
(2014) 07 DEL CK 0153
In the Delhi High Court
Case No : WP (C) No. 3429 of 2003

J.P. Singh

APPELLANT

Vs

Director General Railway Pro.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 DEL CK 0153

Hon'ble Judges : Najmi Waziri, J;Kailash Gambhir, J

Bench : Division Bench

Advocate : Rachna Srivastava, Advocate for the Appellant; Krishna Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Najmi Waziri, J.—This Writ Petition seeks the issuance of a certiorari quashing orders dated 01.01.2003, 31.07.2002, 24.11.2001 and 30.09.2001 passed by respondent Nos. 1, 2, 3 and 4 respectively and for a writ of mandamus directing the petitioner to be reinstated in service with all consequential benefits.

2. The facts are that the petitioner a Head Constable in "C" Coy was arrayed on charges of: (i) misconduct and breach of discipline on 04.02.2001 at about 11.20 hours while "A" Coy and "C" Coy/5 BN were taking over and handing over, respectively the charges of duties and accommodation at BDTS, the petitioner threatened Sub Inspector B.L. Yadav and A.S. Pratap Chand of "A" Coy that if they (i.e. of "A" Coy) did not vacate the bogies for accommodation of "C" Coy staff, he would set ablaze the bogies and (ii) the petitioner argued with IPF Suraj Bhan of "C" Coy/5BN/RPSF about the issue of accommodation and violently pressed his right hand on the throat of Shri Suraj Bhan who was lying on a cot and pushed him down from the cot by lifting the cot and threatened the IPF of dire consequences if he lodged any Diary Entry in this regard.

3. After recording of evidence of the prosecution and the defence in a full fledged trial of the matter, on 21.06.2001 the petitioner was found guilty of both the

charges. However, while meting out the punishment, a lenient view was taken vide order dated 30.09.2001 which included an opportunity to rectify himself and a reduction in rank from Head Constable to Constable for a period of three years with immediate effect and the suspension period was treated as suspension only.

4. The petitioner's representation to Appellate Authority against the said reduction in rank by the Disciplinary Authority was allowed in view of his long service, thereby giving him a chance to improve his attitude and keep his subordination towards higher authorities. His reversion from Head Constable to Constable was set aside and only the punishment of withholding his increment for a period of three continuous years with immediate effect was imposed.

5. Feeling aggrieved by the withholding of his increment for a period of three continuous years, the petitioner represented to the next higher authority i.e. DIG/RPSF-Cum Chief Security Commissioner (Revisionary Authority), vide representation dated 23.01.2002.

6. While considering the petitioner's revision petition the Revisionary Authority was of the view that the punishment awarded to the revisionist was not commensurate with the gravity of the charges hence it proposed to enhance the punishment awarded to the revisionist by virtue of the powers conferred under Rule No. 219.3 of RPF Rules, 1987. However, before any orders were passed under the said Rule, the revisionist/writ petitioner was given an opportunity to show cause as to why the punishment awarded by the Appellate Authority may not be enhanced.

7. The petitioner responded vide his letter dated 27.06.2002 reiterating the contents of his revision petition and requesting that the petition itself may be treated as a reply to the show cause notice of 27.05.2002.

8. Having considered the representations and the record, the Railway Board i.e. the Revisionary Authority dismissed not only the petitioner's revision petition but also removed him from service on 31.07.2002. The Revisionary Authority was of the view that:

I have given careful consideration to the nature of the charges and allegations and the punishment awarded. It is the height of the things that the revisionist a seasoned member of the disciplined force being Head Constable behaved in most indisciplined manner by stating that the space provided in the coach should be got vacated failing which he will set it ablaze. He has further gone to the extent of insulting his immediate Inspector by uttering loudly followed by pressing his throat and forcing him to fall from the cot by turning it upside down.

As such the revisionist does not deserve any sympathy. The discretions of the appellate authority that the revisionist needs a chance to improve his attitude has nothing to do with his past service. Revisionist is not a green born boy. He knows all the pros and cons of the service to which he is employed. He should had behaved in a manner to set an example to his juniors, but he has acted in an

unbecoming manner. The past record of the revisionist is also not impressive and he is a habitual bad character.

In the light of the discussions made here in before, the orders dated 24.11.2001 made by appellate authority are set aside and restore the order dated 30.09.2001 of the Disciplinary Authority with the modifications that the punishment awarded by the disciplinary authority against the revisionist is altered from reduction in rank to removal from service with immediate effect.

9. Against the said order of the Revisionary Authority, the petitioner preferred an appeal before the respondent No. 1 i.e. Director General, Railway Protection Force. But, that too was dismissed on 01.01.2003. The said outcome of the appeal was communicated to the petitioner vide a covering letter of 09.02.2003. The petitioner has now impugned the said orders on the ground that the severity of the punishment was grossly disproportionate to the gravity of the misconduct and inflicting such punishment amounts to legal victimization; that the punishment imposed manifests an imbalance of the relevant considerations.

10. In support of her submissions, the learned counsel for the petitioner relies upon the following judgments: (i) Jai Bhagwan Vs. Commr. of Police and Others, (ii) Ranjit Thakur Vs. Union of India (UOI) and Others, and (iii) B.C. Chaturvedi Vs. Union of India and others, . She relies on the judgment in Jai Bhagwan (surpa) to contend that wherever disproportionate punishment is given in defiance of logic and is otherwise irrational and perverse, it would be open to correction and judicial review. In the said case, the appellant's dismissal from service was substituted by an order of reduction to the rank of a Constable with the direction that while securing him the benefit of continuity of service, but that would not be entitled to any arrears of pay or other financial benefits for the period between the date of dismissal and the date of his reinstatement in the lower post of constable. The Court had passed the order in the context of the appellant being falsely accused of having used casteist abuses to humiliate fellow officers, an allegation, which on inquiry, was found to be totally false. The Court found that the appellant had tried to use the caste card only to escape punishment for the misconduct and indiscipline committed by him. However, the Court took a lenient view in the specific context of this case. A judicial precedent is specific to the particular facts and circumstances of that case. The facts of the present case however, are quite different. The learned counsel for the petitioner submits that there was denial of natural justice to the petitioner and that there was no evidence of him having physically assaulted the personnel of "A" Coy or of insubordination. She submits that guard of "C" Coy Shri Jawahar and other defence witnesses were not properly examined and primarily personnel of "A" Coy were examined, who would naturally be biased towards "C" Coy.

11. We have gone through the evidence recorded and find that two witnesses were examined on behalf of the petitioner as defence witnesses namely H.C. P.K. Singh and Constable R.N. Meena, both of "C" Coy. Interestingly, neither of them stated anything about the actual incident of "violently pressing the right hand on

the throat of IPF/Suraj Bhan who was lying on a cot and pushing him down from the cot and threatening the IPF of dire consequences if he lodged a diary entry in that regard" and of "threatening to set the bogies ablaze".

12. H.C. P.K. Singh was a Quarter Guard Commander on duty at the time the incident is stated to have occurred. He acknowledges that the petitioner was sitting near IPF Suraj Bhan, but, after that his "mind was diverted from there to coy property, he could not see (sic) and heard (sic) the incident". Similarly, Constable R.N. Meena stated that his "mind was diverted from there to coy property and arms and ammunition." He also performed the Quarter Guard Duty at "C Coy at the relevant time. He admitted that his "mind was diverted from there to coy property and arms and ammunition and after some time he heard a voice and saw that IPF Suraj Bhan fell down on the cemented floor of platform and HC Jai Prakash Singh was standing near IPF Suraj Bhan. " Clearly, by their own depositions, the petitioner's two witnesses could not be witness to the incident since their attention, at the relevant and crucial time, was diverted to official duties.

13. In contrast, the prosecution witnesses namely (i) SI Raghubir Singh, (ii) HC D.G. Vargheese, (iii) HC A. Mathai, (iv) Constable Jawahar Prasad, (v) IPF Suraj Bhan, (vi) HC P.R. Pillai and (vii) SI K.S. Anil of "C Coy and (viii) SI B.L. Yadav and (ix) ASI Pratap Chand of "A" Coy deposed in favour of the prosecution case, substantiating the two charges against the petitioner.

14. Interestingly, in his written statement-of-defence, the petitioner relied upon the statements of SI B.L. Yadav and ASI Pratap Chand of "A" Coy, though they in no way supported the petitioner's case. Such reliance, evidently, was misplaced. ASI Pratap Chand and SI B.L. Yadav deposed almost identically. The latter stated and admits that:

HC Jai Prakash Singh of "C Coy demanded that, immediately vacate the bogies otherwise he would vandalise the bogies by setting ablaze...After some time he heard the loud voice and saw that IPF Suraj Bhan fell down on the cemented floor of platform and HC Jai Prakash Singh of "C" Coy was standing near the IPF. "(sic)

15. Thus, from the examination of the evidence on record the charges against the petitioner stand proved. This Court finds no substance in the petitioner's contention that there was lack of evidence in this regard. The petitioner has not brought anything on record to show that there was denial of natural justice or lack of due opportunity to him to present his case. By no yard-stick could it be said that there was a flaw in the procedure which resulted in the miscarriage of justice. The petitioner's contention that the process of recording of evidence was flawed; or that it was arbitrary, malafide or illegal, is merely a bald assertion unsubstantiated by any specific instance. All arguments in this regard, are therefore, unsubstantiated and untenable.

16. The learned counsel for the petitioner then argued that the revision petition

was filed by the petitioner and not by the department. Therefore, his revision petition seeking reduction in punishment could not be used for enhancement of the punishment; the removal of the petitioner by the Revisionary Authority by meting the maximum punishment was arbitrary; and that the enhancement of punishment can be done only upon a revision petition filed by the department against the order of the Appellate Authority. However, there is nothing on record to show that the Revisionary Authority could not enhance the punishment. Indeed, the show cause notice itself refers to Rule 219.3 of RPF Rules, 1987 which reads as under:

219.3 The superior authority while passing orders on the application for revision may at its discretion enhance punishments:

Provided that before enhancing the punishment, the aggrieved member shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that subject to the provisions of sub-rule (2) of rule 212, an order enhancing the punishment shall be treated as an original order for the purpose of appeal, except when such an order has been passed by the Central Government in which case no further appeal shall lie. Where such order has been passed by the Chief Security Commissioner, appeal shall lie to the Director-General and in the case of such order by the Director-General, the appeal shall lie to the Central Government

17. Clearly, the Revisionary Authority was duly empowered to either lessen or enhance the sentence awarded to the petitioner. Furthermore, Rule 155 of the RPF Rules, 1987 reads as under:

155. Determination of punishment:

In determining the punishment, the character, previous bad record and punishment of party charged shall not be taken into consideration unless in a case where they are made subject-matter of a specific charge in the proceeding itself. Offences connoting moral turpitude shall be carefully distinguished from smaller lapses of conduct. It is essential that the punishment shall be inflicted keeping in view the nature of duties expected from the member of the Force and the misconduct by him.

18. The Revisionary Authority was of the view that it was height of things that the revisionist who was a seasoned member of the disciplined force and being a Head Constable behaved in the most indisciplined manner by stating that the space provided in the railway-coach should be vacated immediately, failing which he would set it ablaze and further went to the extent of insulting his immediate Inspector by uttering loudly, which was followed by pressing his throat and forcing him to fall from the cot by turning it upside down.

19. The Revisionary Authority further reasoned that the revisionist did not deserve any sympathy since he was not a new comer to the force, but was fully aware of the pros and cons of the service to which he was employed and that he

should have behaved in an exemplary manner for his juniors, but instead he acted in an unbecoming manner. The Revisionary Authority further kept in mind that past record of the revisionist was unimpressive and showed his habitual bad character; while his past service could be disregarded, his attitude was one of absolute insubordination.

20. There is no evidence of any abuse of process of arbitrariness or denial of justice to the petitioner throughout the proceedings of Inquiry, Disciplinary Authority, Appellate Authority or Revisionary Authority.

In the proceedings in all twelve (12) documents were referred to or relied upon and nine (9) witnesses were examined. They all substantiated the charges against the petitioner. This Court does not find a whiff of prejudice against the petitioner. The evidence itself cries out to his guilt.

21. The learned counsel for the respondent relies upon the judgment in *Gouranga Chakraborty Vs. State of Tripura and Another*, . In this case, on a lesser charge of overstaying leave without sufficient cause, an officer was dismissed by Border Security Force, another paramilitary force.

22. In *Ranjit Thakur (supra)* the Supreme Court held thus:

25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". This question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

23. In *Jai Bhagwan (supra)* it was held as under:

11. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, this Court held that the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision even as to the sentence is in defiance of logic, then the quantum of sentence would not be immune from correction. Irrationality and perversity, observed this Court, are recognised grounds of judicial review.

24. In *B.C. Chaturvedi (supra)* it was held that punishment must commensurate with the evidence; that it should not be vindictive or unduly harsh. The Court further held that judicial review would be maintainable in instances where the punishment imposed by the Disciplinary/Appellate Authority is such that it shocks judicial conscience.

25. The cases referred to by the learned counsel for the petitioner would show that the guiding principle at the time of awarding punishment in a disciplinary proceeding would be nature of the charges, evidence, misconduct, the nature of the duty assigned to the delinquent officer and the organization to which he/she belongs. In the present case, the official belonged to a disciplined uniformed force viz. The Railway Protection Force, specially raised for the protection of passengers, staff and railway property. Such forces have a strict "command structure". It would brook no subordination of any kind, least of all subordination in front of junior and that too by somebody who had been in the force for some number of years. It would be for the Disciplinary Authority to consider whether a lesser punishment would have served the purpose. If the authority came to the conclusion that the nature of the guilt established was such which would strike at the very root of the disciplined force or lessen the authority of the superior officer or that it would shake the command structure on which the entire edifice of the disciplined force is built, the Disciplinary Authority can well impose the severest punishment, even resulting in removal from service. Reinforcing the discipline and saving the command structure would be more appropriate, just and paramount. Indeed, in *Ranjit Thakur* (supra) the balance of proportionality of punishment vis-?-vis the offence is so sharp that unless perfectly balanced it could well call for a judicial review i.e. if the punishment is unduly harsh or unreasonably soft and meaningless, it too would be open to correction. The Revisionary Authority had done just, that in this case, with substantive and cogent reasons. He found that for a disciplined force to which the petitioner belonged, the gross nature of the insubordination, physical assault on his senior officer, in the presence of junior officer would tantamount to challenging the authority of the Force and such insubordination and intransigence could not be tolerated as it would be disastrous for the Force. Hence, for the sake of the Force itself the severest punishment, resulting in removal from service was warranted.

26. This Court finds no merit in the petition. It is accordingly dismissed. No orders as to costs.