
(2011) 08 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (Civil) No.707 of 2010

Jai Prakash Pathak

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27(CCC), 27(CCC)

Citation : (2012) 1 GLR 598

Hon'ble Judges : T.Nandakumar Singh, J

Bench : Single Bench

Advocate : Mr. Th. Saratkumar for the petitioner., Mr. C. Komol for the respondents., Advocates appearing for Parties

Judgement

1. This court on 27.7.2011 passed an order, the operative portion of it read as follows :

"Mr. Th. Ibohal, learned counsel submits that the bus driven by the petitioner met with an accident due to mechanical failure and since a criminal case was already registered and the petitioner was acquitted by the criminal court by considering the incident to be a pure case of accident, a second penalty of reversion could not have been inflicted on the delinquent, without obtaining prior sanction of the Inspector General of CRPF, as contemplated under rule 27 of clause (CC) of the CRPF Rules, 1955.

Considering the specific contention raised by the petitioner, the case be posted on 8.8.2011 to enable the learned Central Government Counsel to produce relevant records showing the sanction, if any, by the Inspector General of CRPF.

2. Heard Mr. Th. Saratkumar, learned counsel appearing for the petitioner and also Mr. C. Komol, learned CGSC appearing for the respondents.

3. Trial court passed the above order dated 27.7.2011 taking into consideration of the petitioner's case that the petitioner is a head constable/driver in 27 Bn. Central Reserve Police Force, Head Quarter, Bawana, New Delhi. On 16.2.2009,

the petitioner had been ordered to move with vehicle registration No. MH14 V8194 from Kambiron to Bishenpur along with G/27 personnel. Accordingly, the petitioner drove the vehicle on the National Highway No. 53 towards Keithelmanbi with G/27 personnel and while negotiating a ninety degree bend between Mile stone 19 and 23 near Keithelmanbi, the vehicle lost its control due to sudden failure of brake and steering control despite slow speed of driving the vehicle. As a result, the vehicle met an accident.

4. The Officer Incharge, GamnomSapermeina Police Station, on receiving a report at about 6.30 p.m. of that day, i.e., 16.2.2009 that a bus bearing registration No MH14 V8194 met an accident and as a result of which, more than 20 CRPF personnel sustained injuries on their persons and evacuated to the hospital for medical treatment and unfortunately, two personnel of the CRPF expired on the way to hospital, registered a case being FIR No.8(2)/2009 GSPM P.S. under section 279/338/304A/427, IPC against the unknown driver and investigated. The Officer Incharge, G. Sapermeina, sent a request to the Motor Vehicle Department, Government of Manipur, for mechanical examination of the said vehicle in connection with the said FIR, i.e., FIR No.8(2) 2009 GSPM P.S. The Inspector [(Mechanical), Motor Vehicle Department, Government of Manipur, after thorough examination of the said vehicle, submitted a report vide his letter/report bearing No.102/DTO(C)] MVD dated 26th February, 2009 that the defect of the vehicle was the brake due to leakage of oil of front wheel left side oil pipe. The I.O., after investigation of the said case, i.e., FIR Case No.8(2) 2009 GSPM under section 279/338/304A/427, IPC, ascertained that the accident of the said vehicle bearing Registration No MH14 V8194 was purely accidental in nature without any negligence or fault of the driver and accident was because of the mechanical defect of the said vehicle and submitted a final report stating that the case is of accidental in nature. The final report for insufficiency of the evidence for the offence mentioned in the said FIR was submitted to the learned C JM, Senapati, who had accepted the F.R vide the order of the learned CJM dated 8.1.2010 passed in CrI. Misc. (F.R.) No.74 of 2009 (Ref:FIR No.8(2) 2009 G/SPM P.S. under section 279/338/304A/427 I.P.C. By the said order dated 8.1.2010, the learned CJM held that the case is of accidental in nature; and discharged the accused driver (the writ petitioner) and the bond stands cancelled. A copy of the said order of the learned CJM dated 8.1.2010 passed in Cril. Misc. (F.R.) No. 74 of 2009 is available at Annexure A/3 to the present writ petition.

5. Under rule 27(ccc) of the Central Reserve Police Force Rules, 1955, when a member of the force has been tried and acquitted by a criminal court, he shall not be punished departmentally under the Rules, i.e., CRPF Rules, 1955 on the same charge or on a similar charge upon the evidence cited in the criminal case whether actually led or not, except with the prior sanction of the Inspector General. For easy reference, rule 27(ccc) of the CRPF Rules, 1955 is quoted hereunder :

"27. Procedure for the Award of Punishments. (ccc) when a member of the Force

has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General.

(d) (1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General [Ins. by SO 3117, dated 15th July, 1971] [or any other authority competent to impose the penalty of dismissal from service on all such members of the Force] may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

6. After the petitioner had been discharged in the criminal case mentioned above, i.e., FIR Case No.8(2) 2009GSPM P.S. which was registered for the accident of the said vehicle i.e. vehicle having Registration No. MH14 V8194 driven by the petitioner on 16.2.2009, the respondent No.2, i.e., the Commandant initiated Departmental Enquiry under memorandum dated 27.1.2010 for the same incident, i.e., the motor accident of the said vehicle driven by the petitioner on 16.2.2009. The said memorandum dated 21.1.2010 and also the article of charges are quoted hereunder :

"OFFICE OF THE COMMANDANT 27 BN. CRPF BAWANA, NEW
DELHI 39

No. P. VIII 2/201027ECII Dated, the January 2010 MEMORANDUM

The undersigned propose to hold an Enquiry against No. 910440093 HC/Dvr. J/P. Pathak of this unit under rule 27 of CRPF Rule 1955. The substance of imputation of misconduct/disobedience in his capacity as a member of the Force in respect of which the enquiry is proposed to be held is set out in the enclosed statement of Article of Charge (Annexure I) A statement imputation of such misconduct/disobedience/other misconduct in his capacity as a member of the Force enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the Article of charge are proposed to be substantiated are also enclosed (Annexures III and IV respectively).

2. The Enquiry shall commence at least 48 hours after the articles of charges are read out to No. 910440093 HC/Dvr. J.P. Pathak of HQ/27 Bn., CRPF and a copy of the same is given to him through OCHQ/27 Bn., CRPF from the issue of this letter.

3. No. 910440093 HC/Dvr. J.P. Pathak of 27 Bn., CRPF is informed that if he does not appear in person before the Enquiry Officer or otherwise refused to comply with the provisions of rule 27 of CRPF Rules, 1955 or orders/instructions issued in pursuance of the said ruled it will be presumed that it is not reasonably practicable to hold an inquiry against NO. 910440093 HC/Dvr. J.P. Pathak of HQ/27 CRPF shall be held ex parte.

4. Attention of No. 910440093 HC/Dvr. J.P. Pathak of HQ/27 Bn., CRPF is invited

to rule 20 of CCS (Conduct) Rules 1964 under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that No. 910440093 HC/Dvr. J.P. Pathak of HQ/27 Bn. CRPF is aware of such a representation and it has been made at his instance and action will be taken against him for violation of Rule 20 of CCS (Conduct) Rules 1964.

5. The receipt of memorandum may be acknowledged.

(RASBIHARI SINGH) COMMANDANT 27 BN CRPF TO, No. 910440093 HC/Dvr. J.P. PATHAK OF HQ/27

CRPF THROUGH OCHQ/27 BN, CRPF STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO.910440093 HC/Dvr. J.P. PATHAK OF HQ/27 BN. CRPF"

"ANNEXURE I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO. 910440093 HC/Dvr. J.P. PATHAK OF HQ/27, CRPF

ARTICLE 1

No. 910440093 HC/Dvr. J.P. Pathak has been directed to move with vehicle Regn. No. MH.14 V8194 from Kambiron to Bishnupur with G/27 personnel during ACO2009 on 16.2.2009. Accordingly he moved with above vehicle on 16.2.2009 with above personnel and while negotiating a ninety degrees bend between Mile stone 19 and 23 near Keithelmanbi driver lost its control and plunged into 70 feet deep gorge after two and half rolls resulting in the death of No. 025150459 CT/GD M.N. Kom of 27 Bn. and No. 041720754 CT/GD Rajesh Maluskar of 172 Bn. Vehicle was extensively damaged. But as per the statement of eye witnesses the vehicle was negotiating the bend at the speed to 3035 km. ph. The statement of all the jawans travelling in the bus revealed that accident could have been avoided if vehicle had been going at slow speed. The plea taken by driver that there was sudden failure of steering control or break failure is not acceptable. The accident occurred due to lapse on the part of No. 910440093 HC/Dvr. J.P. Pathak and considered to be a guilty of disobedience, negligence of duty in his the capacity of a member of the force under section 10(n) and 11(1) of CRPF Act 1949.

(RASBIHARI SINGH) COMMANDANT 27 BN. CRPF."

7. After completing the said Departmental Enquiry, the petitioner had been imposed the penalty for reversing from the rank of HC/DVR to CT/DVR for a period of three years from the date of issue of the order and also for recovery of Rs. 15,000 from the petitioner vide the impugned reversion order dated 27.9.2010 issued by the Commandant, 27 Bn., CRPF, Bawana, New Delhi.

8. As stated above, the only ground for assailing the Departmental Enquiry proceedings for the said motor accident and penalty based on the said Departmental Enquiry is that said Departmental Enquiry was initiated in clear infraction of the rule 27(ccc) of the CRPF Rules, 1955 quoted above.

9. The respondents had filed affidavit in opposition in the present writ petition wherein the respondents did not specifically reply to the point raised by the petitioner for assailing the said Departmental Enquiry and also the impugned reversion order that the Departmental Enquiry was in clear violation of the rule 27(ccc) nor denied. In such situation, this court passed the order dated 27.7.2011 directing the learned CGSC to produce the relevant record showing the prior sanction, if any, by the Inspector General, CRPF. Accordingly, the learned CGSC placed the relevant file of the said Departmental Enquiry before this court. Mr. C. Komol, learned CGSC appearing for the respondents also fairly submitted that on perusal of the records of the relevant file or proceedings of the Departmental Enquiry, it appears that prior prosecution sanction mentioned in rule 27(ccc) of the CRPF Rules, 1955, of the Inspector General, CRPF is not available. This court also perused the said file/proceedings of the Departmental Enquiry. On such perusal, it appears that no prior sanction of the Inspector General, CRPF contemplated under rule 27(ccc) of the CRPF Rules, 1955 was obtained before proceeding of the said Departmental Enquiry. Such being the factual position, this court has no alternative except to come to the findings that the said Departmental Enquiry against the petitioner, which resulted to passing the impugned reversion order, was proceeded in violation of the rule 27(ccc) of the CRPF Rules, 1955. In the result, memorandum dated 27.1.2010 and impugned reversion order dated 27.9.2010 are illegal.

10. For the foregoing reasons, the said Departmental Enquiry against the petitioner and also impugned reversion order dated 27.9.2010 and order for imposition of fine of Rs. 15,000, are hereby set aside.

11. Writ petition is allowed.