
(2007) 08 DEL CK 0214

In the Delhi High Court

Case No : Writ Petition (C) 6926 of 1999

Ex. H.C. Rajender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11(1), 9
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 14

Citation : (2008) 1 ILR Delhi 434 : (2008) 2 SLJ 35

Hon'ble Judges : T.S. Thakur, J; S.N. Aggarwal, J

Bench : Division Bench

Advocate : Manoj Sharma, for the Appellant; Shishir Singh, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner has assailed an order dated 5th November, 1998 passed by the Commandant No 71, Bn. CRPF, dismissing the petitioner from service on proof of two charges of misconduct framed against him. An Appellate Order passed by the Deputy Inspector General of Police, Delhi Range, CRPF, R. K. Puram, New Delhi and a revisional order passed by the Director General, HQ, CRPF, New Delhi upholding the dismissal have also been assailed.

2. The petitioner was enrolled in the CRPF as a Constable on 1st January, 1975. Having served in the Force for more than 23 years, he was, on 30th November, 1998, given a charge-sheet under Rule 27 of the CRPF Rules read with Section 11(1) of the CRPF Act, containing two articles of charges against him. The first charge contained in the charge-sheet alleged the commission of misconduct by the petitioner in that he was, while on duty in Coy quarter guard, found absent without the prior permission of the competent authority. The second charge alleged that while he was detailed as Guard Commander of the Coy Quarter guard, he consumed liquor and was found intoxicated. The articles of charges,

may be extracted verbatim:

ARTICLE I That the said No. 750530231 HC Rajender Singh (Under Suspension) while functioning as an HC in F/71, Bn. CRPF Salakati, Kokrakhar (Assam) committed an offence of Misconduct in his capacity as member of the force u/s 11(1) of CRPF Act, 1949 in that while he was detailed to perform duties in Coy Quarter Guard on 17/1/98 from 1700 hrs to 18/1/98 at 1700 hrs was found absent from the duty place i.e. Coy Q/Guard at about 1935 hrs on 17/1/98 without any knowledge/prior permission of competent Authority. ARTICLE II In that while functioning in the aforesaid office and during the aforesaid period the said No. 750530231 HC Rajender Singh committed an offence of disobedience of Order in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 in that while he was detailed as Guard Commander on the detailed to perform Coy Quarter Guard duty, he consumed alcohol and was found under intoxication when this firing incident took place in the F/71 Coy

3. A departmental inquiry into the above was conducted by the Inquiry Officer, who held both the charges proved. Those findings were accepted by the Disciplinary Authority, who was of the view that the petitioner was not a suitable person to be retained in a disciplined Force like CRPF as his retention would affect the overall discipline of the Unit. The Disciplinary Authority, accordingly, directed dismissal of the petitioner from service with immediate effect. Aggrieved, the petitioner preferred an appeal before the Deputy Inspector General of Police, who dismissed the same by order dated 3rd March, 1999, holding that the inquiry conducted against the petitioner was in accordance with the Rules and the instructions on the subject and that he had been given a reasonable opportunity to defend himself in the same. He further held that keeping in view the nature of the misconduct, dismissal of the petitioner from service was perfectly justified. A Revision Petition filed by the petitioner before the Deputy Inspector General of Police also proved abortive and was dismissed by an order dated 10th August, 1999. The present Writ Petition assails the said orders as already noticed earlier.

4. Appearing for the petitioner, Mr. Manoj Sharma argued that while the first charge against the petitioner constituted a more heinous offence within the meaning of Section 9(g) of the CRPF Act, 1949, the second charge was a less heinous offence in terms of Section 10(a) of the said Act. He submitted that inasmuch as the punishment of dismissal imposed upon the petitioner denied him the benefit of pension, even when he had rendered an unblemished service for over 23 years, the same was disproportionate to the gravity of the offences alleged against him. He contended that the charge of being intoxicated on duty was not even otherwise proved by any reliable evidence. In support, he placed reliance upon the observations made by the Appellate Authority to the effect that the MI room of the petitioner's unit did not have proper facilities to determine the extent of intoxication in which the petitioner was allegedly found. He submitted that the petitioner had already sought voluntary retirement from

service, which request had been granted by the Competent Authority on 11th January, 1998, the date of the alleged incident. Denial of pensionary benefits in such circumstances, when the petitioner's request for going home on discharge stood accepted was, according to the learned Counsel, wholly unjustified, harsh and disproportionate to the gravity of the offences alleged against him. Reliance was placed by learned Counsel upon the decision of the Supreme Court in *State of Punjab v. Mohinder Singh* 2005 (12) SCC 182 in support of the submission that the order of dismissal could be set aside and the respondents directed to substitute the punishment imposed by them by an order of compulsory retirement. That was also, according to the learned Counsel, a case where the delinquent employee was dismissed from service on account of charges of absence from duty, but the punishment awarded to him was converted to compulsory retirement, keeping in view the fact that he had already served for nearly 23 years in the Punjab Police.

5. We have given our careful consideration to the submissions made at the Bar and perused the record. The quantum of punishment to be awarded to a delinquent employee is a matter that rests primarily with the Disciplinary Authority. A Writ Court may not interfere with the punishment imposed by the Disciplinary Authority or an authority higher to it if the Court finds that the punishment awarded suits the offender and the offence. The Court would not, however, hesitate to step in if it finds that the punishment is so disproportionate, excessive or harsh as to constitute evidence of bias or patent arbitrariness on the part of the Authority making the order. The Supreme Court has in this regard evolved what has come to be known as the "Doctrine of Proportionality of punishment". A long line of decisions that have touched this aspect permit interference with the punishment imposed by the Disciplinary Authority in cases where the same is found to be so disproportionate as to shock the conscience of the Court. We may refer in this regard to some of the decisions to bring out this aspect more articulately.

6. In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, their Lordships of the Supreme Court held that the penalty imposed on a delinquent employee must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct is violative of Article 14 of the Constitution. That position was reiterated by the Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, where the Court emphasized that all powers have a legal limit and that while the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Disciplinary Authority the sentence has to be such as to suit the offence and the offender. The Court relied upon the decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All ER 935 while holding that "Doctrine of Proportionality" as a part of judicial review was recognized in the Administrative law. Applying the said Doctrine, the Court held that if in a given case the quantum of punishment appears to be an outrageous defiance of logic, then the sentence would not be immune from correction. The following passage of the

decision succinctly sums up the legal position:

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

7. To the same effect, are the decisions in *Union of India (UOI) and Another Vs. K.G. Soni, , The Commissioner of Police and Others Vs. Syed Hussain, and Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, .*

8. The decision *Mahinder Singh's* case (supra) relied upon by the petitioner is a reiteration of the very same principle. *Mahinder Singh*, the petitioner in the said case, had been dismissed for remaining absent from duty for 5 months without sanctioned leave or prior intimation. That was considered by the Court to be reprehensible conduct on the part of any member of the disciplined force. Even so, since the petitioner had put in more than 23 years of service, the Court directed the authorities to consider his request for converting the order of dismissal into an order of compulsory retirement, if a representation to that effect was made. The Court observed: "Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal into an order of compulsory retirement. Impugned orders are set aside. The authorities however shall be at liberty to pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement.

9. In the instant case also, the petitioner has been dismissed from service on account of absence from duty, no matter the absence was for a few hours and not for 5 months, as was the case in *Mahinder Singh's* case. Intoxication, while on duty, was the only other charge for which the petitioner has been found guilty. But the charge stands on a shaky ground with the finding recorded by the Appellate Authority that the MI room in which the petitioner was taken for examination, did not have the necessary facilities to determine the extent of his intoxication. Suffice it to say that the petitioner's absence, no matter for a few hours, and the aberration of being found intoxicated while on duty, may render him an undesirable person for retention in the Force as opined by the Disciplinary

Authority and the Authorities above him. The object of removing him from the Force to prevent indiscipline spreading among other ranks could, however, be achieved by sending the petitioner home on compulsory retirement instead of dismissal. That is so, particularly when the petitioner had served the Force for nearly 23 years and was otherwise entitled to seek premature discharge with all retiral benefits. Although, according to the petitioner such a request stood made before the incident in question which had, according to him, been allowed also yet there is nothing on record to establish that any such discharge had been sanctioned by the Competent Authority. The fact, however, remained that the petitioner had served for a long period and earned a valuable right to receive pension and other benefits for the rest of his life, which the petitioner would forfeit in case the punishment was, by way of dismissal. The Disciplinary, Appellate or Revisional Authorities do not appear to have kept in mind these aspects while directing dismissal of the petitioner. Dismissal from service of a person, who has not yet earned pension, may not be so harsh as is dismissal of one, who has already earned such a right. What makes the punishment unduly disproportionate and harsh is the forfeiture of rights which the delinquent has acquired by reason of his long service. Cutting short his tenure in the service may be one facet of the order of dismissal but more severe than that is the denial to him and his family sustenance for the rest of their lives. We are, Therefore, of the considered opinion that the punishment by way of dismissal from service was, in the instant case, totally disproportionate to the gravity of the offence committed by the petitioner.

10. The next issue then is whether we ought to modify the punishment suitably or remand the matter back to the competent authority for doing the needful. The normal rule in such a situation is remission back to the competent authority to pass a suitable order on the subject. Although, a Writ Court is, within its powers to pass an effective order to cut short avoidable delay and procrastination in settlement of the case yet that power is sparingly exercised. We see no compelling reason in the present case why we should depart from the usual course of remanding the matter back to the competent authority for passing an appropriate order. Having regard to the facts and the circumstances of the case, we are also of the view that instead of Disciplinary Authority or the Appellate Authority, it would be more appropriate if the matter is remitted back to the Director General of CRPF, HQ, New Delhi to pass an appropriate order for passing a fresh order reducing the punishment or dismissal from service to such lesser punishment as may be considered fit including compulsory retirement.

11. We, accordingly, allow this petition, quash the order passed by the Revisional Authority and remand the matter back to the Director General, CRPF HQ, New Delhi to pass an appropriate order suitably modifying the punishment to any other lesser punishment deemed fit and proper in the circumstances of the case. The needful shall be done by the Director General, CRPF expeditiously but not later than three months from the date, a copy of this order is received by him. Depending upon the order the Director General shall pass, the petitioner shall be

entitled to the monetary benefits flowing as a consequence of the same which shall be worked out and paid to the petitioner within six months from the date, the Director General passes the order.

12. No Costs.