
(2004) 08 DEL CK 0036
In the Delhi High Court
Case No : Writ Petition (C) 6643 of 1998

L.NK. Sumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2004) 113 DLT 323

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; Sidharth Mridul, for the Respondent

Judgement

Mukundakam Sharma, J.—A departmental inquiry was initiated against the petitioner on the alleged ground of unauthorised absence from service, which allegedly amounts to an act of misconduct, neglect and disobedience of the orders within the ambit of Section 11(1) of the CRPF Act. The memorandum of charges containing the aforesaid allegations was sent to the petitioner by the respondents which was duly received. This memorandum of charges was accompanied by the statement of articles of charges, imputation of misconduct, list of documents and list of witnesses. It was also directed that the petitioner should submit reply to the aforesaid memorandum of charges framed against the petitioner. The respondents contend that the petitioner did not respond to the aforesaid letter and, Therefore, the respondent proceeded to hold the inquiry even without the reply of the petitioner. From the records of the respondent it is indicated that on 1.7.1998, a letter was sent by the respondents to the petitioner to join departmental proceeding, which was being conducted against the petitioner on the aforesaid charges. It is alleged against the petitioner that even thereafter, he did not join and again a letter was sent by the respondents to the petitioner on 14.7.1998 intimating the petitioner that the prosecution witnesses have been examined and in case the petitioner desires to lead any defense evidence, the same can be done.

2. It is, however, the stand of the petitioner that both the aforesaid two letters written on 1.7.1998 and 14.7.1998 were received by the petitioner only on 11.8.1998 along with the letter sent by the respondents on 3.8.1998 intimating the petitioner that a representation could be made by the petitioner against the inquiry report submitted by the inquiry officer. A copy of the inquiry report was also annexed with the letter dated 3.8.1998. It is further pointed out by the counsel appearing for the petitioner that 15 days time was given to the petitioner to submit a representation against the aforesaid inquiry report from the date of receipt of the aforesaid letter. The letter written on 3.8.1998 was, however, received by the petitioner only on 11.8.1998. It is contended that without waiting for reply of the petitioner the disciplinary authority imposed upon the petitioner the penalty of removal from service with immediate effect, i.e., 19.8.1998. The aforesaid order was passed by the disciplinary authority on the basis of the records of the ex parte departmental inquiry which was conducted against the petitioner.

3. Being aggrieved by the aforesaid order, an appeal was preferred by the petitioner which was rejected by the respondents vide order dated 23.12.1998. It is pointed out by the counsel appearing for the respondents that it was open for the petitioner to file a revision as against the said order, which was, however, not filed.

4. We have been led through the records by the counsel for the parties and perused the original records produced by the counsel for the respondents and also heard the counsel for the parties.

5. The memorandum of charges was served on the petitioner. The petitioner could have submitted his reply to the aforesaid charge-sheet as the memorandum of charges was duly received. It is of course the stand of the petitioner that a reply to the said charges was sent by the petitioner on 24.6.1998 but the records of the respondents do not indicate that any such reply was received by the respondents. Be that as it may, two other communications were sent by the respondents to the petitioner to join the proceedings and at different stages i.e. on 1.7.1998 and 14.7.1998. There is nothing on record to prove that the aforesaid letters were served on the petitioner by the postal authorities immediately thereafter. On the other hand, a document is placed on record by the petitioner from the postal authorities which certifies that the registered letter No. 3/50 dated 29.7.1998, 7879 dated 31.7.1998 and 5026 dated 4.8.1998 were delivered to the petitioner only on 11.8.1998. The aforesaid certificate is issued by the Assistant Superintendent Post Office, Alwar Division, Alwar vide certificate dated 10.6.1999. No acknowledgment due cards are forthcoming on the record nor any evidence to the contrary is placed on record by the respondents to disprove the aforesaid statement made in the certificate issued by the postal authorities.

6. In this view of the matter we have no other option but to accept the aforesaid document and the contents thereof as correct that the said registered letters

dated 29.7.1998, 31.7.1998 and 4.8.1998 were received by the petitioner only on 11.8.1998. The letter dated 3.8.1998 was received by the petitioner only on 11.8.1998. The petitioner has 15 days" time to submit the representation in terms of the letter dated 3.8.1998, which is an admitted position. The disciplinary authority, however, counted 15 days" time from the date of issuance of the notice dated 3.8.1998 and proceeded to pass a final order against the petitioner on 19.8.1998. Therefore, the petitioner was deprived of the valuable right of submitting the representation as against the inquiry report and, Therefore, we are clearly of the opinion that there is violation of the principles of natural justice in the present case.

7. Since we are required to set aside the impugned order of removal from service, we deem it appropriate to give one more opportunity to the petitioner to submit his reply to the memorandum of charges, which shall be submitted within a week from today to the disciplinary authority.

8. In terms of this order, the impugned order dated 19.8.1998 removing the petitioner from service and order dated 23.12.1998 dismissing his appeal as devoid of merit are set aside. The respondents are, however, given liberty to proceed in the matter afresh in accordance with law. The petitioner shall submit his reply to the memorandum of charges within a week in terms of the observations made herein. On receipt of the reply, the respondents shall proceed with the matter in accordance with law and pass appropriate orders. It is also made clear that the petitioner shall be treated to be in service but no wages for the period of absence from duty shall be paid at this stage and payment of the salary and allowance, if any, shall be guided by the final orders to be passed in the departmental proceedings.

9. The petitioner shall join the proceedings immediately after submission of the reply to the memorandum of charges and shall co-operate with the disciplinary authority in all manners in conducting the inquiry, if so directed by the respondents. The petitioner shall report to the Commanding Officer, 43 Battalion.

10. It is, however, made clear that reporting of the petitioner to the Commanding Officer shall be only for the purpose of conducting the inquiry and the petitioner shall be paid such pay and allowances as is admissible under the rules and it shall also be without prejudice to the rights and contentions of the parties in the departmental proceedings which may be ordered against the petitioner.

11. The petition stands disposed of with the aforesaid observations and directions.

12. Copy of the order be given dusty to the counsel appearing for the parties.