

(2015) 10 DEL CK 0253
In the Delhi High Court
Case No : W.P. (C) 4711/2003

Lokender Pal

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Citation : (2015) 10 DEL CK 0253

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : S.K. Gupta, Vikram Singh, Advocates and Party-in-Person, for the Appellant; Saroj Bidawat, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by the penalty of removal imposed upon him by the respondents - Central Industrial Security Force ("CISF") on 15.01.2012. The petitioner was charged with misconduct, i.e. using filthy language in respect of the Deputy Commandant, CISF Unit, SSP, Salem, which amounted to a misconduct in respect of his duties. The disciplinary proceedings were drawn and a Charge Sheet was issued in this respect. This order of punishment had initially proposed withholding of one increment for two years without cumulative effect.

2. The petitioner had joined CISF as a Constable. Whilst on duty, at the CISF Unit at SSP, Salem, he is alleged to have used abusive language in respect of his superior officer, i.e. Deputy Commandant. This invited a penalty; an order withholding one increment for two years without cumulative effect which was issued on 26.09.2000. This order was apparently reviewed by the Group Commandant on 11.01.2001, who was of the opinion that considering his past conduct, the official response is not adequate in that the punishment was not commensurate with the gravity of misconduct. He, therefore, proposed major penalty by issuing Charge Sheet on 08.03.2001. The Charge Sheet alleged that the petitioner had used unparliamentary language on 29.07.2000. It was also

noted that he had been charged with and found guilty in respect of other similar six charges each of which had led to punishments. The subsequent departmental proceedings ended with the submission of an Inquiry Report which exonerated the petitioner of one charge. The Inquiry Officer (IO) noticed that there was discrepancy in the statements of witnesses - PWs-1 and 4. On 05.12.2001, the disciplinary authority, after considering the record of the IO was of the opinion that the Inquiry Report did not appropriately appreciate the circumstances and, therefore, issued a disagreement note in the form of a notice to the petitioner on 05.12.2001. This later culminated in an order dated 15.01.2002. The order noted that the petitioner had submitted his representation - in response to the disagreement note - on 08.01.2002, asking for dropping of the charges in line with the Inquiry Report recommendations.

3. The disciplinary authority was of the opinion that the IO did not appropriately appreciate the circumstances in weighing the material evidence of PWs-2 and 4. He was of the opinion that there was sufficient material on the record to establish that the petitioner had indeed used filthy and abusive language while referring to his superior officer, i.e. the Deputy Commandant at the said date, time and place. Consequently, he was removed from the service. The petitioner's appeal and request for revision met with no success. Both were rejected on 28.03.2002 and 25.06.2002 respectively.

4. Learned counsel for the petitioner took this Court through the testimony of witnesses who had deposed in the proceedings and contended that the rationale for the disagreement note was unfounded. He stated that there was not only controversy and inconsistency with respect to the place but also material variation as to what was allegedly stated by the petitioner. Highlighting that the petitioner's conduct only pertained to his alleged conversation on the telephone with an unknown person and not with the Commanding Officer himself, learned counsel submitted that the penalty of removal from service was too severe under the circumstances. He highlighted that the petitioner was not found guilty of conduct that could be termed as "moral turpitude". Rather it highlighted the stresses and pulls that a Force personnel is ordinarily put through. Learned counsel relied upon the decision of the Supreme Court in Ram Kishan Vs. Union of India and others, , to say that the quantum of punishment has to be proportionate in the given circumstances of the case. Learned counsel also relied upon the judgment reported as Collector Singh Vs. L.M.L. Ltd., with respect to the issue of proportionality. It was highlighted that in that decision too, the workman had been imposed the penalty of dismissal for using abusive language. Learned counsel relied further on the judgment in Krishan Pal v. UOI and Ors. W.P.(C) 6918/2009, decided on 09.03.2011.

5. The respondent/CISF contends that the Court should desist from interfering and granting any relief in these proceedings. It was highlighted that the so called "discrepancies" which were given undue importance by the IO did not in any way shake the basic allegation levelled against the petitioner, i.e. abusive references

to his superior officer on telephone within the full hearing of all members of the Force during day time, when others too were on duty. It was highlighted that one of the witnesses, upon attempting to remonstrate with the petitioner, was also asked to keep away and virtually abused. It was alleged that the petitioner was a habitual offender in this regard and that he had been chastised with different degrees of penalties which did not seem to have any salutary effect on his performance and that his abusive behaviour continued. Citing the present instance as an extreme case, which could not have been tolerated by any public servant much less anyone who is a member of a disciplined force, learned counsel submitted that the penalty of removal imposed was not excessive as it enabled the petitioner to seek alternative employment. Learned counsel relied upon another decision of this Court in *Gurdeep Singh v. UOI* W.P.(C) 8212/2010, decided on 22.02.2011 and *Debashish Bhattacharya v. UOI and Ors.* W.P.(C) 3824/2011, decided on 30.05.2011.

6. Firstly as to the aspect of the contention with respect to the arbitrariness in the issuance of the order of disagreement which culminated in his penalty, this Court is of the opinion that it really cannot reappreciate the evidence recorded by the disciplinary authority. It was and cannot be disputed that the disciplinary authority is a statutorily empowered officer charged with the duty of appraising the evidence and considering all the materials on record in matters of discipline. Whilst the task of conducting an inquiry can be undertaken by some other officer, it is well known that the findings of such IO have high recommendatory value but are not conclusive or binding upon the disciplinary authority.

7. The Court's scrutiny necessarily has to be whether the concurrence or disagreement per se displayed any arbitrariness in the appreciation of evidence. The petitioner is correct in his submission that the IO exonerated him on the basis of certain discrepancies perceived by him in the testimonies/depositions of PWs-1 and 4. However, as to the same material, the disciplinary authority has concluded differently. The approach of the Court in such cases is not one of appellate nature undertaking a detailed factual scrutiny. The Court would, in exercise of its judicial review jurisdiction and keeping in mind the fact that departmental proceedings are domestic proceedings which have to substantially comply with the principles of natural justice, wherever omitted, in accordance with rules - and be free from bias and not illegal, in the sense that it is contrary to any prescribed statute or pending regulations, cannot enter into the arena of factual appraisal. Viewed from this stand point, on an overall appreciation of the circumstances, it would be evident that the petitioner, i.e. the charged personnel apparently made abusive references to his superior officer, i.e. the Deputy Commandant while conversing with someone on 26.09.2000. Several witnesses were cited and deposed as to this. The cumulative effect of this evidence clearly is that the petitioner not only used such abusive language but when one of the personnel who actually witnessed it, i.e. Sub Inspector I. Perumal, PW-2, sought to dissuade him from doing so, the charged official dismissed him too with abusive language. Therefore, about the nature of the words used by the

petitioner, there is absolutely no controversy or inconsistency. The points highlighted by the IO pertained to the presence of one or the other witness. That to our mind is not an important factor considering that the proceedings were not criminal in nature and were departmental proceedings where the standard of proof is "preponderance of probabilities" as opposed to "proof beyond reasonable doubt".

8. Therefore, we are of the opinion that there was neither any procedural infirmity, arbitrariness or unreasonable appreciation of evidence in holding that the petitioner was guilty as charged.

9. On the second aspect as to the proportionality of the punishment, the authorities cited by the petitioner have highlighted that abusing behaviour per se may not be under certain circumstances be of such gravity as to invite the extreme penalty of dismissal [see Krishan Pal (supra) and Collector Singh (supra)]. On the other hand, the decisions cited by the respondents - Gurdeep Singh (supra) and Debashish (supra) also highlighted under what circumstances abusive behaviour can be considered grave warranting dismissal or removal. In the present case, we notice that the petitioner had been chastised, censored and even imposed with minor penalties on six previous occasions for similar misconduct. Of course, the list of past misconducts cited do not list as to what exactly were the words used by him.

10. Considering all these circumstances and the fact that the petitioner per se did not abuse his superior officer but made abusive references to him on telephone, this Court is of the opinion that the issue of penalty ought to be reconsidered by the CISF. The petitioner's entire record and conduct - not only in respect of allegations and penalties but also the other aspects, such as his appraisal, work and functions assigned to him should be taken into consideration in this regard. In the light of the above facts, the writ petition is partly allowed. The impugned penalty order is hereby set aside. The respondents are at liberty to pass a fresh order after considering all the circumstances and the records within eight weeks from today. While doing so, the respondents shall also pass appropriate orders in respect of FR-54 dealing with the question as to how the petitioner's period for the interregnum period, i.e. between his dismissal and the fresh order shall be treated. The writ petition is partly allowed in the above terms.