

(2008) 05 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (C) No. 1135 of 2007

Ex. Const. R.S. Shekhawat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 33, 34, 36, 37, 39

Citation : (2008) 150 DLT 450 : (2008) 103 DRJ 486 : (2008) 2 ILR Delhi 1108

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

Bench : Division Bench

Advocate : Rekha Palli and Poonam Singh, for the Appellant; S.B. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the CISF on 8.5.1990 and during the tenure of his service was posted with IOC (Mathura) w.e.f. 14.6.2002. The petitioner sustained certain injuries in November 2003 and was advised lighter duties. The petitioner was, thus, posted on duty at the Watch Tower No. 14.

2. The date of the incident which resulted in disciplinary proceedings against the petitioner is dated 5.6.2004 when the petitioner was posted on the said duty tower between 5:00 a.m. to 1:00 p.m. The petitioner claimed that he received an anonymous call at about 7:50 a.m. on the said date informing him about some goods hidden in the nearby Fire Practice Yard. The petitioner went to look to the same but did not find anything and thus came back to the tower.

3. The petitioner was served with the Memorandum dated 21.6.2004 alleging indiscipline and carelessness towards his duties as he was found wandering while holding some goods in his hands which goods were thrown in a nearby bush. On search being conducted, the goods thrown were found to be some copper pipes of some 2.00 kg weight. In another place at the Fire Practice Yard on further

search 20.00 kg of copper pipes bundled in a gunny bag and hidden in the grass were found. Thus a proposal was laid under Rule 37 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the said Rules) for action against the petitioner for minor penalty. The petitioner sent a reply to the Memorandum but the petitioner was found guilty in terms of final order dated 21.7.2004 and was imposed a punishment of deduction of salary equivalent to three (3) days in terms of Rule 34 of the said Rules.

4. The petitioner was aggrieved by the said finding and penalty and thus preferred an appeal under Rule 52 of the said Rules. The appeal was considered by the Commandant who set aside the order dated 21.7.2004, cancelled the charge sheet dated 21.6.2004 and proceeded to direct the issuance of a fresh charge sheet under Rule 36 of the said Rules for imposition of a major penalty. The aforesaid was done without issuing any show cause notice to the petitioner.

5. In pursuance to the aforesaid direction a fresh Memorandum was issued to the petitioner dated 18.1.2005 alleging that the petitioner was guilty of moral turpitude and fallacy in performing his duties. A departmental inquiry was held and the department recorded testimonies of six witnesses. It is the grievance of the petitioner that none of the six defense witnesses whom the petitioner wanted to examine were called for deposition.

6. The petitioner was served with the final order dated 20.6.2005 holding him guilty of the charges and a penalty was imposed of reduction of nine stages in the pay-scale of the petitioner from 3,725.00 to Rs. 3,050.00 for five years with a further direction that the petitioner would not earn any annual increments during the period of penalty.

7. The petitioner aggrieved by the said order again filed an appeal which was decided vide order dated 10.2.2006 by the Deputy Inspector General. The findings of the disciplinary authority were affirmed but insofar as the punishment was concerned, the order states that in exercise of Rule 52 of the said Rules the punishment was cancelled and replaced by the punishment of removal from service.

8. The petitioner thereafter filed a revision under Rule 54 of the said Rules, which was dismissed vide order dated 21.11.2006. The petitioner has thereafter filed the present writ petition.

9. Learned Counsel for the petitioner submitted that the order passed on 11.12.2004 by the appellate authority under Rule 52 of the said Rules was illegal and without jurisdiction as no direction could have been passed for cancelling the charge sheet and the proceedings in pursuance thereto and ordering a fresh charge sheet. In this behalf Rule 52 of the said Rules has been referred to which reads as under:

52. Consideration of appeals. - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the

provisions of rule 33 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider -

(a) whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such directions it may deem fit in the circumstances of the case;

[(iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.]

Provided that -

(i) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (i) to (v) of rule 34 and an inquiry under rule 36 has not already been held in the case; the appellate authority shall, subject to the provisions of rule 39, itself hold such an inquiry or direct that such inquiry be held in accordance with rule 36 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit; and

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (i) to (v) of rule 34 and an inquiry under rule 36 has already been held in the case, the appellate authority shall make such orders as it may deem fit.

10. Learned Counsel for the petitioner thus submits that it is sub-rule 2 of Rule 52 where an appeal is directed against imposition of any of the penalties specified in Rule 34 of the said Rules and that the appellate authority is empowered to either set aside the order and the sentence or even enhance any penalty under the Rules. Thus, it is submitted that the appellate authority only had the option if it was of such opinion to enhance the sentence and not to direct de novo proceedings. In support of the plea learned Counsel has referred to the

judgment of the Apex Court in *Kanailal Bera v. Union of India and Ors.* (2007) 10 SCC 612 wherein it was observed as under:

...Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges leveled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges leveled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.

11. Learned Counsel for the petitioner also pleaded that there were inconsistencies in the evidence recorded and that despite the allegation of such heavy recoveries being made neither any property certificate nor seizure certificate or IOC challan was prepared.

12. It is further pleaded that the petitioner had an unblemished record of sixteen (16) years of service which was sought to be put at naught in terms of the impugned order.

13. Learned Counsel for the respondents, on the other hand, defended the action taken against the petitioner by the respondents. The records have also been produced. It is submitted that at the stage when the appeal of the petitioner was pending, the then DIG carried out an inspection of the CISF Unit IOC (Mathura) from 5.10.2004 to 6.10.2004 and reviewed the disciplinary cases. On such review it was found that the misconduct of the petitioner was a grave one and warranted institution of a major penalty proceedings but the disciplinary authority had taken a lenient view and awarded a lesser punishment or a minor penalty which was not commensurate with the gravity of the proven misconduct. The following observations were made by the DIG:

No. 904523566 Const RS Shekhawat was found collecting brass wire and scrap around his duty on 5.6.04. He has been punished for 03 days pay fine only on 21.7.04. No PE in this case has been conducted. The allegation against him is of serious nature. I have directed Commandant to immediately place him under suspension and review his case.

14. It is in pursuance to the aforesaid that the appellate authority exercised the powers under Rule 52 of the said Rules and passed an order dated 11.12.2004.

15. Learned Counsel for the respondents contended that under Rule 54 of the said Rules a superior authority on its own motion or otherwise can call for the records of any inquiry and revise any order made under the said Rules. Thus reliance has also been placed on Rule 54 of the said Rules, which reads as under:

[54. Revision. - (1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made unless these rules, and may -

- (a) Confirm, modify or set aside the order; or
- (b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) Pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised:

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.

(2) The provisions of rule 52 relating to appeals shall apply so far as may be to such orders in revision.

(3) Orders and instructions issued by the Central Government on this subject from time to time shall be applicable mutates mutants as applicable under Central Civil Services (Classification, Control and Appeal) Rules, 1965.]

16. It is, thus, submitted that under the revisionary power the superior authority can confirm/modify/set aside/reduce or enhance the penalty imposed by the order or impose any penalty where no penalty has been imposed or remit the case to the authority which made the order or any other authority directing such authority to make such further enquiry as may be considered proper in the facts and circumstances of the case.

17. Learned Counsel submits that the nature of charge remained the same in the fresh Memorandum issued and there was no occasion for the petitioner to leave the tower on an anonymous call. It is also pleaded that there have been prior occasions where the petitioner had been punished for various misdemeanor which included censure, fine and stoppage of increment without punitive effect.

18. We have examined the submissions made by learned Counsels for the parties and in our considered view the matter in controversy falls within a very narrow compass.

19. This Court does not sit as a court of appeal to re-examine the evidence and the testimony recorded and thus it is not necessary to weigh the evidence again to reach a conclusion whether the findings arrived at by the disciplinary authority were correct or not. However, the material aspect is that the Memorandum

issued to the petitioner was for a minor penalty under Rule 37 of the said Rules which resulted in the order dated 21.7.2004 whereby the petitioner was held guilty and the penalty of deduction of three (3) days salary was imposed. The petitioner was within his rights to file the appeal and the Commandant was liable to consider the appeal within the parameters of Rule 52 of the said Rules. In fact, the order of the Commandant dated 11.12.2004 itself states that the exercise of the power is under Rule 52.

20. Sub-Rule 2 of Rule 52 of the said Rules provides for the exercise of power by the appellate authority against the order imposing any of the penalties specified in Rule 34 of the said Rules (Rule 34 contains both major and minor penalties). It was, thus, open for the appellate authority to consider whether the procedure laid down in the Rules has been complied with or not, whether the finding of the disciplinary authority were warranted on the basis of the evidence on record and whether the penalty imposed was excessive, adequate or inadequate. As a sequitur to that the appellate authority could confirm, enhance, reduce or set aside the penalty or remit the case to the authority which imposed the punishment or enhance the penalty with proper directions, but after giving a reasonable opportunity of hearing to the petitioner.

21. The appellate authority in the present case could, thus, have been justified in upholding the finding of guilt and imposing a more severe punishment instead of a minor penalty in view of the proceedings itself being initiated for such a minor penalty. The power conferred under Rule 52 of the said Rules on the appellate authority nowhere authorizes such authority to set aside the impugned order and direct issuing a fresh Memorandum or charge sheet to the petitioner as was sought to be done by the appellate authority.

22. It is not open to the respondents to plead that the provisions of Rule 54 of the said Rules would apply in the present case since the power being exercised by the authority was an appeal power and not a revision power. Not only that even the reading of Rule 54 of the said Rules itself shows that what is envisaged is for an authority to make an order either on its own motion or otherwise call for records of any inquiry and revise any order made under the said Rules and in doing so confirm, modify or set aside the order or sentence or remit the case to the authority to make further inquiry.

23. The facts set out in the present case, in fact, show that what precipitated the extreme action against the petitioner without any reference to the powers conferred under Rule 52 of the said Rules was the observations of the DIG, CISF on his visit to the concerned CISF Unit. It is apparent that the appellate authority has acted totally under the diktat of the note made by the DIG, CISF and thus thrown to the wind the procedure envisaged under Rule 52 of the said Rules. The appellate authority, thus, proceeded to act much beyond the powers conferred under Rule 52 of the said Rules to direct a de novo inquiry against the petitioner on a fresh Memorandum/charge sheet being issued.

24. Another aspect relevant is that the appellate authority is the designated authority to consider the appeal. The appellate authority must put its mind to decide the appeal uninfluenced by any extraneous factor or extraneous diktat in a sense the appellate authority is the persona designata. The appellate authority apparently did not apply its own mind to the facts of the case and on the basis of the nothings made by the DIG proceeded to pass an order under the said diktat. This was not permissible. It is such a diktat which has resulted in an illegal and irregular order being passed by the appellate authority.

25. We are fortified in our view by the decision of the Supreme Court in Kanailal Bera case (supra) holding that once a disciplinary proceedings have been initiated the same must be brought to a logical end where the delinquent officer may be held guilty of a charge or not, the sentence may be varied, fresh evidence may be directed to be adduced but no fresh inquiry can be directed on the same charges.

26. We have, thus, no hesitation in holding that the impugned order of the appellate authority dated 11.12.2004 directing a fresh charge sheet to be issued is not sustainable and is liable to be quashed. The consequence thereof is that all proceedings taken thereafter would necessarily have to be quashed and thus the fresh orders passed by the disciplinary authority on 20.6.2005, by the appellate authority on 10.2.2006 and the revisionary authority on 21.11.2006 are also liable to be quashed. We may note that even in the second round the disciplinary authority did not find it appropriate to impose the punishment of dismissal from service but it is the appellate authority which imposed the said punishment.

27. The result of the aforesaid is that the appeal of the petitioner would have to be heard afresh against the order dated 21.7.2004 and a reasoned order passed within the ambit of Rule 52 of the said Rules.

28. A writ of mandamus is issued quashing the order dated 11.12.2004, the fresh Memorandum dated 18.1.2005, the order dated 20.6.2005 of the disciplinary authority, the order dated 10.2.2006 of the appellate authority and the order dated 21.11.2006 of the revision authority with the direction that the appellate authority should hear the appeal of the petitioner afresh against the order dated 21.7.2004 to be confined within the parameters of Rule 52 of the said Rules as set out hereinabove. In these circumstances the petitioner shall have to be reinstated in service from the date of his removal with all consequential benefits to be remitted to him within three (3) months from today.

29. The petition is allowed leaving the parties to bear their own costs.