
(2019) 07 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 6282 Of 2015

Hari Mohan Roy

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 32, 34(iii)
Constitution Of India, 1950 — Article 2, 3, 226

Citation : (2019) 07 GAU CK 0015

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : M Deka

Final Decision : Dismissed

Judgement

Heard Mr. S. Hoque, learned counsel for the petitioner as well as Mr. S.C. Keyal, learned Additional Solicitor General of India for the respondent.

2) By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 23.05.2015, thereby compulsorily retiring the petitioner from service in Central Industrial Security Force (CISF). Also in challenge is the appellate order dated 05.08.2015, thereby rejecting the appeal filed by the petitioner.

3) The case projected by the petitioner is that he was initially appointed as a constable of CISF in the year 1986 and in the year 2012 he was promoted to the post of Head Constable. While discharging his duty at the CISF unit of KoPT, Kolkata, the petitioner was detailed for day shift duty from 0600 hours to 1800 hours at a location and about 1605 hours on 07.12.2014, when "B" shift In-charge/ SI/ Exe T Sudhakar went to check the duty post found that the petitioner was talking in his mobile phone. On the ground that there was strict instruction not to carry or bring mobile phone during the hours, the petitioner was served with a memorandum dated 29.01.2015 together with 3 articles of charges

together with "statement of imputation of misconduct in support of the article of charges framed against the petitioner."

4) It is projected by the petitioner that on the said date his wife was seriously ill and was undergoing a treatment at hospital at Chapar in Dhubri district, Assam, he was talking to his wife over mobile phone. Accordingly, the petitioner had submitted his written statement of defence and a domestic enquiry was instituted on the strength of 3(three) Articles of Charges went against the petitioner. By the final order dated 23.05.2018, the Senior Commandant, CISF unit, KoPT, Kolkata held that all the Articles of Charges were proved against the petitioner and accordingly in accordance with Rule 32 read with conjunction with Schedule I and Rule 34 (III) of CISF Rule 2001, the petitioner was compulsorily retired from service with full pension and with immediate effect.

5) The aggrieved petitioner filed an appeal against the final order dated 23.05.2015 and that the Deputy Inspector General of Police, North-Eastern Zone, Kolkata, by the appellate order dated 05.08.2015, rejected the appeal filed by the petitioner.

6) Challenging the said two orders, the learned counsel for the petitioner has submitted that the petitioner had explained the reasons for carrying a mobile phone while in duty hours. It is submitted that the wife of the petitioner was seriously ill and that she only knew Assamese language for which she could not communicate with the concerned CISF unit so as to call the petitioner and speak to him through office phone and accordingly, the petitioner was assuring himself about the health of his wife when he was caught speaking over his phone. It is submitted that the stand taken by the petitioner was not considered by the disciplinary authority or by the Appellate authority and disproportionate punishment was awarded to the petitioner. It is submitted that the other punishments were also prescribed for such offence and therefore, the respondent had arbitrarily and unreasonably compulsorily retired the petitioner.

7) By referring to the Article of Charge-III, it is submitted under the said Article of charge, reference was made to award 2 major and 9 minor penalties which had only been inflicted on the petitioner and therefore, the petitioner had been punished twice for the same offence.

8) It is further submitted that the previous charges were for offence which had occurred long back between the year 1988 to 2004 and thereafter when the petitioner was promoted in the year 2012, the respondent could not have taken cognizance of the previous punishment inflicted on the petitioner.

9) In support of his submission, the learned counsel for the petitioner has placed reliance on the following cases:-

(1) Sri Tapash Chandra Roy Vs. Union of India and ors, WP(C) 4034/10 decided on 11.05.2017,

(2) Pachunath Samal Vs. Union of India and ors., OJC No.16992/2001 decided on

11.04.2014 by the Orrisa High Court and,

(3) Satinder Pal Singh Vs. Union of India and ors, WP(C) 5226/05 decided on 31.08.2007.

10) The said cases were cited to project that if the punishment awarded to the petitioner was found to be disproportionate, the Writ Court would have the power to interfere with the punishment and to direct the mode of any punishment other than removal from service other than compulsory retirement from service.

11) Per contra, the learned ASGI has referred to the affidavit-in-opposition filed by the respondent and it is submitted that there is no infirmity in the contempt of the disciplinary proceeding and there is no allegation that the petitioner was not given any adequate opportunity of defending himself. It is further submitted that in the written statement of defence, the respondent had admitted that he was carrying a mobile phone and he was found talking on his mobile phone.

12) By further referring to the affidavit-in-reply filed by the petitioner, it is submitted that in para-10 thereof, the petitioner had admitted that there is a strict rule of not using mobile phone during the duty hours as discussed in the Sainik Samelan dated 31.10.2014. Accordingly, it is submitted that as the petitioner had admitted that despite the ban and use of mobile phone during the duty hours he had violated the said direction, the petitioner was guilty of misconduct and the Articles of Charges were accordingly, correctly decided by holding that the charges against the petitioner was proved and tantamounted to misconduct, gross indiscipline, insubordination and dereliction for duty and therefore, it was appropriately held that such acts as mentioned in the Articles of Charges were acts unbecoming of a member of the disciplinary force like CISF.

13) In this connection, the learned ASGI has referred to the office order dated 09.04.2012 and the minutes of the Sainik Sanmellan dated 06.11.2014 as annexed to the affidavit-in-opposition. It is submitted that all the charges have been proved against the petitioner, the nature of punishment which can be inflicted would be at the discretion of the disciplinary authority and, as such, this Court should not substitute its view on the punishment awarded against the petitioner. He has also relied on the case of Union of India Vs. Balram Singh, (2015) 14 SCC 389 in support of his submission.

14) The learned ASGI has also raised a preliminary issue with regard to territorial jurisdiction and it is submitted that at the relevant time, the petitioner was posted under the Kolkata Zone and the disciplinary as well as the appellate proceeding was held within the jurisdiction of Kolkata Zone and, as such this Court has no territorial jurisdiction to entertain the present writ petition and in the said connection, the learned ASGI has relied on the case of Moon Power Daimary Vs. Union of India, WP(C) 7024/13, decided on 30.01.2015.

15) It would be relevant to refer to the 3(three) articles of charges framed against the petitioner:

ARTICLE OF CHARGE-I: "An act highly prejudicial to good orders and discipline of the Force in that CISF No.863100019 HC/ GD Hari Mohan Roy of CISF Unit KoPT Kolkata ('A' Coy) was detailed for day shift duty on 07.12.2014 from 0600 hrs to 1800 hrs at C.F.S. 1st and 2nd of NSD area, CISF Unit KoPT Kolkata. At about 1605 hrs on 07.12.2014, when "B" shift in-charge SI/ Exe T Sudhakar went to check the duty post found that HC/ GD Hari Mohan Roy was talking with his mobile phone in spite of instructions/ directions were issued from time to time regarding not to bring mobile phone during duty hours. Such act on the part of CISF No.863100019 HC/ GD Hari Mohan Roy of "A" Coy of CISF Unit KoPT Kolkata tantamount to gross negligence, carelessness, disobey of law full orders and an act of unbecoming of a member of disciplined Force like CISF". Hence the charge.

ARTICLE OF CHARGE-II: "In that CISF No.863100019 HC/GD Hari Mohan Roy of CISF Unit KoPT Kolkata ("A" Coy) was detailed for day shift on 07.12.2014 from 0600 hrs to 1800 hrs at C.F.S. 1st and 2nd of NSD area, CISF Unit KoPT Kolkata. At about 1605 hrs on 07.12.2014, when "B" shift in-charge SI/ Exe T Sudhakar went to check the duty post found HC/ GD Hari Mohan Roy was talking with mobile phone. On question of "B" shift in-charge to handed over the mobile phone HC/ GD Hari Mohan Roy refused and started unnecessary arguments with SI/ Exe T Sudhakar "B" shift in-charge. Said HC/ GD also made unnecessary arguments with Insp/ Exe A K Singh, Coy. Commander of "A" Coy. Such act on the part of CISF No.863100019 HC/ GD Hari Mohan Roy of "A" Coy of CISF Unit KoPT Kolkata tantamount to gross indiscipline, insubordinate, dereliction for duty and an act of unbecoming of a member of disciplined Force like CISF." Hence the charge.

ARTICLE OF CHARGE-III: "In that No.863100019 HC/ GD Hari Mohan Roy of CISF Unit KoPT Kolkata ("A" Coy) is not amenable to discipline and has not improved his conduct as expected from a member of disciplined Force, in spite of having been penalized/ punished earlier 02 (Two) Major and 09 (Nine) Minor penalties in various occasions for his incorrigible habits during his service tenure and thus, he is a habitual offender." Hence the charge.

16) The statement of imputation of misconduct in support of Articles of Charge-III:

ARTICLE OF CHARGE-III: "That CISF No.863100019 HC/ GD Hari Mohan Roy of "A" Coy of CISF Unit KoPT Kolkata has inculcated an incorrigible habit of committing repeated acts of misconduct and indiscipline thereby did not improve his conduct. Thus awarded the following 02(Two) Major and 09(Nine) Minor penalties:

1. "Withholding of next increment for a period of one year without cumulative effect" vide CISF Unit SIIL Paloncha (A.P) final order No.(2069) dated 29.11.1988 for negligence on duty and threatened ASI/ Exe DC Mohanty.
2. "Pay fine equivalent to five days pay" vide GP HQrs Madras SO Part-II No.

(826/1989) dated 25.08.1989 for sleeping in the unit Quarter Guard room.

3. "Pay fine equivalent to two days pay" vide CISF Unit OIL Duliajan final order No.(959) dated 29.04.1994 for Absent from outpost without permission from competent authority.

4. "Pay fine equivalent to seven days pay" vide CISF Unit OIL Duliajan final order No.(229) dated 30.01.1996 for Absent from Roll Call at outpost and absent from camp duty without permission.

5. "Reduction of Pay by two stages for a period of two years w.e.f. 01.03.1990 with cumulative effect" vide CISF Unit OIL Duliajan final order No.(795) dated 15/16.02.1996 for absent from unit line at about 2100 hrs on 12.06.1995 unauthorizedly and consumed liquor in a civilians house and later got injured in a scuffle with some civilians.

6. "Reduction of Pay by one stage for a period of One year without cumulative effect" vide CISF Unit OIL Duliajan final order No.(3588) dated 28.09.1996 for AWL from Unit line for 33 days.

7. "Fine equivalent to one day pay" vide CISF Unit DSP Durgapur final order No. (407) dated 04.05.2000 for sleeping on "C" shift duty.

8. "Withholding of next increment for a period of one year without cumulative effect" vide CISF Unit DHEP Doyan final order No.(531) dated 22.10.2001 for created nuisance and scuffle with Cook.

9. "Censure" vide CISF Unit DHEP Doyang final order No.(149) dated 20.03.2002 for wearing civil dress in SO's Mess during the inspection of IG/ NES.

10. "Pay fine equivalent to Three days pay" vide CISF unit DHEP Doyang final order No. (1020) dated 03.12.2002 for sleeping on duty.

11. "Pay fine equivalent to Three days pay" vide CISF unit DHEP Doyang final order No. (1693) dated 14.06.2004 for creating nuisance during shift fall-in of Night Shift."

17) It is seen that in the written statement of defence, in para-6 and 7 thereof, the petitioner had admitted that he has spoken to his wife over the mobile phone, and that he had also agreed to the fact that there was a mistake on his part but explained that it was under compelling circumstances that the petitioner had used the mobile phone and accordingly, the petitioner had sought for an apology and pardon for his mistake.

18) As pointed out by the learned ASGI, it is seen that there is an office order dated 09.04.2012 where a repeat direction was issued that no personnel will carry their mobile phone during their duty hours in the Port Area and disobedience of the same would be viewed seriously. In the minutes of the Sainik Sammellan as circulated on 06.11.2014, it was informed to all that if anybody is found with mobile phone on duty, strict action would be taken against them and

their Company Commanders.

19) As indicated by the petitioner, the petitioner was a Head Constable. As a member of the disciplined force, the petitioner was not entitled to carry his mobile on duty. The Article of Charge-III indicates that for his past conduct, the petitioner was put to notice. In the opinion of this Court unless the past conduct is brought to the notice of the delinquent, the disciplinary authority is not permitted to inflict any punishment to the delinquent on the basis of his past conduct. Therefore, a reference to be passed on Article of Charge-III would not imply that the petitioner is being punished twice for the offence but the past conduct is referred for inflicting punishment in respect of all other Articles of Charges-I and II.

20) In so far as Article II is concerned, it is related to an unnecessary argument by the petitioner with the the shift in-charge and the Inspector i.e. Company Coy. In this regard, this Court has refrained to give any opinion because this is not a very substantial reason for the authorities to remove the petitioner from service by ordering compulsory retirement, but the substantial charges against the petitioner is related to Article of Charge-I which is carrying a mobile and talking on a mobile phone during the duty hours and the 2nd issue is that whether the punishment inflicted on the petitioner was disproportionate to the nature of offence.

21) Coming to the cases cited by the learned counsel for the petitioner, in the case of Tapash Chandra Roy (supra), the petitioner therein was found to have consumed liquor during non-duty hours as background indicated in the order that his mother was ill and he had wanted to visit his ailing mother but the permission was refused and accordingly, he was found to have consumed liquor after denial of permission for leave. Under such circumstances, this Court was of the view that the delinquent is to be retained in service, and this Court interfered with the penalty and remitted back the matter to the disciplinary authority for deciding the matter under Rule 34 of the CISF Rules and the order of dismissal from service was reversed.

22) In the cases of Pachunath Samal (supra), it is indicated in the order that there was no dispute that the petitioner therein was never punished earlier prior to the alleged incident and under such circumstances, his lack of duty and of sleeping at a place other than the place allotted to him for duty was found to be harsh for imposing penalty of removal from service and holding the punishment to be disproportionate and the punishment was interfered with by holding that for a single trifle incident the punishment was disproportionate to the nature of misconduct.

23) In the case of Satinder Pal Singh (supra), the High Court held that under the facts and circumstances when the petitioner could not have been compulsorily retired from service for remaining absent duty from 05.02.2002 to 21.02.2002, notwithstanding, that the petitioner therein was punished 13 times for extending

his leave during the period of 12 years and it was held that the punishment of compulsory retirement was disproportionate and order of re-instatement of service by directing the authorities to implicit lesser punishment.

24) In the present case in hand, the petitioner had admitted carrying his mobile and that he was found speaking on the mobile phone. In the considered opinion of this Court, an admission by the delinquent himself is the best evidence in a disciplinary proceeding. Under such circumstances, the punishment inflicted on the petitioner cannot be stated to be disproportionate. If the petitioner's wife was having a serious medical problem and the petitioner was aware of it since morning and he was carrying a mobile phone at 0600 hours, he could have informed this to his authority about such condition and should have taken consent from superior officer to carry a mobile phone or to seek permission to leave the post to speak to his wife by departmental phone. As the petitioner was aware that there was a prohibition in carrying a mobile phone with him during duty hours and with the said knowledge he was carrying a mobile and therefore, when the charges were framed against him and proved the punishment of compulsory retirement inflicted on him, such punishment cannot be said to be of disproportionate. In this case, the petitioner was given compulsory retirement with all pensionary benefits.

25) While dealing with the preliminary objections raised by the learned ASGI has referred territorial jurisdiction, this Court is of the considered opinion that as this writ petition was admitted for hearing by order dated 20.01.2016 it would be unfair to non-suit the petitioner a preliminary issue on territorial jurisdiction notwithstanding the objection taken by the respondent. In this regard, this Court places reliance on the case of Samir Ch. Kar and ors. Vs. Union of India and ors., 2018 (5) GLT 696 as well as 1995 (1) GLR 203: 1995 (1) GLT 120, wherein this Court had held that once a writ petition is admitted for hearing, it can be dismissed on the ground of availability of remedy.

26) In the present case in hand, it is indicated by the Charge of Article No.III, that the petitioner was awarded 2(two) major and 9(nine) minor penalties and accordingly, as 2(two) major penalties were already awarded to the petitioner, the present punishment could not be said to be disproportionate so as to award lesser punishment to the petitioner for offence.

27) Accordingly, this writ petition stands dismissed.

28) The rule issued on 20.01.2016 stands discharged.

29) No costs.