

(2014) 08 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (Civil) Nos. 993 and 1086 of 2007

Hari Mohan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1), 18

Citation : (2015) 1 GLD 647 : (2014) 4 GLT 693

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : R. Mazumdar and H. Bezbaruah, Advocate for the Appellant; R. Bora, Advocate and N. Borah, Central Government Counsel, Advocate for the Respondent

Judgement

Ujjal Bhuyan, J.—Challenge made in both the writ petitions being the same, both were heard together and are being disposed of by this common judgment and order. Question which arises for consideration in both the writ petitions is the legality and validity of the action of the disciplinary authority in directing the enquiry officer to submit a fresh enquiry report after removing the "shortcomings" in the first enquiry report without putting the petitioners on notice and thereafter acting on the subsequent enquiry report.

2. In both the writ petitions, petitioners have questioned the correctness of the order dated 07.02.2005 passed by the disciplinary authority imposing the penalty of stoppage of two annual increments with cumulative effect which was affirmed in appeal and revision.

3. Facts of the case may be briefly noted.

4. Petitioners are serving in the Central Reserve Police Force (CRPF). While the petitioner in W.P.(C) No. 993/2007 is serving as Constable (Beguiler), petitioner in W.P.(C) No. 1086/2007 is serving as Constable (General Duty), both in the 65 Battalion, CRPF.

5. At the relevant point of time i.e. in the year 2004, the petitioners were posted alongwith the 65 Battalion, CRPF in the State of Jammu and Kashmir for election duty.

6. An office order dated 28.05.2004 was issued by the Commandant of the 65 Battalion placing the petitioners and three other CRPF personnel of the said battalion under suspension in contemplation of disciplinary proceeding. Thereafter, charge memo dated 08.06.2014 was issued whereby it was alleged that petitioners and seven other personnel were caught gambling at about 9:30 P.M. on 12.05.2004 by Head Constables (General Duty) Ashok Kumar and Jait Singh. Five out of the nine persons had beaten up the two Head Constables. Petitioners and three others were charged with committing an act of disobedience, mis-behaviour and misconduct as described in Section 11 of the Central Reserve Police Force Act, 1949 (CRPF Act). Alongwith the charge memo, statement of allegation, list of documents and list of witnesses were furnished to the petitioners.

7. The Deputy Commandant of the battalion was appointed as the enquiry officer, who conducted enquiry into the charge framed against the petitioners and others. Sixteen witnesses adduced evidence on behalf of the prosecution whereas two Constables adduced evidence as defence witnesses on behalf of the petitioners.

8. After conclusion of the enquiry, enquiry officer submitted his report dated 02.09.2004. Based on the evidence adduced and other materials on record, the enquiry officer concluded that the charge against the five persons including the petitioners was not proved. As per the enquiry report, it was the Head Constable Ashok Kumar who was involved in a scuffle with local gram sevaks (civilians) and thereafter hatched a conspiracy with two of the prosecution witnesses Jait Singh and Chattar Pal to falsely implicate the petitioners and others as a cover up.

9. On 11.11.2004 the Deputy Commandant, who was the enquiry officer, went to the place where the incident had allegedly occurred. Petitioners and the other charged personnel were asked to accompany the Deputy Commandant. On his visit, the Deputy Commandant is stated to have met some of the civilians of the locality.

10. On 07.02.2005 the Commandant acting as the disciplinary authority passed an order against the petitioners and three others imposing the penalty of stoppage of two annual increments with cumulative effect after holding that the charges levelled against them stood proved.

11. Only after receipt of the order dated 07.02.2005, petitioners could gather that the enquiry report dated 02.09.2004 was returned back to the enquiry officer by the disciplinary authority to make certain corrections so as to overcome the "shortcomings". Petitioners could further come to know that thereafter another enquiry report was submitted by the enquiry officer.

12. Petitioners had preferred appeal against the order dated 07.02.2005 but the appeals were dismissed by the appellate authority. Review filed were also rejected.

13. Aggrieved, petitioners have preferred the above two writ petitions seeking the reliefs as indicated above.

14. Contention of the petitioners is that the impugned order has been passed in violation of the principles of natural justice and also in violation of the laid down procedure. Disciplinary authority had returned the enquiry report to the enquiry officer without any intimation or notice to the petitioners. The subsequent report was not furnished to the petitioners. Action of the disciplinary authority in returning the enquiry report to the enquiry officer with a direction to submit fresh report by overcoming the "shortcomings" was unwarranted and not in accordance with law. In the second stage i.e. after remand, evidence of persons were taken by the enquiry officer who were not named as witnesses in the list of witnesses furnished to the petitioners. On merit, it is contended that it is a case of no evidence. No such incident as alleged had taken place. Petitioners have been punished for an offence which they did not commit.

15. Respondents have filed separate but identical affidavits in both the cases. Stand taken is that petitioners alongwith the battalion were deployed at Tehsil Mahore, Udhampur district in the State of Jammu and Kashmir since 10.04.2004 to provide security in the last phase of parliamentary election. After completion of election duty, the company was taking steps to move to Srinagar for which preparations were made. Head Constables Jait Singh and Ashok Kumar had gone to the room of Shri Lilaram (petitioner in W.P.(C) No. 1086/2007) at about 9 P.M. on 12.05.2014 in connection with registration of a weapon in duty register. Lilaram was not found in his room. When the two Head Constables went to another room they found Lilaram and Hari Mohan, the two petitioners alongwith others playing cards with money kept nearby which indicated gambling. As Ashok Kumar collected the cards and money, he was beaten up by the petitioners and three others. When Jait Singh tried to intervene, he was also beaten up.

16. Preliminary enquiry was conducted which disclosed substance in the allegations against the petitioners and three others. Thereafter, a joint departmental enquiry was ordered. On finalization of departmental enquiry, the competent authority imposed the penalty of stoppage of two increments with cumulative effect on all the five Constables, including the two petitioners. Appeals filed by the petitioners and the others were dismissed by the appellate authority. Revision petitions filed were similarly dismissed. Mercy petitions filed before the Director General, CRPF were also rejected.

17. It is admitted that the enquiry officer not only recorded the statements of sixteen prosecution witnesses and two defence witnesses but also recorded the statements of three civilians. As per the subsequent enquiry report dated 30-12-2004, the enquiry officer came to the conclusion that the charges levelled

against the five delinquents stood proved.

18. It is stated that in so far report of the enquiry officer dated 02.09.2004 is concerned, on scrutiny it was found that some major aspects were totally ignored by the enquiry officer and therefore it was returned back to the enquiry officer by the disciplinary authority vide letter dated 09.09.2004 pointing out the "shortcomings". After rectifying the mistakes on the basis of the observations made by the disciplinary authority, enquiry officer submitted fresh enquiry report dated 30-12-2004 holding that charges levelled against the petitioners and three others were proved. Enquiry report was handed over to the petitioners vide letter dated 31.12.2004. Thereafter, impugned order was passed on 07.02.2005. Order of penalty passed by the disciplinary authority is justified and is commensurate with the gravity of the offence.

19. Heard Mr. R. Majumdar, learned Counsel for the petitioners and Mrs. R. Bora, learned Central Government Counsel. Mr. N. Borah, learned Central Government Counsel has also appeared and has produced the record.

20. Learned Counsel for the petitioners submits that neither the CRPF Act nor the Rules framed thereunder envisage a procedure that was followed by the disciplinary authority in the present case. There is no provision either for a further enquiry or a fresh enquiry by the enquiry officer on remand. Penalty imposed based on such a procedure cannot be sustained. On merit, learned Counsel for the petitioners submits that it was the Head Constables who had a scuffle with the local gram sevaks and to cover up the said incident, a non-existent incident was conjured up implicating the petitioners and others therein as a cover up. He submits that petitioners have been punished for a misconduct which they did not commit. It is a fit case for interference by this Court in exercise of the power of judicial review and for quashing the penalty, he submits.

21. Mrs. Bora, learned Central Government Counsel appearing for the respondents submits that the charge against the petitioners was very serious considering that they are members of a disciplined force. They have been punished following a disciplinary proceeding. Petitioners were afforded reasonable opportunity of hearing during the disciplinary proceeding and principles of natural justice were complied with. Punishment imposed is commensurate with the gravity of the offence. She would submit that being members of a disciplined force, it is the substance of the charge which is more important than the procedure to be followed. She therefore supports the decision of the disciplinary authority and submits that no interference is called for in the punishment imposed.

22. Submissions made have been considered. I have also perused the record produced.

23. Before proceeding further, it would be apposite to refer to some of the relevant provisions of the CRPF Act and the Rules framed there under.

24. The CRPF Act has been enacted to provide for the constitution and regulation of an armed Central Reserve Police Force (CRPF, as already referred to above). Under Section 11 of the CRPF Act, the Commandant or any other authority or officer as may be prescribed, may, subject to any Rules made under the said Act, award in lieu of or in addition to suspension or dismissal, any one or more of the punishments mentioned therein to any member of CRPF whom he considers to be guilty of disobedience, neglect or remissness in the discharge of any duty or of other misconduct in his capacity as a member of CRPF. Section 18 of the CRPF Act is the rule making provision. In exercise of the powers conferred by Section 18 of the CRPF Act, the Central Government has made the Central Reserve Police Force Rules, 1955 (CRPF Rules). Rule 27 of the CRPF Rules lays down the procedure for award of punishments. As per Sub-Rule (a), the punishment of stoppage of increment may be inflicted on Constables by the Commandant after formal departmental enquiry. Sub-Rule (c) provides for the procedure to be followed while conducting a departmental enquiry. As per the procedure prescribed. The substance of the accusation should be reduced to the form of a written charge which should be given to the accused at least 48 hours before commencement of enquiry. At the commencement of the enquiry, the charge should be read out to the accused, who should be asked to enter either a plea of "guilty" or "not guilty". Evidence tendered should be material to the charge and may either be oral or documentary. Oral evidence should be direct and should be recorded by the enquiry officer in the presence of the accused, who should be allowed to cross-examine the witnesses. When documents are relied upon in support of the charge, they should be put up in evidence as exhibits and the accused should be allowed to inspect such exhibits. Thereafter the accused should be examined and his statement should be recorded by the enquiry officer. If the accused pleads "guilty", the enquiry proceedings shall be closed for orders but if he pleads "not guilty", the accused shall be required to file a written statement alongwith a list of witnesses in his defence. If the accused declines to file written statement, he shall again be examined by the enquiry officer. When all relevant evidence has been brought on record, the proceedings shall be closed for orders. Clause (6) is relevant. It says that if the Commandant himself holds the enquiry, he shall record his findings and pass orders where he has the power to do so. If the enquiry has been held by an officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass orders where he has power to do so.

25. Having noticed the relevant provisions relating to conduct of disciplinary proceeding under the CRPF Act and the CRPF Rules, we may now proceed to deal with the case in hand.

26. As already noticed above, petitioners were served with a notice dated 08.06.2004 issued by the Commandant to show-cause as to why a joint enquiry under Rule 27 of the CRPF Rules should not be held. Substance of the charge against the petitioners and three others is that at about 9:30 P.M. of 12.05.2004

they were found by the Head Constables gambling in a room. When one Head Constable took down the names of those Constables and started collecting the cards and money, he was attacked by those who were gambling. When the other Head Constable tried to intervene he was also beaten up. Accordingly, petitioners and three others were charged with committing misconduct and violating Section 11(1) of the CRPF Act. The charge sheet was accompanied by statement of allegations, list of documents and a list of witnesses. Sixteen witnesses were named. It was however stated that evidence of any other witness may be taken if the enquiry officer deemed it fit.

27. On 20.06.2004 the disciplinary authority i.e., the Commandant had appointed Kailash, Deputy Commandant, 65 Battalion, CRPF as the enquiry officer. In the enquiry, altogether eighteen witnesses were examined by the enquiry officer out of whom sixteen were named in the list of witnesses. Remaining two witnesses were produced by the petitioners and three others. After conclusion of the enquiry, the enquiry officer submitted his enquiry report dated 02.09.2004 to the disciplinary authority. The enquiry officer recorded that there was no quarrel and gambling involving the petitioners and three others on the night of 12.05.2004 as alleged. Therefore, the charge made against the petitioners and the three accused were held as not established. Closing the departmental enquiry, the enquiry report alongwith the relevant documents were forwarded by the enquiry officer to the disciplinary authority.

28. On 29.09.2004, the disciplinary authority wrote to the enquiry officer that certain "shortcomings" were noticed in the enquiry report dated 02.09.2004. It was stated that two of the prosecution witnesses i.e. P.W. 7 Jait Singh and P.W. 9 Chatter Pal Singh became hostile. Since their statements were contradictory to what they stated in the preliminary enquiry, real facts could not be established. Statement was made in the enquiry that Head Constable Ashok Kumar was involved in a scuffle with the gram sevaks of the area, which was totally different from what he stated in the preliminary enquiry. To find out factual position, statement of gram sevaks and other concerned personnel should have been recorded. Other "shortcomings" were also pointed out. It was further stated that enquiry report was handed over to the delinquents without obtaining the approval of the competent authority which was not valid. Therefore, the enquiry report was returned back in original to the enquiry officer to rectify the "shortcomings" and to submit actual report.

29. It appears that following the aforesaid instruction of the Commandant (disciplinary authority), the enquiry officer, who was the Deputy Commandant, recorded the statements of three civilians and submitted fresh enquiry report on 30.12.2004 which was furnished to the petitioners on 31.12.2004. As per the fresh enquiry report dated 30.12.2004, the charge against the petitioners stood proved.

30. Finally, the disciplinary authority passed the impugned order dated 07.02.2005 holding that the petitioners had committed misconduct and had

neglected their duties. Allegation levelled against them was held to have been established beyond all reasonable doubt. Therefore, in exercise of the powers conferred by Rule 27 of the CRPF Rules read with Section 11(1) of the CRPF Act, the Commandant acting as the disciplinary authority imposed the punishment of stoppage of two annual increments with cumulative effect on the petitioners and three others.

31. Though a number of points were argued and apparently seems to arise in this case, in my view, the core issue which arises for consideration is whether the disciplinary authority was correct in law in returning back the enquiry report to the enquiry officer for resubmission of the same after rectifying the "shortcomings" in the enquiry report as pointed out by the disciplinary authority?

32. Admittedly the disciplinary authority was not in agreement with the enquiry report submitted by the enquiry officer dated 02.09.2004. Question is what is the legal position in such a situation. As noticed above, Rule 27(c) of the CRPF Rules is silent on this aspect. Rather Rule 27(c)(6) does not envisage return or remand of enquiry report back to the enquiry officer in the event of the disciplinary authority not agreeing with the findings of the enquiry officer. It says that when the enquiry officer forwards the enquiry report together with the proceedings, the Commandant shall record his findings and pass orders.

33. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, the question which arose for consideration before the Apex Court was when the enquiry officer comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved, then can the disciplinary authority differ from such conclusion and give a contrary finding without affording any opportunity to the delinquent. It was held by the Hon"ble Supreme Court that where the disciplinary authority disagrees with the enquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent an opportunity to represent before it records its findings. The report of the enquiry officer containing his findings will have to be conveyed and the delinquent will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer.

34. The Hon"ble Supreme Court in the case of High Court of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, held that findings of the enquiry officer are not binding on the disciplinary authority. If the enquiry report makes a finding in favour of the delinquent and the disciplinary authority disagrees with such findings and holds that the charges framed are prima-facie proved, it should provisionally decide what punishment should be imposed on the delinquent and thereafter to put him on notice.

35. Hon"ble Supreme Court has also disapproved unwarranted remand by disciplinary authority to enquiry officer. This view is expressed in Union of India vs. K.D. Pandey & Anr. reported in (2002) 10 SCC 471. It was held as under:-

"5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In feet from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly."

36. Finally, in S.B.I. and Others Vs. Arvind K. Shukla, , the question before the Hon"ble Supreme Court was when the disciplinary authority disagrees with the conclusion and findings arrived at by the enquiry officer, whether the disciplinary authority was required to record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it recorded its ultimate findings. The Apex Court held that this question is concluded in Punjab National Bank (supra) and that the decision rendered therein is the correct view.

37. That being the position, the disciplinary authority ought to have furnished the enquiry report dated 02.09.2004 which was favourable to the petitioners as well as his points of disagreement as can be seen from his letter dated 29.09.2004 to the petitioners alongwith his tentative decision on the punishment proposed. After getting the response of the petitioners, it was open to the disciplinary authority to have passed such order of punishment as he deemed just and proper in the facts and circumstances of the case. Had he done this, it would have been in conformity with the law laid down by the Hon"ble Supreme Court. But it was not done. The same has therefore vitiated the impugned order.

38. There is one more aspect which needs to be attended to. Enquiry proceedings are quasi-judicial proceedings and the enquiry officer discharges quasi-judicial functions. He may be junior to the disciplinary authority in the administrative hierarchy but when he conducts an enquiry, he functions in a quasi-judicial manner. If that be so, the instructions given by the disciplinary authority in his communication dated 29.09.2004 clearly amounts to directing the enquiry officer to recall his earlier finding and to record a fresh finding in the manner suggested. A disciplinary authority is fully empowered and is well within his right to disagree with the findings of the enquiry officer but he would be clearly exceeding the limits of his jurisdiction if he directs and guides the enquiry officer to conduct the enquiry in a particular trajectory so as to arrive at a particular conclusion. This is not permissible.

39. That being the position, impugned order of penalty dated 07.02.2005 cannot be sustained and is accordingly quashed. Petitioners would be entitled to consequential benefits following quashing of the punishment

40. Writ petitions are allowed. No cost. Record produced by Mr. N. Borah, learned Central Government Counsel is returned back.