
(2016) 05 DEL CK 0276
In the Delhi High Court
Case No : W.P.(C) 4776 of 2011

Mithlesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
CRPF Rules — Rule 27(cc)(ii)

Citation : (2017) 2 ADDelhi 92

Hon'ble Judges : Ms. Hima Kohli And Mr. Sunil Gaur Hima Kohli, JJ.

Bench : Division Bench

Advocate : Mr. Pawan Kumar Bahl, Advocate, for the Petitioner; Mr. Arun Bhardwaj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, who was working on the post of a Lance Naik in the III Signal Battalion with the CRPF, has filed the present petition praying inter alia for quashing his dismissal order dated 04.07.1979, passed by the Deputy Director (Comns.), CRPF as also the orders dated 25.10.2010, 29.11.2010, 11.05.2010 passed by the Director General, CRPF, rejecting his appeal/revision petition.

2. The foundational facts of the case are as follows :-

(a) On 22nd June, 1979 at about 2130 hours, some of the members of the Force (about 1700 in number), held an illegal meeting in the CRPF Camp, Jharoda Kalan, New Delhi and took out an un-authorised procession. In the meeting, they decided to abstain from work and paralyse the normal functioning of the Group Centre by systematic disobedience of orders and non-performance of various lawful duties assigned to them. They also made un-authorised collection of funds from the Force personnel.

(b) On 23rd June, 1979, acts of insubordination and misconduct took place in the morning parade. The revolting members of the Force also abstained from

discharging their normal duties despite definite orders directing them to report. Subsequently, they came in a mob, went to the main entrance of the Group Centre raising abusive anti-government slogans. They locked the signal shift bus at the gate after members of the Force travelling in the said bus were forcibly pulled down and threatened them with dire consequences if they tried to move to their place of duty. The mob then rushed to the Signal Centre building, disrupted the system of communication and the staff working on the wireless sets were forced to join the mob and desert their lawful duties. The mob proceeded to the GC office and forced the ministerial staff as well as the superior officers to close the offices in the face of fatal intimidation. The mob then indulged in physical violence against loyal members of the Force and caused injuries to them.

(c) On the next day i.e. 24th June, 1979, the aforesaid members of the Force continued to abstain from their duties, became grossly insubordinate and insolent towards the superior officers and compelled the Commandant of the 1st Signal to come out of his residence after office hours and address the mob.

(d) During the period from 22nd June to 24th June, 1979, the mob kept the main gate of the Group Centre locked and did not allow any other member of the Force or superior officer to come in or go out in discharge of their duties.

(e) On 25th June, 1979, pursuant to the decision of the higher authorities, the Army Units accompanied by the First Class Magistrate, reached the Group Centre in the early hours. The Magistrate announced that the said mob of members of the Force were an unlawful assembly and they should disperse immediately and hand over their weapons and ammunitions to the Army. However, the agitators refused to hand over their weapons or to disperse and instead, they adopted a violent posture of confrontation with the Army and fired upon them. In the said milieu, the Army resorted to use of force and forced the mob to surrender their arms and ammunitions. In the process, three members of the Force were killed and eight others were injured.

3. In view of the aforesaid incident, a complaint under Sections 9 and 10 of the CRPF Act was registered against the agitators in the court of the Commandant, Group Centre-cum-Magistrate, New Delhi.

4. The specific allegation levelled against the petitioner for dismissing him from service was that he had taken an active part in the CRPF strike between 21.06.1979 to 27.06.1979, when he was posted with the Signal Platoon at the Group Centre, CRPF, Bhubaneshwar. As per the report prepared by the respondents, the petitioner had monitored the conversation between the officers by tapping the telephone lines which could be accomplished by him since he was performing duties there as a Line-Man/Telephone Operator.

5. Aggrieved by the punishment of dismissal inflicted on him, the petitioner had preferred an appeal, a revision petition and a review petition, which were all rejected by the Appellate/Revisional/Reviewing Authorities. Aggrieved by the non-consideration of his appeal and statutory petition which were pending before

respondents since 1987, the petitioner had filed a writ petition in the High Court of Allahabad, registered as W.P.(C) 22119/1990. The said petition was disposed of by the High Court of Allahabad vide order dated 06.11.2009, with directions issued to the respondent No.3 (Director General, CRPF) to consider and dispose of the petitioner's appeal in accordance with law. In compliance of the aforesaid order, the Director General, CRPF had passed a detailed order dated 11.05.2010, holding inter alia that the punishment awarded to the petitioner was just and fair and commensurate with the gravity of the offence committed by him and he did not find any reason to interfere with the said order. It was also observed that the petitioner's appeal was grossly barred by limitation. This was followed by orders dated 25.10.2010 and 29.11.2010 passed by the office of the Directorate General, CRPF rejecting the petitioner's review applications.

6. Learned counsel for the petitioner had submitted that before inflicting a major punishment of dismissal from service on the petitioner, a departmental enquiry should have been conducted and if nothing else, the petitioner should have at least been issued a notice to show cause and an explanation solicited from him. However, no opportunity of hearing was given to him at any stage before the impugned order came to be passed.

7. It is pertinent to note that identical pleas were taken by several other similarly placed personnel in the CRPF, who were dismissed from service under Rule 27(cc) (ii) of the CRPF Rules for indulging in the agitation and when they had approached the Supreme Court claiming inter alia that they had not been afforded an opportunity of hearing and were thrown out of service in violation of their fundamental rights, a Constitution Bench of the Supreme Court had held in the case of Hanuman Singh v. Inspector of Police, CRPF and JRS in W.P.(C) 2457/1980 as below:-

"The petitioner was believed to be the king pin of that rebellion, but a part of the extent of the petitioner's participation in that rebellion, it is clear that the atmosphere generated by the gross breach of discipline on the part of petitioner and his collaborators had created a situation in which it would have been impossible to hold a formal inquiry into their conduct, we are satisfied that, in the circumstances, it was not reasonably practicable to hold inquiry against the petitioner before dismissing him from the force."

8. Subsequently, other writ petitions bearing No.5926/1980, 1796/1981, 2503/1983, 9622/1983, 1121/1984 were also disposed of with the same orders.

9. In the instant case, the submission made by the counsel for the petitioner that an opportunity of hearing was not afforded to the petitioner and a proper departmental enquiry was not conducted, would not be of any assistance in the light of the decision of the Supreme Court in the case of Hanuman Singh (Supra). Furthermore, on examining the confidential report prepared by the respondents in respect of the CRPF personnel who were dismissed from service during the agitation, which includes the petitioner herein and records that as per

the report submitted by the Deputy Superintendent of Police, III Signal Bn. CRPF, the petitioner had monitored the conversation of officers by tapping the telephone lines and had taken an active part in the strike, there is no good reason for us to disbelieve or discard the said report, as it refers not only to the petitioner herein, but to several other CRPF personnel.

10. Having regard to the gravity of the offence committed by the petitioner as would be apparent from a glance at the impugned order dated 04.07.1979, reproduced herein above, which reveals that a rebellious situation akin to a mini mutiny had taken place, the Competent Authority was justified in invoking the provisions of Rule 27(cc)(ii) of the CRPF Rules and dispensing with the requirement of holding a departmental enquiry.

11. Given the aforesaid facts and circumstances and on perusing the records produced before us, we are of the opinion that the respondents had applied their mind before passing the impugned order and there were sufficient reasons for dispensing with the enquiry when the rebellion was of such a large magnitude that the Army had to be requisitioned to contain in the mob that was extending threats, criminal intimidation and bodily harm to loyal members of the Force. The petitioner was an active member of the agitating mob and keeping in mind the scale of the agitation, the respondents had every reason for invoking the provisions of Rule 27(cc)(ii) of the CRPF Rules, 1995 and adopting a common procedure by dispensing with the departmental inquiry and dismissing the petitioner and other delinquent members of the Force, out-rightly.

12. Accordingly, the present petition is dismissed as being devoid of merits.

13. No orders as to costs.