

(2001) 01 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18818 of 1988

Maresh Chandra Sharma

APPELLANT

Vs

Commandant, CISF Unit, 6-T, Visakhapatnam, A.P. and Others

RESPONDENT

Date of Decision : 13-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 3 ALD 284 : (2001) 91 FLR 402

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. Gourishankar Sanghi, for the Appellant; Mr. L. Narasimha Reddy, SC for CG, for the Respondent

Judgement

1. This writ petition was filed seeking a writ of certiorari, call for the records and set aside the order of removal from service passed by the respondents 1 and 2 in their proceedings, dated 18-5-1983 and dismissal of appeal and revision by the appellate authorities confirming the order of removal from service as illegal and consequently direct the respondents to reinstate the petitioner with full back-wages and other service benefits, to which the petitioner is entitled to and pass such other orders which are deemed fit and proper in the circumstances of the case.

2. The petitioner was appointed was a Security Guard by the second respondent and he joined duty on 10-6-1976 and worked in the office of the second respondent till the end of May, 1980 and thereafter he was transferred to the office of the first respondent-Commandant CISF, 6-T, Visakhapatnam in the month of June, 1980. Prior to the transfer to Visakhapatnam, the petitioner worked as constable in the office of the Superintendent of Police, Indore, Madhya Pradesh from 1-11-1973 to 8-6-1976, he resigned the earlier post in order to join in the office of the 2nd respondent for better prospects. It is also stated that when he was working as a constable, he was awarded cash for his outstanding

works and vigilant activities and he also obtained certificate for meritorious activities from the second respondent from 10-6-1976. While it being so, the second respondent has falsely implicated the petitioner as one among 100 members of the force who wrongfully confined the second respondent on 27-5-1980 in order to compel him to withdraw the suspension order of 3 members of the force belonging to CISF, Durgapur on the ground that the petitioner has committed an act of grave misconduct and gross indiscipline. A charge memo was issued by the Commandant on 20-6-1980 alleging that, the petitioner has contravened Rule 51 of the CISF Rules, 1969 and in support of the said charge, Sri Udai Veer, the then second respondent examined himself as PW 1 and other witnesses who are subordinates of the 2nd respondent. According to them, about 30 persons were present in the office of the second respondent on 27-5-1980 and the statement is contrary to the statement made before the Enquiry Officer wherein it is stated that about 100 persons were present, that the oral statement recorded by the Enquiry Officer some of the witnesses stated that 100 persons were present in the Chamber of Sri Udai Veer and some of the witnesses stated that only 20 to 30 people were present. It is further submitted that Udai Veer has identified the petitioner as a person who participated in the incident. On the other hand he directed Sub-Inspector of Police, Sri K.K. Niranjana, to prepare a list of persons who participated in the incident that occurred on 27-5-1980 and the Inspector falsely implicated the name of the petitioner in the list. In the charge memo five persons were alleged to have witnessed the incident, but only four witnesses were examined and the eye-witnesses have not spoken anything about the acts of the petitioner. On the other hand, Sri Udai Veer did not identify the petitioner during the course of enquiry, but he initiated departmental action against the persons whose names have been listed in the list prepared by Sri K.K. Niranjana, who is the Sub-Inspector of Police and the said Niranjana was not examined. It is contended that the Enquiry Officer, who is subordinate to the respondents 1 and 2 due to the pressure, could not hold an independent enquiry, which is evident from the statements recorded by him and signed on different dates. The petitioner also attacks the way in which the enquiry was conducted by the respondents under various grounds. It is further submitted by the petitioner in his explanation that on 27-5-1980 he left the office at about 1 "O" Clock to hospital, which is evident from the hospital records alongwith his wife for treatment in the Mining and Allied Machinery Corporation Hospital, Durgapur on 26 and 27th May, 1980, that he was in the first shift which commences at 5-00 a.m. to 1-00 p.m. on 27-5-1980 and he obtained permission to take his wife to the hospital and the same was informed to the Deputy Officer, Sub-Inspector, Mr. Roy and he made an entry in the Duty Register of Plant V Unit, that the petitioner went to MAMC hospital and the Duty Officer has instructed the Sector Commander HSG Sri S.K. Jha to take charge of the petitioners duty and accordingly he left to the hospital. It is submitted that the Enquiry Officer and the first respondent did not make any effort to call for the said General Diary maintained at the Unit where the petitioner worked and that statement was disputed by the respondents during

the course of Enquiry. According to the petitioner, he left the place of work at 10 a.m., then he went to his quarter which is situated at 5 KMs., away from the place of duty at 11-30 a.m., he reached the hospital and he was there upto 1-30 p.m., and the same is evident from outpatients ticket No.94 issued by the hospital authorities.

3. It is further submitted by the petitioner that when he asked for permission to engage his friend to present his case before the Enquiry Officer, the same was rejected by the respondents and, therefore, the enquiry conducted by the respondents is not in accordance with provisions of Rules. It is also submitted that when once the enquiry conducted is not legal, the impugned order is violative of Service Rules and consequently liable to be set aside.

4. No counter was filed by the respondents.

5. A reading of the removal order dated 18-5-1983 discloses that the petitioner, SG MC Sharma of "B" Company, CISF Unit, VPT Visakhapatnam, formerly deployed to CISF Unit, MAMC Durgapur, was involved in an incident of gheraoing the first respondent Udai Veer, therefore, enquiry was initiated under Rule 34 of the CISF Rules, 1969 and charges were framed vide Commandant CISF Unit, MAMC, Durgapur vide Memo No. V-15014/80/Ad.II dated 20-6-1980 to the effect that while serving with CISF, MAMC, Durgapur, on 27-5-1980, he alongwith 100 members of the Force wrongfully confined the Commandant CISF Unit, MAMC, Durgapur, Assistant Commandant, CISF Unit, BOGL, Durgapur in the office chamber of the Commandant, CISF Unit, MAMC, Durgapur in order to wrongfully force the Commandant to withdraw the suspension order of three members of the Force belonging to CISF Unit, MAMC, Durgapur and the act of the Security Guard was a grave misconduct and an act of gross indiscipline on the part of the petitioner.

6. The petitioner denied the charge in his explanation dated 18-8-1980 and thereafter enquiry was ordered to enquire into the charge framed against the petitioner. Accordingly, a regular enquiry was conducted and the enquiry report dated 16-12-1982 was submitted holding that the charge framed against the petitioner is proved. After going through the papers connected therewith and the findings of the Enquiry Officer, as the petitioner took part in wrongfully confining the Officers of MAMC Durgapur, the first respondent concurred with the finding of the Enquiry Officer and exercising powers conferred on him under Rule 29(a) of the CISF Rules, 1969 ordered removal of the petitioner from service with immediate effect.

7. Aggrieved by the said order, the petitioner preferred an appeal before the Deputy Inspector General of Police, Southern Zone, CISF, Madras, on 31-5-1983 which was also dismissed on 26-9-1984 confirming the order of the first respondent. Against that order, the petitioner preferred revision before the Director General, CISF, New Delhi, which was also dismissed by order dated 12/13-9-1985.

8. The petitioner also preferred mercy petition before His Excellency the President of India on 1-2-1986 and during the pendency of the same, the present writ petition was filed.

9. The learned Counsel for the petitioner while addressing arguments submitted that against the same charge a criminal case was filed against the petitioner and the same was closed and when once the criminal case is closed, the respondents should have exonerated him of the charge and should have reinstated him into service. It is also submitted that the petitioner was not given permission to engage his friend to present his case though he made request on 18-8-1980. It is further submitted that N.G. Dattagupta, who was alleged to be present in the office was not examined and the statement of the petitioner that he was permitted to go to Hospital after handing over charge to other officer was not considered by the Enquiry Officer. Therefore, for all the reasons the enquiry conducted by the respondents is vitiated by law and, therefore, the respondents should not have relied on the report of the Enquiry Officer and removed the petitioner from service. It is also contended that the disciplinary proceedings are initiated against 49 CISF personnel including the petitioner and some of the persons were reinstated and while in the case of the petitioner, without considering his contentions removal order was passed and thus created discrimination among the employees who are similarly situated. Therefore, the action of the respondents in not closing the enquiry and not reinstating the petitioners is discrimination. In support of his contention he relied on the judgment of the Supreme Court in *Sengara Singh and others v. The State of Punjab and others* AIR 1984 SC 1499.

10. In this case, the State of Punjab initiated disciplinary action and dismissed about 1100 members of the Police Force on the ground that they had participated in an agitation which was impermissible under the Rules governing the discipline in the Police Force of the State of Punjab. A number of criminal prosecutions were filed against the participants in the agitation. Some of the members of the Police Force who were dismissed from service filed writ petitions in the High Court of Punjab and Haryana, but they were dismissed. After dismissal of the writ petitions about 1000 former members of the police force were reinstated and criminal cases pending against some of them were withdrawn and a Committee consisting of members of the superior rank of the Police Force was constituted by the State Government to review the cases of the dismissed agitators and reinstatement followed on the recommendations of the Committee. It was conceded that out of the 1100 dismissed agitators 1000 were reinstated and the rest were left to fend for themselves. Those who were thus weeded out by the Committee filed writ petitions in the High Court. It was held that the order of the High Court dismissing the petitions was liable to be quashed. It was held that logically the petitioners must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. It was held that the petitioners would be entitled to reinstatement in service. It was further held that if the indiscipline of a large number of personnel

amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, there was no justification in treating the petitioners differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated, and therefore, on that conclusion the treatment meted out to the petitioner suffered from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14.

11, In respect of the contention of the petitioner that the Enquiry Officer has not examined N.G. Duttagupta, who is a crucial witness, learned Counsel for the petitioner has further relied on a decision of the Apex Court in *Hardwari Lal Vs. State of U.P. and Others*, wherein when a constable was charged for hurling abuses at another police officer under the influence of liquor and when the complainant was not examined and the witnesses who accompanied to hospital, it was held that there was non-observance of principles of natural justice and therefore, the enquiry conducted was not proper and therefore, the Court directed reinstatement of the petitioner with 50% back-wages. It is held that there was no proper enquiry held by the authorities and on that short ground, Their Lordships quashed the order of dismissal passed against the appellant therein by setting aside the order made by the High Court affirming the order of the Tribunal and directed that the appellant be reinstated in service and consider the fact of long lapse of time, before the date of dismissal and reinstatement, without putting the blame only on the respondents. Their Lordships awarded 50% of the back salary. The contention of the appellant therein was that the complainant and the witnesses Shri Virender Singh and Jagdish were not examined and the Tribunal as well as the High Court have brushed aside the grievance made by the appellant that "the non-examination of those two persons has prejudiced his case and examination of those two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or condition of the appellant. Therefore, Their Lordships held that the Tribunal and the High Court were not justified in thinking that non-examination of these two persons could not be material.

12. In the event the writ petition is allowed, the petitioner sought for a direction to grant back wages and reliance is placed on the judgment of this Court in *P. Srinivas Vs. Industrial Tribunal-cum-Labour-Court, Warangal and others*, . In this case, it is held that it is not that the Court should reject each and every writ application where there is delay on the part of the applicant who moves this Court. It is relevant to note that though the petitioner was reinstated into service on 1-12-1987, the Management was fighting the litigation before this Court, both before the learned single Judge and Division Bench assailing the validity of the award made by the Labour Court, Warangal in ID No.77 of 1986 dated 2-2-1987.

It was further held that in the contextual scenario the arguments of the learned Standing Counsel for the Corporation has to be viewed. The Supreme Court and this Court repeatedly held and reiterated that Industrial Law is essentially meant to protect the rights of the workmen and sometimes it is called biased law, biased towards workmen. Ultimately the Court directed the respondent-RTC to compute the periodical increments that would have been earned by the petitioner had he been in service during the period from 8-7-1978 to 1-12-1987 and after determining such increments and on the basis of the same, to fix the wage payable to the petitioner after his reinstatement into service and to pay the arrears in respect of the period subsequent to reinstatement.

13. On the other hand, the learned Standing Counsel for the Central Government submitted that the organisation in which the petitioner is working, requires to maintain high discipline and morale in discharging the duties instead of resorting to such unethical and indiscipline deeds of wrongfully confining their own officers and pressuring him to withdraw the suspension order passed against certain members of their organisation. In the wake of such incidents, the punishment imposed by the respondents is quite legal and does not call for any interference.

14. To appreciate the contentions raised by both the Counsel, I have gone through the material placed before me including the report of the Enquiry Officer. It is evident from the report that he has examined four witnesses on behalf of the Department i.e., Mr. P.K. Lahiri, Mr. T.K. Mandal, Mr. K.K. Niranjana, and Mr. Udaiveer. But the department has failed to examine N.G. Dattagupta, on the simple reason that he retired from service. The fact is that the entire exercise was initiated at the behest of Sri N.G. Dattagupta inasmuch as the allegation is that the petitioner and others have gheraoed him, with a view to force him to withdraw the suspension order passed against three members of the petitioner's organisation. Thus he is the crucial witness to speak about the occurrence of the incident. Failure to examine this witness definitely vitiates the enquiry. That apart, all the four witnesses who are examined on behalf of the department did not categorically say about the participation of the petitioner in the incident. The Enquiry Officer also has not considered the submission of the petitioner that he left the work spot at 10.00a.m., after obtaining, permission from the Officer to take his wife to the hospital and the Officer has entrusted the charge of his duty to some other officer. To prove his plea of alibi, the petitioner produced outpatient tickets issued by the MAMC Hospital his wife was taken to the hospital and he was not present at the place of work and that he did not participate in the gherao.

15. The Enquiry Officer has also not considered the request of the petitioner to engage his friend to assist him in the enquiry, though he made a written request in that regard.

16. That apart, cases of some of the employees who were charged alongwith the petitioner were considered and they were reinstated into service. In these circumstances the ratio laid down by the Supreme Court in Sengara Singh's case

squarely applies. No doubt, the organisation in which the petitioner is employed requires strict discipline and high morale, even then the respondents cannot give a go-bye to the Rules and the delinquents have to be dealt with in accordance with Rules. In these circumstances, I am unable to agree with the contentions raised by the teamed Standing Counsel for the Central Government. Therefore, I am prima facie not satisfied with the way the enquiry was conducted and it is not fair. Therefore, the order of removal passed by the second respondent and confirmed by the first respondent is liable to be set aside and is accordingly set aside. The respondents are directed to reinstate the petitioner into service with 50% of the back-wages and he shall also be entitled to continuity of service and other service benefits.

17. The writ petition is accordingly allowed in part. No order as to costs.