

(2011) 09 DEL CK 0261

In the Delhi High Court

Case No : Writ Petition (C) 6093 of 1998

Ex. CT. (GD) Ashok Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 15(1)

Central Reserve Police Force Act, 1949 — Section 11(1), 11(1)

Penal Code, 1860 (IPC) — Section 120, 420, 468, 471

Citation : (2011) 09 DEL CK 0261

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Sunil Gaur, J.—Petitioner a Constable (General Duty) in CRPF has been visited with a penalty of removal from service with effect from 10.2.1998, upon being found guilty of misconduct of entering into a money transaction with Tota Ram Thakur, a civilian from Village Mugla, District Chamba (HP) with a view to get a road permit of Chamba-Dharamshala mini bus to get himself engaged in a private trade/business without getting prior sanction of the Competent Authority.

2. Petitioner was departmentally tried u/s 11(1) of CRPF Act, 1979 on the following twin charges:

ARTICLE-I

That No. 861271313 Ct/GD Ashok Kumar of GC, CRPF, Pune (Talegaon) Pune committed an act of serious misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act 1949, in that he had entered into a money transaction with a civilian with a view to get a road permit of Chamba-Dharamshala, Mini bus to get himself engaged in a private trade/business without getting prior sanction of the competent authority. Thus, he has violated the provisions of Rule 15(1) of CCS (Conduct) Rules 1964.

ARTICLE-II

That No. 861271313 Ct/GD Ashok Kumar of GC, CRPF, Pune Talegaon (Pune) committed an act of serious misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949, in that he had written a letter dated 30/4/95 in his own handwriting using official letter pad CRP-46 to Shri Tota Ram Thakur a civilian of village/Mohalla Mugla, PO: Hardarpura-176318, District:Chamba (HP) affixing the official seal of Asstt. Commandant (Adm) GC, CRPF, Pune with an ulterior motive, posing himself as an Officer of the Force.

3. The plea of guilt of the Petitioner to the aforesaid charges is Annexure-3 to the writ petition. The substrata of the 2 charges against the Petitioner was based upon the documentary evidence in the shape of documents as noted in Annexure P-2, 30.4.1995 hereby accepted and marked as which are:

No. 1:

Office order No. P-VII-5/97-EC-2 dated 24.9.1997 issued by the ADIGP GC CRPF Talegaon Pune hereby accepted and marked as Appendix A.

No. 2:

Photocopy of the application of Mr. Tola Ramu Thakur here by accepted and marked as Appendix B.

No. 3:

Photocopy of sale and purchase deeds agreement signed by both parties here by accepted and marked as Appendix C.

No. 4:

Photocopy of the letter written by Const.Ashok Kumar to Mr. Tola Ram on 30.4.1995 hereby accepted and marked as Appendix D.

4. The unambiguous defence of the Petitioner to the charges as reflected in Annexure P-3 is as under:

To,

The Additional DIGP,

Group Centre, CRPF,

Talegaon--(Pune)

Sir,

My defence in respect of Articles I & II of your Memorandum No. P VIII-5/97-EC-II dated 2.9.1997 is under:

1. ARTICLE-I Sir, my father was retiring from CRPF on 30.6.1995 and he wanted to do some private work. Sh.Tota Ram Thakur wanted to sell his bus permit.

During investigations I had given him some advance money.

At the time of giving advance money the date of 17.4.1995 was fixed, but my father could not reach in time and so under compulsion I had to give Rs. 20,000/- on behalf of my father and had to sign the agreement. I did not want to sign the agreement but if I had not signed, my advance amount would have been forfeited.

I belong to a poor family and if I had not signed, loss would have been caused to the family and they would have landed in trouble.

Neither did I know about the Rules of the Force nor I had purchased bys for my business. All this happened due to my compulsion. So, sir it is most respectfully prayed that keeping in view my problems, I may be pardoned for my mistake which is neither wilful nor wanton.

2. ARTICLES-2 Sir, I was doing duty of storeman at Company Stores Headquarters. From there I wrote a letter about bus permit to Sh.Tota Ram on a paper of CRP 46. I did not even noticed that there was a stamp of Asst. Commandant and that it was struck out with a pen. I did all this ignorantly and at the end of the letter I had myself written my name, rank and address. If I had any intention of taking any advantage of the stamp, why would I have written my name and rank etc.

3. Sir, so it is most humbly requested that I may be pardoned for writing on C.R.P. 46 paper. further assure you that in future I will not do any mistake which will be against the Rules of the Force.

Applicant No. 86121313

Sh.Ashok Kumar

C.R.P.F. Pune-7

5. Vide order of 24.9.1997, Shri N.S. Dhankar, Assistant Comdt. was detailed as an Inquiry Officer to conduct a departmental inquiry on the afore-noted 2 charges and the Inquiry Officer had confronted the Petitioner with the documentary evidence (Annexure P-2) and the defence submitted by the Petitioner to the twin charges is of admission of his guilt as noticed herein-above.

6. The Inquiry Officer held the Petitioner guilty for entering into a money transaction by writing letter of 30.4.1995 in his own hand writing on a letter pad with official seal to a civilian and while acting upon the report of the Inquiry Officer, the Disciplinary Authority vide order of 10.2.1998 had imposed a penalty of removal from service w.e.f. 10.2.1998 upon the Petitioner which was challenged by him in appeal but without any success as the Appellate Authority had rejected Petitioner's appeal vide impugned order of 21.5.1998.

7. In the writ petition, usual grounds have been taken but at the hearing what was urged by the Petitioner's counsel was that the agreement entered into by

the Petitioner with the civilian though signed by the Petitioner was a sham transaction never meant to be acted upon, as the sum of Rs. 20,000/- referred to this agreement was never paid by the Petitioner to said civilian Tota Ram Thakur, who has not been produced as a witness in the inquiry resulting in grave injustice of the Petitioner.

8. The precise submission of Learned Counsel for the Petitioner put forth is that in the absence of recording of evidence of said civilian -Tota Ram Thakur, Petitioner was unable to elicit from Tota Ram Thakur that the agreement of 17.4.1995 was not meant to be acted upon and that there was no money transaction between them.

9. As per Petitioner's counsel, the impugned order suffers from a grave error as affidavit of 12.11.1998 of aforesaid Tota Ram Thakur evidencing that there was no transaction with the Petitioner takes the sting out of the charges levelled against the Petitioner, ultimately impacting the shockingly disproportionate penalty imposed upon the Petitioner as the carelessness or negligence of the Petitioner cannot possibly be cloaked with any sort of misconduct involving moral turpitude.

10. While relying upon the two decisions of the Apex Court in Roop Kumar Vs. Mohan Thedani, and R. Janakiraman Vs. State represented by Inspector of Police, CBI, SPE, Madras, , it was vehemently urged by Ms. Rekha Palli, Learned Counsel for the Petitioner that oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious, not intended to be acted upon and so, non-examination of the aforesaid civilian Tota Ram Thakur, has manifestly prejudiced the Petitioner as a result thereof the inquiry stands vitiated. What was urged is that had the civilian Tota Ram Thakur been examined during the inquiry, he could have been confronted with the affidavit of 12.11.1998, which infact, absolves the Petitioner of the charges framed.

11. On the quantum of punishment, reliance was placed upon the decisions in Rajendra V. Pai Vs. Alex Fernandes and Others, & State of Uttar Pradesh and Others Vs. Ram Daras Yadav, by Petitioner's counsel to urge that no doubt probity and high standards must be maintained in the Armed Forces, yet in the totality of facts and circumstances of the case, the proportionality of the punishment imposed has to be commensurate with the misconduct and not disproportionate as to prick the conscience of the Court.

12. Whereas, Learned Counsel for the Respondent asserted that the Petitioner had voluntarily pleaded guilty to the charges and now he cannot be heard to say that the said civilian Tota Ram Thakur ought to have been examined at the inquiry. Supporting the impugned order, Learned Counsel for the Respondent submits that the penalty imposed is commensurate with the offence committed and so the writ petition deserves outright rejection.

13. The parameters of the judicial review succinctly spelt out in a recent Division

Bench decision in W.P.(C) No. 79/1996, Sant Singh v. UOI and Ors., rendered on 2.5.2011, authored by one of us, namely; Pradeep Nandrajog J., needs no reiteration and it would suffice to note that judicial review jurisdiction is circumscribed and confined to correct errors of law or procedural law, if any, resulting in manifest miscarriage of justice or violation of principle of natural justice. It has to be kept in mind that judicial review is not akin to adjudication on merits by re-appreciating the evidence.

14. Being conscious of the fact that where a plea of guilt has been found to be voluntary one, there is not much to be urged on merits. However, it needs to be noted that the affidavit dated 12.11.1998 of the civilian Tota Ram sought to be relied upon is a document which was not in existence when the inquiry against the Petitioner had concluded. It is not the case of the Petitioner that he was denied the opportunity of leading any evidence relating the afore-noted documentary evidence relied upon against him and so, reliance placed by Petitioner's counsel upon decisions in Roop Kumar (Supra) & R. Janakiraman (Supra), is clearly misplaced. If the Petitioner had intended to lead any evidence pertaining to the documentary evidence relied upon against him, then he ought to have not pleaded guilty to the Charges framed. It is also not the case of the Petitioner that the plea of guilt put forth by him was not voluntary one. In fact, the defence put-forth by the Petitioner to the Charges framed against him is of unequivocally admitting his mistake and of being careless in not noticing that the official letter head used by him bore the stamp of Asst. Commandant.

15. After having heard both the sides and upon perusal of the record, we are of the considered view that on merits, there is no scope for interference with the impugned order. However, we find that on the proportionality of the penalty imposed, there is ample scope to intervene as the Appellate Authority in the impugned order of 21.5.1998 has taken into consideration the involvement of the Petitioner in a criminal case under Sections 420/468/471 and 120 of Indian Penal Code while upholding the penalty of removal from service. Since the stigma of pendency of the criminal case against the Petitioner is no longer there in view of his acquittal in the criminal case vide CrI. Revision No. 191-192/2002, decided on 29.3.2010, therefore, we find the penalty of removal from service imposed upon the Petitioner to be unduly harsh, as the Charge of Petitioner entering into a business transaction with a civilian without prior sanction of competent authority, gets diluted in view of the fact that in the plea of guilt as well as in the defence raised by the Petitioner to the Charge, it was specifically stated by him that since the time was running out, therefore, Petitioner had entered into the private trade transaction with a civilian on behalf of his father. Even to the second Charge of using official letter pad, having the seal of the Asst. Commandant, the defence put-forth by the Petitioner was of the said stamp of Asst. Commandant being scored out with a pen, with his name and designation mentioned therein and this defence has not been negated in the inquiry held, somewhat waters down the gravity of the nature of offence committed by the Petitioner.

16. Certainly, Petitioner has mis-conducted himself but the afore-noted nature of misconduct of the Petitioner is not of such a grave nature so as to invite penalty of removal from service, which appears to us quite disproportionate to the misconduct committed by the Petitioner. The Appellate Authority did take into consideration the previous conduct of the Petitioner but was influenced by the pendency of the criminal case in upholding the extreme penalty of removal from service. Now with the stigma of pendency of criminal case at the instance of his wife, being no longer there and the fact that the Petitioner had put in more than 11 years of service with 5 cash awards to his credit, we find that the penalty of removal from service imposed upon the Petitioner is unduly harsh and is required to be reconsidered by the Respondents and to be substituted with a lesser penalty.

17. Thus impugned order of 21.5.1998 of the Appellate Authority maintaining the verdict of Petitioner being guilty of the charges is sustained but to extent of upholding the penalty of dismissal from service is set aside with a direction to the Appellate Authority to hear the Petitioner on nature of the penalty to be imposed after affording an opportunity to the Petitioner to place on record certified copy of the order of acquittal passed in the criminal case. Needful shall be done within 12 weeks of the receipt of this order.

18. Writ petition stands disposed of with aforesaid directions.