

(2006) 02 DEL CK 0018

In the Delhi High Court

Case No : Writ Petition (C) 3129 of 1999

Ex. Head Const. Dharambir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

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

Central Reserve Police Force Rules, 1955 — Rule 28

Constitution of India, 1950 — Article 226

Citation : (2006) 02 DEL CK 0018

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : N.S. Bhatnagar, for the Appellant; Manoj Ohri, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule was issued on the writ petition on 21st May, 1999. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The brief facts of this case are that on 29th April, 1982 the petitioner was enrolled as a Constable in G.C. II Ajmer and after undergoing a training of 9 months he was posted in the 3rd Battalion where he served for about 10 years. Thereafter the petitioner was posted in 38th Battalion CRPF at Mehrauli, GH Jharoda Kalan and in August, 1998, the petitioner was posted in E47 Battalion at Tripura. On 10th November, 1998 the petitioner was placed under suspension by the respondent No. 3 and a departmental enquiry was ordered against him on the ground that the petitioner beat another Constable Shri Kailash Chand Dhyani while on patrolling duty and tried to fire upon the said constable with his rifle. On 30th December, 1998 the Enquiry Officer hold the petitioner guilty of the charge. On 15th February, 1999 the findings of the Enquiry Officer were confirmed by Shri C.M. Bakshi and the petitioner was awarded the punishment of dismissal from service. On 12th March, 1999 the petitioner preferred a statutory appeal to

the respondent No. 2 against the order of punishment. However, the appeal has not been decided by the respondent No. 2. It is the findings of the Enquiry Officer dated 30th December, 1998 and order of dismissal of service dated 15th February, 1999 which has been challenged by the petitioner in this writ petition.

3. Even though this writ petition only challenges the departmental enquiry without challenging the appellate order, in the interest of justice we permitted the petitioner to raise the challenge to the appellate order in this Court. The petitioner was charged with the following offences:-

ARTICLE-I

That the said No. 821320127 HC/GD Dharamvir Singh of E/47 Bn, CRPF, while functioning as HC/GD in E/47 Bn, CRPF, during Oct'98, committed misconduct in his capacity as a member of the Force u/s 11(1) of CRPF, Act 1949 in that he beat and tried to fire upon No. 941194138 Ct Kailash Chand Dhyani of E/47 Bn, with his rifle (Auto Fall) while Butt No. 42, Body No. 30503 while on patrolling duty at the campus of out post E/47 Bn, CRPF, Chamanu, on 29/10/98 from 0200 hrs to 0400 hrs.

4. The statement of imputation of misconduct in support of the article of charge framed against the petitioner reads as follows:-

That the said No. 821320127 HC/GD Dharamvir Singh of E/47 while on patrolling duty at campus of out post E/47 at Chamanu on 29/10/98 w.e.f. 0200 hrs to 0400. At about 0215 hrs he entered the lines switched on the light and went near the bed of No. 941194138 Ct Kailash Chand Dhyani of E/47, beat him & cocked his rifle to fire upon him (with his rifle) but was not successful due to presence of mind of No. 961190154 Ct Harender Kumar (Sentry of morcha No. -1) who shouted and called No. 690371149 SI Surender Kumar Ramawat (Platoon Commander) for help of Ct Kailash Chand Dhyani who fought with HC Dharamvir Singh and saved his life. Platoon Commander SI Surender Kumar Ramawat ran to the lines and snatched the loaded rifle from said HC.

5. Consequent to the charge an enquiry was held against the petitioner and the enquiry report indicted the petitioner. The disciplinary authority upheld the inquiry report and passed the order dated 15th February, 1999 terminating the petitioner's services. The petitioner has challenged the aforesaid order by preferring an statutory appeal dated 12th March, 1999 under Rule 28 of CRPF Rules, 1955 to the DIG, CRPF who by the order dated 23rd July, 1999 dismissed the petitioner's appeal dated 12th March, 1999 to which dismissal we have permitted the challenge in the present proceedings.

6. The petitioner had threatened Shri Kailash Chand Dhyani who in his deposition corroborated the aforesaid charge that the petitioner pointed out a rifle against his chest when he was sleeping. It has also been deposed that there was one round found in the chamber of his rifle. Apart from the testimony of said Kailash Chand Dhyani there is one witness, Constable Narender Kumar who has also

deposed about the sound of cocking of rifle. Sub Inspector S.K. Ramawat has also deposed about his intervention between Kailash Chand Dhyani and snatching of the rifle from the petitioner. The petitioner's version as noted by the disciplinary authority that he did not cock the rifle but was quarreling with Kailash Chand Dhyani and he fell down and his rifle struck on the ground was found unbelievable by the disciplinary authority. Relying on the testimony of the above witnesses the petitioner's services were terminated.

7. The appellate authority found that there was no substance in the petitioner's plea that Shri Kailash Chand Dhyani under the influence of liquor used abusive language against his seniors in the Pl. Post in the presence of the appellant/petitioner herein and the petitioner tackled the situation as there was nothing to substantiate the plea of consumption of the liquor by said Shri Kailash Chand Dhyani. The appellate authority also noted that there was nothing to substantiate the petitioner's plea that it was Kailash Chand Dhyani who abused him and a consequent scuffle leading to the petitioner's charge took place. In any case the appellate authority has also noted that even if Kailash Chand Dhyani abused the petitioner while sitting on his cot, it was his duty, being a senior NCO of the Pl. Post to report the matter to his senior officer who was present in the post. The appellate authority has also found that the punishment imposed upon the petitioner was not disproportionate taking into account the past record of the petitioner which has already led to his earlier punishment. There is no averment in the writ petition that the petitioner had a clean past record.

8. In this view of the matter, we have been unable to persuade ourselves to take a view different from that of the appellate authority. Consequently no interference is called for under Article 226 of the Constitution. The writ petition is dismissed and stands disposed of with no order as to costs.