

(2002) 09 DEL CK 0153
In the Delhi High Court
Case No : C.W.P. No. 6126 of 1999

Ex. Constable Jai Kishan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Army Act, 1950 — Section 91, 92
Central Industrial Security Force Act, 1968 — Section 18, 9
Central Industrial Security Force Rules, 1969 — Rule 29A

Citation : (2002) 09 DEL CK 0153

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : N.K. Kinra and N.K. Choudhary, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Orders dated 26.02.1999 issued by the Commandant 5th Reserve Battalion Ghaziabad (U.P.) directing dismissal from service of the petitioner herein in exercise of powers conferred upon him under Rule 29-A of the Central Industrial Security Force Rules, 1969 (hereinafter for the sake of brevity referred to as, "the said Rules") as also the appellate order dated 10.06.1999 whereby and whereunder the appeal preferred by the petitioner herein was dismissed, are in question in this writ petition.

2. The petitioner was appointed as Constable in Central Industrial Security Force (in short, "CISF"). He had been serving in 5th Reserve Battalion at Ghaziabad (U.P.). The petitioner was issued a charge sheet containing the following charges:-

"ARTICLE-I

"That the said No. 853150042 Constable Jaikishan of CISF 5th Reserve Battalion, Ghaziabad remained absent from Base Camp Dhul Line, CISF Unit DHEP

Dhulhasti which is a very sensitive terrorist infected area on 2.5.98 from 2100 hrs. to 2200 hrs during the checking of post commander and about 2210 hrs he misbehaved with the post commander when he asked him reason for absence which amounts to gross misconduct, indiscipline and dereliction to duty with in the meaning of Section 18 of CISF Act, 1968.

ARTICLE-II

That the said No. 853150042 Constable Jaikishan of CISF 5th Reserve Battalion, Ghaziabad remained absent from Base Camp Dhul Line CISF unit DHEB Dhulhasti which is a very sensitive terrorist infected are from 1730 hrs on 3.5.98 to 1030 hrs on 4.5.98 which amounts to gross misconduct, indiscipline and dereliction to duty with in the meaning of Section 18 of CISF Act, 1968.

ARTICLE-III

That the said No. 853150042 Constable Jaikishan of CISF 5th Reserve Battalion, Ghaziabad is an habitual offender of AWL, absenting from duty dereliction to duty, misbehavior with his senior officer and had been punished number of times (i.e. 13 times). His past conduct is Therefore to be considered while deciding the punishment if found guilty for the above charges."

The petitioner, however, pleaded not guilty to the said charges.

3. The petitioner in the writ petition has inter alias contended as under:-

During the period November, 1997 to May, 1998, the petitioner was sent on temporary duty to Dhul Line, CISF Unit, DHEP Dhulhasti (J&K), a terrorist infected area, where one Shri G.C. Diwedi, S.I. (Executive) was the Post Commander. Allegedly, from the very beginning, said Shri Diwedi developed some sort of jealousy, provincial bias and started hostile discrimination and harassment of the petitioner.

Allegedly on 02.05.1998 night, said Shri Diwedi was informed that the petitioner was having temperature and requested not to put the petitioner on regular duty, i.e., from 5.00 a.m. to 5.00 p.m. on 03.05.1998, but the said request was not acceded to. Thereafter, allegedly the petitioner after informing one Lalji Ram, Head Constable of the camp, went to the Base Camp, CISF to get medical treatment and after coming back at about 10.00 p.m. he went to sleep and as he was feeling unwell, he could not get up when somebody was knocking at the door.

The petitioner allegedly performed the regular duty on 03.05.1998 despite the fact that he was very ill. Allegedly after performing his duties and taking permission from C.H.M. Head Constable Lalji Ram, he went to J.B. Hospital for treatment. As on the way, the petitioner got scared of the threats being advanced by said Shri Diwedi that in such terrorist infected area, it is very easy to finish a man and put up an excuse that he has been killed by terrorists, he went to the police station to lodge a complaint for his self-defense; whereupon the SHO immediately informed the said fact to one Shri Ravinder Kumar, Deputy

Commandant and the said Deputy Commandant told that it is an internal matter of the CISF, and as such the complaint was not registered. However, allegedly the petitioner was sent to the Office of the said Deputy Commandant of the Unit along with one CISF Inspector, where he was given an assurance that the matter will be enquired into and he will be given all protection. Accordingly, as per the orders of the said Deputy Commandant, the petitioner was sent to the line of D-Coy, where he spent his night and on the next day, i.e., 04.05.1998 he along with the said Deputy Commandant arrived at the CISF Lines at Dhul.

In the aforementioned situation, allegedly as the said Post Commander Shri Diwedi felt further annoyed and managed to get the afore-said charge sheet issued to the petitioner.

4. A departmental proceeding was initiated on or about 15.01.1999 and the Enquiry Officer submitted his report holding the petitioner is guilty of the said charges whereupon the impugned order was passed by the Commandant 5th Reserve Battalion Ghaziabad (U.P.) on 26.02.1999. An Appeal there against was also dismissed vide order dated 10.06.1999.

Although in terms of Section 9 of the Central Industrial Security Force Act, 1968 (hereinafter for the sake of brevity referred to as, "the said Act"), a revision petition was maintainable, the petitioner filed a writ petition before this Court praying for the following reliefs:-

"(i) Your humble petitioner most respectfully prays that the records of the case may be called for, these may be perused and issue a writ of certiorari quashing the impugned order bearing No. V- 15014/Admin./19/99-568 dt. 26.2.99, Annexure-P.6, and the appellate order dt. 10.6.99, Annexure P-8 with all other orders, nothings, files correspondence, leading to preceding to the impugned order, Annexure P.6 and P.8.

(ii) A direction to the respondents to get the petitioner in service with all consequential benefits of arrears of pay, allowances, seniority and all other benefits of service as if the impugned order Annexure P.6 was never passed came into existence.

... .."

5. Mr. N.K. Kinra, the learned counsel appearing on behalf of the petitioner, inter alias would submit that the Enquiry Officer as also the appellate authority failed to take into consideration the fact that the proceeding was initiated on the ground that the petitioner had a heated argument with the Post Commander, namely, Shri Diwedi, who has threatened his life. The learned counsel would contend that the charges for being absent from duties for one hour on one occasion and for a few hours on the other cannot constitute a misconduct, particularly when under the provisions of the Army Act, 1950 such an absence is not considered to be a misconduct at all.

In this connection, our attention has been drawn to Section 92 of the Army Act,

which reads thus:-

"92. Computation of time of absence or custody.-For the purpose of Clauses (a) and (b) of Section 91.

(a) no person shall be treated as absent or in custody for a day, unless the absence or custody has been lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any military duty which was thereby thrown upon some other person;

... .."

The learned counsel would contend that the petitioner was ordered to stay in the night of 03.05.1998 at the CISF camp by the Deputy Commandant, namely, Shri Ravinder Kumar, as would appear from the statements made by the petitioner herein before the Enquiry Officer.

The learned counsel would urge that in the instant case the material witnesses had not been called, although it was the duty of the Enquiry Officer in terms of the provisions of the Departmental Inquiries Act, 1972 to call witnesses and take evidence as he had been vested with the power under the Code of Civil Procedure, 1908. It was urged that in the instant case no defense witness has been called and, thus, the petitioner have been deprived of a reasonable opportunity of being heard.

As regards the third charge, the learned counsel would contend that in relation thereto the petitioner had already been punished and as such the same could not have again been the subject matter or departmental enquiry.

In any event, the learned counsel would contend that the punishment imposed upon the petitioner is disproportionate to the charges leveled against him.

6. Mr. Gaurav Duggal, the learned counsel appearing on behalf of the respondents, however, would take us through the order of the disciplinary authority dated 26.02.1999 as also the order of the appellate authority dated 10.06.1999 and submit that from a perusal thereof it would appear that all the contentions raised by the petitioner herein had been taken into consideration and the charges have been found to be proved against the delinquent.

The learned counsel would submit that provisions of the Army Act cannot be brought into service for the purpose of initiation of a proceeding under the said Act.

Drawing our attention to the memorandum dated 06.10.1998, the learned counsel would contend that from a perusal thereof it would appear that the principles of natural justice had been fully complied with.

7. Before advertng to the question involved in this writ petition, we may notice

that this writ petition has been filed in the year 1999. The Court issued a show-cause notice as to why the writ petition shall not be admitted on 07.10.1999. The respondents filed their counter affidavit and the parties have been heard on merits. In this situation, we are of the opinion that after a lapse of about 3 years, the petitioner should not be asked to file a revision petition in terms of Section 9 of the said Act.

8. In the instant case, the petitioner has not raised a question as regards lack of jurisdiction on the part of the disciplinary authority. He has also not questioned the impugned orders on the ground of irrationality. The charges against the petitioner even as regard absence of one hour in one case and a few hours in the other must be viewed with seriousness having regard to the place inasmuch as the same had been held to be a very sensitive terrorist infected area. The petitioner had also been charged having misbehaved with the said Post Commander when he asked him the reasons for his absence.

9. In the disciplinary proceedings, the Enquiry Officer was appointed. The Enquiry was conducted at the place of occurrence. The petitioner did not raise any objection as regards holding of the enquiry by the Enquiry Officer. The petitioner refused to have a defense assistant. In the said enquiry proceedings, Inspector Bhagwan Singh Coy. Commander "C" Coy, Sub-Inspector G.C. Diwedi, C.H.M. Head Constable Lalji Ram, Constable Pratap Singh Senior Constable Jagpal Singh, and Constable N.N. Raina were examined on behalf of the prosecution; Sub-Inspector B.S. Prasad and Sub-Inspector (Executive) Shiv Prasad were examined as Court witnesses; and One Head Constable Jagpal Singh was examined as a defense witness.

10. At no point of time, even before the appellate authority, the petitioner made any complaint as regards irregularity of holding of the enquiry. A copy of the enquiry report was also served upon the petitioner and he was given an opportunity to file a representation there against.

11. The disciplinary authority analysed the evidences on record and came to the conclusion that the petitioner not only absented himself but despite advices given to him that the area being a sensitive one he should not visit other places without information, misbehaved with the higher Officers.

As regards the first charge, it was observed that such misbehavior on the part of the petitioner was under the influence of liquor. In relation thereto, whence one of his comparison constables apologized, he ridiculed him.

In the report of the enquiry, it was noticed:-

"... On the arrival of Coy. Commander Bhagwan Singh, G.C. Diwedi and Coy. Commander went to the room of Jai Kishan and asked him open the door. Jai Kishan replied from inside that he does not know any company commander and asked them to go away. Coy Commander Bhagwan Singh has supported the statement of G.C. Diwedi and he has further stated that on the information given

by G.C. Diwedi when he reached Dul Base camp line having received the information of misbehavior of constable Jai Kishan and went to the room of Jai Kishan for enquiry then Const. Jai Kishan told that he will not open the door. The Coy. Commander again asked to open the door, then Const. Jai Kishan replied in coherent voice that he does not recognize any Coy. Commander and asked them to go away CHM Lalji Ram also supported the statements of these two witnesses in his statement and mentioned in his statement that on 2-5-98 at 2115 hrs. Sub-inspector G.C. Diwedi accompanied with Const. Jagpal told him that Const. Jai Kishan was not present in his room and asked him to search for him and when he went in search of him, he found that Const. Jai Kishan was standing with one B.S.F. person, Lalji ram called him and in the meanwhile Sub-Inspector G.C. Diwedi also reached the spot and they told constable Jai Kishan that he should not visit such a bad area without information and in future he should not commit such a mistake. Later on he started taking meals in the control room. After some time Jai Kishan came there and asked where is Diwedi. Lalji Ram told that he is in his room. Then he went to his Diwedi's room and told him to do whatever he want to do. I have received many 34 and 35. I always keep ready Rs. 20,000/- to defend my case. If you want to wrestle with me, you are welcome, Sub-Inspector G.C. Diwedi conveyed this information to the Coy. Commander. Constable Pratap Singh has supported the statements of above witnesses in his statement and he has stated that he had accompanied Const. Jai Kishan for a cup of tea. A B.S.F. person belonging to a place near to his village then they went to see him. Then the B.S.F. men offered liquor to Jai Kishan, they stayed there for 1-1 1/2 hour, when he returned, he was being searched and Sub-Inspector G.C. Diwedi told them that this area is sensitive and you should not visit the area without information Constable Pratap Singh immediately asked for pardon but Const. Jai Kishan told him why he was asking for pardon from such person and Jai Kishan told G.C. Diwedi, what had could do against him. From the statements of all the above mentioned witnesses, it is proved that the first charge against const. Jai Kishan is correct and there is no room for any doubt."

So far as the second charge is concerned, it was held:-

"... Prosecution witness G.C. Diwedi stated in his statement that on 3-5-98 at 1830 hrs CHM Lalji Ram, told that Const. Jai Kishan took the permission to go to hospital but he has not returned so far then he entered this information at report No. 43 in Daily Diary at 1835 hrs on 3-5-98. Prosecution witness Head Const. Lalji Ram was also stated in his statement that on 3-5-98 at 1700 hrs. Const. Jai Kishan asked permission for going to hospital but instead of going to hospital he went to Kistwad and he received this information on wireless on the statements of the above mentioned witnesses, the second charge against Const. Jai Kishan stands proved without any doubt."

As regards the third charge, it was held:-

"8. In respect of III charge the Enquiry Officer recorded the statement of record keeper (Admin) Shri Prasad. The record keeper in his statement stated that

according to the service record to Const. Jai Kishan, Const. Jai Kishan has been punished 13 times for being found asleep on duty, neglect of duty, leaving duty place without permission, misbehavior, assault, use of abusive language, unauthorized leave and other indiscipline activities. In this manner, it is proved from service record that the force member is a habitual of being indiscipline and both the charges against him are Therefore correct and there is no room of any doubt."

12. Before the appellate authority, as noticed hereinbefore, the petitioner did not raise any question as regard any irregularity of holding the enquiry, but merely repeated his side of the story. Before the appellate authority, no question has been raised as regards absence of provision in the Army Act relating to absence from duties nor any contention has been raised that all the witnesses were not permitted to be examined.

13. This Court in exercise of its jurisdiction under Article 226 of the Constitution can interfere with an order of the Disciplinary Authority only in the event it is held that illegality, irrationality or procedural impropriety has been committed in the decision-making process.

As noticed hereinbefore, the principles of natural justice had been complied with in the enquiry proceedings and, thus, the same is not vitiated in law.

14. So far as the submission of the learned counsel appearing on behalf of the petitioner to the effect that under the Army Act absence for a few hours does not come within the purview of Section 92(a) of the Army Act is concerned, we are of the opinion that the provisions of another Act cannot be brought into service for the purpose of construing provisions of an other Act.

15. The matter might have been different if the petitioner would have been charged only for absence of a few hours at a peace station. The absence took place in a very sensitive area. The petitioner raised his defenses as regards his absence, but he could not prove the same before the Enquiry Officer. Furthermore, the petitioner, as noticed hereinbefore, had been charged with misbehavior with the senior officer under influence of liquor.

16. As regards the third charge, as noticed hereinbefore, the same had been issued only for the purpose of quantum of punishment. The procedure adopted by the respondents, in our opinion, is absolutely fair and the same is not vitiated in law. In a case of this nature, even doctrine of proportionality as regards quantum of punishment cannot be invoked.

17. In Ranjit Thakur Vs. Union of India (UOI) and Others, , the Apex Court held:-

"9. The proceedings do not indicate -- this was not disputed at the hearing -- that appellant was asked whether he objects to be tried by any officer, sitting at the court-martial. This, in our opinion, imparts a basic infirmity to the proceedings and militates against and detracts from the concept of a fair trial."

As regards the quantum of punishment, it was held that the punishment must be strikingly disproportionate so as to call for the justify interference.

Having regard to the charges leveled against the petitioner, we are of the opinion that the quantum of punishment cannot be said to be suffering from the vice of Wednesbury Unreasonableness.

18. In Union of India and Others Vs. R.K. Sharma, , it was held that the matter relating to quantum of punishment could not be interfered therewith by this Court.

19. The question as regard proportionality of punishment had been considered in great details in Om Kumar and Others Vs. Union of India, , wherein Jagannadha Rao, J, inter alias held:-

"69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

70. In this context, we shall only refer to these cases. In Ranjit Thakur Vs. Union of India (UOI) and Others, , this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi Vs. Union of India and others, , this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Union of India and another Vs. G. Ganayutham (Dead) by LR.,

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

20. For the reasons aforementioned, there is no merit in this writ petition, which is dismissed accordingly. However in the facts and circumstances of the case, there shall be no order as to costs.