

(2015) 03 DEL CK 0004
In the Delhi High Court
Case No : Writ Petition (C) 6796/2013

N. Bhardwaja

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 DEL CK 0004

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Gautam Narayan, for the Appellant; Ripu Daman Bhardwaj and T.P. Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—A charge memo dated April 14, 1998, concerning an incident took place in December 1993, was issued to the writ petitioner. Four charges, as under, were alleged:-

"ARTICLE-I

Shri N.Bhardwaja, Commandant, 2nd Bn CRPF while posted and functioning as Commandant 14 Bn, CRPF Amritsar during 1993 committed a serious misconduct, in that on return from GC II Ajmer after completion of Govt. duty and while availing casual leave from 17.12.93 to 20.12.93 enroute at his residence in Chandigarh ordered on 16.12.93 move of Service Car and Gypsy Regn. No. DL-4C 7464 with escort from Amritsar to Chandigarh and used the vehicle for his private purpose while he was on casual leave at Chandigarh. Thus the said Shri N.Bhardwaja, failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS (Conduct Rules, 1964.

ARTICLE-II

That the said Shri N.Bhardwaja, while posted and functioning in the aforesaid

capacity and in the aforesaid Bn, committed a serious misconduct in that while travelling in Unit Service Car Regn. No. DIB 4613 on 21.12.93 from Chandigarh to Amritsar met with an accident near Kartarpur, did not submit factual report to the higher authorities and tried to cancel and manipulate to avoid conduct of Court of Inquiry of the accident. Thus, the said Shri N.Bhardwaja, failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1) 9ii) and

(ii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Shri N.Bhardwaja, while posted and functioning in the aforesaid capacity in the aforesaid Bn, committed a grave misconduct in that he adjusted the expenditure to the tune of around Rs. 30,000/- incurred on repairs of the Service Car Regn. No. DIB 4613 which met with an accident on 21.12.93 near Kartarpur, against other vehicles of the Unit which were actually not repaired. Thus the said Shri N.Bhardwaja, failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1) (i) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV

That the said Shri N.Bhardwaja, while posted and functioning in the aforesaid capacity in the aforesaid Bn, committed a serious misconduct in that he failed to fill the duties of the Car of his move from Amritsar to Chandigarh and fictitiously the duty of the Car on 23.12.93 whereas the vehicle become off road on 21.12.93 after meeting with the accident and transported in a 5 Ton vehicle. Thus the said Shri N.Bhardwaja failed to maintain devotion to duty and acted in a manner unbecoming of a Govt.servant and thereby violated the provisions contained in Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964."

2. Report of the Inquiry Officer holding that all charges were proved resulted in a penalty being inflicted upon the petitioner on January 22, 2002. It was a reduction in pay by three stages for a period of three years.

3. The same was set aside by a Division Bench of this Court on August 06, 2008 when WP(C) 3114/2002 filed by the petitioner was allowed. The reason being that statements of persons recorded during preliminary inquiry were read in evidence without examining the witnesses. The Court permitted the department to proceed ahead in accordance with the law.

4. A new Inquiry Officer was appointed who submitted a report opining that Article-I and Article-II of the charge were partially proved and that Article-III and Article-IV of the charge were not proved. The DG, CRPF was of the opinion that all charges were proved and penned a note on January 23, 2009 recording tentative reasons for disagreeing with the report of the Inquiry Officer and sent the same to the Ministry of Home Affairs so that advice from the Central Vigilance Commission could be obtained. On December 18, 2009 the Central

Vigilance Commission concurred with the view that all charges were proved; simultaneously opining that since the petitioner had retired his pension could be suitably cut.

5. Required for further opinion to be sent to DoPT, no opinion came from DoPT. Under instruction from the Ministry of Home Affairs, the Director General, CRPF referred the matter to UPSC on July 15, 2010 for its opinion.

6. It is not clear whether UPSC gave any opinion, but on July 23, 2010 the Ministry of Home Affairs conveyed approval to the disciplinary authority to proceed ahead and serve tentative reasons for disagreeing with the report of the Inquiry Officer to the petitioner. On December 02, 2010 the tentative reasons for disagreement were sent to the petitioner and he responded to the same.

7. The response of the petitioner to the tentative reasons for disagreement were sent by the department to UPSC for its opinion. Considering the evidence, the report of the Inquiry Officer, the tentative reasons for disagreement and the petitioner's response thereto, UPSC opined that Article -I and Article-II of the charge were proved limited to as clarified and explained in para 3.1 and 3.2 of its letter. It concurred that Article-III and Article-IV were not proved and advised that for a period of six months 5% cut in pension should be effected. Accordingly, said penalty was imposed.

8. In para 3.1 and 3.2 of its letter dated November 28, 2011, UPSC has opined as under:-

"3.1 The Commission note that Article-I of the charge deals with the use of Government vehicles for private purpose while the CO was on Casual Leave at Chandigarh from 17.12.1993 to 20.12.1993. After thorough analysis of the evidence, the IO concluded that the CO should have sought permission from the competent authority before ordering movement of the vehicles as officers on Casual Leave are not entitled to use Government vehicles. As far as travelling in a Government vehicle from Chandigarh to Amritsar is concerned, the IO has concluded that the CO's defence that he had ordered the Control Room to dispatch Service Car and Gypsy to Chandigarh for his conveyance back to Amritsar in the light of the turbulent operations scenario in Punjab is justified in view of terrorism in Punjab. The Commission observe that the element of Article-I relating to keeping the Government vehicles in Chandigarh while on Casual Leave is proved.

3.2 The Commission observe the Article-II of the Charge is concerned with the CO's failure to report the accident that his staff car met with at Kartarpur to higher authorities, with the intention of avoiding a Court of inquiry into the accident. It is a matter of record that the detailed report into the accident was submitted on 11.2.1994 after the delay of one month and 20 days. However, the Commission observe that the CO submitted an initial report immediately after the accident vide Signal dated 21.12.1993 and, therefore, cannot be held guilty of giving no information about the accident. The IO's conclusion that there was

slackness in submission of detailed report on the part of the CO is justified and Article-II of the Charge is proved to this extent."

9. Thereafter, without sending the advice received from UPSC to the petitioner, penalty of withholding 5% pension for a period of six months was imposed upon the petitioner and his gratuity was released.

10. Sub Rule (1) Rule 9 of the CCS Pension Rules which empowers the competent authority to order a cut in pension reads as under:-

"(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three thousand five hundred per mensem."

11. Suffice it to state that for a retired Government servant a cut in pension can be ordered if the misconduct of which he is found guilty is grave. Mere misconduct, without a finding of it being grave, would not empower the competent authority to order a cut in pension.

12. Now, from the facts noted hereinabove it stares us in the face that on the previous occasion, when the petitioner was in service, albeit by considering inadmissible evidence, taking the view that all four charges were proved, the penalty ordered was a reduction in pay by three stages for a period of three years. Meaning thereby that taking into account the gravest of the four charges (Charge No. III) the penalty imposed was a reduction in pay by three stages. It would be ex-facie a contradictory opinion for the penalty if it proceeds on the finding that Article-III and Article -IV of the charge are not proved and Article-I and Article-II are partially proved, to hold that the misconduct proved is grave. Further, a perusal of para 3.1 and 3.2 of letter dated November 22, 2011 written by UPSC would evince that as a matter of fact no part of Article-II of the charge was proved for the reason the gravamen of said Article of the charge was that after the vehicle No. DIB 4613 met with an accident near Kartarpur on December 21, 1993 the petitioner did not submit a factual report to the higher authorities and tried to manipulate the record. We note at this stage that the language of Article- II of the charge is full of grammatical errors for the reason it uses the expression "did not submit factual report to the higher authorities and tried to cancel and manipulate to avoid conduct of Court of Inquiry of the accident."

UPSC has rightly noted the evidence that vide signal dated December 21, 1993 the petitioner informed about the accident which took place the same day but gave a detailed report thereof after one month and twenty days, in respect of which act UPSC has opined that it showed slackness. It is apparent that no motive could be alleged against the petitioner in terms of Article-II of the charge. As regards Article-I of the charge, para 3.1 of the letter written by UPSC highlights that the period in question was when terrorism was not fully eradicated in Punjab and thus the petitioner having required a despatch service car and Gypsy to be sent to Chandigarh to transport him back to Amritsar was justified.

13. Under the circumstances we hold that the misconduct, if any committed by the petitioner, is not a grave misconduct and thus we quash the penalty levied of 5% cut in pension for a period of six months.

14. A second issue arises for consideration.

15. In view of the incident, action was initiated to cancel a Presidential Notification under which the petitioner was awarded a gallantry medal. The gallantry medal and the citation were issued conferring an honour upon the petitioner for an operation dated October 04, 2006, which has no concern with the incident dated December 21, 1993 for which the petitioner was charge-sheeted.

16. Thus, the very initiation of the action to withdraw the gallantry medal is premised on noting facts which have no concern with the issue of the gallantry medal. Further, the basis to initiate the action to withdraw the gallantry medal is founded on the penalty levied upon the petitioner of 5% cut in pension for six months, which penalty we have quashed and thus for said additional reason the said action to initiate cancellation/withdrawal of the gallantry medal is required to be quashed. We do so.

17. The writ petition is allowed but without any order as to costs. The penalty imposed upon the petitioner of 5% cut in pension for six months is set aside. Action initiated to withdraw the gallantry medal awarded to the petitioner is also quashed.

CM No. 14750/2013

Disposed of as infructuous.