
(2001) 09 DEL CK 0183
In the Delhi High Court
Case No : C.W. No. 2813 of 1999

Mahender Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Citation : (2001) 09 DEL CK 0183

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

Bench : Single Bench

Advocate : H.S. Dahiya, for the Appellant; Sachin Datta, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—Being aggrieved by the order of punishment passed against the petitioner the present petition is preferred in this court. The Disciplinary Authority imposed upon the petitioner the punishment of demotion to the rank from Sub-Inspector to Assistant Sub-Inspector as against which the petitioner filed an appeal before the Appellate Authority and the said appeal was also rejected and hence the present petition.

2. The petitioner was working as a Sub-Inspector in CISF Unit, BNP, Dewas. While working as such a memorandum of charge was issued to the petitioner under Rule 34 of CISF rules, 1969. The said memorandum of charge was dated 23.8.1997 and contained two specific charges which were drawn up against the petitioner. The petitioner was asked to submit his reply as against the aforesaid charges. Thereafter a regular departmental enquiry was held against the petitioner. During the course of the enquiry an opportunity was given to the charged personnel to adduce evidence in his defense. Altogether 11 witnesses were examined on behalf of the department. The charged personnel however, did not produce any defense witnesses nor any document in support of his defense and on closure of the proceedings the Enquiry Officer submitted his report finding the petitioner guilty of both the charges. The records were placed before the

Disciplinary Authority, who upon consideration of the records agreed with the findings of the Enquiry Officer and thereafter exercising his powers under Rule 29(a) of Appendix 11 of CISF Rules, 1961 imposed upon the petitioner the punishment of demotion in rank from Sub-Inspector to Assistant Sub-Inspector in the force with a further order that his promotion again could be given as per his seniority at the regular time as per recommendation of the Departmental Promotion Committee on normal basis. It was also ordered that the suspension period of the petitioner from 15.7.1997 to 30.8.1997 would be treated as suspension and no other allowance during the aforesaid period would be payable except the subsistence allowance given during the period of suspension. The aforesaid order was passed by the Disciplinary Authority on 19.12.1997. The petitioner filed an appeal before the Appellate Authority. The said appeal was taken up for consideration and was disposed of by the order dated 27.8.1998 whereby the appeal filed by the petitioner was rejected being devoid of merit. Being aggrieved by the aforesaid two orders the present writ petition was filed in this court.

3. The writ petition is contested by the respondents by filing a counter affidavit contending inter alias that the action taken against the petitioner is justified both in law and on facts.

4. It was submitted by the counsel appearing for the petitioner that the charges drawn up against the petitioner are arbitrary, baseless and unfounded. It was submitted by him that since Rajbir Singh deserted from duty in the moving train stealthily and without informing anyone, it was not humanly possible for the petitioner to prevent he same as he had also the prime duty of making due delivery of the huge consignment of currency notes at the appropriate places. He also submitted that the charge of lack of proper command and control over the force members brought against the petitioner was without merit as no such command and control over Rajbir Singh was possible as what he had done was done secretly and slipped away from the moving train without the knowledge of any of the persons accompanying him. It was also submitted by him that so far the allegations made in charge No. 2 are concerned the petitioner in fact tried to contact the higher authorities but as the telephone was out of order no such information could be sent to the higher authorities and Therefore, such information could be furnished by the petitioner only when he reported back to the higher authorities. Counsel also submitted that the punishment awarded by the respondents is excessive in nature inasmuch as in a similar case wherein also similar charge was involved a lesser punishment in the nature of minor penalty was awarded to the charged officer.

5. Counsel appearing for the respondents, on the other hand submitted that the charges drawn up against the petitioner were serious and grave in nature and they were found to have been proved during the enquiry. The Disciplinary Authority as also the Appellate Authority independently considered the said records and the evidence and upon such scrutiny and examination agreed with

the findings of the enquiry officer holding the petitioner guilty of the two charges. Counsel also submitted that the punishment awarded to the petitioner cannot be said to be excessive as no two cases could be similar when the charges drawn up against the two persons are separate and distinct. He also submitted that this court does not enjoy the power to sit over the quantum of punishment awarded by the Disciplinary Authority in view of the settled position of law in that regard.

6. The Memorandum of charge which was issued to the petitioner and on the basis of which the departmental proceedings against the petitioner were instituted contains two charges - the first charge relates to gross dereliction of duty and gross negligence by petitioner as he failed to exercise proper command and control over the force members under him due to which Constable Rajbir Singh deserted on the way on 6.7.1997 Along with 50 round of 7.62 mm ammunition without information and permission of the senior officer. The second charge relates to gross disregard and violation of lawful orders by the petitioner who was detailed as a party in charge of security duty of delivery to Chandigarh on 5.7.1997 Along with other sever force members. It is alleged therein that although one of the members of the said party namely - Rajbir Singh deserted on the way on 6.9.1997 the petitioner did not inform of such dereliction of duty to the Unit Commander or the management for long 11 days and thereby violated the directions given in para 11 & 13 of the delivery duty movement order.

7. On the basis of the aforesaid charges the enquiry was initiated against the petitioner. The enquiry report is placed on record by the petitioner. In this said proceedings 11 witnesses were examined on behalf of the department whereas the petitioner did not examine any defense witness in spite of opportunity given to him. The petitioner also did not produce any document in support of his defense. On closure of the proceedings the Enquiry Officer submitted his report which also contained his findings wherein he had categorically stated that the charges drawn up against the petitioner stood proved in the said proceedings.

8. During the course of arguments no argument was raised alleging any violation of the principles of natural justice in conducting the aforesaid enquiry. The main thrust of the counsel appearing for the petitioner was that he charges are baseless. From the evidence on record the said allegation and the submission of the counsel appearing for the petitioner is found to be without any merit. The petitioner was the in charge of the party and Therefore, a heavy responsibility was cast upon him. Being the in charge of the party the petitioner was supposed to get the work done from the constables accompanying him in that journey. The plea that he could not report about the desertion of Rajbir Singh for 11 days because the telephone was out of order also cannot be accepted. Even assuming that the plea of the petitioner was correct that a particular telephone was out of order, he could have used a telephone in the other stations through which they had passed after the incident or from Chandigarh where the said currency notes were to be deposited or from Delhi which was in between and where the headquarters of CISF is located. Such an information could also have been sent

by telegram or by sending a wireless message which was not done. Thereby the petitioner has violated the instructions contained at Serial No. 13 of the movement order. Under such circumstances it cannot be said that the charges are baseless.

9. A copy of the movement order is also placed on record which is dated 5.7.1997. Clause 11 thereof lays down that CISF personnel would not discuss any matter pertaining to the security of the notes consignment with any person and no CISF personnel would remain desert or absent and that punishment would be awarded to the party in charge and the defaulting CISF personnel on getting the desertion or absence proved. Clause 13 thereof provides that any important information/incident would be reported to the unit commander or management by trunk or telegram. It was also stated that in case of any difficulties or incident enroute, the same would immediately and necessarily be informed to the Station Master or GPR.

10. It is thus crystal clear that the petitioner did not take any steps to inform of the incident of desertion in terms of the mandate of the said Clause 13 and Therefore, it cannot be said that the charges drawn up against the petitioner are baseless. The plea that the punishment awarded to the petitioner is excessive is also without merit for, when the charges are proved punishment could be awarded to the petitioner and it is for the Disciplinary Authority to decide the nature of punishment to be awarded to the concerned person who is found guilty of the charges. Unless the said punishment is found to be too shocking and against all reasonableness, the court would not interfere with the quantum of punishment awarded. In this case neither the quantum of punishment awarded to the petitioner could be said to be excessive or shocking.

11. Under the circumstances, I find no merit in this petition and the petition is dismissed. However, there will be no order as to costs.