

(2011) 05 DEL CK 0108

In the Delhi High Court

Case No : Writ Petition (C) No. 1782 of 1998

Ex. H.C. Jatan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

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

Citation : (2011) 05 DEL CK 0108

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : D.K. Sharma, for the Appellant; Ankur Chibbar, for the Respondent

Judgement

Pradeep Nandrajog. J.

1. The Petitioner, a Head Constable with Central Reserve Police Force attached to the 71st Bn., was found to be a person of a high degree of teaching skills and thus was deputed to Assam Police as an instructor for training recruits and NCO's in handling SLR and other sophisticated Arms who were to join service under Assam Police.

2. He was repatriated by the authorities at the training centre of Assam Police to the 71st Bn. CRPF upon receipt of a complaint by the authorities there that on 1.12.1994 after consuming alcohol the Petitioner created a nuisance in the barracks thereby affecting the morale and discipline of the trainees.

3. The Commandant of 71st Bn. issued a Memorandum of Charge dated 18.1.1995 to the Petitioner listing 2 articles of charge as under:

ARTICLE-I

That the said No. 800570203 Head Constable Jatan Singh of F/71 Bn. CRPF while functioning as a member of the Force and working as an Instructor on attachment to 15 Assam Police Battalion (IR) Jamugurihat, Sonitpur (Assam) for imparting training to Recruits as well as NCO's of 4 AP Bn. in handling SLR and

other sophisticated arms, he committed misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 in that on 1.2.94 at about 11 p.m. after having consumed liquor was found in heavily drunken state creating nuisance and unable to control himself in NCO's barrack. He was produced before the Second-in-Command of 15 AP Bn. by his unit personnel. Later he was sent for medical examination, the Medical Officer of 12 AP Bn., opined in his report that No. 800570203 HC Jatan Singh consumed alcohol and was unable to take care of himself at the time of Medical examination. Thus he committed an offence u/s 11(1) of CRPF Act 1949 as a member of the Force.

ARTICLE-II

That the said No. 800570203 HC Jatan Singh of F/71 Bn., CRPF while functioning instructor in 15 AP Bn., found guilty of remissness in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 in that he failed to discharge his duties after having consumed liquor and was unable to control himself and created nuisance in the NCO's barrack affected morale and discipline of the trainees resulting his premature return to the unit by the Comdt. 15 AP (IR) Bn., Jamugurihat (Assam). Thus No. 800570203 HC Jatan Singh failed to maintain absolute devotion to duty and committed an offence u/s 11(1) of CRPF Act, 1949 as a member of the Force.

4. 2-IC, S.L. Sharma was detailed as the Inquiry Officer vide order dated 18.1.1995 who commenced with the inquiry on 5.2.1995. Upon the Petitioner pleading not guilty to the charge, the inquiry officer proceeded to record evidence of the prosecution and examined 5 prosecution witnesses.

5. SI B.P. Gurung P.W. 1, deposed that along with 6 other personnel of CRPF the Petitioner was deputed with him as instructors to the 15th Bn. Assam Police for imparting training to the recruits and the NCO's in handling SLRs and other sophisticated arms. On 1.12.1994 at about 22:14 hours H.C. Trilochan Singh and Naik Sakat Ali Khan came to his barrack and complained about the Petitioner creating a nuisance under the influence of alcohol and disturbing the sleep of other officers in the barrack; by shouting. Upon their request he accompanied them to the NCO's barracks where the Petitioner was found fast asleep. He awoke the Petitioner and enquired from him whether he had consumed alcohol and was making noise; disturbing others, to which the Petitioner replied that he had consumed some alcohol but was not creating any nuisance. That the JA M.S. Rawat took Petitioner to the S.M. Ganesh Talukdar who reported the matter to the 2-IC of 15th Bn. Assam Police and upon the directions of 2-IC the Petitioner was sent along with Naik Sakat Ali for a medical examination.

6. On being questioned by the inquiry officer he stated that it seemed like the Petitioner had consumed alcohol but his behaviour was normal in front of him and that he did not see the Petitioner create a nuisance as Petitioner was sleeping when he arrived at the barracks and that other than H.C. Trilochan Singh and N.K. Sakat Ali no other personnel had complained about Petitioner's

behaviour.

7. H.C. Trilochan Singh P.W. 2 deposed that on 1.12.1994 at about 22:00 hours on his way to the barrack he met N.K. Sakat Ali Khan who asked him to accompany him. That he was taken to the SCO's barrack where N.K. Sakat Ali Khan discussed something with SI Bhim Prasad Gurung and AB-SI Mahabir Singh and asked them to accompany them to the NCOs. barrack. On reaching the NCO's barracks they awoke the Petitioner and took him to the SM of 15th Bn. That N.K. Sakat Ali Khan also accompanied them and that apart from this he knows nothing about the incident.

8. On being questioned by the Inquiry Officer he stated that he had not seen the Petitioner under the influence of alcohol and that no questions were asked from the Petitioner at the barrack by anybody in his presence. On being cross-examined he stated that he had never seen the Petitioner quarrel with anyone.

9. H.C. Bachi Singh P.W. 3 deposed that the Petitioner was in the habit of consuming country liquor and creating nuisance under its influence and if objected, he used to abuse the officers. That despite several warnings Petitioner did not mend his ways. On 1.12.1994 once again the Petitioner consumed alcohol and under its influence abused N.K. Sakat Ali and H.C. Trilochan Singh. The said officers complained against the Petitioner to the JA and the SM who came to the NCO's barrack and saw the Petitioner abuse other officers under the influence of alcohol. 2-IC was also informed about the incident on whose directions the Petitioner was taken for the medical examination.

10. On being cross-examined he stated that he had not seen the Petitioner consume alcohol but it appeared to him from Petitioner's conduct that he was drunk. That he had never seen the Petitioner man-handle anyone.

11. Naik Sokat Ali Khan P.W. 4 deposed that he along with 10 other instructors including the Petitioner were accommodated in the barrack which was earlier occupied by recruits. That on 1.12.1994 at about 21:30 hours under the influence of country liquor the Petitioner created nuisance in the barrack, disturbing the sleep of other officers. That he along with H.C. Trilokchan Singh went to report the matter to SI B.P. Gurung who along with a few other SIs, accompanied them back to the barrack where they found the Petitioner in a drunken condition. The matter was also reported to the 2-IC upon whose directions he took the Petitioner to the doctor for medical examination.

12. On being questioned by the inquiry officer he stated that on an earlier occasion when the Petitioner was drunk the SM had come to their barrack and told the Petitioner to talk softly and not make so much noise. On being cross-examined he stated that the only time he had seen Petitioner consume liquor was on 1.12.1994 and that he had never seen the Petitioner quarrel with anyone rather his behaviour was in general good with the trainees.

13. H.C. Pyare Lal P.W. 5 deposed that on 1.12.1994 at about 22:00 hours he

was awoken from his sleep by the noise created by Petitioner. He tried to persuade Petitioner to calm down upon which Petitioner told him that he was not worth to be an instructor and that he should learn from the Petitioner how to train. N.K. Sokat Ali also told the Petitioner to not create such a nuisance as he was disturbing their sleep, but when the Petitioner did not stop, N.K. Sakat Ali and H.C. Trilochan Singh reported the matter to SI B.P. Gurung. That SI B.P. Gurung came to the barrack along with 4 other SIs and awoke the Petitioner and asked him if he was drunk, which he denied. The Petitioner was then sent for a medical examination.

14. On being questioned by the inquiry officer he stated that the Petitioner had never before 1.12.1994 consumed liquor or created a nuisance and that on the date of the incident it appeared that the Petitioner had consumed liquor but he did not quarrel or abuse anybody.

15. After prosecution evidence was led the Petitioner made a statement in defence admitting that he had consumed rum but stated that it was a very little quantity (3 ounces) which he had sipped and gave a reason of it being cold and thus justifying his consuming a peg of rum. The Petitioner denied having created any nuisance.

16. We note that though P.W. 1, P.W. 3, P.W. 4 and P.W. 5 have deposed that the Petitioner was sent for medical examination under the directions of the 2-IC but we find nobody deposing as to what happened when the Petitioner was medically examined and in the record we find, marked as Ex.3 a true copy of a letter dated 1.12.1994 stated to be signed by one Dilip Gayan Medical and Health Officer 12th A.P. Battalion and addressed to the Commandant 15th A.P. Battalion recording that having examined the Petitioner at his residence in the midnight, with reference to the gait mode of talking he could opine that the Petitioner was heavily drunk; smell of country liquor was detected in his breathe and Petitioner's pupils were dilated. We note that the said letter, though marked as Ex.3 has not been proved through the testimony of any witness.

17. Holding the charge proved against the Petitioner, the inquiry officer submitted his report dated 16.6.1985 to the Disciplinary Authority holding that the charges were proved and after granting Petitioner an opportunity to file a response to the report of the inquiry officer, vide order dated 8.9.1995 the Disciplinary Authority imposed a penalty of dismissal from service upon the Petitioner. Aggrieved by the said penalty order the Petitioner filed an appeal on 10.10.1995 which was rejected vide order dated 18.12.1996.

18. Challenging the orders dated 8.9.1995 and 18.12.1996 the Petitioner has filed the present writ petition.

19. Notwithstanding various grounds urged in the pleadings, during arguments, the main contentions urged by learned Counsel for the Petitioner were that it is a case of no evidence as nothing incriminatory emerges from the testimony of the witnesses and secondly if it is to be found that the indictment stood, the penalty

imposed upon the Petitioner is harsh and disproportionate to the gravity of the offence particularly keeping in view the unblemished service record of the Petitioner.

20. It needs to be highlighted that Article I of the charge pertains to the Petitioner consuming alcohol and being heavily drunk and creating nuisance in the NCO barrack and Article II of the charge is that the nuisance affected the morale and discipline of the trainees. We note that from the testimonies of SI B.P. Gurung P.W. 1, H.C. Bachi Singh P.W. 3, Naik Sokat Ali Khan P.W. 4 and H.C. Pyare Lal P.W. 5 it clearly emerges that the Petitioner had consumed alcohol which has also been admitted by the Petitioner in his defence statement where he stated that on 1.12.1994 he had consumed rum, but attempted to justify it by saying that he had consumed very little quantity of rum only because he was feeling cold and we reject the justification or the stand taken that Petitioner had consumed just a peg of rum as no such suggestion was given to the prosecution witnesses and in any case their testimony certainly brings out that the Petitioner was bragging about his skills as an instructor as also that the Petitioner was looking down upon the others and for which we only highlight that whereas P.W. 1 to P.W. 4 have not stated what were the utterances of the Petitioner, P.W. 5 has thrown light on the utterances which were creating a nuisance, being the Petitioner telling others that they were not worthy to be instructors and should learn from the Petitioner how to train. It is thus apparent that the nuisance created by the Petitioner was of bragging aloud about himself and since it was 11:00 PM, a time when people usually sleep, it was apparent that the persons around were adversely affected by the nuisance created by the Petitioner. But, we do not find any evidence of any trainee being around and thus the question of the morale and/or the discipline of the trainees being adversely affecting does not arise. Thus, the ocular evidence only brings out one element of the charge of the Petitioner being drunk and creating a nuisance. That the Petitioner was heavily drunk has not been established and for which we are compelled to return a finding that Ex.3 being an unproved document cannot be relied upon.

21. We note that the jurisdictional error committed by the inquiry officer and the disciplinary authority is that of holding the charge proved fully against the Petitioner, ignoring that the ingredient of Article II of the charge that the nuisance created by the Petitioner adversely affected the morale and discipline of the trainee was not established. We may highlight that P.W. 4 has categorically stated that no recruits were inside the barrack where, after drinking, the Petitioner created a nuisance by bragging aloud about himself and denigrating the instructing skills of other instructors.

22. Thus, it is a case of no evidence pertaining to a limb of Article II of the charge and thus we reject the first contention urged that it is a case of no evidence at all. We hold that the evidence establishes Petitioner having consumed alcohol and under the influence of alcohol having created nuisance in the NCO barrack. We hold that there is no evidence that as a result of the

nuisance created by the Petitioner the morale and discipline of the trainees was adversely affected.

23. Since we do not know as to what influenced the Disciplinary Authority to levy the extreme penalty of dismissal from service, whether the aggravating factor taken was the morale and discipline of the trainees being adversely affected or whether the aggravating factor taken was of disturbing the sleep of fellow instructors, we are constrained to quash the penalty of dismissal from service inflicted upon the Petitioner and thus we quash the order dated 8.9.1995 as also the order dated 18.12.1996 and we remit the matter before the Disciplinary Authority to decide afresh on the issue of penalty to be levied and would hope and expect that at the remanded stage the Disciplinary Authority would take into account that the instant misdemeanour is the only one committed by the Petitioner and that the evidence establishes Petitioner being drunk without there being any evidence of Petitioner being heavily drunk (as laid in the charge) and of creating a nuisance by bragging about his skills as an instructor and denigrating his fellow instructors and when he did so no recruit was around and thus nobody's morale or discipline got adversely affected. The period post dismissal from service till fresh penalty order would be passed would require to be accounted for as per FR 54 and/or FR 54-A and for which we direct the competent authority i.e. the Disciplinary Authority to pass a supplementary order.

24. Needful would be done within a period of 8 weeks of receipt of certified copy of the decision.

25. No costs.