

(2003) 12 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No's. 2368 and 5474 of 1997

Dimbeswar Saikia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 226

Citation : (2005) 105 FLR 53 : (2004) 3 GLR 624 : (2003) 3 GLT 588

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : G.K. Bhattacharjee, G.N. Das, B. Chakraborty and B.C. Kalita, for the Appellant; None, for the Respondent

Judgement

B.K. Sharma, J.—Since the common question of facts and law are involved in both the writ petitions, the same have been taken up together for decision. In both the writ petitions, the grievance made is in respect of a common order of dismissal passed against the petitioners pursuant to the departmental proceeding. The charge relating to the initiation of the departmental proceeding against the petitioners can be found at Annexure-2, Memorandum dated December 1995. For ready reference the statement of articles of charges and the statement of imputation of neglect and remissness, in support of articles of charges framed against the petitioners are quoted below : -

"Statement of Articles of Charges Framed Against NK Balbir Singh, No. 802030084 NK Gurdas Ram And No. 810490624 L/NK D. Saikia of D/35 BN. CRPF.

ARTICLE-I

"That said No. 690192558 NK Balbir Singh of D/35 BN. CRPF was guilty of neglect of duty u/s 11(1) of CRPF Act, 1949, in that he did not exercise proper command and control over his men while performing duties in a, highly sensitive market area of Mao Gate in Senapathi district (Manipur) on 19/10/95 as result of

which party members were attacked by some miscreants.

ARTICLE-II

That said No. 690192558 NK Balbir Singh, No. 802030084 NK Gurdas Ram and No. 810490624 L/NK D. Saikia of D/35 BN. CRPF were guilty of neglect/remissness of duty u/s 11(1) of CRPF Act, 1949, in that while going for purchase of medicines in Mao Gate market area on 19-10-95 at 1230 hours they did not carried out proper laid down drill and security instructions and did not moved tactically. As a result of which No. 802030084 NK Gurdas Ram and No,810490624 L/NK D. Saikia of D/35 BN. CRPF while going to the shop for buying the medicines were attacked by the miscreants and snatched their personal weapons i.e. SLR 7.62 mm with 20 rounds each.

Sd/-N.S.Gulati

Commandant-35 BN. CRPF,

Silchar (Assam)"

"Statement of Imputation of Neglect/Remissness in Support of Articles of Charges Framed Against No. 690192558 NK Balbir Singh No. 802030084 NK Gurdas Ram and No. 810490624 L/NK D. Saikia of D/35 BN.CRPF.

ARTICLE-I

That No. 802030084 NK Gurdas Ram No. 810490624 L/NK D. Saikia, No. 891191316 Ct. Ravinder Singh and No. 911331298 Ct. Ashok Kumar of D/35 BN. CRPF under command of No. 690192558 Nk Balbir Singh of D/35 BN. CRPF were detailed to buy some medicines from Mao gate market area on 19-10-95. Two of the above party, i.e.,NK Gurdas Ram and L/NK D. Saikia went to the shop for buying the medicines. While they were making purchases some miscreants who were hiding themselves nearby lanes bounced on them and covered their faces with their shawls and hit NK Gurdas Ram on his head with Danda and L/NK D. Saikia with Dhao. The area around the shop was neither properly searched and secured nor man tactfully positioned by the party commander NK Balbir Singh of D/35 BN. CRPF who did not brief the party about duty. Thus NK Balbir Singh committed an offence u/s 11(1) of CRPF Act, 1949. In his capacity as a member of the force.

ARTICLE-II

That a party consisting of five persons of D/35 Bn. CRPF under the command of NK Balbir Singh of D/35 Bn. CRPF was detailed to buy some medicines from Mao gate market area in Senapathi district (Manipur) on 19-10-95 at 1230 hours. Two of the party, i.e., NK Gurdas Ram and L/NK D. Saikia of D/35 Bn. CRPF went to the shop for buying the medicines. While they were making purchases some miscreants who were hiding themselves nearby Janes bounced on them and covered their faces with shawls and hit NK Gurdas Ram on his head with Danda and L/NK D. Saikia with Dhao. Both of them sustained injuries and fell on the

ground and thereby these miscreants snatched the personal weapons, i.e., SLR 7.62 mm with 20 rounds each and disappeared in nearby jungle. Both NK Gurdas Ram and L/NK D. Saikia were not alert, not used rifles chains and not tactfully positioned by the party commander NK Balbir Singh. Hence all the three committed an offence u/s 11(1) of CRPF Act, 1949, in their capacity as a member of the force.

Sd/-N.S.Gulati

Commandant-35 BN. CRPF,

Silchar (Assam)"

Both the writ petitioners replied to the charges and thereafter pursuant to a regular departmental enquiry the petitioners have been imposed with the extreme penalty of dismissal from service. From the charges quoted above it will be seen that Shri Balbir Singh was also charged for not exercising proper command and control over his men. It is nobody's case that the petitioners of their own had visited the medicine shop to purchase medicines, rather it is an admitted position that they were on official duty when the occurrence took place. It is on record that both the petitioners who had gone to the medicine shop was on official duty for buying medicines. Their arms and ammunitions were taken away by some miscreants. Both of them had sustained injuries and fell on the ground and it is submitted that they had to undergo treatment for long period.

2. In the charge framed against the petitioners, the allegations is that they were guilty of negligence and remissness of duty u/s 11(1) of CRPF Act, 1949. Pursuant to the departmental proceeding which was conducted jointly against all the three aforesaid officers including the two petitioners a common order of penalty was passed on 11-6-96 by which the extreme penalty of dismissal of service has been awarded to the petitioners. On the other hand the said Balbir Singh who was charged of non-exercising proper command over his men has been imposed with a penalty of reduction in rank for a period of two years. Aggrieved, the petitioners preferred departmental appeal before the appellate authority. The said appeal was dismissed and the penalty of dismissal was affirmed by the appellate authority. It is under these circumstances, the two writ petitions have been filed by the petitioners making a grievance against the said order of penalty.

3. During the course of hearing it is fairly submitted by Mr. B. Ghakraborty, learned counsel for the petitioners that he is not seriously disputing the fairness in the departmental proceeding conducted by the Disciplinary authority. On perusal of the record I do not find any procedural irregularity in conducting the departmental proceeding. The only point which has been urged by Mr. Chakraborty is in respect of the proportionality of the punishment, more particularly having regard to the charges levelled against the petitioners and secondly, in view of the fact that Shri Balbir Singh who was to exercise the command over them was awarded a lesser punishment of reduction in rank for a

period of two years.

4. I have given my anxious consideration to the entire matter. On perusal of articles-1 and 2 I find that when the allegations against Shri Balbir Singh was that he did not exercise proper command and control over his men including the petitioners, the allegations against the petitioners are that they were negligent in their duties. On perusal of the Annexure-2, I find that when the petitioners were in the medicines shop they were attacked by the miscreants and they sustained severe injuries for which they had to be hospitalised. From the statement of the imputation at Annexure-2 quoted above, it is also seen that the miscreants had come to the medicine shop covering their faces with shawls and hit the petitioners with dao etc. as a result of which the petitioners sustained grievous injuries for which they had to undergo long treatment.

5. On perusal of the enquiry report and the order passed by the Disciplinary authority and the appellate authority it is revealed that the said authorities were swayed by the consideration towards establishing the guilt and ordered the extreme penalty of dismissal on the ground that the petitioners were not alert and their rifles were not chained. This aspect of the matter will have to be considered in the light of the allegation in respect of Balbir Singh who was to exercise proper command over his men including the petitioners. The men with the helm of the affairs who was also charged sheeted along with the petitioners has been given a lesser punishment of reduction in rank for two years. It is not the case of the respondents that because of the negligence on the part of the petitioners alone, the incident took place. Having regard to the fact that the proceeding initiated against all the three officers including the petitioners were common proceeding and the officer, i.e., Balbir Singh who was to exercise control over the petitioners has been imposed with a lesser punishment of reduction in rank and also the facts situation involved in this case in my considered opinion the penalty imposed against the petitioners for the alleged offence is disproportionate.

6. For the alleged lapse on the part of the petitioners that they did not chain their rifles which were eventually snatched away by the miscreants, coupled with the fact that the miscreants had come in group and assaulted the petitioners all on a sudden could not have resulted in the extreme penalty of dismissal from service, I am inclined to say so in view of the fact that Commanding Officer who was also charge sheeted along with the petitioners for lack of supervision over the petitioners has been given a lesser punishment of reduction in rank. Now the question is as to what penalty should be inflicted upon the petitioners in the given facts situation. As I have already held that the penalty imposed against the petitioners is dis-proportionate, the same will have to be set aside, I am not inclined to prescribe any other punishment in exercise of my power of judicial review under Article 226 of the Constitution of India.

7. Accordingly, while setting aside the order of dismissal passed against the petitioners at Annexure-8 Order dated 11-6-1996 and the appellate order dated

29-10-1996,1 remit back the matter to the respondents to impose any other penalty as they may deem fit and proper. While doing so they will certainly bear in mind that the co-accused Balbir Singh who was said to be in command over the petitioners has, been given the penalty of reduction in rank. However, I make it clear that the petitioners will not be entitled to any back wages.

8. With the above directions both the writ petitions are partly allowed. No order as to cost.

9. The entire exercises shall be carried out by the respondents within a period of two months from the date of receipt of a certified copy of this order.

10. With this order both the writ petitions stand disposed of.