

(2006) 01 DEL CK 0173

In the Delhi High Court

Case No : Writ Petition (C) No. 304 of 2002

Kewal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 226

Citation : (2006) 127 DLT 676 : (2006) 86 DRJ 747

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : V.N. Kaushik, for the Appellant; Alakh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB has already been issued on 6th August, 2002. With the consent of the counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the impugned order of dismissal dated 13th January, 1999 passed by the Commandant, 83 Battalion, Jammu (J & K) pursuant to an enquiry report against the petitioner. The charge against the petitioner is as follows:-

That the said No. 710552691 HC/GD Kewal Singh of B Coy, 83 Bn, CRPF while functioning as Platoon Havildar and Guard Commander of LMG Morcha No. 1 committed an act of misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 in that on 04-09-98 at about 1930 hrs, he resorted to firing with AK Rifle issued to him for duties apprehending threat from No. 830430144 L/Nk(GD) Rajender Singh of B/83 Bn, CRPF and fired one round. Another round from his AK Rifle also fired while he was being controlled by No. 730380119 HC/GD Sita Singh Yadav in an effort to avoid any further firing or save any loss or damage to any person from such firing which hit HC/GD Sita

Singh Yadav injuring him at his right thigh.

3. After perusing the enquiry report, the disciplinary authority held as follows:-

6. It has been established in the Departmental Enquiry proceedings that while the delinquent was supervising stand-to of his Platoon in capacity of Guard Commander of LMG Morcha No. 1 of B/83 Bn, CRPF at Surankote, Distt : Poonch, he noticed No. 830430144 L/Nk Rajender Singh coming towards him. On apprehending suspected threat from L/Nk Rajender Singh, the delinquent resorted to firing without any provocation and fired one round from AK-47 Rifle service arm issued to him for duties. In the meantime, No. 730380119 HC Sita Singh Yadav who was performing the duties of CHM immediately reacted and caught hold of the delinquent and pulled his Rifle down toward ground to avoid any more firing and to save from loss or damage to any life. In this process, another one round from the AK-47 Rifle of HC Kewal Singh also fired which hit medial aspect of right thigh of HC Sita Singh Yadav. His above action amounts to gross misconduct, prejudicial to good order and discipline of the Force, which represents his poor training and poor maturity of service. Firing of bullet from the AK-47 Rifle a service arm issued to him for bonafide Govt. duties apprehending on suspected threat from a person who is also member of the Force does not speak good of his wisdom of rank and age and not appreciated keeping in view his long service and the rank he is holding. Had he been really scared of apprehension and threat from L/Nk Rajender Singh, he should have acted wisely including seeking help from other members present in stand-to or by raising any alarm for taking remedial action than resorting to firing which is not considered wise step on any account. These facts as have been brought out in the D.E. proceedings, I fully agree with the E.O. that the charge framed against the delinquent is proved beyond doubt.

4. Consequently the disciplinary authority agreed with the findings of the enquiry report dated 14th December, 1998 and found that the charges framed against the petitioner were proved beyond any doubt and accordingly the penalty of dismissal from service was imposed against the petitioner with effect from 13th January, 1999. The aforesaid order dated 13th January, 1999 was challenged by the petitioner by an appeal dated 29th July, 2000 to the Dy. Inspector General of Police, CRPF, New Delhi(in short the `appellate authority") and the appellate authority upheld the order of dismissal dated 13th January, 1999 by virtue of the order dated 31st January, 2001. The appellate authority has dealt by the reasoned order impugned in this writ petition with the pleas raised by the petitioner.

5. The following pleas were raised by the petitioner before the appellate authority:-

(a) While the appellant was coming after check of stand-to, LNK(GD) Rajender Singh was coming towards him in an intimidating and threatening manner with a lathi/long bamboo stick and only for self-defense, he fired one round in the air,

otherwise there was no intention to aim or harm LNK(GD) Rajender Singh. Another round got fired accidentally, while HC(GD) Sita Singh Yadav tried to snatch the rifle. Therefore, finding in the enquiry that the appellant resorted to firing without any provocation are contrary to the material on record.

(b) The enquiry was not conducted just and fair as the appellant was not given proper opportunity to cross examine the witnesses.

(c) There was no evidence on record to prove the charge.

(d) The services rendered by the appellant in the Force have not been considered.

(e) Disciplinary authority has acted in arbitrary manner contrary to rules of natural justice as circumstances leading to the incident have not been considered.

(f) Impugned order suffer material infirmities/ irregularities/violation of principles of natural justice.

(g) Charges were not proved from the statement of PWs.

(h) No medical check-up was conducted, hence fact regarding consuming liquor or intoxication was not proved.

(i) No preventive action was taken on the complaint of appellant against LNK(GD) Rajender Singh.

6. The appellate authority has come to the following conclusion:-

5. The observations raised by the appellant in the enquiry proceedings have also been examined. As is evident from the proceedings of D.E., the enquiry was conducted in accordance with the rules/instructions and the charge framed against the appellant has been proved fully. The delinquent was given ample opportunity to defend his case which he specifically admitted to E.O. during the course of enquiry. He never challenged the statements of PWs recorded in his presence copies of which were also provided to him. Therefore, his submission that he was not given opportunity to cross examine the PWs is not tenable at this juncture. Regarding medical check-up of the appellant, same is found irrelevant as no such allegation was included in the charge.

7. The appellate authority has thus rightly found that the petitioner having committed gross misconduct in his capacity as a member of the Force by firing two rounds from his service weapon without and accordingly upheld the order of the dismissal.

8. The petitioner has challenged the aforesaid order dated 31st January, 2001 in this Court though according to the learned counsel for the respondents, this order ought to be challenged in the revision petition before the appropriate forum. However, since the writ petition has been pending in this Court since 2002 we decided to hear the matter finally.

9. We are of the view that since the petitioner could not dislodge the evidence

led against him and the appellate authority rightly recorded a finding that the petitioner was a Head Constable and had 27 years' experience on the said post and ought to have dealt with the incident in a more balanced manner. The appellate authority noticed that two rounds were fired and the second round in fact injured Sita Singh Yadav another CRPF personnel who tried to restrain the petitioner. This is a factor which has been taken into account in dismissing the petitioner's appeal. The petitioner was possessed of a deadly weapon such as AK-47 rifle and had misused the same as per the findings in the enquiry report. The appellate authority's order under challenge in this writ petition cannot be faulted on any of the grounds available under Article 226 of the Constitution. The reasoned order of the appellate authority dated 31st January, 2001 has rightly found that the petitioner was given ample opportunity to defend his case and had not challenged the statement of prosecution witnesses recorded in his presence and found that there was gross misconduct committed by the petitioner in his capacity as a member of the Force by firing two rounds from his service weapon without any provocative circumstances and had thus misused the weapon at his own with the plea of apprehending threat from his junior colleague who was not having any weapon but only a bamboo stick.

10. Consequently the writ petition is dismissed and stands disposed of.