
(2011) 09 DEL CK 0174
In the Delhi High Court
Case No : Writ Petition (C) 2120 of 1998

M.C. Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0174

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Aishwarya Bhati and Jyoti Upadhyay, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Enrolled as a Constable with Central Industrial Security Force in the year 1985, Petitioner was posted to "E" unit Central Coalfields Limited, Dhori, Dist. Bokaro, Bihar (now in the state of Jharkhand). A complaint was made that Ct.A.K.Singh and the Petitioner had left the unit lines without permission or intimation on 24.3.1996 and upon return around midnight, when the CHM HC B.L.Chaudhry questioned the two regarding their misconduct, petitioner assaulted HC B.L.Chaudhry.

2. In view of the fact that jawans of Central Para Military Forces are armed, all forces have a rule that even when not on duty and if staying in the Unit lines, a jawan must take prior permission or at least make an entry in the register kept at the outpost gate while leaving the precincts of the unit and needless to state the object is laudable. There must be a record of movement of those who carry arms. Thus, taking a serious view of having left the Unit line without permission or even an intimation and additionally for having assaulted a superior officer who acted within his duty to question the Petitioner on his conduct of leaving the Unit Line, without permission or intimation, the Commandant issued a charge sheet dated 25.04.1996, listing 2 articles of charge which read as under:

Details of charges made against No. 854280012 Constable M.C.Mishra (Suspended) CISF Unit CCL, Dhori area ("C" Coy) -

ARTICLE of CHARGE - I

Gross indiscipline and misconduct in that No. 8542800/Const.M.C.Mishra, while functioning as constable, absented himself from the unit lines at about 2230 hours on 24/3/96 without the permission from the competent authority, vide GD No. 391 dated 24/3/96. He returned to the unit lines at about 0010 hours on 25/3/96.

ARTICLE of CHARGE - II

Gross indiscipline, misconduct and unbecoming of a member of the force in that No. 854280012 constable M.C.Mishra, while functioning as constable man-handled Head Constable B.L.Choudry (CHM) who fell down and got injury on his knee and elbow at about 0010 hrs on 25/3/96.

3. Submitting a response to the charge-sheet the Petitioner alleged that the charges were false and fabricated. In view of the reply filed, since Petitioner had denied the very factual basis of the charge, the Commandant directed an inquiry to be held and report submitted and for which Insp.B.K.Yamuna was appointed as the Inquiry Officer.

4. Vide letter dated 3.5.1996 the Petitioner requested that the Inquiry Officer be changed, and relevant would it be to highlight that grounds on which Petitioner wanted change of Inquiry Officer being not stated, the Commandant rejected the request.

5. Preliminary hearing was conducted on 22.5.1996 wherein the Petitioner stated before the Inquiry Officer that he had No. objection in Insp.B.K.Yamuna conducting the inquiry and further stated that Petitioner did not wish to take assistance from any member of the force and further that the Petitioner did not wish to produce any documentary evidence.

6. At the inquiry 3 witnesses were examined by the prosecution.

7. HC B.L.Chaudhry PW-1 i.e. the superior officer statedly assaulted by the Petitioner deposed that he was performing duties of CHM of "C" Coy and that as per orders he was to routinely check all personnel in the barracks to keep a record of who went and who returned from duty. On 24.3.1996 during his routine check, he noted that 3 personnel were missing. He went to report the matter to the Coy Commander but the Coy Commander was not available in his barrack. There he met ASI S.C.Majumdar to whom he reported the incident and who advised him to wait for the Coy Commander. At Around 00:15 hours (12:15 AM) he and ASI S.C.Majumdar saw Petitioner accompanied by Ct.A.K.Singh and Ct.R.P.Singh coming towards unit lines from the front of Tarini Club. He called the 3 personnel and enquired about their purpose of being out of the unit lines in the middle of the night, upon which the Petitioner retorted: Who are you to enquire

from us? He i.e. HC B.L.Chaudhry replied that personnel are not supposed to go out of unit lines without permission and that he will report the matter to senior officers. Hearing this, the Petitioner said that he will teach him i.e. HC B.L.Chaudhry a lesson and started assaulting him. The Petitioner incited Ct.A.K.Singh to join the assault upon which Ct.A.K.Singh also started beating him, as a result of which he fell down and sustained injured on his knees, elbow and other parts of the body. ASI S.C.Majumdar tried to separate them but could not succeed as he was pushed away. Both, the Petitioner and Ct.A.K.Singh left towards their unit line after the assault. He reported the matter to the Coy Commander who conducted a surprise roll call where he asked the Petitioner and Ct.A.K.Singh as to why they had beaten him i.e. PW-1. Petitioner replied that the Commandant and the DIG salute him and that nobody can do anything to him. The Coy Commander asked the Petitioner and Ct.A.K.Singh to go for a medical check up if they were injured, but they refused and left the spot. He and the Coy Commander went to the Commandant and reported the incident.

8. On being cross examined by the Petitioner he stated that as per orders he was to check the barracks daily at 22:30 hours so as to ensure that all personnel were in their barrack by 22:30 and that they were coming back from and reporting to their duties on time. He further stated that on 24.3.1996 there was No. alarm of "thief" in the unit line.

9. On being questioned by the Inquiry Officer, he stated that he has never worked with the Petitioner nor does he have any enmity with him and that on the day of the incident the Petitioner had incited Ct.A.K.Singh to beat him. He further stated that he had got himself medically treated at the Tarni Dispensary and tendered the treatment slip Ex.I and General Diary entry No. 391 Ex.II recording absence of Petitioner and Ct.A.K.Singh from unit lines on 24.3.1996 and General Diary entry No. 393 Ex.III dated 25.3.1996 recorded at 00:35 hours that the Petitioner and Ct.A.K.Singh assaulted him.

10. ASI S.C.Majumdar PW-2 corroborated PW-1 to the extent that on 24.3.1996 at around 22:40 hours PW-1 came to the Coy Commanders' quarter to report about 3 personnel missing from the barracks. He deposed that while he was waiting along with PW-1 for the Coy Commander, at about 23:45 hours, he saw Petitioner and Ct.A.K.Singh coming from the front of Tarni Club. HC B.L.Chaudhry (PW-1) called out to them and asked where were they coming from. The Petitioner replied that he was under orders of posting, at that moment someone called the Petitioner to come back to the party and he went inside the club. After some time the Petitioner returned and while he was going towards the unit line PW-1 stopped him and told him that his absence report has been submitted to the Coy Commander and that he should be ready with a reply by tomorrow morning. The Petitioner got angry and said that he was attending a party and that is why he got late which was followed by heated discussion between the two and the Petitioner gave a hard push to PW-1 as a result of which he fell down and got injured. The Petitioner and Ct.A.K.Singh left. He and PW-1 reported the

matter to Coy Commander upon his arrival who took PW-1 to the company lines. He i.e. PW-2 did not accompany them.

11. The Petitioner declined to cross examine the witness.

12. On being questioned by the Inquiry Officer he stated that the Petitioner had incited Ct.A.K.Singh to join the assault and that he had separated the Petitioner and Ct.A.K.Singh from HC B.L.Chaudhry (PW-1). However in answer to the next question he stated that Ct.A.K.Singh had not participated in the assault. He further stated that as a result of the push given by the Petitioner, PW-1 fell down and got injured.

13. It needs to be highlighted that in his examination-in-chief ASI S.C.Majumdar has attempted to trivialize the incident by stating that the Petitioner had simply pushed HC B.L.Chaudhry and that the injuries on HC B.L.Chaudhry were the result of a fall on being pushed, but his answers when examined by the Inquiry Officer would reveal that HC B.L.Chaudhry was assaulted by the Petitioner and he i.e. ASI Majumdar had to intervene. In other words, the deposition of ASI S.C.Majumdar read as a whole substantially corroborates the testimony of HC B.L.Chaudhry.

14. Ct.P.Venka Teshan PW-3 deposed that he was on sentry duty on 24.3.1996 when at around 23:00 hours ASI S.C.Majumdar went outside unit line towards Tarni Club and after some time HC B.L.Chaudhry (PW-1) also left in the same direction. That after about an hour he saw Petitioner along with Ct. A.K.Singh coming towards the unit lines from outside and soon thereafter Coy Commander accompanied by PW-1, PW-2, Ct.A.Ashok Reddy and Ct.S.C.Tiwari entered the unit lines. A check roll call was conducted by the Coy Commander wherein he asked the Petitioner and Ct.A.K.Singh as to why had they beaten HC B.L.Chaudhry. They denied having beaten him but upon PW-1 showing his injuries they also showed the injuries on their hand to the Coy Commander. They were asked to get medical treatment but they left for the unit lines instead.

15. The Petitioner declined to cross-examine the witness despite being given an opportunity.

16. On being questioned by the Inquiry Officer he stated that on the day of the incident he had not heard any alarm of "Chor Chor" and that the Petitioner had not informed him while going out of unit lines.

17. The Petitioner did not produce any evidence in defence. However he gave a defence statement wherein he stated that on 24.3.1996 at about 22:15 hours he heard cries of "Chor Chor" and thus along with Ct.Tiwari and Ct.Reddy the Coy Commander went towards the railway siding from which side said cries were emanating. He and Ct.A.K.Singh also went outside the unit lines. After some time HC B.L.Chaudhry (PW-1) and ASI S.C.Majumdar (PW-2) called them and asked as to where they were coming from and started abusing them. He asked them to stop abusing, upon which a heated discussion took place between Ct.A.K.Singh

and PW-1 resulting in a tussle between the two. In an attempt to separate the two, he had a tussle with PW-1 as a result of which PW-1 fell down and got hurt. That ASI S.C.Majumdar (PW-2) separated him and PW-1 and thereafter he left for getting medical treatment. A check roll call was conducted wherein the Coy Commander enquired about the incident upon which he told the Coy Commander to report his complaint against PW-1 that a tussle had taken place between the two but No. entry was made in the general diary.

18. On being questioned by the Inquiry Officer, the Petitioner stated that on hearing the cry of "Chor Chor", he left the unit lines without permission or even informing the CHM or the sentry on duty. That PW-1 and PW-2 had not beaten him, but only a tussle had taken place between him and PW-1 and that PW-2 had separated them. He stated that he did not submit any written complaint to a senior officer regarding the incident as he did not find it necessary to do so. He agreed that Ct.A.K.Singh stated in his written statement that he i.e. the Petitioner had gone to a party on the night of the incident. He further stated that he had not seen any suspicious person outside the unit lines and that he did not go to the dispensary, despite direction by the Coy Commander, due to non-availability of a transport.

19. The Inquiry Officer submitted a report holding that both charges were established and furnishing a copy of the report of the Inquiry Officer to the Petitioner for his response and considering the same, the Disciplinary Authority, taking into account that in the past, 3 departmental actions were taken against the Petitioner, 1 of which was quashed but 2 penalties remained, in view of Petitioner being indicted once again, levied penalty of dismissal from service vide order dated 6.7.1996 against which statutory appeal was rejected on 1.11.1996 and the Revisional remedy failed when vide order dated 8.12.1997 the revision was rejected.

20. The present petition was filed challenging the order levying penalty, the order rejecting the appeal and the order rejecting the revision petition.

21. The 1st point urged was that the Petitioner was denied an opportunity to defend before an unbiased inquiry officer and for which it was highlighted that on 3.5.1996 the Petitioner had desired a change of the Inquiry Officer which request was denied without a justifiable cause.

22. As noted by us herein above while noting the relevant facts that Petitioner's letter dated 3.5.1996 gives No. reason on basis whereof Petitioner desired change in the Inquiry Officer and thus we hold that the Disciplinary Authority was fully justified in turning down the said request.

23. It was then urged that the Inquiry Officer was prejudiced against the Petitioner and for which the proof was that the witnesses were not examined in the presence of the Petitioner who was not allowed to even cross-examine them and realizing that Petitioner's signatures were to be found on each page where testimony was recorded, it was urged that signatures of the Petitioner were

obtained on blank sheets.

24. Original record was perused by us at the hearing. The record shows that on each and every sheet of paper on which deposition of the witnesses has been recorded, the signatures of the witness, the Inquiry Officer and even the Petitioner have been obtained.

25. We find that in the appeal filed before the Appellate Authority it has not been alleged that Petitioner's signatures were obtained on blank sheet. It is simply stated therein that Petitioner was denied an opportunity to cross-examine the witnesses. Now, record shows that opportunity was granted to the Petitioner to cross-examine witnesses and exercising the same he has cross-examined PW-1. It is apparent that the plea taken in the writ petition and during arguments that signatures of the Petitioner were obtained on blank sheet is an afterthought to overcome the fact that PW-1 has withstood the cross-examination. We need to highlight that a perusal of the record would reveal that the pen used to record the deposition of the witnesses, the cross-examination and questions put by the Inquiry Officer has been used by the Petitioner to pen his signatures and name; the same pen has been used by the witness to pen his signature as also has been used by the Inquiry Officer to pen his signatures. This belies the stand of the Petitioner that his signatures were obtained on blank documents. In any case, the final nail in the coffin of the stand taken by the Petitioner is the fact that if his signatures were obtained by the Inquiry Officer on blank papers we would have expected the Petitioner to have contemporaneously raised a grievance before the Competent Authority and we find that the Petitioner has not done so. The silence of the Petitioner is a pointer to the lie being now spoken.

26. It was then pleaded that material witnesses were not examined. The material witnesses stated were Ct.A.K.Singh, Ct.R.P.Singh and the Coy Commander.

27. It was not the obligation of the department to multiply its witnesses. If the Petitioner desired upon the belief that there were material witnesses, nothing prevented him from moving an application before the Inquiry Officer to summon the 3 as his defence witnesses. The Petitioner did not move any application. In fact, at the preliminary hearing he categorically said that he does not desire to examine any one as a witness in defence. We note that after prosecution evidence was recorded, as is to be found in the order-sheet of 23.5.1996, Petitioner, when questioned: Whether he desires to lead evidence in defence, replied in the negative.

28. It was then urged that prejudice was caused to the Petitioner at the inquiry because of the fact he was transferred, upon being suspended pending inquiry, to the headquarter at Bokaro.

29. As noted herein above the Unit of the Petitioner and the place where inquiry was held is CCL Unit at Dhori. It has not been pleaded in the writ petition that the 2 were so apart that the Petitioner could not appear before the Inquiry Officer. In any case, record shows that the Petitioner has participated on each

and every date when the inquiry was held and thus there is No. scope for any argument that due to being transferred and attached at the headquarters pending inquiry and the seat of the inquiry being CCL Unit at Dhori, a prejudice was caused to the Petitioner at the inquiry.

30. It was then urged that except for the self-serving statement of HC B.L.Chaudhry, there was No. evidence to sustain the second charge and in respect of the first it was urged that the Petitioner went out of the unit lines as he heard cries of "Chor Chor" from outside the unit lines and the natural reaction would be to rush out and try and apprehend the thief.

31. Pertaining to the defence of the Petitioner that he went out of the unit lines, driven by instinct, when he heard cries of "Chor Chor", we would highlight that save and except a suggestion given to PW-1, the Petitioner has not even suggested the same to PW-2 and PW-3 who have just not been cross-examined, the Petitioner did not take the line of cross-examination qua PW-1 to any further point save and except a mere suggestion. We note that notwithstanding the Petitioner not having cross-examined PW-2 and PW-3, since he projected said line of defence when he cross-examined PW-1, the Inquiry Officer has questioned PW-2 and PW-3 whether cries of "Chor Chor" were heard by them and the answer by the 2 is "No".

32. Now, the Petitioner admitted having left the Unit lines without permission or even intimation and whether the reason thereof was as projected by the Petitioner or as projected by the prosecution, is a question of fact and it is settled law that in a judicial review proceedings it would be impermissible to dissect evidence with respect to a question of fact. As long as there is evidence to sustain a finding of fact returned by the Inquiry Officer and accepted by the Disciplinary Authority, the Writ Court cannot fiddle with the evidence to find out where the greater probability rests. This may be permissible in exercise of an appellate jurisdiction.

33. Pertaining to charge No. 1 it is not that the only evidence is of the injured Head Constable for the reason, as noted herein above by us, testimony of PW-2 read with reference to the answers given by him when examined by the Inquiry Officer would reveal that the Petitioner assaulted PW-1 and PW-1 had to be rescued by PW-2. The testimony of PW-3 is evidence of an incident having taken place in that PW-3 had stated that at the roll call the Petitioner showed an injury on his hand as proof of even the Petitioner having suffered an injury and for which the justification given by the Petitioner is as per his statement before the Inquiry Officer and as noted herein above.

34. We have noted that apart from the testimony of PW-1, there is proof in the form of medical papers showing that PW-1 was injured and as regards the Petitioner, through the testimony of PW-3 we have the fact that the Petitioner never got himself medically examined in spite of being told to have himself medically examined and the reluctance of the Petitioner to get himself medically

examined is an inferential fact that either the injury was not a fresh one or was so trivial that the Petitioner did not want a contemporaneous memorandum being prepared with respect thereto.

35. Be that as it may, for the same reasons which we have recorded herein above pertaining to the 1st charge, adopting the same for the 2nd i.e. not to enter into an appellate discussion on the evidence, we hold that there is sufficient evidence to establish charge No. 2 and with respect to Annexure-B to the writ petition, photocopy of a medical prescription alleged to be pertaining to the Petitioner, we may simply note that said document was never produced before the Inquiry Officer and has surfaced as an annexure to the writ petition and thus has to be ignored by us for want of authenticity.

36. On the last submission relating to proportionality of the penalty suffice would it be to state that in the past for 2 misdemeanours penalties were levied upon the Petitioner. A 3rd penalty was quashed by the High Court. Instant incident would thus be the 3rd misdemeanor.

37. Assaulting a superior officer is not a minor misdemeanor and thus we do not find the penalty levied to be disproportionate. It may be highlighted that in 11 years service this was the 4th inquiry faced by the Petitioner. In the earlier 3, 2 penalties had attained finality while the 3rd was set aside. It is settled law that when repeated misdemeanours are committed, past conduct can be considered on the issue of proportionality of the sentence.

38. We dismiss the writ petition but refrain from imposing costs.