
(2007) 04 PAT CK 0029
In the Patna High Court
Case No : CWJC No. 5308 of 2004

Mithilesh Kumar Pathak

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2007) PLJR 93

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : R.B. Mahto and A.K. Choudhary, for the Appellant; S.C. for Union of India, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioner and the learned counsel for the Union of India. The petitioner seeks quashing of the order of punishment contained in annexure-7 dated 29.3.2001 which is the order passed by disciplinary authority, quashing of annexure-11 dated 11.1.2002 which is the order affirming the punishment order by the appellate authority and final annexure-14 dated 26.3.2004 which is the order passed in revision by revisional authority. All the authorities have upheld the order of punishment passed against the petitioner.

2. The petitioner-joined as a constable under C.R.P.F. in the year 1991. He has worked thereafter and has been posted at many places including Jammu & Kashmir. He proceeded on casual leave for 15 days on 21.9.2000 which was to expire on 12.10.2000. The reason for grant of this leave was illness of his wife. Thereafter, he states in the writ application that he himself fell sick on 9.10.2000 when he was taken to a nearby hospital at Banka. On diagnosis the doctor diagnosed his ailment to be infective Hepatitis. He was advised medication and complete bed rest. Petitioner in support of the above statement has brought annexure-1 series on record. Annexure-1 series are prescriptions, medical

advice, purchase receipts of medicines prescribed to him and diagnostic reports of pathological lab. Petitioner further states in his writ application that he lives in a remote village, namely, Pansai which does not have a post office. He has an illiterate wife and it was not possible for her to respond to the letters which were-issued directing him to report back to duty. As the petitioner himself was not in a physical condition to undertake the journey he did not reply to the two letters issued by the Commanding Officer.

3. After petitioner recovered, he collected his papers and obtained a certification issued by the doctor who was treating him, namely, one Dr. S.N. Singh, a Medical Officer attached with Sadar Hospital and Sub-Jail, Banka. The post of the doctor in question is one of Civil Assistant Surgeon. Armed with the evidence petitioner reported back to the authority and joined his duty. The authority however, considered the absence of petitioner for almost 99 days as a case of absence without due authority or leave. The authority further also treated non-reply of the earlier letters to him at his village home as a case of insubordination. Petitioner therefore was issued memo of charge with two charges. One absence without leave from 13.10.2000 to 19.1.2001. Second charge was insubordination due to non-reply to the letters issued to him.

4. Petitioner appeared before the enquiry officer and at very first opportunity tendered the evidence which he has brought on record as annexure-1 series. He categorically stated before the enquiry officer that it was not willful absence but absence because of his illness. He also explained the circumstances under which he could not respond to the letters directing him to join duty. From the enquiry report it seems that official witnesses were examined. So far as the evidence in favour of the petitioner is concerned, it was the evidence contained in annexure-1 series along with the certificate of fitness contained in annexure-2. Petitioner got himself examined too.

5. The enquiry report is there on record. Major part of the enquiry has gone into proving the fact that the petitioner was absent from duty without leave. The fact that he had over stayed on leave beyond sanction period was accepted by the petitioner. To that extent finding of the enquiry officer is not much of consequence. Petitioner was in any way being charged for absence for almost 99 days. The main issue is whether the petitioner had a valid reason for his absence even though unauthorised. Enquiry officer in his report states that evidence which has been produced by the petitioner does not show that he was admitted to a Govt. Hospital. Prescriptions and the treatment which was advised to the petitioner by Dr. S.N. Singh, was issued by him in personal capacity and not as a government doctor because they say that only in annexure-2 which is a certificate of fitness does the doctor put his official seal, in other prescriptions there is no official seal. Besides, enquiry officer records that the prescriptions were written in one pen, therefore they were probably created on the same day. The same logic is also extended to the diagnostic report which was produced.

6. The above reason is the only reason given for disbelieving the evidence which

petitioner had produced in his support. The question, therefore, which arises according to the petitioner, is whether the reason given by the authority is a cogent and valid reason for arriving at the conclusion. As per the petitioner if the enquiry officer arrived at a conclusion without any logical nexus and contrary to evidence then the reason to that extent will be considered arbitrary and illogical of not germane to the exercise of fact finding. Rejection of evidence must be based on sound reasoning and not ipse-dixit.

7. Learned counsel for the petitioner further submits that it is well known, that in Bihar, government hospitals are not available in every village, town or district. In absence of regular and adequate government facilities it is common to obtain treatment from a medical doctor who may be a government doctor but without being admitted in a clinic or hospital. He states that the prescription and certification has been issued by an Assistant Civil Surgeon who was working as Medical Officer in the district of Banka and merely because the petitioner was not admitted to a Government Hospital, therefore, it does not mean that the treatment which he had obtained or the certificate which he has been issued had to be disbelieved.

8. Enquiry officer also did not accept the explanation offered by the petitioner on his inability not to respond to the two letters which were issued to him by the Commanding Officer to report for duty. But, since the first of the charge with regard to illness was disbelieved then this Court can well understand why the authority did not accept the explanation that it was due to illness that petitioner was not in a position to respond to the letters in question.

9. Learned counsel for the petitioner therefore submits that based on the finding which has been recorded by the enquiry officer the order of punishment passed by the disciplinary authority as contained in annexure-7 is to that extent is erroneous and arbitrary finding which no prudent man will reach. Reasons given by the enquiry officer for rejecting the evidence produced by the petitioner is illogical and no cogent ground has been given to disbelieve the same. If the authority disbelieved the same the onus was also on them to prove that they are forged documents and created for the purpose of use by the petitioner. Merely rejecting the same as unbelievable is not good enough ground.

10. Learned counsel for the petitioner has challenged the order on yet another ground that the disciplinary authority has gone into the past service of the petitioner and they were influenced by the fact that on two earlier occasions the petitioner had over stayed in the years 1994 and 1996. The petitioner submits that this allegation was not part of the charge which was leveled against him. In any case the past over stayal was dealt with by the respondents and this issue came to rest then and there itself. Relying on over stayal in past two occasions cannot be utilized by the disciplinary authority to discredit the present case and impose punishment of removal from service while exercising power u/s 11(1) of C.R.P.F. Act 1949 read with Rule 27 of the C.R.P.F. Rules 1955. The order of disciplinary authority was affirmed by the appellate authority and the revisional

authority which are orders contained in annexures 11 and 14 of the writ application.

11. Learned counsel for the respondents has submitted in favour of the impugned orders and submits that there is no legal infirmity in the decision taken by the respondents since the petitioner belongs to a disciplined force therefore over stayal or absence from duty without due authority has to be taken seriously and the courts ought not to grant any indulgence in the matter of punishment which are imposed against such delinquent. Learned counsel for the respondents in this regard relies on several decisions of the supreme Court as rendered in Union of India (UOI) and Others Vs. Narain Singh, , Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, , Ram Saran Vs. I.G. of Police, CRPF and Others, and Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, .

12. In all these cases which have been cited by the respondents the question was of proportionality or gravity of misconduct and the punishment which was awarded in those given facts. The propositions which emerged in these decisions are that if the charges are serious in nature and have been proved then the court ought not to interfere with the order of punishment on the plea that the quantum of punishment is disproportionate. Petitioner is not challenging the punishment order passed against him on the proposition of disproportionality or quantum but on the reason and the finding which has been given by enquiry officer to hold him guilty.

13. In fact Hon"ble Apex Court in its decision reported in 2006(2) SCC 541 (supra) has held that the order imposing punishment upon any delinquent should not be hit by the wednesbury principle. The authority must look into the situation whether there was any mitigating factor before imposing the order of punishment. Over stayal can be a voluntary decision or may be under compelling circumstance. If a person working under a disciplined force chooses to abstain from duty without any explanation and out of his own sweet will then it cannot be said that the order of dismissal would be an arbitrary or excessive. But if there are mitigating circumstances the authority have to keep in mind whether the delinquent's act was voluntary or compelling one. Over stay pet se cannot be a ground for dismissal merely because the petitioner is part of a disciplined force.

14. In the present case petitioner has submitted a series of evidence. It is not only one certificate of a doctor, which is usually in case of over stayal. There are many corroborative evidence on record which were produced before the enquiry officer and this Court is of the opinion that ground given for rejecting those evidence that they were probably written in the same pen and therefore were granted on the same day cannot be said to be a reasonable deduction. More so since these evidence were never put through any scientific test but were subjective to come to an opinion of the enquiry officer based on conjectures and surmises. Wisdom of an enquiry officer can never be allowed to take the place of evidence however high that wisdom may be.

15. The fact that petitioner was treated by an Assistant Civil Surgeon, may be not as an indoor patient in government hospital but that by itself cannot be said to be a reason for rejecting the evidence in question. This Court is also in agreement with the submission of the petitioner that it is not possible for every person to undergo treatment in a government hospital because of the absence of such infrastructure readily being available in every part of the State. This Court accordingly therefore comes to a conclusion that the reason given by the enquiry officer to disbelieve the absence or over stayal of the petitioner for the period in question was not based on sound reasoning or evidence on record and the past conduct of the petitioner cannot be used which were not the part of the charge, for a decision in the present case.

16. If the finding of the enquiry officer is not based on evidence but on conjectures and surmises then in the opinion of this Court the same cannot be held to be a ground for imposing punishment which has been imposed on the petitioner.

17. For the reason therefore stated above, this Court comes to a finding that the finding recorded by the enquiry officer is an erroneous finding not based on material and therefore the order of punishment which has been imposed upon the petitioner as contained in annexure-7 has to be quashed. The consequential orders by the appellate authority as well as the revisional authority contained in annexures 11 and 14 are accordingly also quashed.

18. The respondents are directed to accept the joining of the petitioner by virtue of the fact that the order of punishment against him stands set aside by this Court. This writ application accordingly stands allowed.