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(2009) 12 DEL CK 0190

In the Delhi High Court

Case No : Writ Petition (C) 7097 of 2009

Kharak Singh — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0190

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : O.P. Aggarwal and Yogendra Kumar, for the Appellant; Jyoti Singh and Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 03.08.2009 limited show cause notice was issued in the writ petition. The order reads as under:

Issue notice confined to the quantum of sentence awarded to the petitioner.

Notice accepted by Ms. Jyoti Singh, Advocate.

Reply be filed within four weeks. Rejoinder, thereto, if any, be filed within four weeks thereafter.

List on 08th December, 2009.

2. Thus, attempts made by learned Counsel for the petitioner in court today to argue on the merits of the findings returned against the petitioner pertaining to the 3 Articles of Charge framed against him have been negated by us.

3. We note that the petitioner has not challenged the order dated 03.08.2009 and thus judicial discipline prohibits us from hearing or adjudicating upon the issue whether at all the findings returned against the petitioner, on merits, are correct or otherwise.

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4. We have heard learned Counsel for the parties on the issue of quantum of sentence imposed upon the petitioner.

5. 3 charges were framed against the petitioner which have been proved during the inquiry proceedings. The same reads as under:

Article of Charge-I

a) The Article of Charge-I against No. 941403762 Constable Kharak Singh of CISF Unit ISAC Bangalore who was detailed for "C"s Shift Duty from 2100 hours of 01.02.2006 to 0600 hours on 02.02.2008 at K.V. gate, ISAC, had reported late for shift briefing. After shift briefing, No. 941403762 Constable Kharak Singh forcibly took away the duty chart from the shift in charge using abusive language and signed, stands PROVED.

Article of Charge-II

b) The Article of Charge-II against No. 941403762 Constable Kharak Singh of CISF Unit, ISAC Bangalore who was deployed in "C" Shift duty from 2100 hrs of 1.2.2006 to 0600 hrs on 2.2.2006 at K.V. Gate, ISAC Bangalore failed to wear Bullet Proof Jacket during his duty hours when checked by No. 03260673 SI/Exe R.K. Singh, Shift-in-Charge at 2330 hours on 01.02.2006, stand PROVED.

Article of Charge-III

c) The Article of charge-III against No. 941403762 Constable Kharak Singh of CISF Unit, ISAC Bangalore who was deployed in "C" Shift from 2100 hrs of 1.2.2006 to 0600 hrs on 2.2.2006 at K.V. Gate, ISAC, had assaulted No. 03260673 SI/Exe R.K. Singh, Shift-in-Charge by beating with lathi using abusive language and also chased him with rifle under ulterior motive, on the intervening night of 01.2.2006 and 02.02.2006, stands PROVED.

6. It may be noted that SI R.K. Singh was not only the Shift Incharge but was also the Superior Officer of the petitioner.

7. With reference to the indictment of the petitioner, the Disciplinary Authority opined that the misdemeanor of the petitioner in reporting late for briefing, followed by not wearing Bullet Proof Jacket and lastly in assaulting and thereafter chasing his Superior Officer with a rifle in hand was a severe and a gross misbehavior but penalty imposed was reduction of pay to the minimum in the Time Scale for a period of two years. The penalty order further proceeds that during said two years? period the petitioner would not earn any increment and the reduction will have the effect of postponing future increments of pay.

8. The effect of the penalty would be that for two years the petitioner would stand reduced in the minimum of the pay scale of Rs. 3050/- from the existing pay of Rs. 3650/-, which he was earning and getting. He would have stagnated at the minimum of this scale for two years. After two years he would have lost two increments and would be placed in the pay of Rs. 3650/-. The financial implication would be loss of salary of Rs. 600/- per month for two years: loss of

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two increments for all times to come, but after two years to recommence, the upward journey in the pay scale with the pay being fixed at Rs. 3650/-.

9. The Appellate Authority was of the opinion that the penalty imposed was shockingly low and accordingly on 12.01.2007 issued a Show Cause Notice to the petitioner requiring him to respond as to why the penalty should not be enhanced to one of dismissal from service.

10. In notifying the petitioner the reason why the Appellate Authority was of the tentative view that the penalty should be enhanced, he was intimated that as a Member of an Armed Force, assaulting a Superior Officer on duty and chasing him with a rifle was indeed a misconduct of the gravest category.

11. After receiving the response from the petitioner, the Appellate Authority inflicted the penalty of dismissal from service.

12. It may be noted that the appeal filed by the petitioner against the findings returned and accepted by the Disciplinary Authority was also decided by the Appellate Authority vide the same order being the order dated 05.02.2007.

13. The appeal filed by the petitioner was rejected and the penalty of dismissal from service was inflicted. The Revision Petition filed by the petitioner before the Revisional Authority has been dismissed vide order dated 29.08.2007.

14. Learned Counsel for the petitioner urges that the Disciplinary Authority took note of the fact that the misdemeanor of the petitioner was serious and grave and thus conscious of the gravity of the offence imposed the penalty of reduction in the Time Scale to the minimum of the pay for a period of two years. Counsel urges that Appellate Authority could not have, under the circumstances, enhanced the penalty.

15. Suffice would it be to state that the Appellate Authority has taken note of two factors, being that, of the petitioner being a Member of an Armed Forces (CISF) and the act of chasing a Superior Officer with a rifle in hand.

16. Indeed, it is an offence which assumes a highest degree of culpability where a Constable, who is armed, chases his Superior Officer when he is having his arms and ammunitions with him.

17. We do not find anything shockingly disproportionate in the penalty imposed by the Appellate Authority. We concur with the view taken by the Appellate Authority that the penalty imposed by the Disciplinary Authority was too low keeping in view the gravity of the misdemeanor committed by the petitioner.

18. We find no merit in the writ petition.

19. Dismissed.

20. No costs.

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