

(2002) 10 JH CK 0041
In the Jharkhand High Court
Case No : CWJC No. 968 of 1999

Maresh Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2003) 1 JCR 464

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : R.S. Mazumdar, for the Appellant; M.M. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—The petitioner a Head Constable/GD in Central Industrial Security Force (force for short), posted at Dhurwa, Ranchi, was departmentally proceeded on following charges :

"BAL KRAMANK 7346601345 PRAD-HAN/CD MAHESH SHARMA K.AOU.SU.B. H.E.C. RANCHI-4F.F.P. SAMWAY" MEN DINANK 6.3.1998 KO DWITIYA PALI MEN TAINATI KE DAURAN SAMAY LAGBHAG 12.45 KO F.F.P. MUKHYA DWAR PAR BAL KRAMANK 764280157 UP NIRIK-SHAK/KARYA R.N.RAI EBOM BAL KRAMANK 724380187 PRADHAN ARAKSHAK B.K. SHRIVASTAVA KE DICH DUTY KE SAMBANDH MEN KI JA RAHI BAT CHIT KE DAURAN ANABASHYAK RUP SE HASTACHHEP KARATE HUYE KATHIT UP NIRIK-SHAK/KARYA R.N. RAI KE SATH ASAN-SADIYA BHASHAYON KA PRAYOG EBOM ASHOBHNIYA HARAKAT KI TATHA NIYANTRAN KAKCHA MEN RAKHI DUTY REGISTER MEN HAS-TAKCHHAR KARANE KE BABJUD BHI PUNAH NIYANTRAN KAKSHA MEN JAHAN UP NIRIKSHAK/KARYA R.N. RAI KA KALAR PAKADTE HUYE KRIYABASTHA MEN BELT KE NICHE SUVYA DHARIT JUNGLE SHOE SE EK LAT MARA, JISKA NISHAN PENT PAR ANKIT HAI. BAL KRAMANK 734660134 PRADHAN ARAKSHI SHRI MAHESH SHARMA KA YAH KRITYA GOR JURACHARAN, DUR DURVYABYAR EBOM ANUSHASANHINTA KA PRAICHAYAK HALATHA YAH AAROP HAL"

2. The enquiry officer submitted his report after enquiry (Annexure 2), in which it is said that the petitioner has participated and he was examined as DW 1. The enquiry officer found the charges proved beyond doubt. Therefore, the petitioner filed a petition to the DIG (Annexure 3) stating that he is innocent and prayed him to disbelieve the charges. He also discussed the entire evidence adduced before the enquiry officer. He also stated that the enquiry officer has not considered the case partially. The disciplinary authority considered the entire matter, examined the evidence, facts of the petitioner-proceedee and gave his finding that the charge is proved and after rejecting the plea of the petitioner that he was innocent awarded the following punishment :

"ATAEB, KATHIT AARROPI KO PRAMANIT AAROP KE LIYA DOSHI PAYE JANE KE KARAN ADHOHASTHAK SHARI KO KEYAUSUB NIYAM NIYAMABALI 1969 KE NIYAM 29(A), ANUSUCHMI EBOM NIYAM 31(D) KE ANTARGAT PADATTA ASHIKARON KE PARIPREKSHYA MEN ETAD DWORA "BAL KRAMANK 734660134 PR. AA. /CD MAHESH SHARMA KO TATKAL AARAK-SHAK PAD KE NIMN SABADHIK BETAN MAN REPAYE 3050-4500 MEN TAB TAK KE LIYE PADABANAT KIYA JATA HAI, JAB TAK IS AADESH KI TITHI SE DO BARSHON KE PASHCHAT PRAD-HAN AARAKSHAK/CD PAD PAR PUNH STHAPAN KE LIYE YOGYA NAHI PAYA JATA HAL"

2. He also directed the petitioner that he can file appeal against the order. He also directed that during the period of suspension he shall be treated as without duty. A copy of that order was directed to be made available to the petitioner along with the relevant documents. Then it appears that the petitioner filed a representation (Annexure 5) making his plea of innocent, assailing the evidence and also the findings of the enquiry officer as well as the Disciplinary Authority. Besides further plea that the defence witnesses, namely, Sri C.K. Singh, Sri T.K. Singh, Sri R.P. Singh and S.I. Sri Pradip Singh were not allowed to appear in enquiry and under pressure it was taken from them in writing that they had no information of the occurrence, though ASI Tejpal Singh in his evidence before the enquiry officer had stated that Sri T.K. Singh had caught hold of Mahesh Sharma. Appellate Authority by Annexure-5/1 disallowed the appeal.

3. The ground for assailing the impugned orders are as follows :

(i) That the show cause of the petitioner was not properly considered because the Disciplinary Authority observed that the petitioner had neither admitted charge levelled against him nor denied the same. No appreciation of evidence was made. (Paras 15 and 19)

(ii) The authority has no right to reduce the pay without following the provisions laid down in Force Rules and also without considering the statements of the witnesses.

4. A counter-affidavit had been filed by the respondents. Annexure A is an order of the DIG under Rule 30, Sub-rule (1) of the Force Rules the granting subsistence allowance as per the Rules to the petitioner. Annexure B is order revoking the suspension. Annexure-C is a direction given by the Appellate

Authority to the petitioner that he may file a written statement and may be present for hearing in person. Along with that letter annexures were also enclosed, which contains the charges and the relevant document. Annexure-D is a letter of the enquiry officer with a copy to the petitioner, which appears to have been received by the petitioner because there is an endorsement in the right margin of this letter. Annexure-E is a letter issued by the Deputy Inspector, Central Industrial Security Force, to the petitioner directing him that the petitioner may submit his application against the order of the Disciplinary Authority. This was also received by the petitioner along with the copy of the enquiry proceeding and the enquiry report. Annexure F corresponds to Annexure-A. Annexure-G is the interim order of the Disciplinary Authority. Annexure H is the order showing that during the period of suspension the petitioner has filed a rejoinder to the counter affidavit, in which it has been stated that the petitioner has pleaded to be innocent. He has also made averments that the evidences were not sufficient to prove his guilt and it is not in accordance with the principle of natural justice.

5. On perusal of the pleadings of both the sides, it appears that the case of the petitioner is that the charge against him has not been proved and the punishment awarded to him is beyond the jurisdiction of the authorities, as it is also against CISF Rules and the appreciation of the evidence has not been done.

6. In course of argument, the petitioner relied on a decision rendered in the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, wherein the Apex Court has decided that judicial interference is permissible, if there is violation of natural justice or statutory regulations, or if the disciplinary order is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusions made by the authority on the very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion. The Apex Court further held in this very case that it cannot however be overlooked that disciplinary authority is the sole judge of facts if the enquiry has been properly conducted. If there is some legal evidence on which findings can be based then adequacy of even reliability of that evidence is not a matter to be canvassed before the High Court under Article 226 of the Constitution of India. Another decision that was relied upon by the learned counsel for the petitioner is 1987 PLJR 62 Sheo Shankar Thakur v. The State of Bihar and Ors. In this case some witnesses were alleged to have been examined behind back and secondly withholding for two years and debarring police officer from holding certain posts for five years, after holding departmental enquiry when the police officer was denied sufficient opportunity of cross-examining the two key witnesses in spite of written prayer of the petitioner was found to be unreasonable. The second case which was relied upon relates to a police officer, who was departmentally proceeded under some different Rules, whereas the service of the petitioner is to be regulated by the C.I.S.F. Act and Rules and, therefore, he is to be departmentally proceeded and punished according to C.I.S.F. Act and Rules. No doubt that if there was more reasonable opportunity

given to the petitioner or the petitioner was not allowed to cross-examine the two witnesses or the petitioner was denied to adduce his own evidence then definitely that is a serious matter sufficient to vitiate the proceeding. But these facts though pleaded has not been proved by the petitioner that he has prayed for cross-examination of other witnesses in his defence which was not allowed or he was restrained from cross-examining any prosecution witnesses or any witness. The respondents have denied such allegation in counter affidavit therefore, the onus of proving facts was on the petitioner. The pleadings of the petitioner are not sufficient to establish such allegation in view of the refutation by the respondents. The mere allegations that the witnesses were not examined is not sustainable.

7. The second question is with regard to appreciation of evidence. In this context I have carefully examined the evidence as collected by the enquiry officer during the enquiry and I find that the petitioner had abused and had given a blow by jungle shoe, beyond this nothing has been proved from the evidence that the petitioner has sustained injury on his chin. The enquiry officer then only found this charge proved that the petitioner used unparliamentary language and had given a blow by his feet when he was wearing a jungle shoe and there was a mark of jungle shoe on the thigh. The allegation of the petitioner that the enquiry officer did not consider the evidence appears to be unfounded because the enquiry officer himself has found charge No. 1 has not been proved. The only charge which has been proved was that the petitioner used unparliamentary language and had given a blow by his feet when he was wearing a jungle shoe and there was a mark of jungle shoe on the thigh. Had he considered only the part evidence then he should have stated that all the charges have been proved.

8. The Disciplinary Authority has given his finding by examining the entire evidence and after considering the statements of the petitioner that the petitioner has scuffle with Inspector Sri R.N. Rai on duty and he has given a shoe blow on the thigh, which is a case of gross misconduct on his part and he passed the order, so this finding of the Disciplinary Authority does not appear to be perverse because he had followed all the rules as prescribed under Rule 34 of the Rules and has given a categorical finding. This finding being not perverse and according to rules requires no interference. Therefore, the decisions relied upon by the petitioner does not help in.

9. The Appellate Authority examined whether the petitioner was given an opportunity to defend himself or not and he came to a finding that the sufficient opportunity had been given to him. Under Rule 47 of the Rules the Appellate Authority is required to see that rules of natural justice are not violated, there is no failure of justice because of non-compliance of the rules and whether finding is justified. So I do not find any illegality in the appellate order also. All these requirements have though not been formally complied but the above facts so that in substance these were complied and there has been no violation of principles of natural justice.

10. Now I came to the punishment. The gross misconduct has not defined in the Rules, but such a conduct of a disciplined force during the working hours is definitely a misconduct of some serious nature, though not a gross misconduct. The punishment that has been prescribed under Rule 31 of the Rules, which are as follows :

- (a) dismissal;
- (b) removal;
- (c) compulsory retirement;
- (d) reduction to a lower class or trade or rank or to a lower time scale or to a lower stage, in the time scale of pay.
- (e) withholding of increment or promotion.
- (f) removal from any office of distinction or deprivation of special emolument.
- (g) fine to any amount not exceeding 7 days' pay;
- (h) censure.

11. The punishment awarded to the petitioner of the instant writ is as follows :

"ATAEB, KATHIT AAROPI KO PRAMANIT AAROP KE LIVE DOSHI PAYE JANE KE KARAN ADHOHASTAK-SHARI KO KE YAUSUB NIYAMBALI 1969 KE NIYAM 29(A), ANUSUCHI 11 EBOM NIYAM 31 (D) KE ANTARGAT PADATTA ASHIKARON KE PARIPEK-SHYA MEN ETADDWARA "BAL KRAMANK 734660134 PR. AA/G.D. MAHESH SHARMA KO TATKAL AARAK-KSHAK PAD KE NIMN SABADHIK BETAN MAN RUPEY 3050-75-4500 MEN TAB TAK KE LIYE PADABANAT KEYA JATA HAI, JAB TAK BHA IS AADESH KI DITHI SE DO BARSHO KE PASHCHAT PRADHAN AARAK-SHAK/GD PAD PAR PUNH STHAPAN KE LIYE YOGYA NAHI PAYA JATA HAI."

12. Reduction to a lower time scale is prescribed by Rule 31(d), but the another part of the punishment "JAB TAK BAH IS AADESH KE TITHI SE DO BARSHON KE PASHCHAT PRADHAN AARAKSHAK/GD PAD PAR PUNH STHAPAN KE LIYE YOGYA NAHI PAYA JATA HAI", is not a punishment is in excess of the jurisdiction because the Disciplinary Authority cannot create a punishment of its own and cannot create a punishment of its own and can not award a punishment which is not prescribed by Rules. Therefore, in my considered opinion the reduction in rank to a lower time scale is fit to be upheld, whereas the rest part is fit to be struck down.

13. With the above modification in the order of punishment the writ is dismissed.