
(2015) 09 DEL CK 0162
In the Delhi High Court
Case No : Writ Petition (C) 5765 of 2012

Muneshwar Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

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

Citation : (2015) 09 DEL CK 0162

Hon'ble Judges : S. Ravindra Bhat, J;Deepa Sharma, J

Bench : Division Bench

Advocate : M.K. Tiwari, for the Appellant; Abhay Prakash Sahay, Deepak Gupta, Advocates and B.K. Raut, Pairvi Officer, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J—The petitioner, inflicted with the penalty of compulsory retirement, after the conclusion of a disciplinary inquiry by his employer, the Central Reserve Police Force ("CRPF" in short), complains of its illegality and excessive nature.

2. The petitioner had worked with the CRPF for about 16 years in 2006, when in respect of an incident of alleged absence he was issued a charge sheet, alleging violation of Section 11 (1) of the controlling statute, i.e., the Central Reserve Police Force Act ("the Act"). The two articles of charges, to the extent they are relevant, are extracted below:

"Article I That on 17.06.06 while on quarter guard duty with effect from 1600 hrs to 1700 hrs he left quarter guard area without any permission/intimation from guard commander at about 1445 hrs to and returned back to quarter guard at about 1455 hrs at his own which is prejudicial to good order and discipline of the Force."

Article II ...That on 17.06.06 at about 1445 hrs he left quarter guard with arms and ammunitions with the ulterior motive went towards type IV quarters on cycle

and returned to quarter guard at his own after few minutes which is prejudicial to good order and discipline of the force."

3. An Enquiry Officer, Shri Dinesh Singh, Dy. Comdt. of CTC-III, CRPF was appointed by order dated 22.09.2006. He completed the enquiry and submitted his report to the Disciplinary Authority i.e. the Commandant, CTC-III on 03.05.2007. The report exonerated the petitioner of the charge leveled by Article II, but held that he was guilty of the first charge. The disciplinary authority, i.e., Commandant, CTC-3 by order dated 16.07.2007 awarded the penalty of "Compulsory Retirement from Service" with immediate effect, even while allowing the petitioner full pension and gratuity. He unsuccessfully appealed to the concerned authority; on 07.03.2008 the Inspector General issued the order rejecting his plea. He has, therefore, approached this Court.

4. The petitioner urges that while on duty at Mudkhed, in Maharashtra, since he received news that his mother was ailing, he sought for leave with effect from 12.06.2006; the CHM at that time asked the petitioner to see OC (HQ) in order to solve his problem. He accordingly met OC (HQ) and requested him to sanction his leave. OC (HQ) informed the petitioner that since there was a huge shortage of constables he could be sent on leave after two days. On 17.06.2006, orders were conveyed to the Petitioner and he was asked to leave for Jambhali and his reliever is being sent to Quarter Guard, but it was not clear whether he was required to go along with arms and ammunitions. The petitioner contends that on arrival back at the Quarter Guard, he was ordered by 1st guard commander to meet CHM as he was detailed for some other duty and his reliever was reaching in Quarter Guard shortly. At about 14.45 hrs, the petitioner went out of the quarter guard premises through the rear gate on his cycle towards BOAC ground to meet CHM as per direction of the 1st guard commander where he stopped for urinating. While so, he heard the siren and realized that since he was with arms there might be some misunderstanding at Quarter Guard and accordingly he returned back on his own at Quarter Guard and deposited his arms and ammunition with the first Guard Commander. It is submitted that the Enquiry Officer had recorded clear findings that in respect of the first charge itself, there were no clear orders as to whether the petitioner was to go to Jambhali with arms and that there was some confusion in this regard; however, the report held him guilty as charged, on Article I. However, the findings of the Enquiry Officer about Article II were categorical in that the petitioner was not guilty. The disagreement of the Disciplinary authority with the findings of the Enquiry Officer overlooked lack of evidence which is apparent from the inquiry proceedings. In these circumstances, submits counsel for the petitioner, the order of compulsory retirement is indefensible, given that it is not backed by any evidence.

5. Relying on Union of India (UOI) Vs. H.C. Goel, AIR 1964 SC 364 : (1964) 9 FLR 161 : (1964) 1 LLJ 38 : (1964) 66 PLR 305 : (1964) 4 SCR 718 , where it was held that:

"It is true that the order of dismissal which may be passed against a Government

servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

6. The CRPF contends that the petitioner's conduct was blameworthy and could not be condoned. He was detailed on guard duty and without permission, he went out; both charges were interrelated. The Enquiry Officer rendered findings with respect to the Petitioner's guilt as far as the first charge went; however, for the same evidence, he held that the second charge was not proved. The Disciplinary authority acted within jurisdiction in disagreeing with the findings of the Enquiry Officer. It was stressed that the penalty of compulsory cannot be faulted as incommensurate to the misconduct, nor could the petitioner complain against unfair procedure, since he was given every opportunity of defending himself, including the supply of the disagreement notice by the Disciplinary authority, which he responded to. Counsel for the CRPF stated that the allegations about the order not being based on any evidence, is unmerited.

Analysis and conclusions

7. The Enquiry Officer's findings with respect to the first charge are as follows:

"The statement of charged official that he left the Quarter Guard to meet "CHM as he was directed by him and first Guard Commander to proceed to Jhambhali out post as his reliever was coming. Since clear cut orders were not given whether he should proceed with weapon or otherwise, he went with SLR but on hearing siren he realized that there was some confusion, he returned on his own to Quarter Guard. Though confusion of charged official is partially corroborated by statement of PW HC Manohar Singh and HC Ram Kanwar but is clearly established that Ct. Muneshwar Lai left Quarter Guard from 1445 Hrs to 1455 Hrs on 17.6.2006 without permission of competent authority."

8. It is quite evident that the Enquiry Officer was basing his conclusions more on moral conviction about the petitioner's guilt, rather than his objective consideration. Once it was apparent that there was no instruction as to whether the petitioner could proceed with weapon- a fact corroborated by two prosecution witnesses, the enquiry officer nevertheless held that the petitioner was guilty. This aspect was salient for the petitioner's defense, because he did urge that he went towards the CHM to clarify this aspect. As regards the second charge, the findings in the Enquiry Report are as follows:

"ARTICLE -II

On 17.06.2006 at about 1200 hrs Ct. Muneshwar Lai who was performing Quarter Guard duties w.e.f. 1800 hrs on 16.06.2006 to 1800 hrs on 17.06.2006

went to office with the permission of first Guard Commander to enquire about his leave, he was informed OC, HQ that due to shortage of Constables he will be sent on leave after two days, moreover on his making repeated request the OC, HQ directed CHM to send him to Jhambhali out post accordingly orders of OC, HQ was conveyed by CHM to CT. Muneshwar Lai, after order were conveyed charged official came back to Quarter Guard took his service SLR and Ammunition and told Guard Commander that he wanted to go on leave but instead he was being sent to Jhambhali out post. Meanwhile first Guard Commander asked him where he was going but before he could get any answer Ct. Muneshwar Lai left Quarter Guard premises from rear gate. After which a siren (alarm) was raised by Guard. After about 8 to 10 minutes Ct. Muneshwar Lai returned back at Quarter Guard on his own and deposited his SLR and ammunition to first Guard Commander (as per statement PWs HC Ram Kunwar, HC Manohar Singh, HCL.M. Patil).

In his statement charged official has stated that owing to serious condition of his mother he had applied for leave on 12.06.2006 and as he was repeatedly receiving telephone calls from his native place to come on leave. He went to enquire about his leave on 17.06.2006 at 1200 hrs after taken permission from Guard commander. After meeting CHM and OC (HQ) he was told that he will be sent on leave after two days and instead he go to Jhambhali out post. Since he was not clearly told whether to take his weapon or otherwise to Jhambhali outpost, he took his weapon while enroute to meet CHM he was urinating he heard to sound of siren and accordingly returned on his own and handed over his weapon and ammunition to first guard Commander during his cross examination of PWs it is established that his behavior was normal, calm and composed. Weighing both prosecution and defence side it is established that Ct. Muneshwar Lal remained out of Quarter Guard premises with his weapon more because of misunderstanding than ulterior motive because if there was some ulterior motive he could not have come back within 8 to 10 minutes of his going out beside no members of guard was in position to catch or stop him from doing the act with ulterior motive if any was there in mind of charged official."

9. The Disciplinary Authority's disagreement with the Enquiry Officer's findings is based on two reasons: firstly, that guard commander HC/GD Ram Kunwar in his statement did not mention anything about telling him to go to CHM. And secondly, that there was a toilet/urinal near the guard post and consequently, there was no need for the Petitioner to go out. In the opinion of this Court, the Disciplinary Authority overlooked the evidence of the other witnesses as well as of Ram Kunwar on one material aspect, i.e., that even they admitted to some confusion about the need to keep arms. The rationalization of the Disciplinary authority that the petitioner had only 10 rounds which would have been inadequate if he were to go with arms to Jambhali, is the wisdom of a superior officer, which a subordinate employee such as the petitioner was not expected to display. The Enquiry Officer based his conclusions about the existence of some confusion in this regard- and importantly, this being the cause for the petitioner to move towards the CHM, as the rationale for his findings on Article II. Even on

Article I, the findings are contrary to the conclusion. Both the Enquiry Officer and the Disciplinary Authority acknowledge that the petitioner had asked for leave on account of his mother's illness. The possibility of his not being in a normal frame of mind, therefore, could not be ruled out.

10. An overview of the above circumstances would, in the opinion of the Court, lead one to conclude that the 10 minute absence of the petitioner from the duty he was assigned to, was attributable both to his confusion with respect to lack of clarity as to whether he was to go armed to Jambhali, as well as to his disturbed state of mind - the latter fact being conceded and not disputed by the Enquiry and Disciplinary authority. That he was absent and did in fact present himself to return the arms he possessed, is a fact spoken to by him during the disciplinary proceedings. In these circumstances, it cannot be said that there was no evidence; however, equally, the evidence pointed considerably to the petitioner's mitigation.

11. The Court is mindful that an individual who joins an armed force of the union has to display discipline of exemplary and the highest order. To that end, he is expected to at all times obey commands given to him, which in other forces or employment might seem burdensome. However, at the same time, the disciplinary authority charged with the obligation of ensuring adherence to regulations and commands has to ensure that there is clarity in the nature of instructions and orders given. In the facts of this case, there was no unambiguous direction to the petitioner- that no less than two other witnesses spoke about this, is testimony of the situation. In these circumstances, the disciplinary authority's order, in the opinion of the Court was excessive and disproportionate.

12. In *Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another*, (2007) 114 FLR 236 : (2007) 5 JT 628 : (2007) 2 LLJ 724 : (2007) 6 SCALE 45 : (2007) 4 SCC 669 : (2007) 5 SCR 430 , the doctrine of administrative law was restated, in the following terms:

"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived at in our legal system but has come to stay. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, unreasonable, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality"

18. "Proportionality" is a principle where the Court is concerned with the process, method or manner in which the decision- maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of

decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise - the elaboration of a rule of permissible priorities.

19. De Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former ("balancing test") permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ("necessity test") requires infringement of human rights to the least restrictive alternative. ["Judicial Review of Administrative Action"; (1995); pp. 601-605; para 13.085; see also Wade & Forsyth; "Administrative Law"; (2005); p.366]."

Earlier, the proportionality doctrine had been resorted to in U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, AIR 2000 SC 1151 : (2000) 85 FLR 291 : (2000) 2 JT 173 : (2000) 1 LLJ 1113 : (2000) 2 SCALE 367 : (2000) 3 SCC 450 : (2000) SCC(L&S) 356 : (2000) 2 SCR 439 : (2000) 1 UJ 727 : (2000) AIRSCW 931 : (2000) 2 Supreme 309 . In Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, AIR 2010 SC 75 : (2009) 123 FLR 601 : (2009) 11 JT 472 : (2009) 4 LLJ 672 : (2009) 11 SCALE 608 : (2009) 15 SCC 620 : (2009) 13 SCR 487 : (2009) 7 SLR 546 : (2009) 7 SLR 251 : (2009) 9 UJ 4097 : (2009) AIRSCW 5596 , the Supreme Court held that:

"19. The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reason for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have

imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

13. On a consideration of the above decisions, this Court is of opinion that the penalty imposed, i.e., compulsory retirement is harsh and disproportionate. This Court is of the opinion that the lapse or deficiency displayed by the petitioner could not be of such magnitude as to necessitate his virtual removal from service. The Court is also mindful that even though the order says that the petitioner would not be deprived of his pension, what is overlooked is that he did not even have the minimum qualifying service to be eligible for it. In the totality of circumstances and keeping in mind that the petitioner was out of employment for nearly a decade, ends of justice would be met with if he is reinstated into service with full continuity of service and all service benefits; the arrears of salary are however restricted to half the period he was out of employment. The respondents are directed to pass appropriate consequential orders reinstating the petitioner, and work out the necessary implications of this order, by releasing the arrears of salary after taking into account notional increments and increase in salary, wherever warranted; all attendant service benefits too shall be extended to him. Time for compliance, by issuing appropriate orders, is 10 weeks. The writ petition is allowed in the above terms. No costs.