

(2010) 01 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) No. 351 of 2010

EX. Ct. Rajender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 3 ILR Delhi 154 : (2010) 159 PLR 41

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Anjana Gosain and S. Fatima for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The present writ petition has been filed assailing the order dated 03.04.2006 passed by disciplinary authority finding the petitioner guilty of all five charges for which the disciplinary proceedings were conducted against him. The petitioner also assails the punishment of dismissal from service which was imposed on him by the same order. A challenge is also laid to the order dated 15.02.2001 dismissing the statutory appeal and the order dated 31.03.2009 dismissing the revision filed by the petitioner.

2. The petitioner has claimed that he was enrolled in the CISF as a Constable on 23.06.1987. It is not disputed that he was detailed for internal security duty at Coy No. 23 under Vice President of India Bhawan on 22/23 September, 1999 between 2100 hours to 0100 hours at post No. 10 of the said Bhawan and was armed with a self loading rifle. One H.C. Dharambir Singh was detailed for patrolling duty. The allegations against the petitioner are that during patrol of the area when H.C. Dharambir Singh reached post No. 10, the petitioner abused and threatened to kill him and cocked his weapon for this purpose. H.C. Dharambir Singh is alleged to have sent a message to the Company Commander and the Shift In-Charge of this conduct. The petitioner is stated to have been found in a delinquent and aggressive mood. When the Company Commander Damodar

Singh ordered replacement of his duty and also directed the petitioner to deposit the weapon in question in the armoury at the premises at the Vice-President's House, he failed to obey the order and questioned the Company Commander as to the reason for the same.

3. The above conduct of the petitioner was treated seriously and the respondents issued a charge sheet dated 03.04.2000 to the petitioner. The respondents proposed to hold disciplinary proceedings against the petitioner and a charge memo dated 22.10.1999 was issued to the petitioner leveling the following charges against him:

CHARGE-I

That No. 872160174 Ct Rajinder Singh of No 23 Coy, was deployed for doing the internal security duty at Vice President Bhawan New Delhi. The above said force member was posted on 22/23-9-99 at 2100 hrs till 0100 hrs at Gate Post No 10 with the Arms i.e. SLR. When No. 801350014 HC (GD) Dharambir Singh who was also at patrolling duty there from 2100 hrs to 0100 hrs, the Ct Rajinder Singh abused the HC Dharambir Singh and he shall fire on him and threaten to kill him. Thus the Ct Rajinder Singh committed a misconduct and showed in disciplined which is an offence.

CHARGE-II

That No. 872160174 Ct Rajinder/Singh of No 23 Coy, was deployed for doing the internal security duty at Vice President Bhawan New Delhi. The above said force member was posted on 22/23-9-99 at 2100 hrs till 0100 hrs at Gate Post No 10 with the Arms i.e. SLR. On the same day at about 2230 hrs the misconduct was committed with HC Dharambir Singh and negligence in duty done by the Ct Rajinder Singh and taking it very serious, the Coy Commandar Inspector Damodar Singh ordered the removal of Ct Rajinder Singh from the post straightway and for depositing the SLR in the Kot situated at Vice President House but the above said constable refused to do so and after a long time the SLR was handed over to SI Puran Singh who deposited the same to the KOT. Thus Ct Rajinder Singh disobeyed the valid order of Coy Commandar which is serious misconduct and in disciplined act.

CHARGE-III

That No. 872160174 Ct Rajinder Singh of No 23 Coy, was deployed for doing the internal security duty at Vice President Bhawan New Delhi. The above said force member was posted on 22/23-9-99 at 2100 hrs till 0100 hrs at Gate Post No 10 with the Arms i.e. SLR. On the same day because of misconduct committed by the Ct Rajinder Singh with HC Dharambir Singh and negligence in his duties, the Coy Commandar Damodar Singh removed Ct Rajinder Singh from duty and HC K.C. Sharma No. 724330304 was deployed and Ct Rajinder was asked to report to Coy. After reaching at Coy office, his SLR was got deposited to KOT after struggle. When the Ct was ordered to stay at Coy office for conducting his medical

examination than Ct Rajinder Singh gave hit to Inspector Damodar Singh at his face and he got injury at below of his left eye. Thus Ct Rajinder Singh committed an act of misconduct and is disciplined in that he attacked his superior with the intention to injure him. This is the charge.

CHARGE-IV

That No. 872160174 Ct Rajinder Singh of No 23 Coy, was deployed for doing the internal security duty at Vice President Bhawan New Delhi. The above said force member was posted on 22/23-9-99 at 2100 hrs at Gate Post No. 10 with the Arms i.e. SLR. During the duty period Ct Rajinder Singh was found intoxicated. The Ct was intoxicated while deployed for the duties of security of VIP and a question may arise for the security of the VIP. Thus it is serious misconduct and is disciplined and negligence to his duty which is an offence.

CHARGE-V

That the above Ct Rajinder Singh No. 872160174 (Sus) during his 12 years of short service he has been punished for misconduct and negligence in his duties for three times for minor penalty but there is no improvement in his behaviour and discipline and thus showed serious misconduct had the same as under:-

1. Awarded a minor penalty for OSL from 12-5-95 to 2-6-95 for 22 days without permission from the competent authority i.e. with holding the increment for one year without commulative effect.
2. Awarded a minor penalty of forfeiture of three days pay and allowances for OSL from 24-8-08 to 21-1-98 without permission from the competent authority.
3. Awarded one day pay fine for the misconduct with the superior officer and for abusing him.
4. The petitioner submitted a reply dated 03.11.2009 denying all the charges. On consideration of the reply, the respondents proceeded under Rule 34 of the Central Industrial Security Force Rules, 1969, directing holding of a departmental proceeding in respect of the said charges. One Inspector Bhagwan Singh of the CISF was appointed as Inquiry Officer by an order passed on 03.11.1999.
5. It is not disputed that the petitioner appeared before the Inquiry Officer on receipt of notice for appearance and objected to the appointment of the said enquiry officer. In view of the objection taken by the petitioner, the respondents acceded to his request and appointed one Inspector Satyavir Singh as Inquiry Officer. In the proceedings held by this Inquiry Officer on 23.01.2000 the petitioner sought change of this Inquiry Officer as well. The representation made by the petitioner was considered and rejected by an order dated 01.02.2000.
6. During the disciplinary proceedings, the respondents have examined four witnesses in support of the aforesaid charges. The petitioner has also led evidence and has examined one witness in his defence. The record of the case laid before us shows that the petitioner has primarily taken a plea of casteism

against him in respect of the proceedings which were initiated against him and nothing else.

7. On a consideration of the matter, the Inquiry Officer has submitted a report dated 10.03.2000 finding the petitioner guilty of all charges. The petitioner was duly furnished copy of the inquiry report by a communication dated 14.03.2000 and filed his response thereto on 30.03.2000. The report of the Inquiry Officer as well as the petitioner's response thereto along with the record of the inquiry was placed before the Commandant of CISF, 2nd Battalion, Saket. It is not disputed that he was the disciplinary authority so far as the petitioner is concerned. The detailed consideration by the Commandant finds recorded in the order dated 03.04.2000. The disciplinary authority agreed with the findings of the Inquiry Officer. Our attention has been drawn to the order passed by the disciplinary authority which reflects a careful consideration of the evidence of the four prosecution witnesses as well as the defence of the petitioner, whereafter the disciplinary authority concluded that the petitioner had consumed liquor on duty, which fact stood confirmed not only from the oral testimony of the prosecution witnesses, but also by the report of the medical officer at the Vice President Bhawan, who examined him on the night of 22/23 September, 1999, immediately after the incident. The witnesses had confirmed that the petitioner was smelling of liquor. In addition thereto, the threats which the petitioner is alleged to have given to the head constable were also found established as well as his failure to obey the command of the Company Commander, who required the petitioner to deposit his arm. The disciplinary authority has noted that the petitioner was a member of the para military forces and it was his bounden duty as such member to obey all lawful commands given to him.

8. So far as the punishment was concerned, the disciplinary authority has considered the past conduct of the petitioner. It has been observed that having regard to the fact that the petitioner was posted on guard duty at the residence of the Vice-President, such conduct as alleged against the petitioner was totally unacceptable and that the matter deserves to be treated with utmost seriousness. In addition thereto, the seriousness of the matter was aggravated by the misbehavior and misconduct of the petitioner against the superior officers by way of assaulting him and failing to obey the command.

The assault of the superior stood established by his medical report. In this background the disciplinary authority exercised its power conferred in Rule 34 of the CISF Rules, 1965 awarding punishment of dismissal from service of the petitioner.

9. Aggrieved thereby the petitioner filed a statutory appeal. This appeal was duly considered by the Deputy Inspector General, North Zone, the appellate authority and again dismissed by a detailed order dated 15.02.2001.

Before us an objection has been taken that Inspector Damodar Singh, who was involved in the incident was also drunk and no action had been taken against

him. From the order of the appellate authority we find that Inspector Damodar Singh, who was also involved in the incident was also proceeded against for drunkenness and failure to supervise his subordinates properly. Departmental action, thus, also stands against him and for this reason there is no substance in the plea set up before us on behalf of the petitioner. The order of the appellate authority is well-reasoned and again deals with the evidence which was led before the Inquiry Officer at sufficient length. It reflects application of mind. The appellate authority affirmed the findings and sentence, which was imposed on the petitioner by the disciplinary authority.

10. It is noteworthy that the petitioner assailed the orders passed against him by way of an earlier writ petition bearing No. 1773/2002 in this court. When the writ petition came up for final hearing on 19.03.2008, an objection was taken that the petitioner has not availed the alternate statutory remedy by way of a revision petition under the CISF Act. The petitioner was, accordingly, permitted to withdraw the writ petition with liberty file the revision within one month of the passing of the order by this court.

11. We find that the petitioner took a period of almost 9 months before he preferred the revision petition. Yet by an order dated 31.03.2009, the Inspector General of the CISF has condoned the delay in filing the revision petition and considered the revision petition on merits. By this order, the revision petition has been dismissed. Perusal of the order shows the detailed consideration of the grounds which have been urged on behalf of the petitioner. It has been found that the Inquiry was considered in accordance with the procedure laid down under Rule 34 of the CISF Rules, 1969, after giving full opportunity to the petitioner to defend the case. The order discusses the evidence which has been led before the Inquiry Officer and has noted that the acts of indiscipline of the petitioner, which have been mentioned in Charge-V, are relevant for the purposes of establishing his conduct while in service. It has been observed that the petitioner failed to rectify the conduct despite three prior opportunities to mend his ways.

12. It has been urged at some length by Mr. Dalal, learned Counsel representing the petitioner, that there was no medical evidence to establish the fact that the petitioner was intoxicated. It needs no elaboration, that it is not open to this Court while exercising powers of judicial review of the orders passed against the petitioner in and arising out of the disciplinary proceedings, to go into the minute questions of fact. It is not the petitioner's case that there was no evidence at all against the petitioner. It is trite that it is not open to this Court to scrutinize the sufficiency of the evidence which was led by the prosecution. So far as the allegations against the petitioner are concerned, the case of the prosecution in the inquiry was that he had consumed liquor on duty. For establishing such an allegation it is irrelevant as to whether the petitioner had reached the stage of intoxication as has been contended. The authorities have noted that smell of liquor was found in the petitioner's breath. This fact, coupled with the petitioner's

s conduct has led them to arrive at the above findings.

13. It has further been contended by Mr. Dalal that the petitioner was denied a fair inquiry for the reason that he was not permitted a defence assistance of his choice. In this behalf we find that the Inquiry Officer has recorded in the proceedings held on 09.02.2000 that the petitioner appeared and participated in the inquiry. He did not raise any objection and refused to take the help of any defence assistant. We also find from a perusal of the grounds of appeal and the revision which were filed by the petitioner, that no ground in this behalf had been raised or pressed on his behalf. The above narration also shows that the petitioner has actively participated in the inquiry proceedings and has also examined one witness in his defence. In the light of the above facts, certainly this objection taken for the first time in the present writ proceedings cannot be permitted to be raised in order to challenge the proceedings of the Inquiry Officer. The petitioner points out no prejudice suffered by him in defending the enquiry proceedings, on account of alleged denial of defence assistance of his choice either in the reply/representation against the inquiry proceedings, or in his statutory appeal or revision. There is no material at all placed before us which could even remotely suggest that the petitioner sought such assistance. The Inquiry Officer had offered an opportunity to the petitioner to avail the services of a Defence Assistant, and the petitioner had declined the same. For this reason, we find no merit in this objection of the petitioner, which is hereby rejected.

14. An objection is taken that the disciplinary proceedings were not warranted and that the respondents were required to conduct a trial against the petitioner u/s 18 of the CISF Act, 1968. It is trite that the same conduct and acts of commission or omission may give rise not only to prosecution under the criminal law, but also to disciplinary proceedings, which could be initiated by the authority. In the instant case, instead of proceeding against the petitioner for his actions in accordance with Section 18 of the Act, the respondents have decided merely to initiate disciplinary action against the petitioner. No illegality can be found in the action of the respondents for the same.

15. No procedural infirmity or illegality has been pointed out.

The petitioner also does not urge infraction of any rules of procedure or substantive law. The petitioner also does not contend violation of any of the principles of natural justice. As noticed above, the orders passed by the disciplinary/appellate and revisional authority are reasoned and reflect application of mind. No ground of judicial review thereof is made out.

This writ petition is wholly devoid of any merit and is, accordingly, dismissed.