
(2015) 08 GAU CK 0036
In the Gauhati High Court
Case No : WP(C) No. 5399 of 2008

Gopal Ch. Kalita

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 4 GLT 59

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : M. Dev, R. Mazumdar and P. Deb, for the Appellant; D.C. Borah, Central Government Counsel, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. R. Mazumdar, the learned counsel for the petitioner. The respondents are represented by Mr. D.C. Borah, the learned Central Govt. Counsel (CGC). The petitioner is a Constable in the Central Industrial Security Force (CISF) and at the relevant time, his Unit was deployed with the ONGC, Nazira. He was detailed for shift duty at Cable PTL at the DSAB Rig from 1700--2100 Hrs. on 17.12.2005 and from 0500--0900 Hrs on 18.12.2005. Soon after his 2nd shift duty was over at 9 A.M., the theft of 30 meter length power cable was detected from the patrolling area and the lock in the lube oil store was also found broken for an attempted theft. Consequently a disciplinary proceeding was drawn up on 30.12.2005 (Annexure-1) under Rule 36 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as "the CISF Rules"). The constable was charged with gross misconduct, indiscipline, negligence and dereliction of duty under the following imputation:--

"That No. : 901405311 Constable G.C. Kalita of Sivasagar Sector, CISF Unit ONGC Nazira was detailed for duty at Cable PTL of DSAB Rig with Arms and ammunitions from 1700 to 2100 hrs on 17.12.05 and from 0500 hrs to 0900 hrs on 18.12.05. During his tenure of duty a theft place wherein 30 meters of power cable was stolen by miscreants/criminal from DSAB Rig and an attempt had also been made on the lube oil store by breaking the lock. A reply to this effect has

been received from Shri A.K. Dhabaria, DIC, Rig-E-2000-9 and AGD entry to this effect has been made vide GD No. :242 dated 18.12.05. Subsequently a report has also been made vide GD No. :618 dated 18.12.05 at 1715 hrs by Coy. Commander Sivasagar Sector. An incident report to this effect has also been sent by Sector Commander to the DIG, CISF Unit ONGC Nazira vide letter No. :CISF/ONGC(N)/SBS/35/2005/2623 dated 26.12.05. The above act on the part of 901405311 Constable G.C. Kalita amounts to gross misconduct, indiscipline, negligence and dereliction of duty. Hence the charge."

2. In his reply furnished on 9.1.2006 (Annexure-2), the constable denied the charges and stated that the theft had not taken place during his shift duty. He further stated that the cables were kept under cover and therefore they could have been stolen only at night and not during the 2nd shift duty of the constable from 0500 Hrs onwards on 18.12.2005. As regards the first shift duty until 9 RM. on 17.12.2005, since the OK report was given by the Post Commander, the possibility of the theft in the 1st shift duty was wholly ruled out by the delinquent.

3. Dissatisfied with the explanation, an enquiry was ordered and notice was given to the delinquent on 21.1.2006 by the Inquiry Officer to attend the enquiry and apply for defence assistance with the consent of the nominated persons. In his response of 30.1.2006 (page 34), the constable informed the Inquiry Officer that he was unable to secure any defence assistance from his own Unit but since Head Constable G Venkatachalam of the CISF Unit NLC Neyveli has agreed to act as the defence counsel, the Inquiry Officer was requested to ensure the presence of the named defence assistant in the enquiry. However as the suggested Head Constable was posted at Kerala, the request for the assistance of the Head Constable G. Venkatachalam was rejected by the Inquiry Officer through his communication dated 8.2.2006 and thus the petitioner was forced to undertake a self defence exercise in the enquiry.

4. Initially the enquiry was conducted by Inspector Nagen Baglary but after he was transferred, Inspector S. Vasistha was appointed as the Inquiry Officer on 4.3.2006 and he concluded the proceeding.

5. As the charge was denied by the delinquent, 5 witnesses were pressed into service to prove the charge while one CISF Inspector was examined as a Court Witness. No defence witness or exhibit was adduced by the charged constable but he presented a defence statement before the Inquiry Officer.

6. The witnesses proved the duty hours of the delinquent constable and evidence was also given by the constable G. Murmu (P.W. 2), who was detailed for patrolling duty from 1300--1700 Hrs., just before the petitioner's shift. The constable S. Kalita (P.W. 3), who was on two shift duty firstly from 1100---0100 Hrs. and in the 2nd shift from 0900 Hrs., after conclusion of the 2nd shift of the charged constable also presented his evidence.

7. In his defence, the delinquent mentioned that soon after his 2nd shift duty, the theft of cable was discovered by the ONGC staff at about 0930 Hrs., but the

constable denied that the theft had taken place during his duty hours. He further stated that when he took over patrolling duty at 0500 Hrs. from constable G Murmu, he gave an OK report as at that point of time, the cable theft was not detected.

8. After evaluating the evidence, the Inquiry Officer noted that the theft was detected first at 0915 Hrs. during constable S. Kalita (P.W. 3) duty shift from 0900--1300 Hrs. However the Inquiry Officer specifically observed that the disputed issue is whether the theft took place in the intervening night of 17/18.12.2005 or it took place between 0500-- 0900 Hrs. on 18.12.2005 -- when the charged constable was on his second shift duty.

9. The evidence of the charged constable who gave the OK report at 0515 Hrs. was then analyzed and concluded that the cable was not stolen upto 0500 Hrs. and thus inference was drawn that Only thereafter during the duty hours of the charged constable, the theft had taken place. Consequently in his report dated 7.4.2006 (Annexure-8), the Inquiry Officer opined that the theft could materialize on account of the failure of the charged constable to effectively discharge his duty during 0500--0900 Hrs. on 18.12.2005 and accordingly the charge was found to have been proved against the delinquent.

10. The report of the Inquiry Officer was considered by the CISF Senior Commandant who observed that the charge was established on the basis of the departmental inquiry and accordingly by invoking the powers under Rule 32(1) read with Rule 34(v) of the CISF Rules, reduction of pay by two stages for a period of two years with stoppage of increment during the period of reduction, was ordered against the delinquent on 5.5.2006 (Annexure-10). The resultant Appeal filed by the constable was rejected by the Appellate Authority on 20.1.2007 (Annexure-12).

11.1. Assailing the legality of the disciplinary proceeding, Mr. R. Mazumdar, the learned counsel submits that merely because the theft was discovered soon after the shift duty of the charged constable, should not have been made the basis for inferring that the incident took place while the charged constable was on duty. He contends that conclusion was reached by the Inquiry Officer on surmise and conjecture by overlooking the possibility of the cable being stolen, during the earlier patrolling hours of other constables.

11.2. The petitioner submits that the cables were kept covered under a shed and therefore there is a distinct possibility of late detection of the theft. Therefore just because an OK report was given by the constable when his shift started, that OK report should not have been the basis for the inference that the cables were stolen during the duty hours of the charged constable.

11.3. The fairness of the inquiry proceeding is questioned by the petitioner by projecting that assistance of the suggested Head Constable was denied through the letter dated 8.2.2006 but the Inquiry Officer never arranged for alternate defence assistance for the delinquent.

12.1. On the other hand, Mr. D.C. Borah, the learned CGC submits that when the charged constable reported OK after he took over patrolling duty at 0500 Hrs. and the theft was discovered soon after the duty shift of the petitioner, it is logical to conclude that the incident took place during 0500--0900 Hrs., when the delinquent was on shift duty.

12.2. Referring to Rule 36(8) of the CISF Rules, Mr. Bora submits that assistance of a colleague posted at the place of inquiry is only permitted and three options are to be given by the charged constable but since the chosen Head Constable G Venkatachalam was posted at Kerala, the Inquiry Officer rightly rejected the request made for the suggested Head Constable.

13. The law requires the disciplinary authority to prove the charge on the basis of preponderance of probability and it is quite evident in this case that casual inference was drawn for concluding that cables were stolen during the duty shift of the charged constable. The basis for the conclusion was the OK report given by the petitioner when he started his patrolling duty at 0500 Hrs. But while drawing such conclusion, the possibility of bona fide non-detection of the theft of the covered cable was never taken into account by the Inquiry Officer. In fact the ONGC staff discovered that 30 Mts. cable was stolen at about 0915 Hrs. but none could say that the incident occurred during 0500--0900 Hrs. on 18.12.2006. Thus no evidence was available to rule out that the loss remained undetected during earlier patrolling shifts and the possibility of innocent non-detection of the theft by the delinquent when he started his duty shift, was overlooked both by the Inquiry Officer and by the disciplinary authority.

14. The duty hours of the petitioner was from 0500--0900 Hrs. but the missing cable escaped his notice and that is how the OK report was given by him. But this by itself does not necessarily confirm that the theft had occurred during his duty hours. It may also be noted that this was a daylight hours and the farmers had started to proceed to the paddy fields and the ONGC staff were also reporting for duty and it can't entirely be ruled out that cables were stolen, during dead of night but was undetected until 0915 Hrs.

15. Here the petitioner was unable to secure the assistance of a colleague posted in his own Unit for defence assistance and therefore after securing the consent of the Head Constable G Venkatachalam, request for ensuring his presence was made. But as the constable was posted at Kerala and not in the petitioner's Unit, the suggested name was rejected by the Inquiry Officer but no 2nd opportunity was given to the charged constable to apply for some alternate defence assistance. This according to me had prejudiced the petitioner and therefore the enquiry proceeding in the absence of defence assistance can't be approved. In the above circumstances and considering the deficiencies noticed in the preceding paragraphs, I hold that adverse finding was recorded against the petitioner on the basis of inference and not on the basis of evidence. Moreover the enquiry proceeding is found to be vitiated for want of defence assistance. Therefore the disciplinary proceeding is held to be vitiated and consequently the

order passed by the disciplinary authority on 5.5.2006 (Annexure-10) and by the Appellate Authority on 20.1.2007 (Annexure-12) are held to be unsustainable and the same are quashed. No cost.