

(2011) 05 DEL CK 0184
In the Delhi High Court
Case No : Writ Petition (C) 3824 of 2011

Debashish Bhattacharya

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0184

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

Bench : Division Bench

Advocate : Arvind Jain and Kuldeep Singh, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 7967/2011

Allowed subject to just exceptions.

W.P.(C) No. 3824/2011

1. Heard learned Counsel for the parties at the preliminary admission stage itself.
2. Since Petitioner has filed all relevant documents, with consent of learned Counsel the matter is disposed of at the first hearing.
3. Vide charge memorandum dated 16.12.2008 the Petitioner was charged as under:

Charge Article - I

Force No. 024850030 Constable D. Bhattacharya was ordered for duty at SHA Gate No. 2 on 23.11.08 from 20:00 to 24.11.08 up to 07:00 hrs. and at SHA Gate No. 11 on 25.11.08 in day shift, but he remained absent from duty on both the dates without the permission of competent authority. Thereafter, Constable

Mohd. S.D. Wajid Khan was deputed in his place on 23.11.08 and Constable Satnam Singh on 25.11.08, which is confirmed as per report registered in Roznamcha No. 994 and 995 on 23.11.08 at 20:06 and 20:10 hrs. and the Report No. 158 dated 23.11.08 sent by the Company Commander "C" Company. The above said act of Force No. 024850030 Constable D. Bhattacharya, being a member of disciplined force, tantamount to gross negligence towards his duties.

Charge Article - II

Force No. 024850030 Constable D. Bhattacharya consumed liquor and used abusive language against the barrack members and officers at "C" Company on 6.12.08 at about 20:20 hours. He was asked by the competent authority for medical examination, for which he refused at the first instance but second time he was taken to Govt. Hospital Safdarjung and medical examination of Constable Devashish Bhattacharya was conducted by the Doctor. Its report has been entered at Bijwasan Camp's G.D. No. 109, 110, 112 and 113. The above act of 024850030 Constable D. Bhattacharya tantamount to gross misconduct and indiscipline.

Charge Article - III

Force No. 024850030 Constable D. Bhattacharya, "C" Company, CISF Unit, IGI Airport, New Delhi was punished with below-mentioned penalties in his past services, for his remaining absent from Unit Line, gross negligence towards his duties and disobedience of the orders of his officers, losing and concealing the third copy of Railway Warrant, but despite this the above-mentioned force member failed to improve his conduct. Therefore, charged.

S. No.

Charge

Penalty

1.

Getting withdrawn railway warrant from CISF BRC ? TAPS Tarapur in a wrong manner and concealing third copy.

Awarded the penalty of ?Censure? vide Final Order No.V-15014/CISF/BRC-TAPS/04-717 dated 3.5.04 of Assistant Commandant, CISF BRC ? TAPS, Tarapur.

2.

For losing third copy of Railway Warrant at CISF BRC ? TAPS Tarapur.

Awarded the penalty of ?Censure? vide Final Order No.V-15014/CISF/BRC-TAPC/07-271 dated 8.2.07 of Assistant Commandant, CISF BRC-TAPS, Tarapur.

3.

For remaining absence from Unit Line of CISF Unit, IGI, Delhi.

Awarded the penalty of ?Deduction of salary equivalent to salary of three days? vide Dy.Commandant/Term-II, CIST Unit, IGI, Delhi?s Final Order No.V-15014/(30/08)/Rule-37/Dy.Com. Term-II/08-346 dated 1.7.08.

4.

Gross negligence towards his duties and disobedience of orders of officers during posting with CISF Unit, IGI, Delhi.

Awarded the penalty of ?Deduction to salary of seven days? vide Asstt. Commandant, CISF Unit, IGI Delhi?s Final Order No.V-15014/(61/08)/Rule-37/Term-2/08-914 dated 25.11.08.

4. Needless to state Article III of the charge was simply informing the Petitioner his past conduct and making it known to him that if held guilty pertaining to Article I and/or Article II of the charge sheet, the said past conduct would be taken into account on the issue of penalty to be levied.

5. The Inquiry Officer has indicted the Petitioner of having committed the wrongs as per Article I and Article II of the charge and after supplying the inquiry report to the Petitioner, the Disciplinary Authority has levied the penalty of removal from service which has been upheld by the Appellate Authority.

6. With respect to Article I of the charge it may be stated that the Petitioner admitted being absent from duty at 20:00 hours on 23.11.2008 till 07:00 hours on 24.11.2008 and thereafter on 25.11.2008.

7. Learned Counsel for the Petitioner urges that the explanation given by the Petitioner of being unwell has wrongly been rejected by the authorities, but concedes that Petitioner has no proof and indeed gave none of his stated sickness and thus we concur with the reasoning of the Inquiry Officer that the Petitioner gave no justifiable excuse for being absent from duty on 23.11.2008 and 25.11.2008.

8. Pertaining to Article II of the charge, we may note that Insp. Subhash Ram PW-1 has stated that due to high alert being sounded on 6.12.2008 he stayed at the Bijwasan Camp and about 20:20 hours HCB.R. Sinha (BHM) told him over the telephone that the Petitioner had drunk alcohol and was abusing everybody and creating a nuisance and that after receiving information he took SI Sukhdev to the Bijwasan Camp and found Petitioner abusing the jawans from U.P. and Bihar. He was calling them dogs and was bragging of his contacts with a senior politician from the State of Bengal. Petitioner was stating that he comes from a Naxilite infested area and could get even with everybody. Petitioner was taken to the hospital where he was found to consume alcohol much in excess of the permissible limits and that he made a GD Entry PW-1 Ex.1 with respect to the incident. Insp. B.L. Bairwa appeared as PW-2 and corroborated PW-1. He stated that the senior politician named by the Petitioner was the Chief Minister of West Bengal, Sh. Buddhadeb Bhattacharya. SI Sukhdev Singh PW-3 corroborated PW-1 and PW-2. So did HC Ram Kumar PW-4 and HCB.R. Sinha PW-5, the BHM

who first noted the Petitioner abusing fellow jawans from the State of U.P. and Bihar and calling them dogs. Ct. S.K. Kanojia PW-6 corroborated PW-1 to PW-5. Neutral witness ASI/Clerk L. Raja Babu, deposed that in the past 6 punishments were levied upon the Petitioner, 4 being the ones which was notified under Article III of the charge and 2 more. The said 2 more were Petitioner using undesirable and obscene language against one Partho Dass on 19.9.2008 as also creating a nuisance and abusing force personnel in the unit lines on 28.8.2008.

9. Learned Counsel for the Petitioner submits that for the misdemeanors constituting Article III of the charge the Petitioner had been punished in the past and therefore the department could not have taken into account the said offences committed by the Petitioner.

10. The argument ignores somebody being punished for a wrong and a past wrongful conduct being taken into account for purposes of levying penalty when further misdemeanors are committed.

11. It is settled law that the past conduct of an employee can always be considered by the Disciplinary Authority on the question of levy of punishment. Thus, Article III of the charge was not by way of a misconduct alleged against the Petitioner for which the Department intended to penalize him. It was simply intimating the Petitioner that his past conduct would be considered by the Disciplinary Authority pertaining to the first two charges.

12. It is then urged that salary was deducted for the absence on the dates notified as per Article I of the charge and thus counsel urges that stated wrong pertaining to Article I of the charge could not be considered on the issue of levy of penalty.

13. The answer is simple. Salary was deducted on the principle of "No work no pay". The misdemeanor remained for purposes of taking disciplinary action.

14. It is lastly urged that the penalty imposed is grossly disproportionate to the gravity of the offence.

15. We do not agree. Petitioner joined CISF on 23.4.2002 and we note that in 7 years? time the Petitioner has earned as many as 7 penalties.

16. The Petitioner cannot incite regional ill feelings. His utterances proved through the testimony of PW-1 to PW-5 shows that he brags of his political connections in the State of West Bengal. He brags of his coming from a Naxalite infested area. He talks poorly of the fellow jawans who come from the State of U.P. and Bihar. He belittled them. He called them dogs.

17. Anyone who incites communal or regional negative sentiments is unfit for public service in a secular democracy.

18. Taking into account the past conduct of the Petitioner, who appears to be an incorrigible person, we are of the opinion that the penalty of removal from service cannot be called shockingly disproportionate. We highlight that CISF is an

armed force and God knows anything could have happened where a jawan uses foul language against a community of jawans.

19. The writ petition is dismissed in limine.

20. No costs.

CM No. 7966/2011

Since the writ petition has been dismissed in limine instant application which seeks interim orders is dismissed as in fructuous.