
(2006) 07 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) No. 6314 of 2002

Jasbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 136, 226
Penal Code, 1860 (IPC) — Section 279, 338, 427

Citation : (2006) 07 DEL CK 0083

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

**Advocate : Mahabir Singh, Rakesh Dahiya and Nikhil Jain, for the Appellant;
Richa Kapoor, for the Respondent**

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner joined Platoon of 22nd Battalion of Central Reserve Police Force in January 1995 as a Constable/Driver. He was in charge of vehicle No. DL-11B-3204 (Tata 407) and was attached to E-22 at Doordarshan Kendra, Sri Nagar for Company duty. On 28.9.1998 the petitioner was directed that his vehicle should reach C/22 location at 0500 hrs. on 29.9.1998 as he was supposed to proceed to Gulmarg for VVIP duty. The petitioner reported for his duty on 29.9.1998 at 0500 hrs.... The petitioner left from C/22 location to Gulmarg at about 0615 hrs. Along with a convoy of three vehicles. The petitioner was leading the vehicle of the Convoy. In his vehicle S.I Sajjan Singh was sitting on the front seat and 12 others were sitting in the rear body of the vehicle. At about 0710 hrs. at Srinagar Baramula By-pass suddenly a dog came on the road in front of the vehicle while the petitioner was negotiating the curve on the road. The petitioner applied emergency breaks to save the life of the dog as a result of which the vehicle overturned towards the left side of the road. As a result of the accident, 5 out of 13 persons who were sitting in the vehicle sustained injuries.

Out of these five persons one Constable Jarnail Singh sustained serious injuries. He was admitted in SKIMS Hospital at Soura and after 22 days shifted to Safdarjung Hospital, Delhi where he expired on 22.10.1999.

2. Soon after the accident, SI Sajjan Singh, who was among the passengers traveling in the above said vehicle, approached the Police Station and an FIR being FIR No. 274/1998 u/s 279, 338 and 427 IPC was registered on his report. Vide order dated 17.10.1999, the petitioner was served with a charge sheet for the said incident wherein it was stated that petitioner had misconducted his capacity as a member of the force u/s 11(1) of the CRPF Act, 1949 as he drove the vehicle rashly and negligently at a speed of 70 Kms/Hr and the vehicle met with an accident causing death.

3. Departmental Enquiry was initiated against the petitioner under Rule 27 of the Central Reserve Police Force Rules, 1955. Vide order dated 28.10.99, upon completion of the said enquiry, the petitioner was served with a show cause notice dated 5.4.2000 along with the findings of the enquiry officer allowing the petitioner for making the representation/submissions within 15 days of that notice. During the course of enquiry, the petitioner claims to have produced the evidence to show that there was some defect in the vehicle and he had so recorded in the Defect Register and brought to the notice of his senior. The petitioner was dismissed from service vide order dated 17.5.2000. Against this order, the petitioner preferred an appeal before the Deputy Inspector General of Police which was partially accepted and the punishment imposed upon the petitioner was modified from dismissal to removal from service. The petitioner again filed a revision against that order on 13.11.2000 but the same was rejected on 16.3.01. A mercy petition dated 5.5.01 was also filed by him which met with the same fate. Vide letter dated 16.10.2000 the petitioner was informed that his mercy petition had been rejected. According to the petitioner, he had not received the said letter. He again approached the respondents and vide letter dated 28.2.02 he was informed that his revision petition has been rejected nearly seven months back. The petitioner has challenged the legality and correctness of the above three orders before this Court in the present writ petition mainly on the ground that the evidence produced by the petitioner was not considered by the authorities. Show cause notice was served upon the petitioner proposing punishment of dismissal but the documents were not produced. Other grounds have been taken in regard to the fact that the punishment of dismissal is entirely disproportionate to the gravity of the charge particularly keeping in view the service record of the petitioner. According to the petitioner, he had already been punished by the Court of Sub-Judge, CJM, Srinagar who had imposed a fine of Rs. 3,000/- upon the petitioner. Counter affidavit was filed on behalf of the respondents wherein the facts are hardly disputed, however, it is stated that the enquiry was conducted in accordance with rules. Petitioner was granted proper opportunity to show cause why the punishment of dismissal be not imposed upon him and that the petitioner is guilty of "Suppressio Vari and Suggestio Falsi" and no ground in law or fact has

been made for interfering with the orders of punishments passed against the petitioner. It is also stated that various authorities in the hierarchy of the CRPF have considered the case of the petitioner and taking a sympathetic view, converted the punishment of dismissal into removal so as to avoid any bar to the re-employment of the petitioner in other departments. According to the respondents, the petitioner was driving the vehicle rashly and negligently which resulted in the incident and he was directly responsible for occurrence of the accident on 29.8.98. It is specifically stated by the respondents in their counter affidavit that vide Defect Memo dated 5.9.98, the defect in the vehicle was duly considered and removed and copy of the Inspection Report of Works Manager, J&K SRTC who inspected the vehicle on 28.3.2000 was placed on record. Thus the petitioner has not even stated correct facts in this behalf.

4. In the rejoinder filed by the petitioner, there is repetition of what has been stated in the petition which is hardly of any significance. During the course of hearing, he primarily pressed upon his submission in regard to punishment being excessive or disproportionate to the gravity of the article of charges which were framed against him. It was contended by the learned Counsel for the petitioner that the punishment is too harsh and the appellate/divisional authority should have reduced the quantum of punishment in the facts and circumstances of the case. He relied upon the judgment of the Supreme Court in the case of Dev Singh v. Punjab Tourism Development Corporation Ltd. and Anr. JT 2003 (7) 509 in support of his contention.

5. At the very outset of our discussion, we may notice that all other questions raised by the learned Counsel appearing for the petitioner have no merit and the counsel has very fairly not pressed the same. The notice was served upon the petitioner Along with the copy of the enquiry report giving him time to submit his representation but the petitioner submitted no representation and filed an application dated 28.3.2000. In any case, copy thereof has not been placed on record by the petitioner so as to enable the Court to examine this contention. If the petitioner has failed to avail of the benefit granted to him, he cannot shift the blame of non-submission of reply to any other person except himself.

6. Quantum of punishment is a subject which falls primarily in the domain of the Disciplinary Authority. The Court normally would not substitute its view with the view of the Disciplinary Authority, unless the punishment awarded to the delinquent was not only disproportionate to the gravity of the charge but was so prejudicial that it would prick the conscience of the Court. We may usefully refer to a decision of the Punjab and Haryana High Court in the case of Ved Prakash Arya v. Haryana State Handloom and Handicrafts Corporation Ltd. and another, CWP No. 12815/2002 decided on 19th August, 2004 where while discussing the scope of interference by the court, the Court held as under:

When charges are so inter-mingled between two delinquents and in fact are inter-dependent for holding either of them guilty and in a common enquiry connivance between the two is held to be a basic factor for proving the Article of Charges

against them, then such a vast distinction in imposition of punishment would attract the element of unfairness. In the case of *State of U.P. and Ors. v. Raj Pal Singh* 2001 (4) S.L.R. 637, the Hon'ble Supreme Court held as under:

Though , on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.

At this stage it may also be appropriate to make a reference to the judgment of this Court in the case of *Devi Saran Versus Union of India* 1998 (3) RSJ 483 where the Court held as under:

Once there is a finding as regards the proof of misconduct, what should be the nature of punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances taken into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of punishment imposed, it has to be considered in the peculiar facts and circumstances of each case.

It is clear from the above well settled law that the jurisdiction of the Courts is not totally ousted in regard to the matters relating to quantum of punishment. Wherever the facts and circumstances of the case call for, the courts would certainly interfere even in the quantum of punishment. The nature of the offence proved against the petitioner is one which certainly does not call for the severest punishment of dismissal from service.

From the above enunciated principles it is clear that the scope of interference by the Court in exercise of its jurisdiction under Article 226 of the Constitution of India, in the order of punishment is a very limited one. Wherever the order of punishment would prick the judicial conscious of the Court on the plea of unfairness and arbitrariness, the Court may have to necessarily step in and interfere with such orders to maintain the administrative actions in conformity with the basic rule of law. Reasoning which is the sine qua non for passing of any

order of punishment by its very necessary implication oust the arbitrariness in such action. The disciplinary authority is expected to apply its mind in a manner which would apparently be free of any unfairness apparent on the face of the record. In the present case, the orders can hardly meet this basic test of law and, thus, to that extent are liable to be set aside.

7. In light of the above principles the reliance placed by the learned Counsel appearing for the petitioner upon the judgment of the Supreme Court in the case of Dev Singh (supra) is not of much help. In that case the charge against the delinquent was only misplacing of a file in contrast to the facts of the present case where the petitioner has been found guilty of rash and negligent driving by the authorities as well as by the Court. As a result of rash and negligent driving by the petitioner, four people were injured and one of them even lost his life. The gravity of the offence and its consequence is a very relevant factor which has to be considered by the Court while deciding such an issue. This Court cannot examine and re-appreciate the evidence led in criminal proceedings before the Court as well as in the Departmental Enquiry proceedings. The reliance has also been placed by the respondents upon a Division Bench Judgment of this Court in the case of Ram Bihari Shukla Union of India and Ors. C.W.P No. 3920/1999 decided on 6th December, 2001 and particularly the following observations of the Court:

So far the plea seeking for modification/alteration of the punishment on the ground that it is disproportionate to the offence alleged, suffice is to say, that this Court does not ordinarily exercise such a power as such power is vested in the disciplinary authority. If in case the disciplinary authority on the basis of the evidence on record has come to a conclusion that the delinquent person is required to be punished with an order of dismissal from service which is justified on the evidence on record, the High Court exercising jurisdiction under Article 226 of the Constitution of India would not normally alter the said punishment unless the punishment appears to be shocking to the conscience of the Court. In a three Judges Bench judgment of the supreme Court in B.C. Chaturvedi Vs. Union of India and others, , it was reiterated thus. On a proper reading and appreciation of the allegations and evidence, it cannot be held that the punishment is an outrageous defiance of logic.

In the present case, the petitioner attempted and pointed his carbine towards some of his colleagues who are also C.R.P.F. personnel but was prevented from firing on the interception of some other C.R.P.F. personnel. The offence alleged against the petitioner, Therefore, is grave and serious. Therefore, it cannot be said that the punishment awarded to the petitioner is disproportionate to the offence alleged.

8. Therefore, the Court has to examine the merit of this contention within the limits of jurisdiction of the Court to interfere with the quantum of sentence. The petitioner, in fact, has made incorrect and contradictory versions at different places. It was stated that he was driving vehicle at a speed of 40-50 kmph and

because a dog had come in front of his vehicle, he had applied the brakes, as a result of which the vehicle overturned. If the vehicle was being driven at that speed, it is very unlikely that on applying of brakes, the vehicle would have overturned in the manner resulting in injury to the persons sitting inside it and even causing death of an individual. The authorities in their discretion have imposed the punishment considering the various facts, circumstances and discipline of the force. Interference by the Court in this quantum of punishment would hardly be justified. Resultantly, this writ petition is dismissed, while leaving the parties to bear their own costs.