

(2010) 09 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 3589 of 2007

Kh. Nil Bir Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1), 9
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 226

Citation : (2011) 129 FLR 646 : (2011) 1 GLT 742

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : N.K. Singh, P. Chakraborty and A. Roshid, for the Appellant; N. Borah, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The Petitioner who was a Head Constable/General Duty in the Central Reserve Police Force (CRPF) is aggrieved by order dated 12.1.2007 by which he has been removed from service pursuant to a departmental proceeding. He is also aggrieved by the appellate order dated 8.3.2007 dismissing the departmental appeal preferred by him.

2. The Petitioner while was serving as HC/GD in 15th Bn. SSB, Bongaigaon, an enquiry was proposed under Rule 27 of the CRPF Rules, 1955 in respect of the following charge:

Article No. 1:

That the said No. 8782901 HC/GD Kr. Nibir Singh of C Coy of 15th Bn SSB committed gross dereliction and remissness in the discharge of his duty in that while performing the duties as guard Commander for the guard deployed at Gate No. 2 at Bn.H Qr did not stay in the post/guard room/tent with the other guard personnel while performing the duties of guard commander of the guard

deployed at Gate No. 2 at Bn.H Qr. he quite the post/guard room/tent without permission/informing the competent authority at about 2040 hrs. and went to his barrack about 100 meter away thereby resulting in the loss of one 7.62 mm SLR Butt No. 270 Body No. EE-7386 with SLR magazine containing 10 rounds live ammunition of 7.62 mm. He thus violated Section 11(1) of CRPF Act, 1949 and Rules 1955 for dereliction and remissness in the discharge of his duties.

3. The charge was levelled by memorandum dated 9.8.2006. Along with the memorandum, apart from the statement of Article of charge, the statement of imputation of misconduct and the lists of documents and witnesses were also furnished.

4. In response to the said memorandum of charge, the Petitioner submitted his written statement of defence and thereafter a regular enquiry was conducted, on conclusion of which the Enquiry Officer submitted his report holding the charge to have been established. The Petitioner was intimated about the enquiry report dated 13.9.2006 furnishing him a copy of the same and directing to submit his representation, if any, against the said report.

5. Pursuant to submission of reply to the enquiry report, the Commandant, 15th Bn SSB by his Annexure-A/3 memorandum dated 20.11.2006 intimated the Petitioner about the decision of the authority to impose the penalty of dismissal from service. The Petitioner was directed to submit his representation against the proposed penalty of dismissal from service. On furnishing of such reply, the disciplinary authority duly considered the same along with the enquiry report and the evidences on record and thereafter passed the impugned order dated 12.1.2007 imposing penalty of removal from service exercising the power under Rule 27 of the CRPF Rules, 1955. Being aggrieved, the Petitioner made an appeal to the appellate authority and the appellate authority also having dismissed the appeal by order dated 8.3.2007, the Petitioner filed the instant writ petition challenging the aforesaid orders.

6. The plea taken in the writ petition is that the impugned orders are arbitrary being contrary to the evidence on record. It has been generally stated that the punishment imposed is against the provision of CRPF Act, 1949 and the CRPF Rules, 1955. It has also been stated that in view of the facts and circumstances of the case, the order of removal from service is excessive.

7. The Respondents have filed their counter affidavit enclosing therewith all the relevant documents relating to the enquiry proceeding. In the said affidavit, while defending the action of the Respondents, it has been stated that there was serious lapse on the part of the Petitioner in not remaining in the guard room to perform the duty assigned. As regards the enquiry proceeding, it has been stated that the Petitioner was duly provided with reasonable opportunity of being heard.

8. In the affidavit-in-reply filed by the Petitioner, the stand in the writ petition has been reiterated. According to the Petitioner, although he was assigned the duty in the guard room, but when he had gone out to the barrack with the

intention to return to the guard room, he suffered from stomach pain as a consequence of which, he could not return to guard room i.e. place of duty. It was only in the morning on being informed, he could learn about the loss of one 7.62 mm SLR Butt No. 270 Body No. EE-7386 with SLR magazine containing 10 rounds live ammunition of 7.62 mm as indicated in the Article of charge.

9. Ms. P. Chakraborty, learned Counsel for the Petitioner, upon a reference to the evidence on record submits that the case against the Petitioner having not been established, the penalty of removal from service could not have been imposed. She further submits that there being no dereliction of duty on the part of the Petitioner, and since he had to remain absent from the guard room in the particular night due to suffering from illness, the Respondent authority ought to have considered that aspect of the matter instead of mechanically arriving at a conclusion that the Petitioner was guilty of the charge. She also submits that even if the charge leveled against the Petitioner is said to have been established, the penalty of removal from service being grossly disproportionate to the gravity of the offence, same is required to be interfered with. In this connection, she has also referred to the provision of Section 11 of the CRPF Act, 1949 under the head "Minor Punishments".

10. Countering the above submissions made by the learned Counsel for the Petitioner, Mr. N. Borah, learned Central Govt. Counsel submits that the Petitioner being a member of the disciplined force, ought not to have left the sensitive duty place i.e. the guardroom, in which he was assigned his duties, as a consequence of which there was loss of arms and ammunitions. As regards the contention raised for imposition of minor punishment as per the provision of Section 11 of the Act, he submits that Section 11 itself provides for imposition of penalty of dismissal from service. Referring to the evidence on record, he also submits that the Petitioner himself having admitted the charge, he has rightly been imposed with the penalty of removal from service and the Writ Court exercising the power of judicial review under Article 226 of the Constitution of India will be reluctant to interfere with the said penalty.

11. I have considered the submissions made by the learned Counsel for the parties and the entire materials on record.

12. The Petitioner is not aggrieved by any procedural irregularities in conducting the enquiry proceeding. It is not his case that the enquiry proceeding was not conducted as per laid down procedure and that he was not provided with any opportunity of being heard. The Respondents have annexed along with the counter affidavit the copies of the statements made by the witnesses. On perusal of the said statements including the statement made by the Petitioner, the charge against the Petitioner is clearly established.

13. Apart from the fact that the witnesses examined on behalf of the disciplinary authority clearly stated about the absence of the Petitioner from duty, the own statement of the Petitioner made during the proceeding has also established the

charge. In the statement made by the Petitioner, he has admitted that he was sleeping in Barrack No. 6 and not in the guard room. He has also admitted that it was only in the morning, he could come to know that too, on being informed that arms and ammunitions were missing from the guard room. To the question put to the Petitioner as to why he was sleeping in Barrack No. 6 instead of remaining in the guard room, his reply was that he was under the impression that he would be relieved by someone at the earliest. To the question put to him that as to whether he has committed mistake by not sleeping in the guard room, to which his reply was:

I did a great mistake by not sleeping in the guard room where my duty was allotted by the CHM.

14. The enquiry officer on the basis of the evidence on record submitted his report in which the Petitioner was held to be guilty of the charge. On perusal of the enquiry report and the evidence on record, it appears that altogether 8 witnesses were examined and the defence examined none, except recording the statement of the delinquent i.e. the Petitioner himself. Certain documents were also exhibited. On the basis of the said evidence and upon assessment and analysis of the said evidences, the enquiry officer in its finding recorded as follows:

HC/GD Kh. Nibir Singh was detailed as guard commander of Gate No. 2 guard on dated 26.6.2006 and accordingly he reported for his duty at about 1730 hrs. At about 2400 hrs. HC/GD Kh. Nibir Singh left his post/guard without informing/permission of the competent authority and went to the barrack which is about 100 meter away from the Gate No. 2 guard and did not stay in the guard with the other guard personnel during the night on 26.06.06 and 27.06.06. By doing so there was no command, control and supervision over the guard personnel. Further he did not even monitor the sentry change and not checked the guard in the night. Since there was no command and control over the guard, the guard personnel had not performed their duties rightly. As CT/GD Beg Bahadur Kami, had consumed liquor while on duty from 2000 hrs. to 2300 hrs. At about 2300 hrs. CT/GD Beg Bahadur Kami without being relieved left his sentry post along with his personal weapon and went outside the Bn Campus to one of the private house for consuming liquor and came back after about half an hour or one hour and he was not noticed by the sentry on duty. During the period CT/GD Beg Bahadur Kami went out of the Bn campus and consumed liquor in one of the private house he lost his personal weapon SLR with magazine and ten rounds of 7.62mm and none of the guard personnel were able to notice this incident during the night and Guard Commander was not aware of the incident during the night. Guard Commander HC/GD Kh. Nibir Singh came to know about the incident in the morning when CT/GD Beg Bahadur Kami reported him about the loss of his personnel weapon. Had the HC/GD Kh. Nibir Singh been present in the guard room/tent/post, firstly the CT/GD Beg Bahadur Kami would not have consumed liquor on duty and would not have gone out with his personal weapon; secondly

there would have been proper relieving of sentry on duty and proper accounting/ checking of weapon. Both the instances are directly attributable to the absence of the guard commander HC/GD Kh. Nibir Singh. Thus he has failed to perform his assigned duties and also shows his careless and casual attitude in the discharge of such sensitive duty.

After analysis, assessment and fining:

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The charge proved.

15. On the basis of the said report and the representation made by the Petitioner, the disciplinary authority upon evaluation of the evidence on record passed the impugned order of removal from service. Thereafter, the Petitioner preferred an appeal on 7.2.2007. In the appeal, contrary to the stand in the enquiry proceeding, the ground of absence from the guard room was stated as follows:

That after taking my dinner, I took rest in the guard tent. At about 2000 hrs. CT/GD Beg Bahadur Kami went to relieve CT/GD S. Ranjan Singh from duty. After relieving from the duty CT/GD S. Ranjan came into the tent and had his dinner. At about 2040 hrs., I told the guard on duty CT/GD Beg Bahadur Kami to perform his duty sincerely as I am leaving for the barrack. After reaching the barrack I felt sudden unbearable pain in my stomach which I have been suffering for quite sometime. According, I took digene and went to bed.

16. From the above, it is seen that while in the enquiry proceeding, the Petitioner admitted the charge, but on the other hand in the appeal preferred to the appellate authority, he took altogether a different stand attributing his absence from duty to his alleged illness. It is not the case of the Petitioner that he had intimated anyone, including superior authority about his absence from duty in the guard room.

17. It is on the above basis, the disciplinary authority came to the finding that the Petitioner being a member of the disciplined force was not fit to remain in the said force and consequently passed the impugned order of removal from service dated 12.1.2007. The appellate authority also considered the entire materials on record and rejected the appeal preferred by the Petitioner by its order dated 8.3.2007. As against the original proposal for dismissal from service, by the impugned orders, the Petitioner was imposed with the lesser penalty of removal from service.

18. Law is well settled that the Writ Court exercising its power of judicial review under Article 226 of the Constitution cannot sit on appeal over the findings recorded by the enquiry officer and the disciplinary authority. It also cannot re-appreciate the evidences so as to come a different conclusion. If the evidences on record and the findings recorded by the enquiry and disciplinary authority and so also the appellate authority are plausible one based on the evidences, Writ

Court will be reluctant to interfere with the same.

19. In the writ petition no definite ground has been urged towards assailing the impugned orders. As noted above, it is generally stated that the impugned orders are contrary to the evidence on record and that the penalty imposed is grossly disproportionate. However, no grounds have been urged as to how the impugned orders are contrary to the evidence on record and as to why the penalty imposed is grossly disproportionate.

20. Coming to the plea of the learned Counsel for the Petitioner that the penalty of removal from service could not have been imposed in view of the provision of Section 11 of the Act, what has been urged is that the Petitioner could not have been imposed with the major penalty of removal from service in view of reference to Section 11 of the Act, which provides for only minor punishments, under Article of charge. In the instant case, the memorandum of charge was issued under Rule 27 of the CRPF Rules, which empowers the authority prescribed to impose any one of the penalties prescribed therein. As per the said prescription, the Commandant of the Battalion is empowered to award punishment of dismissal or removal from the force. Further, the Article of charge apart from referring to Section 11, also refers to CRPF Rules. That apart Section 11 itself speaks of penalty of dismissal and the minor punishment prescribed are only in lieu of or in addition to dismissal from service.

21. The above aspect of the matter need not detain us when the charge sheet itself was issued under Rule 27 of the CRPF Rules, 1955. Section 9 of the Act while describing "more heinous offences" also mentions under Clause-(g) that every member of the force who being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave shall be deemed to have committed more heinous offence.

22. In view of the above, it cannot be said that the disciplinary or appellate authorities have exceeded the jurisdiction and competence in issuing the impugned orders. It will have to be borne in mind that the Petitioner being a member of disciplined force ought not to have abandoned his allotted duty in the guard room which resulted in loss of arms and ammunitions. It is another thing to say that the Petitioner although was absent from guard room duty but he was not solely responsible for the loss of arms and ammunitions, but it is altogether different when the question is as to whether the Petitioner was absent from his assigned duty, which was to keep vigil by remaining in the guard room. Instead of remaining in the guard room, the Petitioner stayed away from the same and slept in the barrack unauthorisedly and without any intimation to anyone including his superiors. It was only in the morning he could come to know about the loss of arms and ammunitions and that too on being informed by one of his colleagues.

23. By now is well settled that it is not for the Writ Court to interfere with the punishment imposed by the competent authority, unless the same is said to be

disproportionate which shocks the judicial conscience. In the instant case, the punishment imposed cannot be under that category warranting interference with the same.

24. For all the aforesaid reason, I do not find any merit in the writ petition and accordingly it is dismissed. There shall be no order as to costs.