

(2015) 04 DEL CK 0358
In the Delhi High Court
Case No : Writ Petition (C) 2988 of 2013

Mahesh Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Citation : (2016) 1 ESC 309 : (2015) 3 SLJ 205

Hon'ble Judges : Pradeep Nandrajog, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Rekha Palli, Punam Singh and Ankita Patnaik, for the Appellant;
Rajesh Gogna, CGSC and Sameer Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J—The petitioner was Head Constable/GD in CISF and on June 18, 2011 he was posted at CCIL/ICD Tughlakabad. On that day he was deployed on duty from 06:00 hrs to 18:00 hrs with arms at Railway Gate of ICD Tughlakabad alongwith Ct.GD Raghuram for protecting and safeguarding the property. On that day at about 15:45 hrs. the petitioner was allegedly caught by Sh.Dinesh Bhardwaj, owner of Sculpture Cargo and Sh.Dharmender Singh, Supervisor of B.Ghosh Company while he was carrying a box containing fastners made of brass weighing about 10 kg. When the matter came to the notice of ASI/Exe. S.Kadian, Incharge of CIW, a preliminary inquiry was conducted into the matter. On the basis of statement made by Sh.Dinesh Bhardwaj and Sh.Dharmender Singh and other material, charge memo dated July 06, 2011 was served on the petitioner with the following Articles of Charge:-

"Charge-1

Force No. 0841320182 HC/GD Mahesh Sharma (suspended), CISF Unit CCIL Tughlakabad was deployed on duty on 18.06.2011 between 06:00 hrs to 18:00 hrs at Railway Gate Post. The force member found to be taking away the brass fastener box (approximately 10 kgs) with wrong/malafide intension without

permission from the Bonded Warehouse-2 at about 16:30 hrs. The said act committed by HC/GD Mahesh Sharma is a symbol of gross dereliction of duties, indiscipline and misconduct.

Charge-2

Force No. 0841320182 HC/GD Mahesh Sharma (suspended) had been punished earlier 11 times for minor offences of indiscipline but he failed to mend his attitude."

2. On finding the response of the petitioner to the charge memo being not satisfactory, the Disciplinary Authority decided to conduct an inquiry into the matter and Sh.Narender Kumar, Inspector/Fire of CISF Unit, BTPS Badarpur was appointed as Inquiry Officer. At the inquiry following seven witnesses were examined:-

- (i) PW-1 - Sh.Dinesh Bhardwaj PW-1, Owner of Sculpture Cargo.
- (ii) PW-2 - Sh.Dharmendra Singh, Supervisor of B.Ghosh Company. (iii) PW-3 - Ct.Raghuram, CISF Unit, CCIL, Tughlakabad.
- (iv) PW-4 - Ct.Amlendu Ghosh, CISF Unit, CCIL, Tughlakabad.
- (v) PW-5 - Inspector/Exe. J.R. Meena, CISF Unit, CCIL, Tughlakabad.
- (vi) PW-6 - ASI/Exe. S.Kadian, CISF Unit, CCIL, Tughlakabad.
- (vii) PW-7 SI/Min. Sajida Gaur, CISF Unit, CCIL, Tughlakabad.
- (viii) PW-8 - Ct./GD Kuldeep Singh, CISF Unit, CCIL, Tughlakabad.

3. Ms.Rekha Palli, Advocate has vehemently advocated the case of the petitioner challenging the finding of guilt recorded by the Inquiry Officer mainly on the ground that how such a finding could have been recorded when Sh.Dinesh Bhardwaj PW-1 and Sh.Dharmender Ghosh PW-2 had not made any incriminating statement against the petitioner rather claimed that under utter confusion prevailing at that time they made the statement during the preliminary inquiry. Learned counsel for the petitioner has submitted that Inquiry Officer has ignored the material evidence of Sh.Dinesh Bhardwaj PW-1 and Sh.Dharmender Singh - PW-2 and thus the inquiry report is liable to set aside as the findings are perverse.

4. Record of disciplinary proceedings against the petitioner has been perused by us to satisfy ourselves whether the finding of guilt against the petitioner is based on no evidence or can be termed as perverse.

5. Statement made by Sh.Dinesh Bhardwaj PW-1 on the day of incident i.e. on June 18, 2011 is to the effect that on June 18, 2011 he was getting the cargo loaded and unloaded at the warehouse when at about 16:30 hrs. He saw the petitioner going towards Gate No. 4 with one box. He called the petitioner but the petitioner did not respond. At that time Sh.Dharmender Singh PW-2 -

Supervisor of B.Ghosh Company was also with him. He ran towards the petitioner, took the box from him and kept the same in the warehouse. Mr. Alam talked to the petitioner and also conveyed the information to CISF (INT). He has also stated that the said box contained brass fastners weighing about 10 kg. Sh.Dharmender Singh PW-2 also made statement on the same day in sync with the statement of Sh.Dinesh Bhardwaj PW-1 and on that day both claimed to have made statement after fully understanding the same.

6. During disciplinary proceedings Sh.Dinesh Bhardwaj was examined as PW-1 and at that time he made statement to the effect that on June 18, 2011 he alongwith Mahesh Sharma was getting the cargo loaded/unloaded at the warehouse. At about 16:30 hours Mahesh Sharma i.e. the petitioner and some other people were standing near Gate No. 4 near a box. He went there, picked the box and put back the same in the warehouse. The said box bearing No. 456 was containing brass weighing about 10 kg.

7. Since the above statement made by Sh.Dinesh Bhardwaj PW-1 was at variance with his earlier statement dated June 18, 2011 immediately after the occurrence, he was questioned by the Presenting Officer about the reason for contradiction. The explanation given by PW-1 was :-

"The contradiction is due to fact that the statement dated 18.06.2011 was recorded in haste and without any verification. On 18.06.2011 labourers were working in the warehouse-II and when there was commotion at about 16:30 hrs. that Mahesh Sharma of CISF is taking away the brass box, I immediately went there and saw that everybody was saying that Mahesh Sharma of CISF was taking away the brass box. Immediately 5-10 minutes thereafter officer of the CISF reached there and made enquiries from me and whatever information I had at that time I conveyed to them. The aforesaid incident occurred in such a quick succession that I could not have the chance to understand the matter properly."

8. During his cross examination by the petitioner as to whether he had seen the petitioner near warehouse at about 16:30 hrs., he answered in affirmative but in reply to the question by the petitioner as to whether he had seen the petitioner taking the brass box, he replied in negative.

9. Sh.Dharmender Singh - the alleged eye witness to the incident of the box being taken away by the petitioner was examined as PW-2 who referred to some commotion taking place outside the warehouse at about 16:30 hrs. and presence of the petitioner alongwith some other persons standing near the box at Gate No. 4. When the Presenting Officer questioned him about the contradictions in the two statement i.e. the one made on June 18, 2011 after the occurrence with the statement made during disciplinary proceedings, he explained as under:

"The contradiction is due to fact that the statement dated 18.06.2011 was recorded in haste and without any verification. On 18.06.2011 labourers were working in the warehouse-II and when there was commotion at about 16:30 hrs. that Mahesh Sharma of CISF is taking away the brass box, I immediately went

there and saw that everybody was saying that Mahesh Sharma of CISF was taking away the brass box. Immediately 5-10 minutes thereafter officer of the CISF reached there and made enquiries from me and whatever information I had at that time I conveyed to them. The aforesaid incident occurred in such a quick succession that I could not have the chance to understand the matter properly."

10. Ct./GD Raghuram PW-3 has stated that on June 18, 2011 he was on duty with the petitioner at the same post. At about 16:30 hrs. two civilians shouted and the petitioner left for that place. He has also stated about the petitioner leaving the post at about 15:45 hrs. for going to toilet and returning after ten minutes.

11. Ct./GD Amlendu Ghosh PW-4 was on duty at Watch Tower No. 3 and deposed that on that date he had not seen the petitioner Mahesh Sharma at his place of duty after 15:45 hrs.

12. Inspector/Exe. J.R. Meena PW-5 was performing the duties of Company Commander. He has stated that on June 18, 2011 at 16:50 hrs. the Assistant Commandant telephonically informed him to verify the incident of HC Mahesh Sharma allegedly picking some goods from the warehouse. He verified the incident and informed the Assistant Commandant who further directed him (PW-5) to record the statement. Assistant Commandant also reached the spot and made enquiry and thereafter at the directions of Assistant Commandant he recorded the statement of concerned persons and entry was also got made in the General Diary of the Control Room regarding the incident.

13. ASI/Exe. S.Kadian PW-6 was performing his duties as Incharge of Crime and INT Section. He has stated that on getting the information about the incident he reached the spot and was informed that the CISF personnel (your man) had been taking away the goods which had been taken away from him.

14. Ct./GD Kuldeep Singh PW-8 has stated that on June 18, 2011 at about 16:30 hrs. he came to know from the sources about theft of some goods from bonded warehouse-II which he further conveyed to Incharge, INT Section.

15. SI/Min. Sajida Gaur PW-7 has produced the service record of the petitioner containing details of the punishment awarded to him during the period 1996 to 2010 which are eleven in number.

16. The inquiry office has noted the testimony of all the witnesses as well the submissions of the charged official i.e. the petitioner who attributed motive to Sh.Dinesh Bhardwaj PW-1 for his false implication as a day prior on June 17, 2011 Sh.Dinesh Bhardwaj brought two civilians and petitioner prevented their unauthorised entry and the alleged challenge given by Sh.Dinesh Bhardwaj to see the petitioner soon. On the basis of the statement of witnesses and documents exhibited during inquiry proceedings, the Inquiry Officer held the petitioner guilty of the above two charges. The Disciplinary Authority agreeing with the report of Inquiry Officer imposed a penalty of compulsory retirement

with full pensionary benefits.

17. Sh.Dinesh Bhardwaj PW-1 and Sh.Dharmender Singh PW-2 examined during disciplinary proceedings stated about the presence of the petitioner near Gate No. 4 near the box on the date of occurrence. They have tried to come to the rescue of the petitioner to the limited extent that they had not seen the petitioner carrying away the box and taking it back from him.

18. It is not the case of the petitioner that he was on duty at Gate No. 4. As per Ct./GD Raghuram PW-3, who was on duty with the petitioner, the petitioner had gone for toilet at about 15:45 hrs. and returned within ten minutes. The petitioner did not offer explanation for his presence near Gate No. 4 away from his place of duty.

19. We may note here that Annexure-P1 is the GD entry No. 539 made on June 18, 2011 at 18:01 hrs. The details of the incident as recorded in the General Diary record that on June 18, 2011 HC Mahesh Sharma was on duty at Railway Gate from 06:00 hrs to 18:00 hrs. During duty hours at about 15:45 hrs. he left the duty post for going to the toilet and before leaving he handed over his arms and ammunitions to Ct.Raghuram, who was also on duty with the petitioner at the same post. It further records that Sh.Dinesh Bhardwaj of Sculpture Cargo and Sh.Dharmender Singh, Supervisor of B.Ghosh Company saw the petitioner carrying a box containing fastners from Bonded Warehouse-II. They called the petitioner and took back the box from him and kept in the bonded house and information was given to INT Staff.

20. A perusal of the testimony of various witnesses recorded during inquiry proceedings as well the corresponding entry made in the General Diary immediately after the occurrence had led the Inquiry Officer to record the finding of guilt on Article of Charge-1. The service record of the petitioner containing eleven punishments had resulted in recording the finding on Article of Charge-2.

21. In exercise of power of judicial review in domestic inquiries, this Court does not act as a appellate authority and does not reassess the evidence led during disciplinary proceedings. It is not open to this Court to interfere with the finding of guilt merely because another view is possible on the basis of material available on record. In *State of Haryana and Another Vs. Rattan Singh*, AIR 1977 SC 1512 : (1977) LabIC 845 : (1982) 1 LLJ 46 : (1977) 79 PLR 492 : (1977) 2 SCC 491 : (1977) 9 UJ 298 the Supreme Court has observed as under:-

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through

case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

22. When the case of the petitioner is scrutinised in the light of the above legal principles it is apparent that the Inquiry Officer considered the sequence of events right from the stage the information was received by INT Section about the incident followed by verification of the incident and recording of statement of material witnesses on the same day. The petitioner had been placed under suspension on June 19, 2011 immediately after the incident. The alleged incident of June 17, 2011 attributing motive to Sh.Dinesh Bhardwaj PW-1 for not allowing him to bring two persons unauthorisedly has not been suggested to PW-1 during his cross examination.

23. We find that the inquiry has been conducted in a fair and proper manner and the finding of guilt has been recorded on appreciation of evidence and cannot be termed as perverse. In fact by asking this Court to consider the evidence of Sh.Dinesh Bhardwaj PW-1 and Sh.Dharmender Singh PW-2 made during inquiry proceedings the petitioner wants us to re- appreciate the evidence of PW-1 and PW-2.

24. Coming to the aspect of proportionality, he has eleven punishments during his service career. The petitioner was member of Central Industrial Security Force deployed to protect the property and his act of trying to take away a box belonging to Sculpture Cargo Company could not have been viewed lightly. Being guilty of such misconduct did not deserve the petitioner to remain in force. The punishment of compulsory retirement with full pensionary benefits to a person who allegedly tried to commit theft of the property at a place which he was

supposed to secure from bad elements, calls for no interference by this Court.

25. The writ petition is dismissed.

26. No costs.