

(2017) 11 DEL CK 0709

In the Delhi High Court

Case No : Civil Writ Petition No. 631 Of 2014

Jagdish Lohra

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(iii)

Citation : (2017) 11 DEL CK 0709

Hon'ble Judges : Sanjiv Khanna, J;Navin Chawla, J

Bench : Division Bench

Advocate : Madan Gera, Vikas Mahajan, S.S.Rai, Naaveen Bhagat, Devik Singh, Naresh Kaushik

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. The petitioner in the above petition, challenges before us the Advice letter dated 31.05.2013 issued by the Deputy Secretary, Union Public Service Commission (hereinafter referred as "UPSC" in short), New Delhi and the order dated 25.10.2013 passed by the Director General, Central Industrial Security Force (hereinafter referred as "CISF" in short), Ministry of Home Affairs, reducing the pay of the petitioner by two stages for a period of three years with further direction that he will not earn increment during the period of reduction and on expiry of such period, the reduction will have the effect of postponing the future increment of pay.

2. The petitioner further challenges the remarks/downgrading made in the Annual Performance Assessment Reports for the period 1st April, 2009 to 31st March, 2010 and 1st April, 2010 to 21st October, 2010. However, at the time of hearing, no submission was made by the learned counsel for the petitioner regarding the said challenge. We, therefore, in our judgment are not dealing with the same.

3. The petitioner was working as a Deputy Commandant, CISF. He was served with a memorandum bearing No. V-15014/16/2010/L&R/325 dated 15.03.2011, leveling the following charges against him:

"ARTICLE-I

That Shri Jagdish Lohra, Deputy Commandant, while posted at CISF unit, DMRC Delhi from 02.03.2007 to 31.12.2010 committed a gross misconduct in that he used to frequently visit the rented accommodation of his subordinate functionary namely Constable Suresh Chand and maintained undue closeness with him. This conduct of Shri Jagdish Lohra was detrimental to the functioning of a uniformed Force because he was expected to maintain certain amount of command control over Constable Suresh Chand who was his subordinate functionary.

Thereby, Shri Jagdish Lohra, Deputy Commandant, contravened the provision of Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964 and acted in a manner unbecoming of an officer of his status in an Armed Force of the Union-CISF.

ARTICLE-II

That the said Shri Jagdish Lohra, while functioning in the aforesaid capacity during the aforesaid period committed gross misconduct in that he deployed Constable Suresh Chand for duties mostly in 'B and C ' Shift during the period from 01.01.2010 to 27.10.2010. He was not rotated as required and thereby Shri Jagdish Lohra, failed to supervise the duty deployment.

Thus Shri Jagdish Lohra failed to maintain absolute devotion to duty and acted in a manner unbecoming of an officer of his status in an Armed Force of the Union-CISF.

ARTICLE-III

Whereas on 27.07.2010 at about 2130 hrs the CIW personnel of the unit apprehended three miscreants taking out Copper Cable in Tata Ace vehicle (Regn. No. DL-ILM-6518) from Khyber Pass Depot of DMRC through gate No.2 in connivance with on duty Constable Suresh Chand and whereas shift I/C ASI/Exe Fakir Ram Pauri informed Shri Jagdish Lohra, Deputy Commandant over phone about the incident, he did not give any proper directions to shift I/C and CIW to detain Constable Suresh Chand. As a result, Constable Suresh Chand ran away from the scene of crime and remained absent from duty for 35 days before surrendering to Delhi Police.

Shri Jagdish Lohra failed to exercise effective supervisory control over the functioning of his subordinates, as a result Constable Suresh Chand indulged in corrupt practices and connived with the miscreants enabling them to take away the Copper Cables from Khyber Pass Depot of DMRC Delhi on 27.07.2010.

Thus Shri Jagdish Lohra, Deputy Commandant, failed to exercise proper administrative and operational control during a time when proper instructions were required to be given to junior officials and thus acted in a manner

unbecoming of a officer in an Armed Force of the Union."

4. The petitioner submitted his written statement of defence dated 16.06.2011, denying the charges.

5. The Department examined six witnesses; one witness i.e. Girija Shankar was examined as court witness, whereafter, the petitioner examined one witness, Sonu. Petitioner was also examined.

6. The Inquiry Officer submitted his report dated 24.05.2012, holding that the three charges were proved against the petitioner.

7. Based on the report of the Inquiry Officer and considering the submissions made by the petitioner, UPSC was consulted in the matter and vide impugned letter no. F.3/402/12-SI dated 31.05.2013, it was advised that if penalty of "Reduction of pay by two stages for a period of three years with further direction that he will not earn increment during the period of reduction and on expiry of such period, the reduction will have the effect on postponing the future increment of pay" was imposed on the petitioner, then the ends of justice will be met.

8. The Director General, CISF vide impugned order no. V-15014/16/2010/L&R/862 dated 25.10.2013, awarded penalty of reduction of the pay of the petitioner by two stages for a period of three years with further direction that he will not earn increment during the period of reduction and on expiry of such period, the reduction would have the effect of postponing the future increment of pay.

9. The learned counsel for the petitioner has challenged the impugned order on the ground of violation of principles of natural justice. It has been contended that the petitioner had requested for production of document in form of checking register maintained at Gate No.2 wherein it is alleged that duty deployment was recorded by one Hemraj, Sr. Commandant, DMRC, New Delhi. It is contended that this document was relevant for disproving Article of Charge No.2 regarding deployment of Constable Suresh mostly in B and C shifts during the period 1st January, 2010 to 27th October, 2010 as the duty deployment was recorded by Sr. Commandant Hemraj in the checking register maintained at Gate no.2 before 21st May, 2010.

10. We, however, are not impressed by the said argument. Enquiry officer in his report has summarized the duty deployment of Ex-Constable Suresh Chand for the period January, 2010 to 27th July, 2010. He records that the petitioner had joined as In-charge of Yellow Line on 11th March, 2010. Ex-Constable Suresh Chand was on duty for 89 days thereafter, out of which he performed duty in Shift- A on 18 days, Shift-B on 31 days and Shift-C on 40 days. He thereafter records that therefore, in 80% cases, Ex-Constable Suresh Chand was deployed in B and C shifts.

11. As far as alleged order by Hemraj is concerned, the enquiry officer dealt with

it in the following words:-

"The CO cannot take recourse to certain administrative orders by his superior authorities, after a particular administrative failure (rotation of duty) has occurred in Charged Official's area of administrative responsibility. The CO is applying the order retrospectively, which is neither logical nor reasonable and hence cannot be relied upon."

12. We may also quote from the other finding of the Enquiry Officer with regard to the duty deployment of Ex-Constable Suresh Chand as they clearly show that the production of the checking register was not relevant:-

"The argument of the CO that it was not his duty but that of Company Commander and Shift In-charge's to supervise the duty deployment of personnel does not appear logical. As In-charge of the Yellow Line, it was a serious responsibility on the part of the CO, to have exercised closed watch by way of conducting periodic scrutiny of duty deployment/deployment pattern of force personnel under his command. As per his own statement that on 21.05.2010 he had passed order to the Shift In-charges of Yellow Line that duty deployment of all force personnel would be done routine-wise. Even then, if the rotation of duties was not affected, as the duty deployment register (PW-01/Exh-03) makes it evident, then such order does not have any sanctity. Enforcing a lawful order is indicative of officer's supervisory capabilities to exercise proper command and control on personnel under him and passing an order for certain administrative action is only necessary but not the sufficient condition, to achieve that administrative objective. The CO does not appear to have ensured implementation of his own order on proper rotation of duties.

It has also come on record during the cross examination of PW-1 that on several occasions, apart from the Company Commander, CO also used to give directions directly to the shift in-charge regarding duty deployment. PW-01 also deposed that although, there was no order in writing issued by CO regarding putting Ex Ct. Suresh Chand on 'B' and 'C' shift continuously, yet, whenever, CO used to visit the Khyber Pass Depot, such orders were given directly or Passed on phone. Similarly, during the cross examination of PW-06, the response to Q-10 by PW-06 shows that he did not unambiguously deny the absence of any order by the CO regarding putting Ex.Ct. Suresh Chand mostly on 'B' and 'C' Shifts. PW-06 only said that "IN WRITING THERE WAS NO SUCH ORDER". Obviously, such orders can never be in writing. It corroborates the statements of PW-01 that verbally, CO used to intervene in the matters of duty deployment of Ex.Ct. Suresh Chand, who used to get duty deployment changed through CO's intervention.

As G.O In-charge of the yellow line, it was a gave (sic.) and serious responsibility on the part of the CO to have ensured that rotation of duty, as required, was appropriately done. The disproportionately dither deployment of Ct Suresh Chand in 'B' and 'C' shifts for months together cannot of CO over the said period (sic.).

It is unlikely that a given constable would be put more in 'B' and 'C' shifts, as compared to 'A' shift, for months together, by the shift In-charge of Khyber Pass Depot on their own, in a line headed by a Deputy Commandant rank officer, and still this serious deviation goes un-noticed by the CO. As brought out during the course of Inquiry through the cross-examination of PW-01 and PW-06, CO was not only intervening in the duty deployment of Ex. Ct. Suresh Chand by giving directions to shift In-Charge, which, as revealed by the duty deployment register (PW-01/Exb-03) and corresponding analysis shown above, resulted mostly in 'B' and 'C' shifts of Ex.Ct. Suresh Chand but also kept him posted at Khyber Pass Depot in spite of getting reports about his undisciplined activities from shift In-charge (PW-06) of Khyber Pass Depot."

13. Learned counsel for the petitioner further submits that there was violation of a fair opportunity to defend the case as certain witnesses were sought to be produced as defence witnesses in the case, however, the Enquiry officer did not allow all of them to be produced. He submits that these witnesses were relevant to the defence of the case and therefore, the petitioner has been denied a fair opportunity in the enquiry proceedings to defend himself.

14. We, however, are unable to accept this plea of the petitioner.

15. Ex Deputy Commandant Rajinder Singh was sought to be examined by the petitioner on the ground that he was fully aware of the procedure prevalent and could have very well explained about the duty deployment and other procedural aspects relevant for the enquiry.

16. It is to be noted that the petitioner himself was a Deputy Commandant and, therefore, could himself have deposed about the procedure prevalent with respect to duty deployment and other procedural aspects relevant for the enquiry. In any case, as noted above, the Enquiry Officer has based his findings more on the number of days that Ex-Constable Suresh Chand had been deployed in B and C shifts and the position of the petitioner as the Supervisory officer, if not the officer directly responsible for such duty deployment. We, therefore, do not find Rajinder Singh Ex Deputy Commandant to be a relevant witness, or principles of natural justice having been violated due to refusal to summon him as a defence witness.

17. As far as Ajay Kumar, Commandant CISF APSN, Mumbai is concerned, though he was allowed to be summoned as a witness, he expressed his unwillingness to appear as a defence witness. It is not explained as to what was the relevance of this witness and, therefore, again we find no merit in submission of the petitioner that merely because Ajay Kumar did not appear in the enquiry proceedings, the enquiry proceedings have been vitiated in any manner.

18. The third person sought to be summoned by the petitioner was Ex-Inspector D.K. Singh (I/C CIW) DMRC, Delhi. It is stated that he was relevant as PW-7, i.e., Ex-Constable Suresh Chand had alleged in his cross examination in reply to question no.11 that he had intimated about the factum of the petitioner visiting

the house of ex-Constable Suresh Chand for dining and drinking to Inspector D.K. Singh. We failed to understand how Inspector D.K. Singh would have been relevant to the charges being enquired only on the statement of Ex-Constable Suresh Chand in his cross examination.

19. The last person sought to be examined by the petitioner was Pt. Ramjit Kaushik. It is submitted that he was a relevant witness as it had been alleged that the petitioner along with Ex-Constable Suresh Chand had attended the marriage of the daughter of Pt. Ramjit Kaushik. We may only note that the Petitioner does not deny attending the marriage, however, sought to explain his relationship with Pt. Ramjit Kaushik. Again the said witness had no relevance to the charges being enquired against the petitioner. In fact, the enquiry officer had held that these two witnesses i.e. ex-Inspector D.K. Singh and Pt. Ramjit Kaushik were not relevant for either proving or disproving the charges. We have no reason to disagree with the said finding.

20. It is lastly contended by the counsel for the petitioner that the finding of guilt arrived at by the enquiry officer and as upheld by the disciplinary authority is perverse and without any legal evidence. Our attention has been drawn to the statement of ASI/EXE F.R Pauri (PW-06) to contend that the said witness has stated that as Ex-Constable Suresh Chand was leaving the spot, he did not try to stop him because he thought that Ex-Constable Suresh Chand would slap him. Counsel for the petitioner, therefore, contends that there were various officers of CISF present at the spot when the incident took place and the finding that only because the petitioner did not give proper direction on phone which resulted in Ex-Constable Suresh Chand running away from the scene of the crime is incorrect. It has further been contended that the Inquiry officer has placed much reliance on the statement of Inspector/EXE Gore Lal Shukla (PW-01) without appreciating that the said witness was biased and inimical towards the petitioner, who had issued various advisory memos/letters and warning letters to the said witness for non-performance and ultimately got him transferred by recommending adverse report against him.

21. Before considering the merit of the above contention, we must appreciate the scope and extent of our jurisdiction while examining the case of a disciplinary proceeding under Article 226 of the Constitution of India. It has been repeatedly held that the Court exercising the jurisdiction of judicial review would not interfere with the findings of the fact arrived at in the departmental enquiry proceedings except in case of mala fide or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. In the case of Union of India vs. H.C. Goel, AIR 1964 SC 364, Supreme Court held that the Court cannot embark upon re- appreciating the evidence or weighing the same like an appellate authority. The same view was taken by Supreme Court in the case of State Bank of India & Ors. vs. Narendra Kumar Pandey, (2013) 2 SCC 740, wherein it was held that:

"It is a well-accepted principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any resulting in manifest miscarriage of justice or violation of the principles of natural justice."

22. Equally, in a departmental proceeding, the allegations are not to be proved like a criminal charge, i.e., beyond any reasonable doubt. In *State Bank of Haryana & Anr. v. Rattan Singh* (1977) 2 SCC 491 Supreme Court held as under:-

"In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectively, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding."

23. The same *vide* was taken by Supreme Court in the case of *State Bank of Bikaner & Jaipur vs. Srinath Gupta & Anr.*, (1996) 6 SCC 486, wherein it was held:

"It is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself."

24. In the present case, the Inquiry officer has considered the entire evidence led before him for arriving at the conclusion of guilt against the petitioner on all three charges. As far as charge No.1 is concerned, he has relied upon the statements of Inspector/EXE Gore Lal Shukla (PW-01) and Constable Sant Kumar (PW-03) as well as Inspector/EXE Girija Shankar (CW-01) who was examined as a Court witnesses, and the statement of Ex-Constable Suresh Chand (PW-07). He has also taken note of statement of Sonu, who was examined as a defence witnesses. As far as charge No.2 is concerned, apart from statements of Inspector/EXE Gore Lal Shukla, statement of EX-ASI/EXE F.R. Pauri (PW-06) and the duty deployment of Ex-Constable Suresh Chand in B and C shifts has been relied upon. With respect to charge No.3, reliance has been placed on the statement of Constable Chander Pal Singh (PW-02) and that ASI/EXE F.R Pauri

(PW-06), the duty and the responsibility that is expected of a Commanding Officer and general circumstances.

25. We have gone through the Enquiry Report and cannot persuade ourselves to hold that the finding of guilt as recorded by the Inquiry Officer is in any manner perverse.

26. We were not given any credible answer regarding the association of the petitioner with Sonu, who is the son of the landlord of Ex-Constable Suresh Chand. Equally, the highly disproportionate deployment of Ex-Constable Suresh Chand in B and C shifts has neither been denied nor explained. It is also not denied that on the incident being discovered, a call was made to the petitioner. As a Commanding Officer, it was his duty to guide the Force to take appropriate steps for safeguarding the custody of Ex-Constable Suresh Chand. He was not expected to have left this important aspect to the wisdom of his junior officers. In any case, taking into account the totality of evidence led before the Inquiry Officer, it cannot be held that the finding on any of the charges by the Inquiry officer even borders to a case of no evidence or where a reasonable man, acting reasonably and with objectivity could not have arrived at a finding of guilt against the petitioner.

27. We also do not find the punishment awarded to the petitioner to be disproportionate in nature so as to warrant our interference.

28. In view of the above, we find no merit in the present petition and the same is dismissed with no order as to costs.