
(2013) 02 DEL CK 0380

In the Delhi High Court

Case No : Writ Petition (C) No. 5489 of 1999

K.S. Rathi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 6 AD 132 : (2013) 199 DLT 683

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : H.S. Dahiya, for the Appellant; Archana Gaur, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner impugns the order dismissing him from service, issued by the Commandant (CISF) on 2nd February, 1998. The brief facts are that the petitioner joined the services of the CISF some time in 1991. He was granted 3 days leave for the period 22nd October, 1995 to 24th October, 1995. He claimed that at the end of the period, he fell ill and, therefore, was unable to report for work and was on medical rest. To say so, he relies upon certain documents such as prescription of a medical practitioner, etc., issued some time in the beginning of November, 1995. He also relies upon a copy of the prescription slip issued by one Dr. Khatri. In his representation made during that time, the petitioner stated that he was advised rest on account of his suffering from bronchitis, and it is also further stated that he was advised not to serve in cold areas on account of his peculiar ailment. Apparently, the petitioner applied for joining for duty after obtaining medical fitness on 22nd July, 1996. He followed this up with further representation in October 1996 and ultimately on 3rd April, 1997 he was allowed to join duty by the Commandant OCS Shakurbasti. The petitioner consequently joined his duty on 7th April, 1997, pursuant to the order dated 3rd April, 1997.

2. The CISF alleged that immediately upon his joining the duties, an order

requiring the petitioner to move from the area where he reported was issued on 9th April, 1997. This order, according to the CISF was received or served upon the petitioner on 13th April, 1997 and it required him to report to the unit at Dulhasti (J&K). Since the petitioner did not comply with the movement order, a charge-sheet was issued upon him on 20th August, 1997.

3. The petitioner resisted the charges. Consequently, an Inquiry Officer was appointed to enquire into the allegations. During the course of the inquiry proceedings, the petitioner alleges that the inquiry proceedings were conducted in an unfair manner, in as much as he was not allowed proper opportunity to defend himself by allowing the assistance of a defence assistant. It is also urged that the Inquiry Officer conducted certain irregularities in regard to the recording of evidence. The specific ground alleged in this regard is that the Inquiry Officer did not record the depositions of the witnesses who testified during the proceedings either verbatim or in a question and answer form and instead chose to make a selective recording, twisting the facts as it were. The inquiry proceedings culminated in an adverse report, which eventually led to the dismissal of the petitioner by an order dated 2nd February, 1998. The petitioner appealed unsuccessfully to the superior officers before approaching this Court under Article 226.

4. Learned Counsel argued that the inquiry proceedings were conducted in an unfair and prejudicial manner. He highlighted the fact that in spite of the petitioner requesting for appointment of a particular official as a defence assistant, the request was denied. It was also argued that the irregular manner in which the evidence was recorded prejudiced the defence of the petitioner. Learned Counsel sought to rely upon the actual proceedings and stated that this resulted in extreme prejudice and the petitioner, in fact, sought for removal of the Inquiry Officer in this regard by a letter, some time in December, 1997. The same was however, rejected without giving any reasons.

5. Learned Counsel next argued that on the merits, the petitioner had produced sufficient evidence to show that he was unwell, and that the movement order was unjustified having regard to the circumstances. He relied upon the letter/representation dated 11th April, 1997, enclosing a doctor's certificate and copies of medical records, issued by Dr. Ram Manohar Lohia Hospital. The learned Counsel took this Court through the records which are annexed in the petition in the form of OPD records maintained by Dr. Ram Manohar Lohia Hospital for the period 22nd November, 1995 to July, 1997.

This, however, nowhere reflects the ailment mentioned in the representation of 11th April, 1997, regarding the petitioner's health, which is sought to be asserted even before us. In fact, these documents, spanning a period of about 9-10 months, show that the petitioner was suffering from hepatitis and not bronchial related ailments, on account of various factors. In any event, the documents pertaining to the medical history of the petitioner, and which are relied upon, are of some time in July 1997. Nothing further is forthcoming as to

what ailment he was suffering from, which prevented him from reporting for duty at Dulhasti (J&K) in the second week of April 1997. The Court also notices that there is in fact no material on record at all to support the petitioner's assertion that he was suffering from the ailment, which is sought to be the basis of this petition, i.e. Bronchitis, or which prevented him or incapacitated him from reporting for duty.

6. So far as the allegations of unfairness in the inquiry proceedings are concerned, this Court notices that even though the petitioner was not permitted to engage an individual whom he chose as a defence assistant, at the same time he did not nominate any one else. The CISF authorities appear to have declined the appointment of the defence official named by him on account of administrative exigencies. The petitioner, however, has not been able to demonstrate that an alternative name was ever offered and rejected. In these circumstances, the charge of unfairness on account of denial of proper representation in the opinion of this Court is unfounded.

7. So far as the allegation of unfair manner in which the depositions were recorded goes, the Court notices that the representation made to the authorities during the subsistence of the inquiry i.e. sometime in December, 1997 is vague and lacking in material particulars. Besides stating that the Inquiry Officer was not accurately recording the deposition of witnesses, and that he "twisted the facts", the dates on which such alleged misdemeanour took place and the actual depositions made by the concerned officials, etc. have not been revealed. In these circumstances, the authorities cannot be faulted with in rejecting such a vague request for change of Inquiry Officer.

8. Having regard to the facts and circumstances as discussed in the preceding paragraph, the Court is satisfied that on the merits of the findings, no fault can be found by the action of the CISF authorities. The petitioner clearly appears to have malingered and not reported to duty despite an opportunity to do so, even after more than an year and half of his absence from duty. i.e. for the period November, 1995 to April 1997.

9. The Commandant who appears to have taken a lenient view on account of his representation, allowed him to rejoin duties on 7th April, 1997. Still, when the movement order was sought to be served upon the petitioner, he tried to avoid it, ultimately leading to affixation of the said order on his premises. All these facts have been clearly brought out in the inquiry proceedings. In the reply to the charge-sheet itself, it is apparent that the petitioner was aware of the movement order and had sought for its deferment and cancellation on the ground of his alleged health condition. He appears to have assumed that the representation itself amounted to stay of the transfer order. During the inquiry proceedings, the basic facts alleged against him have been held to be proved. The appeal preferred by the petitioner too was rejected after considering all the facts. In view of the above discussion, this Court holds that there is no case for interference made out under Article 226, neither were any principles of natural

justice violated as is sought to be alleged by the petitioner in these proceedings, nor was he dealt with unfairly in any manner as to persuade this Court to set aside the orders impugning the present proceedings. The writ petition is accordingly dismissed.