
(2018) 06 PAT CK 0069

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6862 Of 2013

Khushi Ram

APPELLANT

Vs

Union Of India Through The Inspector And Ors

RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 1 PLJR 28

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Dinu Kumar, Anshuman Singh, Hardayal Kumar

Final Decision : Allowed

Judgement

1. Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 24.09.2010 passed by the Disciplinary

Authority by which petitioner has been compulsory retired from service, order dated 14.02.2011 passed by the appellate authority dismissing the

appeal and order dated 07.01.2012 passed by the Revisional Authority rejecting the revision petition of petitioner.

3. Briefly stated, the facts of the case as stated in petition is that petitioner joined the C.R.P.F. as Sepoy (G.D.) on 19.09.1989 and was posted as

guard commander at D.I.G. residence, Group Centre, Muzaffarpur and in the mid night of 14.09.2009 after deputing the guards on their respective

post at about 10.00 hours, returned back to his rest room to sleep. Deputy Commandant Amitabh Singh, who was residing in the officers mess entered

the residential house of D.I.G. from back side and abused S.P. Pokhariyal, D.I.G. after keeping him and his personal guard as hostage on revolver

point by his personal loaded revolver. Petitioner was informed about said incident at 23.00 hours when Deen Dayal Singh (P.W.1) Ct/GD came to

petitioner and narrated the incident and petitioner reached at the place of incident and for which departmental enquiry was initiated against petitioner

and two others for said incident.

4. Petitioner was suspended on 15.09.2009 by respondent No. 4 pending departmental enquiry and by order dated 17.07.2010 the suspension was

revoked and subsequently by order dated 24.09.2010 petitioner was imposed punishment of compulsory retirement. Petitioner preferred appeal before

D.I.G. and same was dismissed by order dated 14.02.2011 and thereafter petitioner preferred revision which was also dismissed by the Revisional

Authority by order dated 07.01.2012.

5. A counter affidavit has been filed on behalf of respondents stating therein that petitioner was transferred from 95 battalion, C.R.P.F to D.I.G.P.,

Group Centre, C.R.P.F., Muzaffarpur. A joint departmental enquiry was contemplated against petitioner, alongwith Dhanpal Singh and Niranjana

Kumar Yadav and memorandum of charge was served upon petitioner for dereliction of duty on 14.09.2009 alleging that he was posted at the

residence of D.I.G. on Guard duty and did not stop, one unknown person entering in the house of D.I.G. at 10.00 PM, as a result of which the D.I.G.

and his security guard were kept hostage on the revolver point of Amitabh Singh Deputy Commandant and all guards remained mute spectator without

taking any action.

6. Petitioner submitted his reply against the charges but the Disciplinary Authority was not satisfied and directed for conducting departmental enquiry

by the order dated 26.11.2009 and Sri R.W. Dawa, second-in-command was appointed as Enquiry Officer. Sufficient opportunity was granted to

petitioner to defend himself and Inquiry Officer found the charges against petitioner as partially proved.

7. The Disciplinary Authority issued 2nd show cause notice to petitioner alongwith enquiry report by letter dated 31.08.2010 for submitting his reply

within 15 days and petitioner submitted his reply on 14.09.2010. Disciplinary Authority considered the enquiry report and reply of the petitioner and

passed an order of punishment of compulsory retirement from service on 24.09.2010.

8. It has further been submitted by the respondents that petitioner was deputed as Guard Commander and was sleeping in the guard room situated at about 45 meters away from D.I.G. residence. He was supposed to be alert on his duty but despite hearing the noise he neither raised any alarm nor

reacted to the situation. Petitioner served for 22 years and as such taking lenient view he was imposed punishment of compulsory retirement.

However, it was contended by the petitioner that he was on duty from 5.00 AM to 10.00 PM and was Guard Commander of two more units and was

very much tired and was under deep sleep when the incident took place.

9. After hearing the counsel for the petitioner and counsel for the Union of India, it appears that memo of charge dated 24.09.2010 as framed against

petitioner was not supported by imputations of misconduct. Allegations in the memo of charge is that petitioner did not prevent one unknown person

entering in the house of D.I.G. and it has been further alleged in the charge that petitioner did not take necessary steps and remained a mute spectator

there whereas in the counter itself the respondents have stated that petitioner was not on duty and had retired in his guard quarter which was situated

45 meters from the residence of D.I.G., as such, the charge framed itself was defective and incorrect and alleged misconduct and charges are not

borne out of the facts as stated by the department, as such, whole proceeding based on such memo of charge stands vitiated.

10. The Disciplinary Authority appointed R.W. Dawa second-in-command, Group Centre, C.R.P.F., Muzaffarpur as Inquiry Officer by his order

dated 26.11.2009 who asked petitioner to appear before him on 23.01.2010.

11. The statement of Sepoy Dindayal Singh was recorded by the Inquiry Officer as PW-1 who in his examination- in-chief stated that on 14.09.2009

he was posted at the residence of D.I.G. as Personal Security aid. Between 10.00 to 10.30 in the night he heard that one person is quarreling with

George Bara, the personal security guard of D.I.G. and was asking to call D.I.G. outside. When he came out he found said person had pointed his

revolver on George Bara and was threatening to call D.I.G. outside. He asked said person to remove his revolver and to leave the place but he did not

listen to him and was using abusive language and threatened that he will kill him if D.I.G. was not called outside. Thereafter he awoke the D.I.G. and

he came out then said person pointed his revolver on D.I.G. and altercation

between said Amitabh Singh, Deputy Commandant and D.I.G. continued for 40 minutes. Thereafter K.P.S. Alango, Assistant Commandant arrived and took away Amitabh Singh with him. In reply to question put by Inquiry Officer he stated that Amitabh Singh was loudly using abusive language. He further stated that one guard was standing 15-20 steps away and second 30 meters. He further replied that there was loud noise but both the guards did not come at the place of occurrence. P.W.-1 was cross-examined by the petitioner and he stated that when everything became peaceful then Nand Kishore Kumar Prasad, Deputy Commandant reached there and he asked him to call the petitioner and when he went there he found petitioner to be sleeping and thereafter called him.

12. PW-2 George Bara stated in his examination-in-chief that he was in his room with Deen Dayal and was going to sleep, suddenly one person came and took him out on revolver point. Sepoy Deen Dayal also was awoken. Said person was using abusive language against D.I.G. and forcing him to call D.I.G. on the revolver point, he recognized said person to be Amitabh Singh, Deputy Commandant who was posted in Muzaffarpur in the year 2010. D.I.G. came out and tried to pacify Amitabh Singh but he pointed his revolver on him and abused him for 15 minutes. Amitabh Singh was under influence of alcohol and by that time K.P.S. Alango arrived there and took away with him and thereafter he went to sleep. In his reply to the question of Inquiry Officer he said that Amitabh Singh was in his uniform. There was no boundary wall. Security Guards were standing there and they remained mute spectator. None of the guards called petitioner. In his cross-examination by the petitioner he said that at the time of incident petitioner was not there and he came after the incident was over.

13. PW-3 Manoj Kumar is driver and he has stated in his examination-in-chief that on 14.09.2009 he was posted as Night Guard in M.T. Park from 10.00 PM to 12.00 PM. He came on Mini bus to Officer's mess and waited for Amitabh Singh, Deputy Commandant but he did not arrive. He saw Amitabh Singh and doctor Prem Kumar going out of the mess. Amitabh Singh was carrying a bottle and sat on his car but car did not start even after 3-4 attempts. He came out of the car and called on mobile and move towards residence of D.I.G. He informed the Deputy Superintendent (Administration), later on he saw Sri Alango coming out of the residence of

D.I.G. alongwith Amitabh Singh and also saw after some time Deputy Superintendent (Administration) and Subedar Major and he asked what is order for him then he was told to bring the vehicle to M.T. Park. He answered 27 questions asked by Inquiry Officer but same are not material and relevant for this case. He was cross-examined by the petitioner and he stated that he did not see petitioner at that place.

14. P.W. 4 is S.P. Pokhriyal D.I.G., C.R.P.F., Muzaffarpur, who in his examination-in-chief has stated that he resides in the quarter opposite to the officer's mess and there is no boundary wall and it is opened from all sides. Although two night guards were deployed there for his and his family's security but they failed to perform their duty in terms of security guideline dated 30.09.2008. He has repeated same thing which have been stated by other witnesses and has made allegation against the two night guards who were on duty at that time. He has also specifically stated that what was the duty of two night guards when said incident was happening. He has further stated that two guards should have also inform petitioner about the incident but did not inform the petitioner. The Inquiry Officer asked 8 questions which was replied by him but nothing adverse or against petitioner has been stated. Petitioner cross-examined PW-4 and in his reply he stated that being guard commander it was his responsibility to give proper training and instruction to guards who are subordinate to him. He denied that he had seen petitioner at the time of incident and further said that he was guard commander and if the night guard posted at that time did not inform him about the incident then he was also responsible as he did not trained and instructed the night guards properly.

15. The Inquiry Officer after conclusion of inquiry submitted his enquiry report to the Disciplinary Authority. The Inquiry Officer after appreciating and considering the evidence of record did not found charge as framed proved against petitioner but held petitioner guilty as he did not give proper instruction and training to his subordinate guards as such, they failed to perform duty as per security guidelines dated 30.09.2008 by which night guards are duty bound to inform the guard commander under such situation.

16. The Inquiry Officer travelled outside the scope and ambit of disciplinary proceeding and found petitioner partially guilty of allegations which did not form part of charge memo. From entire evidence on record nothing has been

stated by the witnesses including the D.I.G. against petitioner. On the basis of materials available on the record the charge as framed against petitioner cannot be said to be proved as it is the case of no evidence against petitioner. The D.I.G. also in his examination- in-chief or in reply to the questions put by Inquiry Officer has not stated anything against petitioner. However, in cross-examination by the petitioner he stated that petitioner is also guilty of charge. The Inquiry Officer as well as Disciplinary Authority are subordinate to D.I.G. and once D.I.G. stated that petitioner is also guilty of charge. The Inquiry Officer had no option but to held charges to be partially proved. The Inquiry Officer performs functions of quasi judicial authority and is in a position of independent adjudicator. He is not representative of the department or the Disciplinary Authority. His function is to examine the evidence presented by the department to establish the charges and cannot travelled beyond the charges. However, in present case he has found petitioner partially guilty for allegations which were not part of the charge, petitioner was not in a position to defend a charge which was not framed against him, as such the enquiry proceeding stands vitiated.

17. A second show cause was issued to petitioner alongwith copy of enquiry report and petitioner submitted his reply but same was not considered by the Disciplinary Authority and although Inquiry Officer found charge to be partially proved, the Disciplinary Authority found the charges to be fully proved. The Disciplinary Authority without giving any reason for his difference with the finding of Inquiry Officer found charges to be fully proved and passed order of punishment of compulsory retirement.

18. The High Court under judicial review cannot sit over the findings of departmental authorities as an appellate authority and substitute its finding or re-appreciate or reassess the evidence led before the Inquiry Officer as same is the function of punishing authorities. The authenticity or reliability of the evidence cannot be judged by High Court. If there is some evidence on the basis of which the Disciplinary Authority has found the charges, High Court cannot go into sufficiency of evidence. However, present case is of no evidence and Inquiry Officer travelling beyond the charge as framed against petitioner.

19. The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before Apex Court in M.A.

Bijlani V. Union of India. Since reported in (2006) 5 SCC 88 has held as follows:-

“It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there

should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e.

beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the

documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record.

While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of

proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations

with which the delinquent officer had not been charged with.”

20. In *Moni Shankar V. Union of India* Apex Court held: Since reported in (2008) 3 SCC 484 has held as follows:-

“The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding,

principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether

while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and

irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The

Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face

value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the

doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of

unreasonableness is giving way to the doctrine of proportionality.”

21. The Apex Court in *Narendra Mohan Arya Case* (2006) 4 SSC 713 in paragraph No. 44 has held as follows:-

“The judgment and order of the learned Single Judge suffers from several infirmities. He had observed that “the disadvantages of an employer

as such acts are committed in secrecy and in conspiracy with the person affected by the accidentâ??. No such finding has been arrived at even in the

disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon.

Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed

and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or

not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere

hypothesis. Mere ipse dixit on his part cannot be a substitute of evidenceâ??.

22. Petitioner belongs to a discipline force and as such any dereliction of duty has to be viewed seriously but members of disciplined force are also

entitled for fair and impartial trial and proceedings has to be conducted as per procedure rules in compliance of natural justice. It is true that at the

initial stage of enquiry, petitioner was asked if he has any reservation against enquiry officer he said no but it is a fact that the enquiry was conducted

for misconduct as alleged by the D.I.G. and he was also a witness, as such enquiry officer and disciplinary authority who were subordinate to D.I.G.

makes the proceeding vulnerable and doubtful and against the principles of natural justice and fair play.

23. Ordinarily High Court does not interfere in the orders of punishing authority, particularly when same is related to disciplined force, if same has

been passed in accordance with procedural rules and in compliance of natural justice and has been conducted in a fair and impartial manner, but if it

appears to the court that proceedings were conducted in a pre-determined manner and with bias and orders have been passed not on the basis of

evidence on record but for extraneous reasons then High Court in order to do justice will certainly interfere with such orders. It is bounden duty of

courts to see that innocents are not punished or harassed and guilty are not spared.

24. As a result, this Court finds that the memo of charge as framed against petitioner was flawed and not supported by imputations of misconduct and

inquiry proceedings stands vitiated for the reasons as discussed above. | Once the basis of a proceeding is gone, all consequential acts, actions, orders

would fall to the ground automatically and as a consequences the order passed by Disciplinary Authority, appellate authority as well as Revisional

Authority are not sustainable and set aside. Petitioner is directed to be reinstated in service with all consequential benefits, continuity of service and

full back wages within three months from date of production/receipt of copy of this order

25. This Court is not inclined to give liberty to the department to initiate fresh proceeding as even allegations as alleged against petitioner in midst of

proceeding is accepted to be true in its entirety same does not constitute any misconduct.

26. The writ petition stands allowed.

27. The original records of the disciplinary proceeding produced by the counsel of the department be returned to the concerned counsel, immediately.