

(2014) 08 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application Nos. 5324 and 5325 of 2010

K.S. Lodhi

APPELLANT

Vs

Central Industrial Security Force

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) LabIC 4043

Hon'ble Judges : Mohinder Pal, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Sonal D. Vyas, Advocate for the Appellant; Devang Vyas, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These petitions arise out of a common background. Facts being very similar, we may notice those arising in Special Civil Application No. 5325/2010.

2. The petitioner was at the relevant time working as a constable in Central Industrial Security Force ("CISF" for short). He was stationed at Air Force Yelanka, Bangalore. On 6.3.2009, a charge-sheet was issued against him which contained five charges. It was alleged in the charge-sheet that from 11.2.2009 to 15.2.2009, he was posted temporarily at the International airport, Bangalore. On 15.2.2009, at about 9 O" clock, he left CISF campus without prior permission and consumed liquor. He thereafter, got into an argument with an employee of CRPF Chikkabhiraiya by name and scuffled with him. During his medical examination, it was revealed that the employee was under influence of alcohol. Case of the employer is that the said charged official along with his colleague (petitioner of SCA No. 5324/2010) and yet another person (not before us), had thus got involved in the said incident. In the charge-sheet it is further alleged, that during the scuffle, the charged official caused injury to the said employee of CRPF. He thus acted in a manner unbecoming of an employee of CISF. Charge

article-5 pertained to his past conduct. It was pointed out that during his service career on four previous occasions, he was visited with minor penalties on basis of his misconducts.

3. The petitioner filed a reply to the said charge-sheet in which he admitted his presence outside the CISF campus in the night of 15.2.2009. He however, denied that such visit was without permission since according to him no such permission was needed. He also admitted to a verbal altercation with the CRPF constable. He however, denied any physical assault. With respect to the past penalties, he stated that since he had already undergone such punishment, same should be discarded from consideration.

4. In case of petitioner of Special Civil Application No. 5324/2010, first four charges are identical. In charge article-5, the department has in case of such employee also alleged past minor punishments, of-course, for different misconduct.

5. The inquiry officer submitted his report dated 8.7.2009. He held that the charges were proved. He held that the petitioner had left the CRPF campus without permission and under the influence of alcohol scuffled with the constable of CRPF and also injured him.

6. The disciplinary authority concurred with the view of the inquiry officer. The representation of the employee was taken into account. He held that the charges were proved. Considering the facts of the case, he imposed punishment of compulsory retirement from service with full pensionary benefits. Facts are similar in case of petitioner of Special Civil Application No. 5324/2010 also. The third charged employee however, was exonerated.

7. Learned counsel Ms. Sonal Vyas for the petitioners submitted that the inquiry officer erred in holding the charge of injuring the constable of CRPF as proved. There was no evidence to establish such charge. The disciplinary authority also erred in taking into account the past punishments which were already undergone by the employees. She lastly submitted that the punishment of compulsory retirement was grossly disproportionate. In support of her contentions, she relied on the following decisions:

1) In case of Jagdish Singh Vs. Punjab Engineering College and Others, . It was however, a case where a sweeper was dismissed from service for unauthorised absence for a total of 15 days. Employee's defence was that he had to remain away from duty to sort out his daughter's problems with in-laws. It was found that his past service record was other-wise blemishless. It was in this background that the Apex Court found that the punishment was disproportionate and ordered substitution of the same by stoppage of two increments and dis-entitled the employee for salary when he did not discharge his duties.

Facts in the present case are vitally different.

2) In case of Union of India (UOI) and Another Vs. S.C. Parashar, in which the

Supreme Court observed that procedure for examining major and minor punishments are different. Employer could not combine the minor penalty with major penalty proceedings.

In the present case such facts do not arise. Previous minor penalties are referred to in the charge-sheet and relied upon by the disciplinary authority only for judging overall conduct of the employee to decide the correct punishment in the present case.

8. Coming to the material on record, the charges against the petitioners were quite serious. They were members of armed forces. They left the premises without the permission and under the influence of alcohol, picked up a quarrel with a constable to CRPF. They assaulted him and caused injuries. Such injuries were proved through cogent evidence. The inquiry officer as well as the disciplinary authority held that the charges were duly established. We may recall that the petitioners also did not seriously dispute their leaving CISF campus and their presence at the scene of incident and most significantly, that they had quarreled with the constable of CRPF. The fact that they were under influence of alcohol was established through medical evidence. Though they denied any physical fight, such allegation was established through evidence of the injured person himself, who had appeared before the inquiry officer, supported his statement recorded during the preliminary inquiry and further stated that after a brief argument, the charged officials pushed down his bicycle and also gave him blows on his face and other parts of the body. His evidence was duly supported by medical evidence which showed injury on the ear.

9. The inquiry officer in fact, erred in observing that such charge was proved only through medical evidence and that there were no eyewitness to the incident. It may be that there may be no other eyewitness who may be referred to as an independent witness. Nevertheless, the complainant himself was an injured eyewitness. His testimony unless found to be unreliable, cannot be discarded. Merely because he was complainant, he does not cease to be an eyewitness. In that sense there was not only the medical evidence as recorded by the inquiry officer, but also eyewitness account of injured complainant himself.

10. That being the position, all charges were in our opinion correctly held to have been proved by the authority. The only question therefore, remains was the punishment disproportionate? It is by now well settled through series of judgments and in particular in case of B.C. Chaturvedi Vs. Union of India and others, , that once a punishment is imposed on an employee through a validly held departmental inquiry, Court would interfere only if it is found that the punishment is so grossly disproportionate to the proved charges as to shock the conscience of the Court.

11. The petitioners were members of the armed forces. Charges against them as such members were very serious. They not only breached the departmental rules and regulations, but also had physical fight with a citizen under the influence of

alcohol. Their past service also was not blemishless. Each charged officer was facing multiple minor nature punishments. The disciplinary authority having taken into account such aspects, imposed punishment of compulsory retirement that too protecting full pension of employee, in our opinion, cannot be stated to have imposed punishment too harsh or disproportionate to the proved charge.

12. The grievance that the past conduct was taken into account which was impermissible, also cannot be accepted. Such past conduct was referred to for the purpose of putting the petitioner to notice that the employer desires to take into account such past proved charges. The petitioner was not being punished twice for the past misconduct for which he had already undergone minor punishments. The petitioner was merely being put to notice about his own past conduct which the employer would take into account while judging the punishment which in our opinion was wholly permissible.

13. In the result, both the petitions are dismissed. Rule is discharged.