
(2009) 04 MAD CK 0231

In the Madras High Court

Case No : Writ Petition No's. 19616 of 2004 and 24986 of 2006

Hareem K.G.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 294(B), 323, 354

Citation : (2009) 04 MAD CK 0231

Hon'ble Judges : D. Murugesan, J;C.S. Karnan, J

Bench : Division Bench

Advocate : T.N. Sugesh, for the Appellant; P. Senthilkumar, CGC in W.P. No. 19616 of 2004 and A.S. Vijayaraghavan, SCGSC in W.P. No. 24986 of 2006, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner, while posted in Central Industrial Security Force (CISF) Unit at NLC, Neyveli, on 20.11.2003,

absented himself unauthorisedly from 21.00 hours to 05.00 hours in "C" shift. He was also charged that he misbehaved with one lady by name

Janaka. Hence, he was issued with the following two charges:

Charge - I:

Gross indiscipline and dereliction of duty in that CISF No. 921404240 Constable Hareem K.G. of "G" Coy CISF Unit, NLC Neyveli who was

detailed for "C" shift duty from 2100 hours to 20.11.2003 to 0500 hours on 21.11.2003 failed to report for duty and absented from duty

unauthorisedly. This amounts to indiscipline and dereliction of duty on his part.

Charge - II:

Gross misconduct and unbecoming of a member of the Force in that CISF No. 921404240 Constable Hareem K.G. of G Coy CISF Unit, NLC

Neyveli, reportedly misbehaved with Smt. Janaka, wife of Shri V. Chakraborty residing at Block-30 NLC Neyveli, at about 1845 hours on

20.11.2003 on the road side, near St. Pauls Matriculation School, Block-29, Neyveli, by caught hold of her hands. Constable Hareem KG was

caught by villagers and later taken to Thermal Police Station, Neyveli, where he was arrested by Police and a case was lodged by the police vide

Crime No. 555/03 dated 20.11.2003 u/s 294(B), 323 & 354 IPC. This act on the part of No. 921404240 Constable Hareem KG has tarnished

the good image of CISF in the eyes of public. His said act amounts to gross misconduct and unbecoming of a member of CISF, an Armed Force

of the Union.

2. The petitioner submitted his explanation, but the same was not accepted and enquiry was initiated. The enquiry officer submitted his finding

dated 20.03.2004 holding both the charges proved. Based on the enquiry report, he was imposed with a punishment of pay reduction to the

lowest stage for a period of two years with effect from 01.07.2004, which will have the effect of postponing his future increments, vide order of

Commandant, CISF Unit, NLC Neyveli dated 15.06.2004. The petitioner took the said order on appeal before the Deputy Inspector General,

CISF. On the ground that for the proved misconduct, the petitioner ought to have been inflicted with graver punishment, the appellate authority

issued a show cause notice dated 01.07.2004 calling for his explanation as to why the penalty awarded to him should not be enhanced. The

petitioner also submitted his explanation dated 12.07.2004. Finally, the appellate authority, in his order dated 30.07.2004, enhanced the

punishment to one of "pay reduction to the lowest stage, i.e. 3500-3050 in the time scale of Rs. 3050-75-3950-80-4590 for a period of two

years". The appellate authority further ordered that during the period of such pay reduction, he will not earn increments and the reduction will have

the effect of postponing of future increments of pay. Thereafter, the petitioner filed a revision petition before the Inspector General, CISF, which

was also rejected by order dated 08.02.2006.

3. The petitioner has questioned the show cause notice issued by the appellate

authority for enhancement of penalty in W.P. No. 19616 of 2004

and the consequential final orders of the appellate authority as well as the revisional authority enhancing the punishment in W.P. No. 24986 of 2006.

4. We have heard the learned Counsel for the petitioner and the learned Counsel for the respondents. In our opinion, both the writ petitions

deserve to be allowed, as there are no evidence worth for consideration adduced by the respondents in the enquiry to sustain the charges.

5. Before we consider the merits of the case on hand, we may mention that the standard of proof requires for the proof of charges in a

departmental enquiry / disciplinary proceedings is not the same which is required in a criminal proceeding. A preponderance of probability of a

case is sufficient and in the event the enquiry officer comes to the conclusion on the basis of the materials, though they do not support fully the

charges levelled, that the charges are proved on the basis of the available materials, that does not mean that a finding, which is not supported by

any material, or in fact contrary to the evidence or the materials before the enquiry officer, could be the basis. Such finding could be perverse and

any order of punishment imposed on such findings would be invalid.

6. Before we delve upon the first charge, it would be appropriate to refer to the second charge. As per the second charge, he reportedly

misbehaved with one Janaka, wife of Sri. V. Chakraborty at about 18.45 hours on 20.11.2003 on the roadside near St. Pauls Matriculation

School, Block-29, Neyvali, by catching hold of her hands. According to the respondent, when the petitioner caught hold of the hands of the said

Janaka, she raised alarm and her husband, Chakraborty, came to the scene along with some of the villagers and the petitioner was taken to the

police station by the villagers and a case in Crime No. 555 of 2003 for the offences under Sections 294(b), 323 and 354 IPC on the file of the

Thermal Police Station was registered. There is no dispute that he was shown arrest and later on, granted bail. For completion of facts, he was put

on trial and ultimately, he was acquitted on 8.3.2004 on the ground that the charges were not proved. Before the criminal Court, both Janaka as

well as Chakraborty were examined as witnesses and they turned hostile. P.Ws.3 and 4, who belong to the same village, were examined as eye

witnesses and they had also deposed that they did not have any knowledge of the occurrence. In the absence of any evidence to implicate the petitioner, the learned Judicial Magistrate had acquitted the petitioner.

7. Before the enquiry, the said Janaka and her husband Chakraborty were also examined. We have perused the statement of the said Janaka

examined as P.W.6 and Chakraborty, examined as P.W.7. She has deposed that she could not confirm whether the petitioner was the person,

who caught hold of her and she could not also identify. Similarly, Chakraborty, P.W.7, also did not identify the petitioner and he could not

confirm as to whether the petitioner caught hold of the hands of his wife. However, the enquiry officer held the charges as proved by solely relying

upon the fact that the petitioner was taken to the police station and a case was registered, he was shown arrest and later on, he was remanded. By

the said subsequent event, the enquiry officer presumed that the petitioner misbehaved with the said Janaka. In our opinion, the said finding is

totally perverse and contrary to the evidence and solely on the ground of presumption and assumption.

8. Law on this aspect is well settled that even in enquiry, if a finding is rendered on a presumption or assumption, such a finding cannot be sustained

and cannot be the basis for imposition of any penalty. In this context, we may also refer the defence taken by the petitioner. According to the

petitioner, admittedly he went to a petrol bunk to fill petrol for his two wheeler and after filling up the petrol, when he was returning, the said

Janaka, her husband Chakraborty and one other person stopped him and they snatched his purse. When he defended, the villagers came and at

that time, the said Janaka shouted as if the petitioner caught hold of her hands. Believing the same only the villagers took the petitioner to the police

station and a case was registered. There is absolutely no evidence let in by the Management to discard the above defence of the petitioner. The

sequence of events, in our opinion, would show that it is the petitioner, who was the victim of circumstances and only when he tried to defend the

three persons, who waylaid him and snatched his purse, he was taken by the villagers on suspicion. The two villagers examined as P.Ws.3 and 4

before the criminal Court had also specifically deposed that they did not know about the incident. In the absence of any evidence to prove the

charge No. 2, the imposition of penalty is totally illegal and unwarranted.

9. The explanation of the petitioner that he went to fill up petrol for his two wheeler and when he was returning, the above occurrence had

happened and therefore, he was taken to the police station and he was shown arrest and remanded to custody and only for the said reason, he

was absent from 21.00 hours on 20.11.2003 to 05.00 hours on 21.11.2003 at "C" shift is acceptable. Therefore, in our opinion, both the charges

are held not proved and accordingly, the imposition of penalty is unsustainable and liable to be set aside.

10. For the above reasons, both the writ petitions are allowed and the impugned orders in both the writ petitions are set aside. The petitioner is

entitled to all the monetary benefits and other benefits attached to his service but for the impugned orders. No costs.