

(2006) 12 MAD CK 0241

In the Madras High Court

Case No : Writ Petition No. 1551 of 2003

I.R. Babu

APPELLANT

Vs

The Commandant, CISF Unit and The Deputy Inspector
General, CISF Unit

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36

Citation : (2006) 12 MAD CK 0241

Hon'ble Judges : S. Tamilvanan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M. Md. Ibrahim Ali, for the Appellant; Thenkodi Nelson, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the orders of the respondents dated 05.09.2002 and 20.12.2002, dismissing the petitioner from service, the petitioner has filed the above writ petition, to quash those orders and issue direction to the Commandant to take the petitioner into the strength of CISF, with all monetary benefits.

2. Heard the learned Counsel for the petitioner as well as the respondents.

3. When the petitioner was working as Constable in CISF Unit, NLC, Neyveli, he was issued with a Charge Memorandum under Rule 36 of CISF Rules, 2001. The Article of Charge reads as under:

Article of charge No. 1 That CISF No. 912293420 Constable I.R.Babu while posted at CISF Unit NLC Neyveli indulged himself in wooing Shri K. Subramaniam, Village:Kaliarkuppam Taluk: Virudhachalam, a driver of truck No. TN 31 V 7500 and engaged him with the said truck for removing a 3 Nos. fluid coupling shell made of aluminium and one No. of bearing from specialised Mining Equipment/Re-conditioning yard at NLC on 3.9.2001 at about 2300 hrs with the

intention of wrongful gain. The said act on the part of Constable I.R. Babu amounts to gross misconduct and unbecoming of a member of the Force.

4. The materials placed show that the petitioner even refused to receive the Memorandum when it was served to him in person on 29.11.2001 and 12.12.2001. Finally, it was served to him by registered post. He did not submit his written reply. Thereafter, an Enquiry Officer was appointed. Here again, though he received notice for participating in the enquiry, admittedly, he did not participate and cooperate with the Enquiry Officer.

5. Learned Counsel for the petitioner submitted that due to the change of Enquiry Officer and various reasons, the petitioner abstained from participating the enquiry. The fact remains that he did not participate in the enquiry and cooperate with the Enquiry Officer. In other words, he lost a good opportunity to cross examine the veracity of prosecution witnesses and also putforth his own defence.

6. Now let us consider whether the management has established the charge by placing acceptable materials. Totally, four witnesses were examined. P.W.1 is the Assistant Commandant working in CISF Unit, NLC, Neyveli since June 1999. It was he, who conducted the preliminary enquiry regarding the theft of Fluid coupling 3 Nos. and bearing 1 No. from SME/RC Yard, Mine-II NLC on the night of 03.09.2001. During the course of preliminary enquiry, P.W.1 has recorded the statements of one Tamil Maran, Executive Engineer, K. Gandhi, Junior Engineer, K. Shanmugam, CE, SME, Mine Zone, NLC, Constable A. Charles, K. Subramaniam, driver of Truck No. TN-31-V-7500, Constable I.R. Babu and Ors.. He explained, after taking the statements, he came to the conclusion that on 03.09.2001 at 20.00 hours Constable I.R. Babu took Truck (Tipper) TN 31-V-7500 on hire and taken the tipper with the help of K. Subramaniam, SME-MRR, Mine-II. He also explained that how the materials were loaded and handed over to various persons at Mandarakuppam. Though P.W.1 is not an eye witness to the occurrence, as stated earlier, it was he, who conducted the preliminary enquiry regarding the theft of articles and examined all the persons concerned including K.Subramaniam, driver of the Truck.

7. P.W.2, K.Subramaniam is the next witness examined on the side of the management. In his evidence before the Enquiry Officer, he has stated that at the relevant time, he was working in NLC Neyveli Mine-II. On 03.09.2001 in between Shed No. 12 and 13 in Mine-II, one Tamil Maran, EE/SME Zone, saw the loading of some materials in private vehicle TN-31-V-7500 at about 10.30 PM with the help of crane. According to him, immediately, the Executive Engineer contacted the DCE over phone whether any material is being sent outside and confirmed that the above incident was nearly theft. Then, the Executive Engineer chased away the above vehicle up to Mine Auto, but the vehicle escaped with the materials. Hence, the Executive Engineer reported to CISF as well as GM, Mines-II. On the next day, a message was received stating that vehicle TN-31-V-7500 has been seized. Later on, the vehicle was taken by the Police and the police

spotted the materials, Fluid coupling 3 Nos. , bearing 1 No. on the information of the vehicle driver. On 05.09.2001, a theft report was given to Mandharakuppam Police Station by him. Based on the same, police arrested the driver of the vehicle and the petitioner. A case was registered by the police against these two persons.

8. The third witness examined by the management is one Vinoth as P.W.3. According to him, he is serving in CISF Unit, NLC, Neyveli since June 1999. He is working in Intelligence Wing of the CISF Unit, NLC, Neyveli. He also narrated how he received the information and the steps taken by him. He also explained the examination of various persons including the driver of the Tipper lorry as well as the petitioner.

9. Constable A. Charles was examined as P.W.4. According to him, he is serving in CISF Unit, NLC Neyveli since 12.07.1999. He also explained what had happened on the night of 03.09.2001 and also informed the same to Tamil Maran, who tried to stop the truck, but the truck sped the spot. He also explained that he came to know from several workers present there, that one crane has been taken to another place in the yard, which shows that the crane was used for lifting materials. He also informed the same to the Intelligence Officer.

10. Apart from the above witnesses, Tamil Maran, Executive Engineer was also examined as P.W.5. According to him, on 03.09.2001, he came for night shift along with his colleague Gandhi, AE, SME MRR at about 10.30 PM by their yard jeep. He further stated that while they nearing to Shed No. 12, they saw a private vehicle parked in front of the Shed. When they came very near to that vehicle, it started moving. At that time, they noted the registration number of the Tipper lorry as TN-31-V-7500. He also stated that since there was no night shift in that Shed, they suspected that something wrong happened. Immediately he informed DCE, RC Yard Mr. J. Shivaiah Chetty.

11. The Enquiry Officer analysed the statements of prosecution witnesses P.Ws.1 to 5 and arrived at a conclusion that, on 03.09.2001 at about 23.00 hours, a Truck No. TN-31-V-7500 was engaged by Constable I.R. Babu with truck driver K. Subramaniam of Kaliarkuppam village and used the truck for removing 3 Nos. of Fluid Coupling shell made of aluminium and one number of bearing from SME/ RC yard and the materials stolen with wrongful intention by I.R. Babu with the help of truck driver K.Subramaniam, were recovered after the arrest of the driver on 06.09.2001, based on the confession statement given to police, by both the Constable I.R. Babu and driver Subramaniam. The charge framed against the Constable I.R. Babu proved beyond doubt.

12. A copy of the report was furnished to the petitioner. The disciplinary authority, considered the entire materials including the statements of prosecution witnesses and also the fact that the charged official did not cooperate with the Enquiry Officer, and after accepting the report, awarded the penalty of dismissal

from service.

13. Questioning the said order, the petitioner preferred an appeal to the appellate authority, namely, the 2nd respondent. The appellate authority, on going through various grounds raised in the appeal, the entire proceedings of the Enquiry Officer, order of the disciplinary authority, after satisfying himself, confirmed the order of the disciplinary authority and dismissed the appeal.

14. Learned Counsel for the petitioner vehemently contended that considering the nature of the charge implicating the driver, viz., K. Subramaniam, non-examination of the said driver is a fatal to the case of the management. It is true that with the connivance and assistance of the said Subramaniam, truck driver, the alleged incident had taken place at the instance of the petitioner. Learned Counsel appearing for the respondents has brought to our notice that the Enquiry Officer sent several notices summoning the said driver for examination on the side of the management. According to her, in spite of best efforts, the driver did not turn up. She also pointed out that due to threat and fear at the hands of the petitioner, the driver failed to turn up. On the other hand, there is no reason to disbelieve the version of the prosecution witnesses. Though all the persons examined on the side of the management did not witness the occurrence, there is no reason to disbelieve their version. It is also not in dispute that based on the information, the lorry was chased; stolen materials were recovered; the lorry was taken to the police station and a case was registered against the lorry driver as well as the petitioner. After considering all these aspects, the disciplinary authority imposed appropriate punishment. As rightly pointed out, the petitioner is none else than a Constable in CISF Unit, Neyveli and his primary duty is to protect the properties of the Public Sector Undertaking. When he himself was responsible for the theft of articles, there is no need to show any leniency in awarding punishment. We are satisfied that all the relevant aspects including the gravity of proven charge has been considered by the disciplinary authority as well as appellate authority.

15. It is also relevant to point out that in the counter affidavit filed by the 1st respondent, it is stated that the petitioner had suffered 7 punishments during his 10 years service. Considering all these materials, we are in agreement with the conclusion arrived by the respondents and unable to accept the contentions raised by the learned Counsel for the petitioner.

16. Consequently, the writ petition fails and the same is dismissed. No costs.