

(2004) 03 DEL CK 0062
In the Delhi High Court
Case No : CW. 6143 of 2002

Ex. Cost. Chand Rup

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Citation : (2004) 110 DLT 294 : (2004) 73 DRJ 469

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Pradeep Dahiya, for the Appellant; Rajdipa Behura, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—The petitioner, a constable in the Central Industrial Security Force(CISF), while posted at CISF Unit, LPG(BP), Tikri Kalan, Delhi, proceeded on 20 days sanctioned EL from 25th of August, 2000 to 13th of September, 2000. He was to report for duty on 14th of September, 2000. He, however, failed to turn up and instead reported for duty on 15th of September, 2000.

2. On 19th of September, 2000, the petitioner was deployed for duty from 2100 hours to 0500 hours at Railway Gate, CISF Unit, LPG(BP), Tikri Kalan, Delhi. He was, however, found absent from duty. On 20th of September, 2000, when he was deployed for second shift duty from 1300 hours to 2100 hours at Watch Tower No.1 of the CISF Unit, LPG(BP), Tikri Kalan, Delhi, he went missing from duty. This was followed by his absence from the unit without leave from 21st of September, 2000 to 24th of September, 2000. He reported in the Unit on 25th of September, 2000. Yet another incidence of his absence from duty came to the notice when he was detailed for unit lines duties on 8th of October, 2000 and 9th of October, 2000 but was found missing. He reported for duty on 10th of October, 2000.

3. For his aforesaid acts of indiscipline and mis-conduct, a charge-memo dated

10/13.11.2000 was issued to the petitioner by respondent No.3. The summary of allegations of misconduct/indiscipline on which a departmental inquiry was proposed to be initiated read as under:-

"CHARGE -I

No.882293532 Const.Chandrup was granted earned leave of 20 days from 25.8.2000 to 13.9.2000 and he had to report for his duty in the unit on 14.9.2000 forenoon but the above force member remained absent from duty with any prior intimation or permission from the competent officer and present himself in the Unit Line on 15.9.2000. Such act on the part of an armed and discipline member of the force is a sign of serious indiscipline, misconduct and carelessness. Therefore it is a charge.

CHARGE -II

No.882293532 Const.Chandroop was posted at his duty on the Railway gate on 19.9.2000 from 2100 hrs. to 0500 hrs. But he remained absent from his duty. On 20.9.2000 he was posted for duty in the second shift from 1300 hrs to 2100 hrs. but he was found absent and also found absent from 21.9.2000 to 24.9.2000 in the Unit premises. Thereafter reported in the Unit Line on 25.9.2000. Such act for a discipline member of the force is a sign of serious carelessness and indiscipline. Therefore it is a charge.

CHARGE -III

No.882293532 Const.Chandroop was posted on duty in the Unit Line on 8.10.2000 and 9.10.2000 as Santri. He was found absent from his duty and report for duty on 10.10.2000. This act for a member of the force is Seriall indiscipline, misconduct and carelessness. There it is a charge.

CHARGE -IV

No.882293532 Const.Chandroop has got 3 major and 17 minor punishments during his 12 years service, which is serious indiscipline, misconduct on the part of a disciplined member of the force and declare himself unfit for service in the force. There it is a charge."

4. The petitioner submitted his statement of defense on 29th of November, 2000 denying the allegations contained in the charge-memo. This necessitated an inquiry into the allegations. On inquiry, the charges were held proved. A copy of inquiry report was supplied to the petitioner by the disciplinary authority(respondent No.3) and he was afforded an opportunity to make his representation along with documentary evidence, if any, which could not have been produced earlier in the course of inquiry. The petitioner submitted his representation on 28th of May, 2001. No document in support of his defense was, however, filed. The disciplinary authority, eventually, passed an order dated 4.9.2001 awarding punishment of removal from service and pursuant thereto, the petitioner was removed from service with effect from 10th of September,

2001.

5. Against the order awarding punishment of removal from service, the petitioner filed a statutory appeal on 27th of January, 2002, which was, however, rejected by the appellate authority(respondent No.2) on 1st of August, 2002. The petitioner has, eventually, approached this Court and seeks his reinstatement in service with full consequential benefits by quashing and setting aside the inquiry report dated 17.2.2001, the order dated 4.9.2001 inflicting punishment of removal from service, and the order dated 1.8.2002 passed by respondent No.2 dismissing his appeal.

6. Defending their impugned actions, the respondents in their counter-affidavit state that admittedly the petitioner was to report for duty at unit line on 14th of September, 2000 after availing of 20 days earned leave from 25th of August, 2000 to 13th of September, 2000, but he failed to turn up on that date and reported for duty on 15th of September, 2000 only. He overstayed his leave without any prior permission/intimation from/to the competent authority. He failed to produce any documentary evidence for consideration pertaining to the alleged incident of quarrel at his home and his illness, which incapacitated him from reporting for duty on 14th of September, 2000. He remained absent from his duties on 19th of September, 2000 and 20th of September, 2000 without leave and remained away from unit line from 21st of September, 2000 to 24th of September, 2000 without any prior permission of the competent authority. In regard to his alleged sickness from 19th of September, 2000 to 24th of September, 2000, neither any information was given nor any documentary evidence was submitted by the petitioner. It was only on his return to the unit on 25th of September, 2000 that he had submitted a medical prescription pertaining to his illness issued by the Medical Officer, General Hospital, Bahadurgarh(Jhajhar). Contrary to the claim of the petitioner that he remained present in the unit line during his sickness period from 19th of September, 2000 to 24th of September, 2000, referring to GD No.932 & 939 at 1500 hours & 2230 hours, the respondents maintain that he was not present in the unit line. In support, the mess diet register indicating that the petitioner had not taken any mess diet from the unit mess on any of the said dates is also referred to sustain the allegation of his absence from unit during the aforesaid period. In regard to petitioner's absence from his duties on 8th of October, 2000 and 9th of October, 2000, entries in the general diary made at S.No.147 & 155 respectively are cited as proof in that regard. The petitioner had failed to produce any documentary evidence pertaining to his illness on these dates. Though, as per the record, he was present in the unit line, but absented from duties without any permission in that regard. The CISF, it is pleaded, being an armed force, the kind of indiscipline which the petitioner was found indulging in time and again could not be excused and to maintain discipline in the force, removal from service was most appropriate punishment which had been inflicted on the petitioner keeping in view the seriousness of charges leveled against him. The respondents, accordingly, defending the impugned action against the petitioner, pleaded that the punishment awarded to the petitioner is not liable to

be interfered with.

7. The petitioner assails the findings of the inquiry officer holding him guilty under different heads/charges on the grounds that the same are perverse and based on no evidence. It is pleaded that the factum of his illness on different occasions as brought out by him in the course of inquiry, supported by medical certificates in that regard, was not accorded due consideration by the inquiry officer and he also omitted to take note of petitioner's presence in the unit lines during his sickness period from 19th of September, 2000 to 24th of September, 2000, which was evident from the mess diet register. According to the petitioner, he was not afforded proper opportunity to prepare for his defense as with the list of defense, he was not supplied with gist of statements which respective witnesses were to make in the course of inquiry. Terming the order dated 4.9.201 inflicting the punishment of removal from service and order dated 1.8.2002 dismissing his statutory appeal, passed by the disciplinary authority(respondent No.3) and the appellate authority(respondent No.2) respectively, as arbitrary and illegal for non application of mind and being based on extraneous considerations, the petitioner pleads for reversal thereof.

8. Admittedly, the petitioner had failed to turn up on 14th of September, 2000 after availing of sanctioned EL from 25th of August, 2000 to 13th of September, 2000 and instead reported for duty on 15th of September, 2000. The plea taken was that there was some quarrel at his home and also as he was ill, he could not report for duty on due date. He, however, failed to produce any medical certificate in regard to his illness. Further, he does not dispute that he was not present on duty on 19th & 20th of September, 2000. He, however, sought to explain his absence from duty on these dates by pleading illness. He claims to have been present in the unit line in a sick state and to support his plea in this regard, he referred to the mess diet register carrying entries in regard to his having taken mess diet. This is, however, a fact that he did not produce any medical prescription or certificate until 24th of September, 2000 showing that he was actually sick and it was only on 25th of September, 2000 that he produced a medical prescription from Medical Officer, General Hospital, Jhajhar. In spite of his presence in the unit line, as claimed by him, he omitted to bring his sickness to the notice of his superior. Similarly, for his absence from duty on 8/9th of October, 2000, he could not produce any medical certificate showing that he was really sick on these dates. In any case, his sickness is not shown to have been of a sort which could have incapacitated him to bring it to the notice of his Company Commander.

9. The disciplinary authority examined the findings of the inquiry officer with reference to the evidence in support thereof before accepting the inquiry report and passing the impugned order of removal of the petitioner from service. The appellate authority also went through the entire evidence produced before the inquiry officer keeping in view the defense set up by the petitioner and found no reason to interfere with the punishment of removal from service awarded by the

respondent No.3.

10. On findings of fact in a departmental inquiry, interference therewith is uncalled for unless the findings are based on no evidence, or wholly perverse and/or legally untenable.[see " Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others,]

11. Insufficiency of evidence is not a ground to interfere with the findings in an inquiry report and the scope of interference in this respect is quite limited. If there be some evidence to reasonably support the findings of inquiring authority, the court, in exercise of its writ jurisdiction, would not reverse the findings merely on the ground of insufficiency of evidence.[see R.S. Saini Vs. State of Punjab and Others,].

12. In the present case, apart from the inquiry officer, the evidence on record was examined by the disciplinary authority as well as the appellate authority at their respective level before finding the charges against the petitioner as proved. In view of such an exercise by them, re-appreciation of evidence on the part of this Court is unwarranted.[see Rae Bareilly Kshetriya Gramin Bank Vs. Bholu Nath Singh and other, , and " Commandant, TN Special Police, 9th Battalion & Another Vs. D.Paul" 1999 SCC 789.

13. On perusal of the evidence forming basis of the inquiry report, we find it difficult to accept the plea raised on behalf of the petitioner that the inquiry report is based on no evidence or that the findings holding the charges against the petitioner as proved being perverse or legally untenable. It is noticed that findings in regard to charges being held as proved were recorded on due consideration of the evidence produced on behalf of the department and also the defense evidence in the form of medical certificates. The appellate authority had, in its order, taken note of petitioner's plea in regard to his presence in the unit lines during his sickness period from 19th of September, 2000 to 24th of September, 2000 while observing that nothing prevented the petitioner from bringing the factum of his sickness during that period to the notice of the competent authority. Thus, it is futile to question the correctness of the findings holding the petitioner as guilty of the charges leveled against him.

14. In Bank of India and Another Vs. Degala Suryanarayana, , the Supreme Court laid down that strict rules of evidence are not applicable in departmental inquiry and the standard of proof being different, it is sufficient to establish the charge by evidence, albeit not by any conjecture or surmises, acting upon which reasonably and objectively, a reasonable man could uphold the charge.

15. The other argument that the petitioner was not afforded proper opportunity to prepare for his defense as the gist of statements of the witnesses, who were proposed to be examined in the course of inquiry, had not been supplied to him, is also not well founded. At no point of time, the petitioner made any request for supply of gist of statements of witnesses, who were to be examined in the course of inquiry to prove the charges. He rather kept on participating in the inquiry by

cross-examining the witnesses. Non-supply of documents, by itself, cannot suffice to hold the inquiry vitiated, and no interference with the inquiry report would be called for unless some prejudice is shown to have been occasioned in prosecuting one's defense. (see " Food Corporation of India Vs. Padma Kumar Bhuvan" 1999 SCC 620 and Syed Rahimuddin Vs. Director General, C.S.I.R. and Others, . In what way non-supply of gist of statements of witnesses, who were to be examined in the course of inquiry, had prejudiced the petitioner could not be brought out on behalf of the petitioner. In the circumstances, he cannot derive any advantage on this count.

16. Lastly, the plea that there was non-application of mind by the disciplinary authority as well as the appellate authority in awarding punishment of removal from service and dismissing his statutory appeal, a bare perusal of orders dated 4.9.2001 & 1.8.2002, passed by respondents 3 & 2 respectively, would suffice to brush aside such a plea. Both the said respondents, on their turn, had carefully gone through the available evidence as well as inquiry report and had passed reasoned orders.

17. The fact that the charge IV pertaining to previous punishment awarded to the petitioner on different occasions during the course of his past service was included in the article of charges is made a basis to advance an argument that having earlier been punished for such offences, a charge on that count vitiated the whole inquiry as the same tended to put the petitioner to a double jeopardy, and it was contended that by taking previous punishments, as contained in charge IV, into account, the disciplinary authority acted on extraneous considerations bearing no co-relation with the other charges of indiscipline or misconduct set out in the charge-sheet, in awarding the punishment of removal from service. Even if the plea of the petitioner to the said effect is accepted, the seriousness of charges on the other three counts, independent of charge IV, would appear to be good enough to sustain the punishment of removal from service as awarded to the petitioner by applying the principle of severability.

18. In Union Bank of India Vs. Vishwa Mohan, , the Supreme Court, dealing with a situation where in a departmental inquiry penalty was based on relevant as well as irrelevant considerations and the High Court held the delinquent officer as having been greatly prejudiced on account of non-supply of copy of the inquiry report and felt that the principle of severability could not be applied as charges were inextricably mixed up, by observing that the High Court was required to apply its judicial mind to form its opinion whether non-furnishing of the report would have made any difference to the result in the case and thereupon to pass an appropriate order, proceeded to reverse the High Court order setting aside the punishment of dismissal from service. Being a member of an armed force, the lapses noticed on the part of the petitioner were undoubtedly serious enough to warrant strict action on the part of the disciplinary authority.

19. On behalf of the petitioner, reliance was placed on a Supreme Court decision in Syed Zaheer Hussain Vs. Union of India (UOI) and Others, in support of plea

that the punishment of removal from service was disproportionate to the charges held proved against the petitioner and that the same was liable to be substituted by penalty of lesser magnitude. That was a case where penalty of dismissal from service was awarded for a one time unauthorised absence just for seven days and in the facts and circumstances of that case, the punishment of dismissal from service was substituted by 50% cut in back wages for suspension period observing that such punishment would involve a substantial monetary loss to the delinquent official and would be a sufficient corrective measure for him to remain careful in future. The delinquent official belonged to a civilian department working as Sorting Assistant in respondent's (Union of India) organisation.

20. The misconduct noticed on the part of the delinquent official in Zaheer Hussain's case is in no way comparable to the kind of charges for which the petitioner, a member of an armed force, has been held guilty,. Given the nature of charges of gross misconduct for which the petitioner was held guilty, the punishment of removal from service cannot be held disproportionate.

21. We, thus, in the ultimate analysis, find no reason to interfere in the matter and, consequently, dismiss the petition.

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