

(2008) 02 DEL CK 0260
In the Delhi High Court
Case No : WP (C) No. 4654 of 2003

Darshan Singh

APPELLANT

Vs

Union of India (UOI), Director General, CRPF and
Commandant, CRPF (RAF)

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2008) 02 DEL CK 0260

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; R.V. Sinha, for the Respondent

Judgement

J.M. Malik, J.—The petitioner joined as Constable (Driver) in CRPF on 04.04.1995. He was transferred to CRPF (RAF - Rapid Action Force) 107 Battalion, Bhopal, Madhya Pradesh on 27.09.1997. It is alleged that Sh. R.K. Parihar, Assistant Commandant used to harass the petitioner on one pretext or the other. He would time and again summon the petitioner to order lee room and make him stand at the door for hours. The petitioner in vain tried to bring the same to the notice of the Sub-Ordinate M.T. Transport Officer. On 04.01.2001 above said Sh. R.K. Parihar used the abusive language and the petitioner paid him with the same coin. The petitioner brought these facts to the notice of Sh. K. Yadav, AOD, Deputy Commandant. On the contrary, the petitioner was threatened by Sh. K.S. Yadav. The petitioner then wrote to the superior officer. The petitioner filed a written complaint dated 08.01.2001 to Inspector General of Police and Deputy Inspector General of Police, RAF (CRPF), R.K. Puram, Delhi. The DIG directed the then commandant to enquire about the above said complaint.

2. No enquiry was ever held and the complaint was sent to Sh. Z.F. Khan, the then Commandant, a superior officer. It was reported that the complaint sent by the petitioner was false. The petitioner was held guilty of indiscipline for sending

the complaint to superiors directly and a penalty of five days confinement to lines and pack drill for one hour per day was inflicted upon the petitioner. No enquiry was held in this context. The petitioner, who was away to Bhuj to assist in measures arranged to help the earthquake victims, was never called for the purposes of the enquiry. The salary of the petitioner was deducted for five days. Commandant CRPF/RAF, respondent No. 3 asserted that the petitioner did not undergo the line confinement. The petitioner admits that he could not undergo the punishment of 30 kg pack drill as he was at that time under treatment by the Unit CMO, who prescribed him to take medicines for ten days but the respondent No. 3 was, inhumanly, pressing for the pack drill part of the punishment.

3. As the petitioner failed to undergo the pack drill punishment an enquiry was conducted by Sh. Jarnail Singh, Deputy Commandant on his alleged disobedience. The petitioner was suspended on 04.05.2001 for not undergoing the punishment. The said suspension was, however, revoked by the respondents after about 13-14 months. The petitioner joined back on 31.05.2002 when the re-inquiry was ordered and continued to serve till the petitioner was illegally removed and sent back home by the impugned order.

4. It is alleged that all the questions were put by the enquiry officer to elicit the desired result/answer. It is averred that as a matter of fact the questions put by the enquiry officer were so leading that the whole enquiry stands vitiated. For few months the result of the enquiry was not declared and eventually the said enquiry was declared closed without recording any finding on the basis of some procedural technicality and "de-novo" re-inquiry was ordered by DIG, RAF(CRPF). Although, the re-inquiry was barred by delay and laches, yet, the same enquiry was conducted without serving the petitioner and at his back. The said enquiry officer did not consider the statements of witnesses who had earlier in the first round of enquiry deposed in favour of the petitioner nor did he summon them to throw light on the charges levelled against the petitioner in violation of Rule 27(c)(5) of CRPF Rules, 1955.

5. It was explained that previously, too, the petitioner silently suffered the punishment awarded to him. On 26.10.2000, the Diwali day, Constable Sh. Balram Singh, fitter, fell down on an iron box under the influence of liquor. A false complaint was registered against the petitioner and he was charged with causing injury to said Sh. Balram Singh. The alleged complainant, Balram Singh, himself, admitted that he got injury himself by falling on the rough rocky surface while he was in an inebriated state as he had consumed liquor because he was in celebration mood of Diwali. However, the enquiry officer found that charge stood proved and imposed a penalty of seven days confinement of the petitioner to the lines and deduction of seven days salary besides disallowing food from mess for seven days.

6. The petitioner was dismissed from service vide order dated 24.12.2002. The appeal preferred by him was dismissed on 18.01.2002. Aggrieved by that order the present writ petition was filed with the following prayers:

- (i) declare that the first inquiry by the respondent No. 3 was itself abuse of power and particularly the re-inquiry was illegal and void ab-initio;
- (ii) declare that the finding of the inquiry officer is perverse and based on no evidence;
- (iii) set aside and quash the order of removal from service dated 24.12.2002 passed by the Commandant, CRPF 107, Battalion, Bhopal, Madhya Pradesh as also the order of the Appellate Authority confirming the same.
- (iv) direct the respondent to reinstate the petitioner back in the service with back wages and consequential benefits;

7. The defence set-up by the respondents in the counter affidavit is this. Previously, too, the petitioner was awarded the following punishments. On 16.05.1999, the petitioner was absent from his Sentry duty in the M.T. Garage and had left his post and gone to his house for which he was appropriately punished by the Commandant by awarding him three days confinement to the line with forfeiture of pay and allowances with one hour punishment drill. Again on 21.10.2000, the petitioner quarreled with Constable Balram under the influence of liquor and had assaulted him. The petitioner awarded punishment by Sh. B.S. Rathore for seven days confinement to the line with forfeiture of pay and allowances when the Commandant was away from the unit of Bawana. It was explained, "Shri Jarnail Singh, D/C was appointed as Enquiry Officer, but the Enquiry Officer had submitted DE proceedings and therein certain observations have been noticed and DE proceedings returned to him but the EO failed to complete DE as per instructions contained in S/o 20/01". Thereafter the enquiry was marked to Shri B.S. Rathore, who previously, too, had awarded the punishment to the petitioner. The petitioner objected to it. The DIGP, RAF cancelled the order of D.E. and ordered de novo departmental enquiry. During de novo enquiry the behaviour of the petitioner remained non-cooperative/obstinate and he did not produce material evidence in his defence. It was explained that the other allegations made against the respondents are wrong, misleading and misconceived and therefore vehemently denied.

8. We have heard the Counsel for the parties. The Learned Counsel for the respondents vehemently argued that the petitioner is a habitual drinker, disobedient, incorrigible and a non-cooperative person. The CRPF, which is a disciplined force has no option but to lower the boom with such offenders. Again, the Counsel for the respondents pointed out that Sh. R.K. Parihar is not a party and such like allegation should be made in presence of Sh. R.K. Parihar. Again the record shows that the petitioner was declared medically fit.

9. We have marshalled the record produced before us. The CRPF case is full of holes as a sieve. To top it all, the petitioner has placed on record the photocopy of the medical report dated 18.04.2001. The said medical report reveals that the petitioner had pain in chest on 18.04.2001. He was referred to Hamidiya Hospital, Bhopal for check up. Photocopy of the OPD pertaining to Hamidiya

Hospital has also been filed wherein, the Doctor advised "for review for investigation". The photocopies of Reference Register Unit Hospital 107 BN RAF w.e.f. 01.01.1999 to 31.12.2002 were also placed on the record. These reveal that on 19.04.2000, 20.04.2001, 21.04.2001 and 23.04.2001, the petitioner was suffering from chest pain and was referred to Hamidiya Hospital.

10. Now, we turn to the Appellate order dated April 2003. The defence of the petitioner was dealt in para No. 6 of the Appellate order, which runs as follows:

(6) Appellant has stated that he was sick during the orderly room and Doctor had given him medicines therefore he could not undergo pack drill. But this statement of appellant is wrong and baseless because he was M.D from sick report on 23.04.2002. If he was sick he should have gone again to sick report and could be admitted to the hospital. But he did not do so, which makes it appear that his statement is wrong and baseless.

The defence of the petitioner has been that he was not physically fit on account of illness to undergo the punishment of back drill punishment. There is no finding by the authority who has passed the order of removal or by the Appellate Authority to the effect that the defence set-up by the petitioner to the charge of disobedience was factually incorrect. The appellate order quoted above is contrary to the record already detailed above. This leads us to inextricable confusion. How a sick person can be compelled to undergo such like strenuous exercise. Even the disciplined force like CRPF is not excepted to have such like rules. This has put a large question mark over the bona fides of all concerned officers. Could not the concerned officer wait for few days and ask the petitioner to undergo the punishment when he was medically fully fit. Was he bent upon to harass the petitioner. Did not he make an attempt to execute the orders by hook or crook. The court has to view such like evidence with intense suspicion.

11. Our attention was also drawn towards statement made by Constable/fitter Rambir Singh, who appeared as a defence witness. His following statement was recorded:

I, Ct/fitter Rambir Singh force No. 910100212 had gone to see Adjutant 107 on 4.1.2001 in connection with leave, there Ct./Dvr., Darshan Singh was already present before Shri R.K. Parihar (Asstt. Commandant). Before my arrival, Shri R.K. Parihar was in anger on some issue, between these two, who hurled abuses of mother and sister to Ct./Dvr. Darshan Singh and threatened to break his leg and also said to kill and further said that I cancel your family permission and how you go to see your child. I don't have to say anything further.

Above statement is read over, explained and admitted to be correct.

Statement of Randhir Singh, defence witness was also recorded. He also made the following statement:

I Constable/Driver Randhir Singh Force No. 940280101 state that Shri R.K. Parihar hurled abuses, using mother and sister to Ct./Dvr., Darshan Singh in my

presence and said that give application to Prime Minister what you can do to me. Emphasis supplied

No finding is given on the statements made by these two witnesses. These facts further put another spoke in the wheel of doubt.

12. The office order dated 29.01.2001 shows that Commandant had ordered that "out living family pension in respect of Darshan Singh is hereby canceled w.e.f. 05.01.2001". This goes to show that the pension was cancelled retrospectively w.e.f. 05.01.2001. It adds further dimensions of respondents' problem.

13. The respondents have failed to prove to the satisfaction of this Court as to why de novo enquiry was held, why the record of first enquiry was not considered, why defence witnesses were disbelieved etc. Despite explanations given by the respondents, it is clear that the distance between illusion and reality is unbridgeable. The respondents have made a vain attempt to make bricks with straw.

14. In *V. Ramana v. A.P.S.R.T.C. and Ors.* JT 2005 (8) SC 134, it was held:

7. Lord Greene said in 1948 in the famous *Wednesbury* case 1948 (1) KB 223 that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council for Civil Services Union v. Minister of Civil Services* 1983 1 AC 768 (called the CCSU case) summarized the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

15. Under these circumstances, we find that the punishment awarded to the petitioner is shockingly disproportionate. We accordingly set aside the order passed by the authority below, restore the service of the petitioner along with back wages and other consequential benefits.