

(2011) 07 AHC CK 0315

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18145 of 2004

L.N. Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(16), 14(18)
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Central Reserve Police Force Act, 1949 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule 3, 20, 9
Constitution of India, 1950 — Article 226

Citation : (2011) 7 ADJ 389

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Bhoopendra Nath Singh assisted by Shri S.N. Tiwari for the petitioner. Shri N.P. Shukla, Standing Counsel, Central Government appears for the respondents.

2. The petitioner is serving in the Central Reserved Police Force. He has filed this writ petition to quash the order dated 13.3.2004 passed by the Addl. Deputy Inspector General of Police (Personnel-1), Directorate General, Central Reserve Police Force, New Delhi communicating the order of the President of India imposing a punishment, after a disciplinary enquiry to reduce him to the lowest stage of pay i.e. Rs. 10,000/-in the time scale of pay of Rs. 10,325-15,200/-for a period of 3 years w.e.f. 15.3.2004 with further direction that during the period of such reduction he will not earn increase of pay and that on the expiry of such period, the reduction will have the effect of postponing further increment of his pay.

3. Shri N.P. Shukla, has taken a preliminary objection to the territorial jurisdiction of the Court in entertaining the writ petition and in awarding the

reliefs prayed for by the petitioner. He has relied upon the Full Bench judgment of this Court in *Rajendra Kumar Misra v. Union of India*, 2004 (4) ESC (AII) 2313 , in which it was held that where in a writ petition filed against Court Martial proceedings the entire cause of action had arisen at Calcutta and that the petitioner was merely residing at Ballia in U.P., that would not give jurisdiction to Allahabad High Court. The objection by army staff can be issued either at Delhi, where he is located or at a place, where cause of action wholly or any part arise. The Full Bench relied upon Section 9, Order 2 Rule 2 and 3 of the CPC in explaining the words "cause of action" and thereafter the judgments of Supreme Court beginning from *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, to *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, in holding that the Division Bench in *Kailash Nath Tiwari v. Union of India*, Special Appeal No. 997 of 1995, 2002 (1) ESC 366 (AII) (DB), did not lay down the correct law.

4. In the present case the petitioner is still in service. The Presidential Memorandum dated 14.5.1998 initiating departmental enquiry proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were initiated against the petitioner, when he was posted as Deputy Commandant, CRPF at Isa, Mount Abu in respect of charges relating to an incident while he was posted and was functioning as Adjutant/ DC (OPS) 61 Battalion CRPF, Mantri Pokhari, Imphal. The enquiry was concluded, enquiry report served and the reply was given by the petitioner while he was posted at Isa, Mount Abu. The punishment order was made on 13th March, 2004 and was served upon the petitioner, when the petitioner was posted as Deputy Commandant, 101 Battalion, RAF, CRPF at Allahabad. The impugned order had its effect on the petitioner while he was posted at Allahabad in *Rajasthan High Court Advocates Association v. Union of India*, AIR 2001 SC 416 , the Supreme Court held that Class-(1) and (2) of Article 226 of the Constitution of India provides how territorial jurisdiction shall be exercised by any High Court and one of the tests may be as to whether cause of action partly or fully has arisen within its territorial jurisdiction. In *U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others*, it was held that expression "cause of action" has acquired a judicially settled meaning. In the restricted sense the cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

5. In the present case the disciplinary enquiry was initiated in respect of the incident which took place in August, 1995 at Imphal. The departmental enquiry was held, when the petitioner was posted at Mount Abu and culminated into a final order of punishment, when the petitioner was posted at Allahabad. These bundle of facts would give to the petitioner cause of action to file the writ petition

at Allahabad. The order was served upon him and that punishment had effect on him, when he was posted at Allahabad and thus the cause of action had accrued to him within the territorial jurisdiction of Allahabad High Court.

6. On merits, the facts giving rise to the instant writ petition are that, while the petitioner was posted and functioning as Adjutant/DC (OPS) of 61 Battalion, CRPF at Mantri Pokhari, Imphal, he was alleged to have antedated the Office Order dated 7.8.1995, on 13.8.1995 for preparation of a moment order for dispatch of 18 CRPF personnel for special operations on 8.8.1995. The antedated order indicated that Shri Ram Singh, Asstt. Commandant alongwith escort to be selected by him, will proceed to Dimapur area on 8.8.1995 for special operations in one light vehicle and 2 Nos of 1 Ton/3-5 Tonners. The vehicle was intercepted at Patna in the night of 11th and 12th August, 1995 and were seized carrying a huge quantity of contraband "ganja". The Articles of Charges levelled against the petitioner are quoted as below:

ARTICLE-1

That the said Shri L N Mishra, Dy. Commandant while posted and functioning as Adjutant/ DC (Ops) of 61 Bn, CRPF, Mantripokhri, Imphal during August, 1995 committed a serious misconduct in that when a copy of antedated office-order No. D.III-1/95-OPS-61 dated 7.8.1995 regarding detailment and despatch of Shri Ram Singh, Asstt. Commandant and party for special operations in Dimapur area, was handed over to him on 13.8.1995, he deliberately ante-dated its acknowledgment for having received on 7.8.1995. Thus the said Shri L N Mishra, deputy Commandant failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3 (1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

Thus the said Shri L N Mishra, Deputy Commandant while posted and functioning in the aforesaid capacity during the aforesaid period committed a serious misconduct in that when he received the ante dated office order No. D. III. 1/95- Ops-61 dated 7.8.1995 on 13.8.1995 as mentioned in Article I of charge above, got prepared a movement order for despatch of 18 personnel for special operations on 08/08/1995 and ante dated it by signing on 7.8.1995. Thus the said Shri L N Mishra, deputy Commandant failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained Rule 3 (1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

7. The petitioner submitted his written statement of defence on 26.6.1998. The departmental enquiry was conducted, by Shri Y.N. Srivastava, IPS, the then ADG, CRPF. In his enquiry report after taking evidence, the enquiry officer recorded the findings as follows:

Findings

11.1 Taking into consideration the entire record of enquiry proceedings produced

before me by the Disciplinary Authority, Presenting Officer and the Charged Officer, the following facts have been established beyond any doubt :

Charge No. 1

(1) As the charged officer has himself admitted to have ante-dated this document, further corroboration through oral or documentary testimony is perhaps not required to substantiate this charge. The Disciplinary Authority, however, should have listed the office copy of the Office Order on which the Charged Officer had acknowledged its receipt as a prosecution document to strengthen the charge. In the absence of this, the prosecution has listed the said office order as Exhibit S-1 which has the endorsement and initial of the charged officer dated 7.8.1995 which too has been admitted by the charged officer. His initial on this document can be taken as his acknowledgment of the Office Order with ante-date. This admission has been made in his statement of defence dated 26.6.1998 while replying the Memorandum of Articles of Charge, written statement of defence dated 19.8.1999 under rule 14 (16) of CCS (CCA) Rules, while replying to the mandatory questions by Enquiry Officer under rule (18) of Rule 14 of CCS (CCA) Rules and finally in the defence brief dated 9.12.1999.

(2) While admitting the charge Shri L.N. Mishra has stated that he antedated the acknowledgment under threat, duress and coercion from his Commandant. However, none of the defence witnesses has deposed that the Charged Officer received the document under any kind of threat from his Commandant

(3) The plea that the act was done under orders of the superior officer is totally irrelevant in evaluating the guilt of the employee. The reason is, firstly, there is no obligation to obey an unlawful order and where the employee does so, he acts solely under his own risk and responsibility, and secondly, if the employee feels that he can disregard the orders only to his period, he should take recourse to the lawful procedure of bringing it to the notice of the authorities and seeking their instructions. In no case can a misconduct be condoned on the ground that it was done under orders of superior authority (*Imperial Tobacco Co. Ltd. v. Bamal*, 1955 II LLJ 37).

(4) Even assuming that the Charged Officer received the said document under duress, coercion and threat of his Commandant, it was incumbent on him to have immediately brought it to the notice of some Senior Officers. However, there is no evidence on record to show that he had done so. His plea in the defence brief that he had informed DIG Ajmer, DIG Imphal, IG Northern Sector and so to IG Northern Sector when they visited the unit immediately after the incident does not carry any value in the absence of corroboration. If the Charged Officer had brought this factor into the notice of above officers, he should have brought any of them as Defence witness to corroborate his version. Therefore, no reliance can be placed on the version of the Charged Officer that he received the document under threat duress, coercion and threat This appears to be an after-thought of the Charged Officer as pointed out by the Presenting Officer.

Charge No. II

(5) Charge II against Shri L.N. Mishra is that when he received the antedated office order on 13.8.1995, he got prepared a movement order for despatch of 18 personnel for special operations on 8.8.1995 and ante-dated it by signing on 7.8.1995.

(6) Exhibit S-2, the Movement Order and the signature thereon has been accepted by the Charged Officer. Although oral testimony of DW-2 indicate that the names to be included in the Movement Order were given by the Commandant himself, but the very fact that the Movement Order has been duly signed by the Charged Officer and who has admitted this fact, onus of issuance of this Movement Order squarely lies on the Charged Officer. This admission has been made in various documents as mentioned in para 11.1 (1). He has, however, mentioned that this ante-dating was done by him under duress, coercion and threat. Although this has been corroborated by DW-2 but at the same time in his cross-examination while replying Question No. 5 DW-2 has mentioned that he did not feel any immediate danger to Shri Mishra. He also mentioned that no physical force was used against Shri L.N. Mishra nor any weapons etc was pointed towards him. He even said that none of the CATs who were present in the chamber of Commandant had threatened to the Charged Officer.

(7) The defence has taken a plea that while threatening, the Commandant was in the standing position, which indicates that he was in an aggressive mood. This does not carry much conviction.

(8) The Charged Officer being a senior uniformed Gazetted Officer should not have come under pressure of the Commandant by simply hearing words "aapke bachche yahin rehte hain. Hum yahin ke rehne wale ham. Hum kuchh bhikarsakte hain". If he could have succumbed to such a pressure which is not of a very direct nature, what could be expected of him while commanding a large body of the force in a sensitive and hostile infested area where one has to operate under great tension and threat to one's life.

(9) The case of the Disciplinary Authority is that he ante-dated the signatures on movement order. It is nobody's case whether this ante-dating was done deliberately or involuntarily or under any peculiar circumstances. The ante-dating has been accepted by the Charged Officer.

(10) According to the version of the DW-2 the Charged Officer signed the movement order first. Normally, he should have signed it in the date of 13.8.1995 and should have altered the date to 7.8.1995 under so-called pressure of the Commandant. However, since there is no alteration on this document, it cannot be inferred that he signed it involuntarily.

(11) Exhibit S-1 on which the Charged Officer altered the date was given to him by the Commandant after he had signed the movement order as per the

statement of DW-2 who was an eye-witness. Thus, it is beyond comprehension as to what was the necessity for him to have put the date as 13/8 after he had already succumbed to the so called pressure of the Commandant and signed the movement order in the date of 7.8.1995.

11.2 After the detailed and thorough examination of the entire evidence and arguments brought forward by the prosecution and the defence and after considering various Court judgments as well as after applying various guiding principles and yardsticks for judging evidences, I find that-

1. Article-I of the charge is proved.

2. Article-II of the charge is proved.

(Y.N. Srivastava) Addl. DG (HQRS) CRPF Enquiry Officer.

8. The petitioner submitted reply to the findings of the enquiry officer served upon him alongwith letter dated 14th February, 2000. In his reply dated 13th March, 2000 the petitioner stated that the findings of the enquiry officer are not based on the evidence brought out during the proceedings through witness, document and delinquent. The findings were biased or misconceived and are based on presumptions, hypothesis and personal convictions. The conclusions that the supply copy is the office copy on which acknowledgment might have taken place, is not correct. If it would have been taken as admission of the charge, then the charge would have not been inquired into, and straightaway the findings in respect of charge would have been drawn as proved. The findings that none of the defence witnesses had said that the charged officer had received the document under any kind of threat from his commandant is baseless and wrong. Both the defence witnesses had stated that the Commandant had threatened him to sign the paper and that he did it under threat to the life of himself and his family members, under duress and coercion.

9. The petitioner further stated in his reply that the plea of obedience of the superior officers was wrongly found to be irrelevant. The order of the Commandant was very much lawful. The person had left headquarter on the same day for which the order was issued. The despatch of unit personnel for operational duties to Dimapur by the Commandant was very much lawful, and it was told by the Commandant later on the same day that they had gone for special operation duty at Dimapur. In a situation where order was issued, there was no harm in accepting the previous facts. Without the knowledge of the fact that the Commandant had some malafied intention in the order, it could not be taken as unlawful. The act done was not unlawful at all. Obedience to such orders extend protection u/s 17 of the CRPF Act, 1949, when warrant or order issued by the competent authority is produced. The EO's conclusion that the petitioner should have taken Senior Officers as defence witness to prove that the petitioner had informed them was never questioned nor refuted by anybody. It is only the petitioner and some officers posted in the unit, who brought out the truth into light. The plea of duress, coercion and threat was not afterthought.

From the very beginning of the enquiry the petitioner was threatened, coerced and pressurised by the Commandant.

10. The petitioner further submitted in his reply that the enquiry officer had presumed that the order was prepared by the Commandant through Ct. Makhan Singh-DW-2 was got prepared, by the petitioner. There can be no stronger proof than the admission made by Ct. Makhan Singh, who had categorically stated that he was called by the Commandant given a list of names of personnel, ordered to prepare movement order and had handed over the movement order to the Commandant, who dictated the authority of office-orders to be incorporated, found out mistakes in that, tore that away and ordered to prepare new one by adding one more name. Ct. Makhan Singh prepared and handed over the same to the Commandant, when the Commandant forced and threatened him and his family members for obtaining his signatures.

11. The petitioner also stated in his reply that he had reported in the 61 Bn. CRPF only on 3.8.1995, after availing long leave alongwith wife and children. He had no knowledge of any plan or design whatsoever of the Commandant or any person of the unit in connection with the movement of the party under Shri Ram Singh, Asstt. Commandant for special operation at Dimapur or any other purpose. It was in the evening of 8.8.1995, that the Commandant told the petitioner that they had gone for special operation at Dimapur. The Commandant is fully responsible for the administration, operation, provisioning, discipline, welfare, achievements, losses, which he does with the assistance of Dy. Commandant, Asstt. Commandant, Inspectors, Sub-Inspectors and other subordinates. His authority cannot be questioned by anyone under his command. If he had directly issued orders to Shri Ram Singh or to anybody for that matter, to do a particular duty, it was not illegal or beyond his jurisdiction. No one could have asked as to why he has made the orders. If the Commandant did not adopt proper channel for issuing orders, he cannot be forced by any subordinate to do so. The petitioner was falsely implicated and even if it is presumed that the Office Order dated 7.8.1995 was acknowledged on 13.8.1995, it did not make any difference in the scenario of the incident, which had already taken place on 7.8.1995. The act had already taken place. The personnel had already moved. The act of acknowledging office- order could not and will not deny the incident, which had taken place. It did not add or reduce anything to the incident. Besides there are some documents, which are signed ante-dated such as Government Cash Book, Red Cheque, Blank Cheque, Joining Report, Indent Form, Car Diary and Line Committee Report. Since there was no mala fide intention, it was not objectionable.

12. Shri B.N. Singh took long time explaining that the petitioner was coerced and pressurised on 13.8.1995 to antedate the order, to have been issued on 7.8.1995. He submits that as Deputy Commandant the petitioner was duty bound to accept his orders and not to question them. The order was actually prepared by and was antedated by the Commandant and not the petitioner. He

has read out the statement of the witnesses to establish that The enquiry officer had not properly appreciated the statements in finding that the petitioner had antedated the orders.

13. We have gone through the evidence and do not find anything on record to suggest that the petitioner, who is stated to have joined after long leave on 3.8.1995, was not aware of the interception and seizure of the vehicles at Patna carrying contraband item "ganja" in large quantity. The unit wanted to validate the movement and that the petitioner signed the movement order on 13.8.1995 antedating them on 7.8.1995, thereby making the movement legal.

14. A perusal of the evidence and the enquiry report would show that the petitioner has taken a contradictory stand. On one hand he stated that he had no knowledge as to what was happening and on the asking of the Commandant he had signed the movement order on 13.8.1995, antedating it as on 7.8.1995. On the other hand he states that he was coerced and pressurised to do so. If he was coerced and pressurised to ante-date and legalise the movement, the petitioner was fully aware of the illegality of the orders and the consequences, which such antedating will have on the movement, which was unauthorised and resulted into seizure alongwith large quantities of "ganja" at Patna. If the petitioner was actually coerced and pressurised, and according to him he had reported to the senior officers, he could have called them to depose in his favour. The sequence of events clearly suggest that the petitioner had full knowledge of the illegal movement and the seizure of the vehicle carrying "ganja". The enquiry officer recorded findings on the basis of the oral and documentary evidence that the petitioner had antedated the order and legalised the movement of the vehicles. The act was clearly in violation of the maintenance of absolute devotion to duty. The manner in which it was made, is unbecoming of a Government servant amounting to misconduct under Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

15. The defence taken by the petitioner that no Government officer can be said to commit misconduct in discharge of his official duties or in exercise of power conferred on him, in his best judgment, when he is acting under the directions of the superior officers and that the petitioner cannot be faulted for taking steps to antedate the order on the directions of the Commandant, is wholly without substance. The petitioner was aware of the illegal movement and seizure of the vehicle carrying "ganja". He was asked by the Commandant to validate the movement by sending movement order, which he did by antedating it from 13.8.1995 to 7.8.1995. The petitioner was not acting in valid discharge of duties, in carrying out illegal orders of which he was aware of the consequences. His action of antedating the order could not be defended on the ground that he was carrying out the orders. This stand is also contradictory to his reply given to the enquiry officer report that he was pressurised and coerced to antedate the order.

16. The punishment awarded to the petitioner is not so disproportionate, that the Court may interfere under Article 226 of the Constitution of India.

17. The writ petition is dismissed.