

(2008) 07 DEL CK 0198

In the Delhi High Court

Case No : Writ Petition (C) No. 8679 of 2003

Devender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2008) 07 DEL CK 0198

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : Anil Singal, for the Appellant; Ashwani Bhardwaj and Munish Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule DB.

2. At the request of learned Counsel for the parties, the petition is taken up for final disposal.

3. The petitioner joined the CRPF as Constable (Executive) on 18.02.1995 and was granted leave from 01.10.1997 to 30.10.1997. It is during this leave period that an FIR was registered against the petitioner alleging that he along with his accomplices had stolen a Tata Sumo and was apprehended. It is alleged that he was found to be in possession of a locally made pistol and a live cartridge. The petitioner was arrested on 10.10.1997 and on the same date, an intimation was sent by the SHO, Baghpat to the Commandant, CRPF of the Camp where the petitioner was deployed. The respondents received the said intimation and placed the petitioner under suspension on 18.10.1997 with effect from 10.10.1997. The petitioner was subsequently granted bail on 26.10.1997 and joined the unit in the late afternoon of 01.11.1997. The petitioner gave details on 19.11.1997 to the respondents alleging the same to be false one. The petitioner thereafter again sought leave on 17.03.1998 on account of the fact that he had received a

message from his hometown that his pregnant wife was in a critical condition. The petitioner received a message on 18.03.1998 that the condition of his wife was deteriorating fast and since the application of the petitioner for leave was still not considered, he left for his hometown on 18.03.1998 at 9 PM. However, before the petitioner could reach his hometown, his wife passed away on 19.03.1998.

4. The respondents thereafter, on coming to know about the aforesaid fact, sanctioned 25 days earned leave to the petitioner and recalled the suspension order. The petitioner appears to have been grievously aggrieved by the non grant of his leave when his wife was on deathbed and thus even made a complaint to the National Human Rights Commission on 28.05.1998, which called for a report from the respondents by 02.07.1999.

5. It is the case of the petitioner that respondent No. 5, Addl.DIGP, with malafide intent to harass, initiated a disciplinary inquiry against the petitioner in terms of the Order dated 01.04.2000. The petitioner was issued a charge sheet in the following terms:

Item No. 1:

That No. 951120064 Ct. Devender Kumar of Group Centre I, CRPF Ajmer in his capacity as member of the CRP Force did acts as to be guilty of neglect of duty or remissness in the discharge of duty or other misconduct within the meaning of Section 11(1) of the CRPF Act, 1949. On 10.10.1997 he was arrested by the police of PS Khekra Distt. Baghpat, UP. As per decision No. 2 of Govt. of India under Rule 3 of CCS (Conduct) Rules, 1964, he should have immediately given information of his arrest to the Department which he did not do. By concealing this fact, he has violated the abovesaid rule.

Item No. 2

That the abovesaid No. 951120064 Ct. Davender Kumar of (Admn.Co.) of Group Centre I, CRPF, Ajmer in his capacity as a member of the force violated Section 11(1) of the CRPF Act by the neglect of duty/remissness in discharge of duty. He was on 30 days earned leave from 01.10.1997 to 30.10.1997. He did not report in time after completion of leave but he actually reported on 01.11.1997 at 1600 hrs and thus absented himself for two days and has as such violated the abovesaid rule.

6. The petitioner was thereafter imposed with the punishment of dismissal from service in terms of the Order dated 10.11.2000. The petitioner filed an appeal against the said Order, which was dismissed on 31.10.2001 and the revision petition filed by the petitioner met the same fate on 28.03.2002. The petitioner seeks to challenge all the three aforesaid Orders.

7. The charges extracted above show that there are only two aspects alleged against the petitioner.

8. The first is the charge that though the petitioner was arrested on 10.10.1997, he never informed the Department. It is not in dispute that the petitioner was arrested on 10.10.1997 and on the same date intimation was sent by the local police station to the Commandant of the petitioner. The petitioner remained in custody till 26.10.1997. Since the respondents received an intimation from the police station, the petitioner was placed under suspension during the interregnum period on 18.10.1997 with effect from 10.10.1997. The petitioner subsequently, on being released on bail, reported for duty.

9. In our considered view, the charge itself is wholly without any merit and without any application of mind bordering on absurdity for the reason that the petitioner cannot be said to be at fault for not intimating the respondents when the petitioner was in custody and the intimation had already been received by the respondents while the petitioner was in custody. The petitioner, in fact, had been placed under suspension. Thus one fails to understand where is the question of the petitioner thereafter informing the respondents about his being arrested on 10.10.1997. In any case, on 19.11.1997, the petitioner also personally gave relevant information.

10. The second charge against the petitioner is of delay in rejoining for a period of little less than 2 days. There is really no cogent explanation forthcoming for it, but the conduct of the respondents in removing him from service and the petitioner having suffered over this period of time itself is more than sufficient punishment. In normal circumstances, we would have been inclined to direct the respondents to consider the issue of imposition of appropriate punishment for the offence of overstaying for about 2 days since charge No. 1 was meritless but in the given facts of the case we desist from doing so as the petitioner has suffered enough.

11. It may be noted that insofar as FIR registered against the petitioner is concerned, there are no details forthcoming in the record though learned Counsel for the petitioner states that he has obtained instructions that the petitioner has been acquitted in 2006. The respondents did not deem it appropriate to take any action in respect of the registration of the FIR for a period of two and a half years from the date when they had come to know of such registration till they decided to initiate disciplinary proceedings against the petitioner. The reason for the same, as explained by the learned Counsel for the respondents, is that they were waiting for the fate of the criminal proceedings, then certainly the matter was yet to be concluded when the disciplinary proceedings were initiated. All this does seem to give credence to the submission of the petitioner that the respondents were troubled by the complaint made by him to the National Human Rights Commission which in turn had called upon the respondents to explain its position about the subsequent event of 1998.

12. The result of the aforesaid is that the three impugned orders are set aside. The sentence imposed on the petitioner is quashed and a direction is issued that the petitioner should be taken back in service with all the consequential benefits

including monetary benefits and seniority. The respondents to take necessary action within a month from today.

13. The petition is allowed with costs of Rs. 3,000/-.