

(2012) 05 DEL CK 0116

In the Delhi High Court

Case No : Writ Petition (C) No. 3169 of 2012 and CM No's. 6785-6786 of 2012

Ex. Ct. Rajinder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Border Security Force Act, 1968 — Section 117, 20(a), 26, 33(a)
Constitution of India, 1950 — Article 226

Citation : (2012) 5 ILR Delhi 542

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Mishra and Mr. Ajay Tiwari, for the Appellant; Ravinder Agarwal, Amit Yadav, Advocates and Sh. Bhupender Sharma, DC/BSF, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM No. 6786/2012

Allowed subject to all just exceptions.

The application is disposed of.

CM No. 6785/2012

This is an application by the petitioner/applicant seeking quashing/set aside the order dated 15th May, 2000 and 18th January, 2010 by which the respondents had dismissed the petitioner from service. The petitioner/applicant has contended that he is a poor person and did not have sufficient means even for the survival of his family which led to delay in filing the writ petition.

For the reasons stated in the application, it is allowed and the delay in filing the writ petition is condoned and the writ petition is to be considered on merit.

The application is disposed of.

1. The petitioner has challenged the order dated 15th May, 2000 passed by the Disciplinary Authority, dismissing the petitioner from the service w.e.f. 15th May, 2000 and the order dated 18th January, 2010 passed by the Appellate Authority dismissing the appeal of the petitioner. The petitioner has also sought directions to the respondents to reinstate him with full back wages. Brief relevant facts are that the petitioner was recruited in the Border Security Force (BSF) in the year 1996 as a Constable (GD). After completion of his training, he was posted at 22 BN BSF, Srinagar (Jammu & Kashmir). On 15th March, 2000 a complaint was made by HC Datta Ram that the petitioner had abused him with filthy language under the influence of intoxication on the same day. In his complaint dated 15th March, 2000, HC Datta Ram had also stipulated that the petitioner was on duty of General Branch after which he along with Constable Vijay Kumar had come to the Headquarter to take food and after bringing their food they had reached the guarding of DIG at 18.45 PM and told his Guard Commander that he had some necessary work. Thereafter, the Guard Commandant had found the petitioner to be drunk at 0700 hours and abusing the Commander by name, and saying that he will become a militant and will shoot everyone. He had also cocked his Rifle and damaged his weapon and ammunition. Around 2110 hours the petitioner was taken by the Constable Vijay Kumar, Const R.P. Singh, Constable Naresh Kumar, and Constable Sube Singh in unconscious state and had reported the incident to the GD line officer SI Surender Jha and had thereafter left him at BN Hospital.

2. On account of the misbehaviour on the part of the petitioner three charges were framed against him and he was tried by the Summary Security Force Court (SSFC) on 15th May, 2000 under the BSF Act, i.e. u/s 20 (a) for assaulting his superior Officer, u/s 26 for intoxication and u/s 33(a) for willfully damaging the property of the Government. Charges which were framed against the petitioner categorically stated that while deployed on guard duty on 15th May, 2000 at about 2030 hours at the office of Additional DIG (G), Ftr HQ BSF, Srinagar he pointed his Rifle towards the HC Datta Ram of the same unit and said "Main Tuje Goli Mar Doonga" (I will shoot you); that he was found in the state of intoxication on the same day and time and that he had willfully damaged three magazines of 7.62 mm SLR and four rounds of 7.62 mm ammunition by hitting the same against the wall and thus, damaged the property of the Govt.

3. During the SSFC proceedings, the petitioner pleaded guilty of all the three charges, and therefore, the petitioner was sentenced "to be dismissed from service" by order dated 15th May, 2000. The findings and sentence were promulgated to the petitioner on the same day and the trial proceedings were counter signed by the DIG SHQ BSF ISD II Srinagar on 27th May, 2000.

4. The petitioner did not challenge his dismissal by the SSFC for 9 years and thereafter, he filed a petition dated 11th August, 2009 against his dismissal addressed to the DIG, BSF Ftr HQ Tripura. Under the relevant rules i.e. Section

117 of the BSF Act read with 167 & 168 of the BSF Rules, the petitioner was to submit an appeal against the order of his dismissal within three months from the date of promulgation of sentence excluding the time taken to obtain the copy of the proceedings. The petitioner in his appeal raised the grounds, inter-alia, that on 15th March, 2000 at about 1900 hours the Guard Commander HC Datta Ram had used unparliamentary language against him and had accused him of consuming liquor and at his instance he was taken to the unit MI Room and that on the recommendation of the adjutant a false report was prepared stipulating that the petitioner had consumed excessive liquor and thereafter, disciplinary action was initiated against him at the instance of HC Datta Ram; the allegation against him of breaking the rifle and rounds is false as HC Datta Ram himself had stated that he had taken away the rifle from the petitioner; the petitioner had also pointed out the variations in the statement of Constable Vijay Kumar and HC Datta Ram; that the statement of ASI/PH OP Kutty reveals that he was beaten by HC Datta Ram and others and, therefore, in order to save themselves he had been falsely implicated in the matter and that the Commandant without giving opportunity of a personal hearing had ordered the SSFC and thereafter, dismissed him from service without giving him any opportunity to prefer an appeal and that he had not even been paid arrears due to him at the time of his dismissal. The Appellate Authority duly noted all the grounds pleaded by the petitioner and observed that during the SSFC trial Subedar Rameshwar was appointed as the "friend of accused" to assist the petitioner and on arraignment, the petitioner had pleaded "guilty" to all the three charges and, therefore, the Court complied with the provisions of BSF Rule 142(2). Opportunity was also given to the petitioner for making statements in reference to the charge or for the mitigation of the punishment and call any witness, as to his character to which the petitioner had declined to do the same. The Appellate Authority also noted that before awarding the punishment the SSFC had also taken into consideration his past record, according to which he had received two awards but he was also punished summarily four times during his service of 9 years and two months and consequently, he was awarded the punishment of dismissal from service.

5. The Appellate Authority took into consideration the evidence before the SSFC and held that there was sufficient evidence in the ROE to support the charges against the petitioner. The Appellate Authority also noted that if the petitioner's plea that he was falsely implicated in the matter is to be believed, then he should have stated so during the record of evidence or before the SSFC instead of pleading guilty to the said charges. The Appellate Authority also noted that the allegations leveled by the petitioner are not substantiated by the evidence on record.

6. Regarding the allegations of the petitioner that at the time of dismissal he was not paid the arrears, the Appellate Authority noted that the arrears of pay and allowances including for the period 1st May, 2000 to 15th May, 2000 were paid by DVR No.20 dated 1st July, 2000 and DVR No.63 dated 17th July, 2000 and

thus, repelled all the pleas and contentions raised by the petitioner and dismissed his appeal against the order of his dismissal dated 15th May, 2000.

7. Aggrieved by the order of dismissal dated 15th May, 2000 and dismissal of his appeal by order dated 18th January, 2010, the petitioner has preferred the above noted writ petition, inter-alia, on the grounds that the order of dismissal is biased and perverse; that he was not given a fair opportunity to produce evidence in his defence; that the actions of the respondents are contrary to their existing rules and regulation; that the respondents failed to appreciate the real fact about the allegation leveled by HC Datta Ram; that the trial was not conducted in a judicious manner; and that the order of dismissal has been passed in a whimsical manner.

8. Along with the writ petition, the petitioner has also filed the copies of the statements recorded during the proceedings. Perusal of the statement of the witnesses had revealed that a medical report stipulating the level of alcohol in the petitioner's body was also produced during the proceedings. However, the copy of the medical record produced during the proceedings was not produced by the petitioner and, therefore, the learned counsel for the petitioner had taken time to produce the copy of the medical papers on 23rd May, 2012 pursuant to which the petitioner has produced the copy of the medical report dated 15th March, 2000 which clearly shows that the concerned medical personnel who had examined the petitioner on 15th March, 2000 had categorically stated that the petitioner was badly smelling of alcohol. The witness, HC Datta Ram, PW-1 who had appeared during the proceedings had also categorically stated that on 15th March, 2000 when the petitioner had come back in the room he was smelling very badly of liquor. When it was enquired from him, from where he had consumed the liquor, he did not answer the same and rather started abusing HC Datta Ram and took his rifle and cocked it towards the said HC Datta Ram and said "Main Tuje Goli Mar Doonga" (I will shoot you) and thereafter, he damaged his rifle, magazines and ammunition. After which the rifle was taken from the petitioner and he was taken to the MI Room of the unit. The statement of the HC Datta Ram is also corroborated by HC Ram Prakash, PW-2 who was however, not cross-examined by the petitioner even though he was given the opportunity. The charges against the petitioner were also established from the statement of the Constable Vijay Kumar, PW-3 who too was not cross-examined by the petitioner even though opportunity was given to him. Constable Surender Jha, PW-4 had also categorically stated that the petitioner had stated that he would become militant and he will shoot other persons. The said witness was however, cross-examined by the petitioner and it was put to him as to when the petitioner had stated that he would become a militant and will kill all of them. In answer to the question put to the said witness in the cross-examination, the witness had replied that the petitioner had stated so in the unit MI Room when he had become conscious. However, even to the said witness it was not suggested on behalf of the petitioner that the witnesses were deposing falsely or that the petitioner had been falsely implicated in the matter.

9. Perusal of the statement of Sh. O.P. Kutty also corroborates the charges made against the petitioner and the said witness too was not even cross-examined by the petitioner, even though he was given the opportunity.

10. Thereafter, the petitioner was given the opportunity to make a statement in support of his allegation, however, the petitioner declined to make any statement or even give any statement in writing, despite the opportunity having been given to him, nor did he examine any of the witnesses in support of his plea, that he was falsely implicated in the matter.

11. It cannot be disputed that the grounds on which decision of Summary Security Force Court can be interfered by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist having which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the Court has to find out if the respondents have left out a relevant factors or taken into account irrelevant factors. It was held in *M.V. Bijlani Vs. Union of India (UOI) and Others*, . that the Judicial review is of decision making process and not of re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

12. In Judicial review of the decision of Summary Security Force Court this Court will not take over the functions of the Summary Security Force Court. The writ petition is not an appeal against the findings of Summary Security Force Court nor this court is exercising or assuming the role of the Appellate Authority. It cannot interfere with the findings of the fact arrived at by the Summary Court

except in the case of mala-fides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the accused to defend himself or if it is a case where there has been non application of mind on the part of the Summary Court or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance for the scope of Judicial Review can be placed on State of U.P. and Others Vs. Raj Kishore Yadav and Another, V. Ramana Vs. A.P.S.R.T.C. and Others, ; R.S. Saini Vs. State of Punjab and Others, ; Kuldeep Singh Vs The Commissioner of Police, JT 1998 (8) SC 603; B.C. Chaturvedi Vs. Union of India and others, Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, Government of Tamil Nadu and another Vs. A. Rajapandian, Union of India (UOI) and Others Vs. Upendra Singh,

13. In B.C. Chaturvedi Vs. Union of India and others, Supreme Court at page 759 has held as under:-

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

14. Learned counsel for the petitioner has contended that a fair trial was not conducted and that all the concerned persons have conspired to falsely implicate the petitioner. However, the learned counsel for the petitioner has not been able to substantiate any of his contentions.

15. This has not been disputed by the learned counsel for the petitioner that the petitioner had pleaded guilty before the SSFC and that Rules 142 and 143 of the BSF Rules had been complied with by the respondents. From the perusal of the record of evidence, it is apparent that there is sufficient evidence which inculcates the guilt of the petitioner. The learned counsel for the petitioner has also not been able to make out any plea or ground on the basis of which this Court may infer that there has not been an application of mind on the part of the Disciplinary Authority or the Appellate Authority. No illegality, irrationally or any procedural impropriety has been pointed out in the facts and circumstances, nor can it be held that the finding of the respondents is so outrageous so as to be in utter defiance of logic or that the power has been exercised by the respondents on the basis of alleged facts which do not exist or which are patently erroneous. The learned counsel for the petitioner has failed to give any satisfactory explanation that if the petitioner was indeed falsely implicated then why this plea was not put to any of the witnesses who were examined. The plea of the learned counsel for the petitioner that the petitioner was not allowed to cross-examine is also negated by the fact that the petitioner did cross-examine some of the witnesses and declined to cross-examine the other witnesses. A friend of the accused was also appointed and no allegation was made against that person about his unsuitability. No cogent explanation has also been given that if the petitioner was indeed falsely implicated then why he did not give any statement in the ROE and SSFC stating that he had not done any of the thing which were alleged against him and that the medical personnel had falsely given the report against him that he had badly smelling of liquor. The petitioner has also not denied the earlier punishments awarded to him. None of the grounds and conditions have been made out by the petitioner which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. There are no ground to justify any interference with the orders of the respondents dated 15th May, 2000 and 18th January, 2010 dismissing the petitioner. The writ petition is, without any merit, and it is, therefore, dismissed.