
(2011) 08 DEL CK 0363
In the Delhi High Court
Case No : Writ Petition (C) 2781 of 1994

Dashrathi Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34

Citation : (2011) 08 DEL CK 0363

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.R. Kumar, Vernika Tomar and Srifana Lama, for the Appellant; Ajay Verma and Abdus Salam, Asst. Cmdt., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Petitioner- a Security Guard of C.I.S.F. Unit at Cochin Shipyard was charge-sheeted under Rule 34 of C.I.S.F. Rules, 1969 for the following offence:

On 27.5.80 he along with 100 members of the force wrongfully confined the commandant, CISF Unit MAMC. Assistant Commandant, BCGL Durgapur in the office chamber of the Commandant CISF Unit MAMC. Durgapur in order to wrongfully force the Commandant to withdraw the suspension order of three members of the force belonging to CISF unit MAMC Durgapur

2. Enquiry commenced with Memorandum of 20th June, 1980 along with Article of Charge (Annexure-I), statement of allegation in support of the Article of Charge (Annexure-II) and list of witnesses (Annexure-III) being served upon the Petitioner who had submitted the written statement of defence on 12th August, 1980. During the course of disciplinary proceedings, evidence of four witnesses was recorded and the Petitioner was given an opportunity to cross-examine them but the Petitioner chose not to cross-examine Sh. Udayaveer, Commandant (CISF), SIK. K. Niranjana. However, the Petitioner had cross-examined SIT.K.

Mondal and Asst. Commandant P.K. Lahiri. Upon conclusion of the enquiry, penalty of dismissal from service was inflicted upon the Petitioner against which, he had preferred a statutory Appeal but without success. Even the Revisional Authority upheld the penalty imposed upon the Petitioner.

3. In the writ petition imposition of penalty of dismissal from service has been assailed by the Petitioner on various grounds but at the hearing, learned Counsel for the Petitioner had chosen to assail the impugned penalty simply by asserting that the penalty imposed is based on no evidence and thus is sought to be set aside.

4. Upon hearing learned Counsel for the parties and on perusal of the record of this case, we find that the evidence of witnesses Sh. Udayaveer Singh and Sh. T.K. Mondal does not implicate the Petitioner but the deposition of Sh. K.K. Niranjana (PW-4) and Sh. P.K. Lahiri (PW-3) clearly incriminates the Petitioner. Submission that the Petitioner was on duty at the entrance of the office building and had not participated in the gherao inside the office building has been rightly repelled by the Disciplinary Authority in view of the clinching evidence on record. It would be indeed worthwhile to refer to the incriminating cross-examination of above referred two witnesses. The pointed cross-examination of Sh. P.K. Lahiri (PW-3) by the Petitioner, reads as under:

Q1 On 27.5.80 in which unit I was performing duty?

Ans. I saw you participating in gherao in the chamber of Command. CISF MAMC on 27.5.1980.

Q2 At which time did you see me in the chamber?

A I saw you in the chamber from 1015 hrs to 1715hrs by turn.

5. Even the cross-examination of Sh. K.K. Niranjana (PW-4) sufficiently incriminates the Petitioner and it is as under:

Q1 Do you recognize me?

Ans Yes.

Q2 Did you see me in the gherao?

Ans. Yes.

6. It may be highlighted that learned Counsel for the Petitioner conceded that there was enough evidence wherefrom it could be inferred that nearly 100 members of the force, wrongly confined the commandant as also the Assistant Commandant of the unit. It was a case of indiscipline of the worst kind inasmuch as three force jawans had been suspended for indiscipline and their colleagues were wanting the suspension orders to be withdrawn and rather than have a dialogue, they resorted to threats and intimidated their superior officers.

7. A two-fold plea was urged. Firstly that it was a case of no evidence inasmuch

as P.K. Lahiri, PW-3 was statedly not from the same unit. Contention urged was that P.K. Lahiri could not have identified the Petitioner. The second plea was that the best evidence was withheld by the department. The best evidence stated was a Roster Register which Petitioner claims to have been signed by him as proof that when the gherao took place he was on duty.

8. Both pleas are meaningless. P.K. Lahiri was never cross examined as to how he could recognize the Petitioner if P.K. Lahiri was from a different unit. Mr. Lahiri would then have given an answer. Without questioning Mr. Lahiri as to how did he identify the Petitioner, no contention can be predicated upon Mr. Lahiri being attached to a different unit. That apart, undisputably K.K. Niranjana is admittedly from the same unit and his testimony establishes that the Petitioner was a part of the unruly gang which gheraoed the superior officers.

9. As regards the second plea, we find that the Petitioner never challenged the testimony of PW-3 and PW-4 by suggesting to them that he was on duty when the gherao took place. As regards the roster register, we find that the Petitioner never required the enquiry officer to summon one. If the Petitioner had proof of his innocence in the form of his entry being marked in the roster register showing him to be on duty when the gherao took place, it was his duty to have moved an application before the enquiry officer to summon the said record.

10. In the face of the afore-referred incriminating evidence, Petitioner's counsel cannot be heard to say that the finding of guilt returned by the Enquiry Officer, is based on no evidence. It is no longer res integra that findings of the Disciplinary Authority can be interfered while exercising writ jurisdiction, only when the findings suffer from jurisdictional infirmity, procedural irregularity and the findings of the Disciplinary Authority can be said to be perverse when it is based on no evidence or on inadmissible evidence. Since we find that the imposition of penalty of dismissal from service upon the Petitioner is well founded in the face of the evidence of the aforesaid witnesses and the punishment imposed cannot be said to be disproportionate, so we proceed to dismiss the writ petition being without substance, while leaving the parties to bear their own costs.