
(2006) 12 GAU CK 0065
In the Gauhati High Court

Dipti Kr. Gogoi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Citation : (2007) 2 GLT 241

Hon'ble Judges : B.S. Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The appellant while serving as constable, Central Industrial Security Force, Unit ONGC, Jorhat, was served with a memorandum of charge dated 20.12.1999 alleging that on 23.11.1999 at about 5.20 hours in barrack No. 8 of CISF lines, Cinamara, he assaulted Constable S.K. Das, Jorhat Sector with an iron piece thereby committed gross misconduct, indiscipline, aggression and an act unbecoming of a member of Armed Force, i.e., CISF. A further charge was also drawn against him for his failure to turn up to duty on 23.11.1999 and remaining absent without permission from the competent authority, thereby committing gross misconduct, negligence and dereliction of duty. The appellant on receipt of the charge memo submitted his reply on 31.12.1999 stating inter alia that on 23.11.1999 he went to Constable S.K. Das at about 5 AM to enquire about his deployment of duty but said Sri Das instead of giving him reply used filthy language, resulting in heated altercations between them and suddenly Sri Das gave him several fist and blows, for which he pushed him and fell down on a steel box near his bed, which caused injury to him. It has further been contended in the said written statement that he had no malafide intention to cause injury to Sri Das and the incident occurred due to provocation by Mr. Das. Regarding the unauthorized absence from duty the appellant has contended in the written statement that after the said incident he went to perform his allotted duty but the Inspector, namely Mr. S. Singh, stopped him near the complex gate and compelled him to sit in the control room stating that there would be an

enquiry against him.

2. The departmental authority being not satisfied with the reply of the appellant decided to hold the disciplinary proceeding against him and accordingly the enquiry officer was appointed. In the said proceeding, the appellant participated, wherein he was given full opportunity to defend himself. The enquiry officer, on completion of enquiry, submitted his report on 24.02.2000 holding that the charges levelled against the appellant have been proved. The said report was furnished to the appellant vide memorandum dated 25.02.2000 for submission of his representation in writing. The appellant also submitted his representation on 07.03.2000, which was received by the disciplinary authority on 13.03.2000. The Commandant, i.e., the disciplinary authority upon perusal of the record of the enquiry, which includes the report of the enquiry officer passed the order dated 14.04.2000 imposing penalty of removal from service of CISF with immediate effect. The appellant, being aggrieved, filed a departmental appeal before the Deputy Inspector General, CISF (NEZ) on 12.05.2000, which was rejected by the Departmental Appellate Authority vide order dated 16.10.2000. A writ petition being W.P.(C) No. 2667/02 was thereafter, filed by the appellant challenging such departmental action which was however, dismissed vide judgment and order dated 22.06.2004 and hence the present appeal.

3. We have heard Mr. A.M. Bujarbaruah, the learned Counsel for the appellant and Mr. Hasibur Rahman, the learned Assistant Solicitor General of India for the respondents.

Mr. Bujarbaruah, the learned Counsel for the appellant has contended that there is absolutely no evidence on record to record the finding by the enquiry officer that the charges levelled against him have been proved. It has been submitted that none of the witnesses examined in the disciplinary proceeding has supported the allegations levelled against the appellant that he hit constable S.K. Das with an iron piece causing injury to him and infact none of the witnesses have seen such occurrence. It has further been contended by Mr. Bujarbaruah that in the absence of such evidence, stand taken by the appellant in the written statement that Sri S.K. Das fell down on a steel box, which resulted in the injury, has been substantiated. According to Mr. Bujarbaruah the authority in order to prove the allegation that injury was caused to S.K. Das by means of iron piece was required to examine the doctor and in the absence of such evidence from any Doctor it cannot be said that the allegation levelled have been proved. Alternatively, it has been argued by the learned Counsel that as it is evident from the evidence adduced in the proceeding in support of the charges that the scuffle between the appellant and Sri S.K. Das took place and as a result of which Sri Das has suffered injury, the quantum of punishment of removal from service is shockingly disproportionate to the gravity of misconduct committed by the appellant and as such, the Disciplinary Authority may be directed to impose lesser punishment by setting aside the order of removal from service. The learned Counsel in support of his contention has placed reliance on the decision

of the Apex Court *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, as well as in *Kuldeep Singh Vs. The Commissioner of Police and Others*,

4. Mr. Rahman, the learned Assistant Solicitor General appearing on behalf of the respondents, supporting the judgment passed by the learned Single Judge as well as the disciplinary action taken against the appellant, has contended that the enquiry officer as well as the Disciplinary Authority and the Departmental Appellate Authority after discussing the evidences on record have come to the finding that the charges have been proved against the appellant. It is evident from the order of removal from service as well as the order passed by the appellate authority that there are sufficient evidences to record the finding by the enquiry officer that the charges levelled against the appellant have been proved. This Court in exercise of its power of judicial review under Article 226 of the Constitution may not re-appreciate the evidences adduced in the disciplinary proceeding and come to a finding different from the finding recorded by the enquiry officers as well as the disciplinary authority, as, in exercises of the power of judicial review the writ Court can not re-appreciate the evidences on record in a disciplinary proceeding. Refuting the submission of the learned Counsel for the appellant that there is no evidence on record to substantiate the charges, the learned Assistant Solicitor General referring to the order passed by the disciplinary authority imposing punishment has submitted that the witnesses examined in support of the charges including Constable S.K. Das, who suffered the injury at the hands of the appellant have categorically stated about the injuries caused by means of iron piece by the appellant, without any provocation and therefore, it can not be said that there is absolutely no evidence to record the finding that the charges have been proved. It has further been submitted by the learned Counsel that the non-examination of the Doctor will not vitiate the disciplinary proceeding as, such examination is not required, the proceeding being a disciplinary proceeding and not a criminal proceeding more so, when there is ample evidence on record to show that the charges have been proved. Mr. Rahman has further contended that keeping in view the gravity of misconduct committed by the appellant, it cannot be said that the removal from service is shockingly disproportionate to the gravity of such misconduct. Mr. Rahman relying on the decision of the Apex Court in *Mithilesh Singh Vs. Union of India (UOI) and Others*, has submitted that the scope of judicial review of the penalty imposed by the disciplinary authority in a disciplinary proceeding is very limited and unless the punishment appears to be shockingly disproportionate, the Court can not interfere with the same and it is to be left to the disciplinary authority to decide about the quantum of punishment. In the instant case, according to the learned Counsel, the appellant being a member of a disciplined force, the disciplinary authority has rightly imposed the penalty of removal from service, as he was indulging in grave misconduct and his action is unbecoming of a member of Armed Force.

5. The appellant has not challenged the order passed by the disciplinary

authority taking disciplinary action against him either on the ground of procedural irregularity or on the ground of violation of the principles of natural justice in conducting the disciplinary proceeding against him. The challenge to the disciplinary action taken against him is, firstly, on the ground of no evidence and non-examination of the Doctor and secondly, on the ground of disproportionately of punishment. The learned Single Judge while dismissing the writ petition has rejected both the contentions of the appellant by holding that the medical documents were proved by Constable S.K. Das, who received the injuries on his person and though the appellant cross-examined him nothing adverse could be brought out. The learned Single Judge referring to the finding recorded by the disciplinary authority has also held that examination of the medical officer, in view of the aforesaid position, was not required. The contention of the disproportionately of the punishment was also rejected on the ground that the proved charges were extremely grave in nature and such conducted in public service, specially in Armed Force cannot be tolerated and therefore, the punishment of removal from service could not be termed as disproportionate to the proved misconduct.

6. The scope of judicial review of a disciplinary action taken by the authority in a disciplinary proceeding is very limited. The High Court while exercising the jurisdiction under Article 226 of the Constitution does not act as an appellant authority and therefore, it can not re-appreciate the evidences adduced before the enquiry authority in a disciplinary proceeding and come to a finding, different from the finding recorded by the enquiry officer or by the disciplinary authority in such proceeding. In short the High Court cannot substitute its own finding by re-appreciating the evidence on record. Its jurisdiction is circumscribed by the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of the principles of natural justice and such power of judicial review is not akin to adjudication of the case on merits as an appellant authority. However, the High Court in exercise the power of judicial review can no doubt interfere with the disciplinary action taken against a person, if the finding recorded either by the enquiry officer or by the disciplinary authority is based on no evidence. There is no dispute to the proposition of law laid down by the Apex Court in Kuldeep Singh (supra) as well as Rajinder Singh (supra).

7. It is evident from the order imposing penalty of removal from service passed by the disciplinary authority that, apart from Constable S. K. Das, who was examined as witness No. 8 in the proceeding, other witnesses have also seen the appellant going inside the barrack No. 8 and after few minutes coming out from there running and thereafter seen the Constable S.K. Das coming out with injury. Constable S.K. Das has also in categorical terms stated that the appellant hit him with an iron piece causing injury to him on his head. That apart admittedly the appellant did not attend his duty on 23.11.1999. There being such positive evidence on record, it cannot be said that there is absolutely no evidence to record the finding that the charges have been proved. It also appears that the medical papers have been exhibited by Constable S.K. Das (witness No. 8) and

there is no dispute about the injuries sustained by him. In the disciplinary proceeding the nature and the degree of injuries is not important. What is important is whether the petitioner has committed any misconduct in causing such injuries. The appellant in fact in his written statement has admitted that he pushed down Constable S.K. Das and as a result of which he fell down and received injuries. The standard of proof in a disciplinary proceeding and in a criminal proceeding is distinct and different. The approach and objective in both the proceeding is also altogether distinct and different. In the disciplinary enquiry the standard of proof is preponderance of probability but in a criminal proceeding the charges are required to be proved beyond all reasonable doubt. The authority by producing witnesses before the enquiry officer in the enquiry proceeding could prove the charges levelled against the appellant. Hence the contention of the appellant, that there is no evidence and the non-examination of the Doctor has vitiated the proceeding, cannot be accepted and therefore rejected.

8. As discussed above, the charges against the appellant was for causing injury to Constable S.K. Das on his head by means of an iron piece and un-authorized absence from the duty on 23.11.1999. The said charges have been found to be proved by the enquiry officer. Such findings have also been concurred by the disciplinary authority as well as by the appellate authority. The appellant being a member of Armed Force, namely CISF, is not entitled to be dealt with leniently, on the face of the misconduct proved against him. The scope of judicial review of the quantum of punishment awarded is also very limited. The High Court in exercise of the power of judicial review may in a given case interfere with the punishment imposed by the disciplinary authority if it is shockingly disproportionate to the gravity of misconduct proved. It is normally to be left to the direction of the disciplinary authority to decide about the quantum of punishment, depending upon the gravity of misconduct. The Apex Court in *Mithilesh Singh (supra)* has reiterated the scope of interference by the Court with punishment awarded by the disciplinary authority. In the instant case the disciplinary authority as well as the appellate authority, keeping in view the gravity of misconduct proved against the appellant, have awarded the penalty of removal from service. Such discretion exercised by the authority cannot be interfered with by the Writ Court in exercise of its power of judicial review, as, such punishment can not be termed as shockingly disproportionate to the gravity of misconduct proved.

9. In view of the aforesaid discussion, we do not find any merit in the appeal and hence the same is dismissed. No cost.