissed.

3. A counter affidavit was filed on behalf of the respondents wherein it has been stated that the petitioner is guilty of serious indiscipline as he had assaulted his senior. It is stated that he was provided full opportunity to defend himself and upon proof of charges he was punished in accordance with law. According to the respondents, the facts are as under:

That having been found guilty of grave charges levelled against him. during the course of D.E. No. 911120377 C.T. Dharambir Singh was dismissed from service with effect from 30.7.1996 by the Commandant-33 Bn, C.R.P.F. vide office D/O No. P.VIII.B/95-33-Estt.II, dated 30.7.1996. The said Ct. has now filed a civil Writ Petition No. 1061/98 against the orders of his dismissal from service in Delhi High Court.

That the petitioner Ct. Dharambir Singh of F/33 Bn, C.R.P.F. while on Guard Duty in Dte. General, C.R.P.F., Complex, committed an act of misconduct in his capacity as a member of the force on 21.11.1995 at 2030 hrs in that he misbehaved with his senior No. 781310383 Nk. Rajinder Singh and assaulted him which caused injuries to the later. This fact has been proved from the Medical Certificate issued by Duty Medical Officer of Safdarjung Hospital. The said Ct. also threatened him of dire consequences in the presence of No. 710591624 HC Surjeet Singh and No. 690391058 HC Jagan Nath Ram who were happened to be present at the scene of incident of incident. Keeping in view the gravity of the case, the concerned O.C. submitted a written report of this fighting case to Bn

H.Q. Rs. Thereafter on the basis of this report, Shri B.S. Negi, Asstt. Comdt. was detailed to conduct a P.E. of this case and submit his report. After it, Ct. Dharambir Singh was placed under suspension with effect from 21.11.1995 vide this office O/O No. P.VIII.7/95-Estt-II, dated 22.11.1995. On going through the P.E. report, it was considered appropriate to conduct a Departmental Enquiry against Ct. Dharambir Singh as he assaulted at and scuffled with his senior, which was a serious offence. Therefore, Shri Satya Prakash Badola, DC was appointed as enquiry Officer vide this office O/O No. P.VIII.8/95-Estt.II, dated 5.1.1996 to conduct the D.E. During the course of D.E. Ct. Dharambir Singh was given ample opportunity to cross-examine the witnesses in his defence. On the basis of proceedings and findings of the Departmental Enquiry submitted by the E.O, the articles of charge levelled against him were proved beyond any doubt.

Having been proved guilty of charges levelled against him before issue of final orders of punishment, a show cause notice was served to Ct. Dharambir Singh with direction to submit its reply in writing within 15 days. On going through the Enquiry Report and reply, submitted by Const. Dharambir Singh, the competent authority did not consider the said indisciplined and irresponsible Const. fit to be retained in the force any more, hence keeping in view the graveness of the offence the said constable was dismissed from service with effect from 30.7.1996 (AN) vide this office O/O No. P.VIII.8/95-33-Estt. II, dated 30.7.1996.

After that, the said Constable submitted an appeal against the orders of his dismissal from service through a letter No. 10/8/96 dtd. 12.8.1996 issued by Shri Manmohan Satija, advocate in Tis Hazari Court. Brief History and parawise comments of this case on the above appeal were forwarded to the D.I.G.P, C.R.P.F., Ajmer vide this office letter NO. P.VHL8/95-33-Estt.II, dated 13.11.1996, but the D.I.G.P, C.R.P.F., Ajmer rejected the appeal of above Ct. under the provisions of Rule 29(O) of CRPF Rule 1955 vide his office O/O NO. P.VIII.27/96-Estt. 3 dated 17.1.1997. Thereafter, the said individual submitted his revision petition No. MM/2/6/97 dated 4.12.1997 to this office through Shri Manmohan Satija, Advocate which was also rejected by the I.G.P. NS, CRPF, New Delhi vide his O/O No. P.VIII.4/97-NS-Adm.I, dated 25.7.1997 being devoid of merit. Then the individual again submitted his another appeal through Smt. Phoolan Devi, M.P. which was also rejected by the MHA, under the D.Y. No. 3071/97-Pers-2 dated 17.11.1997 being devoid of merit. In this connection, I.G.P., N.S. CRPF, New Delhi letter No. P.VIII.4/97-NS-Adm-I, dated 27.11.1997 refers, which is also available in Enquiry proceedings report file.

4. It is specifically mentioned that the injuries caused to Lance Naik Rajinder Singh were also proved from medical report certificate issued by Deputy Medical Superintendent, Safdarjung Hospital, Delhi. It is also stated in the detailed reply filed on behalf of the respondents that Ct. Dharamvir Singh had cross-examined the witnesses and there is no violation of principles of natural justice. The Departmental Enquiry was conducted in accordance with law and as such the present writ petition deserves to be dismissed.

5. The challenge to the impugned order of dismissal is primarily on the following grounds:

(a) The Impugned order is violative of principles of natural justice, the provisions of Central Reserve Police Force Act, 1949 and the rules framed thereunder. The petitioner was not given copies of the documents and was not provided with adequate opportunity to defend himself.

(b) The Impugned order suffers from a basic infirmity as it is based on incorrect appreciation of evidence. The findings have been recorded on assumptions and presumptions as the prosecution witnesses themselves had not supported the charges, in its entirety.

(c) The copy of the medical report on which the entire case of the department was based, was neither supplied to the petitioner, nor the same was proved on record in accordance with the rules.

(d) The punishment awarded to the petitioner in any case is excessive and disproportionate to the offences for which the petitioner is charged.

6. The first three arguments, in fact, can be dealt with together as they will have to be decided as a result of common discussion. The petitioner was charged with a serious offence and the article of charges (Annexure P-3) and the statement of imputation (Annexure P-4) read as under:

SATMENT OF ARTICLES OF CHARGE FRAMED AGAINST NO. 911120377 CONSTABLE DHARAMVIR SINGH OF F/33 BN CRPF R.R. SHALA, NEW DELHI.

ARTICLE-1

That the said No. 911120377 CT. Dharamvir Singh, while functioning as CT (CD) in F/33 Bn. CRPF, Committed an act of gross misconduct in his capacity as a member of the force u/s 11(1) of CRPF Act, 1949 in that on 21.11.1995 afternoon he misbehaved with his senior No. 781310383 Nk Rajinder Singh and assaulted him. As a result No. 781310383 NK Rajender Singh sustained injury at right elbow and cheek, which is pre-judicial to good orders and discipline of the force.

Sd/-

(B.S. Narang)

Comdt-33 BN CRPF

STATEMENT OF IMPUTATION IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST NO. 911120377 CONST DHARAMVIR SINGH OF F/33 BN CRPF NEW DELHI.

ARTICLE-I

No. 911120377 CT. Dharamvir Singh of F/33 Bn, CRPF, while on Guard Duty at

Directorate, Genl, CRPF, CGO Complex, New Delhi on 21.11.1995 at about 2030 hrs misbehaved with his Senior No. 782310383 Nk Rajender Singh sustained injury at right elbow and cheek as per Medical Examination Report issued by Duty Medical Officer, Safdarjung Hospital, New Delhi. The said Const, has also threatened him of dire consequences in the presence of No. 710691624 HC Surjeet Singh and No. 690371051 HC Jagan Nath. Thus he committed an act of grave misconduct u/s 11(1) of CRPF Act, 1949.

Sd-/

(B.S. NARANG)

COMT-33 BN CRPF

7. The article of charges was given to the petitioner and as required under the rules, he was given due opportunity to defend himself. Even from the averments made in the writ petition and the documents placed on record, we are of the considered view that the procedure adopted by the respondents in conducting the Departmental Enquiry is not violative of any statutory provisions or the rules, of course, with the exception which we would proceed to discuss shortly. The charge was read over, explained and served upon the petitioner. He was given ample opportunity to examine the witnesses as well as to put forward his defence which he actually did. He examined witnesses in support of his case. Thereafter, he was found guilty and punished for the said offence. In face of this, it is difficult to hold that there has been violation of statutory provisions as such. However, there is a material defect in as much as the respondents did not furnish to the petitioner, nor proved on record the medical certificate issued by the medical officer of the Safdarjung Hospital. In fact, this was the very basis which could show the cause of injuries received by Naik Rajinder Singh and what was the nature of the injuries. The doctor who had authored this certificate and had examined Naik Rajinder Singh was not examined by the Department for the reasons best known to them. This was so despite the fact that a number of witnesses were examined by the Department in support of their case. This was a material document relied upon by the Department and a copy of the same ought to have been furnished to the petitioner as non-furnishing of this document has obviously resulted in a serious prejudice to his defence. The petitioner, at the very first instance, had taken up the plea that Naik Rajinder Singh was under the influence of liquor and in fact, was drunk. Non-furnishing of the medical report, thus, has caused him prejudice in as much as he never knew that the case of the Department is based upon the said medical evidence. It is also not understandable why no comments were made by the Medical Officer in his report with regard to the fact that whether Naik Rajinder Singh was drunk or not, particularly when the petitioner had apprised his seniors of this factual situation immediately after the incident. The medical report was neither proved in accordance with law nor copy thereof was furnished to the petitioner and he was deprived of the opportunity to cross-examine the said Doctor in order to establish his innocence or to raise a plausible plea that Naik Rajinder Singh had

got hurt on his own.

8. Another aspect is that some of the prosecution witnesses had not fully supported the case of the Department. Prosecution Witness, Nayak T.K. Mandal in his statement (Annexure P-11) while answering the Question No. 4 i.e. "Before quarrel, when Nayak Rajinder Singh came to your bed, in which condition he was?" stated as under:

Sir, he was in a drunken position and was in a Civil Dress.

9. Another witness of the Department, Const. Jagan Nath had also stated that when he reached the spot on the date of the incident, Ct. Dharamvir Singh stated that Nayak Rajinder Singh had consumed liquor and his medical examination be got conducted. Hav. Surjit Singh also made such suggestions and had stated that "later on it was revealed that the company Commander had ordered a medical examination of Naik Rajinder Singh."

10. The above stand of the petitioner is contested by the respondents, who state that the same witnesses had made statements clarifying their stand. It is stated on behalf of the respondents that Naik T.K.Mandal in answer to another question i.e.. "In front of reception (CGO) you used to be on duty in open and does the security. On 21.11.95 around 1930 hrs., before going on duty, when Nayak Rajinder Singh went in front of you, then you smelt liquor, was that smell came from the mouth of the Rajinder Singh or from anyone else. Was Rajinder Singh trembling or was speaking unnecessary" stated as under:

Sir, I did not talk with Rajinder Singh. He passed from five feet away from me. Other drivers and Jawans were also roaming there. Therefore, I cannot definitely say that they smell came from the mouth of the Rajinder Singh. He was neither trembling nor had a talk with me or anyone else and he straight away went to his hut

11. Hav. Surjit Singh later on, while making a reference to Rajinder Singh and Dharamvir, stated that both were in dress and were not intoxicated. Hav. Chunni Lal had stated that he had seen Constable Dharamvir Singh beating Naik Rajinder Singh and he had also given threats to Rajinder Singh. After separating, both were handed over to SI Jia Lal Choudhary.

12. It is again not clear from the records as to why SI Jia Lal Choudhary was not examined by the authorities. He would have been the best Superior Officer to give an independent and correct version of the events that had taken place and were brought to his notice. This again is a definite irregularity committed by the authorities during the Departmental Enquiry. Non-examination of the Doctor as well as SI Jia Lal Choudhary has resulted in serious prejudice to the claim of the petitioner. The duty roster was not produced during the course of enquiry which could establish as to whether Naik Rajinder Singh was on duty on the said date and whether the petitioner was deputed on duty at the time he is stated to have left his post of duty. We may also notice that vide its order dated 19.10.2005,

the Court had passed the following order:

Learned Counsel for the respondents is directed to bring on the next date of hearing the guard duty roster to show that Naik Rajinder Singh was on duty as Guard Commander on 21-11-1995 at 2100 hours. List on 28th November, 2005.

13. The above order was not complied with by the respondents and the duty roster was not produced. However, it was stated on their part that the records have since been destroyed. On this basis, the counsel for the petitioner contends that the entire trial is vitiated.

14. Now, we come to the last submission of the petitioner that the punishment awarded to the petitioner is entirely disproportionate to the gravity of the offence for which the petitioner was charged. Even if the case of the Department is taken to be correct, it is a case of contributory indiscipline of Const. Dharamvir Singh and the senior officer. Keeping in view the facts and circumstances of the case and the fact that there are material irregularities in completion of the Departmental Enquiry, it is further emphasized that imposition of punishment of dismissal would be unreasonable and unfair. The counsel for the petitioner has relied upon a recent Division Bench judgment of this Court in the case of Lt. Col. U.B.S. Ahluwalia (Retd.) v. Union of India and Anr. W.P.(C) No. 496/1998 decided on 13th July, 2006 where the Court held as under:

Considering the fact that the petitioner had put in 20 years of service and also that he proceeded for the foreign employment in November, 1982 and thereafter resigned in June 1986 from the foreign assignment, forfeiture of his pension would be too harsh. Ordinarily we would have directed the respondents to reconsider the punishment, but keeping in view that the case pertains to the year 1988 in order to shorten the litigation we direct that it would be a fit case that the pension of the petitioner is withheld till 30.6.2006 only. With this direction the present writ petition is disposed of leaving the parties to bear their own costs.

15. Reliance has also been placed on the case of Ranjit Thakur Vs. Union of India (UOI) and Others, relating to a person subject to Army Act where the Court dealing with the question of quantum of sentence held as under:

Judicial review, generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment, is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

In the present case the punishment is so strikingly disproportionate as to call for and justify interference. Therefore, the impugned proceedings of the summary court-martial and the consequent order and sentence are quashed. The appellant is entitled to and shall be reinstated with all monetary and service benefits.

16. Learned Counsel for the petitioner further relied upon the judgment in the case of Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others, . Reliance has also been placed upon the judgment of the Supreme Court in the case of Ram Kishan Vs. Union of India and others, where the Court under somewhat similar circumstances, in a case where a Constable was charged of abusing his superior officer and punishment of dismissal was awarded to him, held the same to be disproportionate particularly in view of the fact that the language was not stated or proved during the trial. The Supreme Court in the said case had directed the respondents to substitute the punishment of dismissal to stoppage of two increments.

17. It can hardly be disputed that the punishment of dismissal from service is the severest punishment that could be imposed upon an employee. For imposition of such punishment, it should be necessary that the charge has been proved and the conduct of the employee is such that it would invite imposition of such a harsh punishment. It is not possible to evolve a straight-jacket formula to determine the excessiveness or otherwise of the punishment awarded. In the present case, reasonable doubt was created and there is some evidence to show that the senior person Naik Rajinder Singh himself was probably under the influence of liquor and the non-examination of certain material witnesses have prejudiced the interest of the petitioner.

18. The order of the appellate authority dated 30.7.1996 confirming the punishment of dismissal of the petitioner from service is liable to be set aside for the above reasons. But at the same time, it will be more appropriate that the Appellate Authority is called upon to pass an order afresh in accordance with law. The Appellate Authority is expected to apply its mind to the facts and circumstances of the case as well as the grounds of excessive punishment.

19. In view of the principles enunciated in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and The State of Punjab and Anr. v. Harjinder Singh, 1999 22 PLR 569, while setting aside the order of the appellate authority dated 30.7.1996, we remand the matter to the Appellate Authority who shall proceed with the matter in accordance with law and pass appropriate orders as expeditiously as possible, and in any case not later than 6 months from the date of pronouncement of this judgment. The writ petition is allowed to this limited extent, while leaving the parties to bear their own costs.