

(2015) 01 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) 2884/2005, W.P. (C) 2438/2006 and W.P. (C) 19649/2005

Om Prakash

APPELLANT

Vs

Inspector General/N.S.

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 2, 226

Citation : (2015) 01 DEL CK 0097

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

Bench : Division Bench

Advocate : Inderjit Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The challenge in these writ petitions is to the final orders dated November 07, 2003 passed by the Disciplinary Authority and orders passed by the Appellate Authority whereby the penalty of removal from service imposed on all the three petitioners, was upheld in appeal. It is desirable that all the three writ petitions should be disposed of by common order as all the three petitioners were charged for the incident dated August 05, 2003 wherein constable Raja Bhaiya Singh suffered injuries at the hands of three petitioners as well for their refusal to undergo medical examination. The respondents after initiating separate disciplinary proceedings against the three petitioners, imposed penalty of removal..

2. The Article of Charges framed against the writ petitioners are as under:-

3. Since the petitioners did not plead guilty to the charges levelled against them, in the separate inquiry proceedings in all seven witnesses have been examined by the respondents in support of the charges. On considering the evidence adduced during the course of inquiry, the Inquiry Officer arrived at the conclusion that the charges against the three petitioners had been proved by the

respondents.

4. The Disciplinary Authority vide order dated November 07, 2003 imposed penalty of removal from service, observing that the petitioners were not fit to be retained in Force. The appeal preferred against the penalty order of removal from service was rejected. The revision preferred before Inspector General North Sector met the same fate.

5. These writ petitions have been filed with a prayer to quash the impugned orders with direction to the Respondents to reinstate the petitioners with all consequential benefits.

6. The respondents contested the writ petitions by filing counter affidavits claiming that the finding of guilt has been passed on sufficient material and the penalty imposed commensurate with the guilt proved against the three petitioners who are members of disciplined force. Further the Presenting Officer could not be appointed during disciplinary proceedings for the reason that the disciplinary authority did not receive any amendment to CISF Rules, 2001 regarding appointment of a Presenting Officer which otherwise is discretionary. More so, the Presenting Officer has to present the case on behalf of disciplinary authority and the prejudice in such a situation, if any, could be only to the respondents and not to the petitioners.

7. When the writ petition came up for hearing, none appeared on behalf of the petitioners Om Prakash and Ratan Singh in W.P.(C) Nos. 2884/2005 and 2438/2006. Mr. Chandan Kumar, Advocate appearing on behalf of the petitioner Prem Singh in W.P.(C) No. 19649/2005 submitted that the petitioner was never medically examined to ascertain that he was under the influence of alcohol at the time of incident. Further he had no enmity or hostility with Constable Raja Bhaiya Singh which could be a reason for the petitioner to assault him. It has also been urged before us that the doctor who medically examined the injured Constable Raja Bhaiya Singh was never produced before the Inquiry Officer and during the inquiry proceedings the injured was unable to show any scar mark to establish that he had suffered injuries at the hands of the petitioners on August 05, 2003. Learned counsel for the petitioner Prem Singh further submitted that Constable Rajbir Singh, who was also sleeping in the same room, has not witnessed the occurrence and that there was absolutely no material before the Disciplinary Authority to record a finding of guilt against the petitioner Prem Singh and impose a penalty of removal from service. Learned counsel for the petitioner Prem Singh also submitted that the inquiry is vitiated for the reason that during inquiry proceedings, Rule 36(5)(c) of CISF Rules, 2001, which came into force with effect from June 09, 2003, was not complied with by appointing a Presenting Officer and in fact Inquiry Officer himself has examined the witnesses which vitiates the disciplinary proceedings against the petitioner. He has also drawn the attention of the Court to the fact that the alleged weapons of the offence i.e. Belt and Danda have not been recovered which creates a doubt about the correctness of charges levelled and held to be proved against the petitioner.

By placing reliance on the decision reported as Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , learned counsel for the petitioner Prem Singh submitted that the order to remove the petitioner from service being contrary to the rules and regulations governing him needs to be set aside by this Court.

8. Learned counsel for the respondents submitted that the order of penalty is based on finding of Inquiry Officer wherein he held that the charges against the petitioners stand proved. It was urged before us that the amendment in Rule 36 (5)(c) of CISF Rules, 2001 came into force with effect from June 09, 2003 but the same did not come to the notice of the disciplinary authority. However, the petitioners have not been able to show the prejudice, if any, caused to them for non-appointment of Presenting Officer which otherwise, as per rules, is not mandatory.

9. While justifying the penalty of removal, learned counsel for the respondents has drawn the attention of this Court to the past misconduct of petitioners Ratan Singh and Prem Singh repeatedly for which penalties were imposed. Petitioner Om Prakash had no record of past misconduct but as the Article of Charges against him pertaining to the incident dated August 05, 2003 being proved, were of grave nature, the penalty imposed on him commensurate with the gravity of the charges.

10. Before dealing with the rival contentions, to avoid repetition we prefer to note here that during the course of inquiry, seven witnesses have been examined to prove the charges against the petitioners on different dates. After giving details of the PWs with their date of examination hereunder, we shall refer their names.

11. We have perused the record of the disciplinary proceedings initiated against the three petitioner to ascertain whether it is a case of no evidence against the petitioners as well the material on the basis of which the Inquiry Officer arrived at the conclusion that the charges have been proved.

12. Statement of injured Raja Bhaiya Singh is to the effect that on August 05, 2003 while he was lying on his cot and his roommate Rajbir Singh was also lying in his cot, petitioner Prem Singh was missing from his bed. At about 2200 hrs. all the three petitioners entered his room. Petitioner Prem Singh bolted the door from inside and all of a sudden all the three petitioners started assaulting him. Petitioner Ratan Singh was having belt and petitioner Prem Singh was having danda in his hand whereas petitioner Om Prakash tried to hold him. He was assaulted with belt and danda. He ran towards the door, unbolted the door and raised alarm.

13. Inspector S.S. Chauhan had also confirmed the incident while deposing that when he was watching TV in the Recreation Room on the first floor, he heard

noise and looked down to see what was happening. He had seen Raja Bhaiya Singh bleeding from his head and the petitioners in aggressive mood and extending threat to Raja Bhaiya Singh that next time he would not be spare. Inspector S.S. Chauhan had also stated that he directed the three petitioners to undergo medical examination as they appeared to be under the influence of alcohol for which they refused saying that unless and until the entire unit would be medically examined they will not go for medical examination. Inspector S.S. Chauhan had taken the injured Raja Bhaiya Singh to the Government Hospital at Kullu for necessary medical treatment.

14. SI Ram Singh had also seen constable Raja Bhaiya Singh bleeding from his head and the petitioners smelling alcohol as well the refusal to undergo medical examination.

15. PWs J.P. Rana, Diwan Singh and Girind Singh had also seen injured bleeding and the petitioners being in state of intoxication and their refusal to undergo medical test.

16. Constable Rajbir Singh though stated that he had not seen the incident despite being present in the same room, confirmed the incident to the extent that after hearing some noise when he got up from the cot, he saw inspector S.S. Chauhan, clerk Diwan Chand, Ram Singh and constable Raja Bhaiya Singh standing near the stairs in the hall and about some quarrel with Raja Bhaiya Singh. He stated that he saw inspector Sahab asking the petitioners to undergo medical examination and they told him why their medical examination should be conducted. Thus, he supported charge under article 2 to the above extent.

17. We have also perused the MLC of injured Raja Bhaiya Singh. The MLC records:-

"Date and hour of arrival - 6/8/03 at 12.05 am

Alleged h/o assault by other colleagues by Constable Ratan Singh, Constable Om Prakash, Constable Prem Singh at around 10 PM on the night of 5.8.03.

O/E : 1. There is small abrasions over occipital region of scalp. Fresh bleeding present.

2. Contusion mark over back at neck left shoulder region and on left side.

3. Tenderness left wrist found."

18. The Inquiry Officer on consideration of statement of witnesses examined by the respondents and MLC of injured Constable Raja Bhaiya Singh, held the following facts to be proved:

(i) The petitioners were seen running from the room of Raja Bhaiya Singh by PWs Diwan Chand and S.S. Chauhan.

(ii) PWs Diwan Chand, J.P. Rana, Ram Singh, Girand Singh and S.S. Chauhan had seen Raja Bhaiya Singh bleeding from his head.

(iii) All the three petitioners were seen in aggressive mood, smelling alcohol having no control on their limbs i.e. legs and tongue.

(iv) All the three petitioners were heard threatening Raja Bhaiya Singh that though he managed to save on that day, they would attack on him again.

(v) All the three petitioners when asked to undergo medical examination, refused for the same stating that unless the entire Unit is medically examined, they would not undergo medical examination.

19. The Inquiry Officer also noted that PW Rajbir Singh, who was sleeping on his cot in the same room where injured Raja Bhaiya Singh was attacked, suppressed the facts claiming that he was sleeping at that time which was highly improbable. But even Constable Rajbir Singh confirmed that he got up on hearing some noise and came out of the room. He saw S.S. Chauhan, Diwan Chand, Lachhu Ram and Raja Bhaiya standing near the staircase leading to first floor and some other members of the force were present in hall from whom he came to know about the quarrel with Raja Bhaiya Singh by Ratan Singh, Prem Singh and Om Prakash. He also confirmed that when S.S. Chauhan asked all the three petitioners to undergo medical test, they refused saying that incase medical is to be conducted, it should be of entire Unit.

20. The Inquiry Officer also noted that none of the petitioners could produce any evidence in their defence.

21. The Appellate and Revisional Authorities duly considered the record and were of the view that all the three petitioners had entered the room of Raja Bhaiya Singh, assaulted him due to which he sustained injuries as recorded by the doctor after medical examination of Raja Bhaiya Singh. Further from the statement of prosecution witnesses Diwan Chand, J.P. Rana, Ram Singh, Girand Singh and S.S. Chauhan, it was proved that all the three petitioners were under the influence of alcohol at that time and despite directions by the superior officer, the petitioners refused to undergo medical examination. While taking note of the plea that the weapons of offence were not seized and no FIR was registered, same was rejected observing that in departmental inquiry, the charges are required to be proved on the preponderance of probabilities and evidence and it being a case of misconduct which could be dealt with by the department, non-registration of FIR was insignificant.

22. We find no force in the submissions made by learned counsel for the petitioner Prem Singh that non-examination of doctor is sufficient to infer that there was no such injury and that the MLC is dated August 06, 2003. No doubt, in this case the doctor who medically examined constable Raja Bhaiya Singh was not examined by the Inquiry Officer but the factum of medical examination of constable Raja Bhaiya Singh at Health and Family Welfare Department, District Kullu at 12.05 AM was never challenged during inquiry proceedings. Rather the petitioners tried to take advantage of the fact that the date on the medical examination report was August 06, 2003. The Inquiry Officer recorded that the

date changed after midnight, hence in respect of the incident which took place on the night of August 08, 2003, the injured was taken to the hospital and medically examined after midnight (12.05 AM), thus medical examination report was rightly bearing the date August 06, 2003.

23. Non-examination of the medical officer by the Inquiry Officer in the facts and circumstances is of no consequence as the Inquiry Officer has based his findings on the statement of witnesses namely Diwan Chand, J.P. Rana, Ram Singh, Girand Singh and S.S. Chauhan who had seen constable Raja Bhaiya Singh bleeding from his head. Thereafter he was taken to Health and Family Welfare Department, District Kullu, Himachal Pradesh for his medical examination.

24. Another contention of petitioner Prem Singh is that in the absence of Presenting Officer, the petitioner has been prejudiced as Inquiry Officer has examined the witnesses. Learned counsel for the petitioner Prem Singh has failed to bring on record any prejudice being caused to the petitioner Prem Singh just for the reason that in compliance of Rule 36 (5)(c) of CISF Rules, 2001, the Presenting Officer was not appointed.

25. It may be advantageous to refer to the decision of Supreme Court reported as Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , wherein it was held that whether prejudice has been caused to an employee or not has to be considered in the facts and circumstances of each case. Relevant observation in this regard appear in para 7 (v) of the report as under:

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(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural

expansion of natural justice" which in itself is antithetical to justice.

26. We may also note that petitioner Prem Singh cannot derive any advantage by placing reliance on Sukhdev Singh and Ors. vs. Bagatram Srdar Singh Raghuvanshi and Anr. (Supra) for the reason the questions arising for consideration before Hon"ble Supreme Court were:-

(i) Whether an order for removal from service contrary to regulations framed under the Oil and Natural Gas Commission Act, 1959, the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956 would enable the employees to a declaration against the statutory corporation of continuance in service or would only give rise to a claim for damages.

(ii) Whether an employee of a statutory corporation is entitled to claim protection of Arts. 14 and 16 against the Corporation. In short the question is whether these statutory corporations are authorities within the meaning of Art. 12.

27. The Petitioner Prem Singh has not been able to establish that the act of the respondents was in violation of the terms governing his service conditions. Thus, the prejudice, if any, in the absence of Presenting Officer, could be only to the department and not to the petitioners. Similarly, non-seizure of belt and danda is also no ground to interfere with the impugned orders for the reason that burden of proof on prosecution in disciplinary proceedings is not like that of a criminal trial. Whereas in a criminal trial, the prosecution is required to prove its case beyond reasonable doubt, disciplinary proceedings require evaluation of evidence based on preponderance of possibilities. Even strict rules of evidence do not apply. Further during cross examination, the petitioners have not been able to establish that the testimony of the prosecution witnesses are not worthy of credence.

28. Instance of past misconduct of petitioners Prem Singh and Ratan Singh wherein repeatedly penalties have been imposed on them as well gross misconduct of petitioner Om Prakash in assaulting his colleague by entering in his room when he was about to sleep and assaulting him with belt and danda and threatening him, have also been taken note of by the Inquiry Officer as well the Appellate and Revisional Authorities. Their refusal to undergo medical examination to ascertain whether they were under the influence of alcohol at that time, had also been viewed seriously by the Authorities. Thus, there was sufficient evidence before the Inquiry Officer to prove the charges, which by any yardstick, were sufficient to prove the Article of Charges framed against the Petitioners, which are of grave nature.

29. The Supreme Court while considering the scope of interference by the High Court in the decision of departmental authorities in the decision reported as State of Andhra Pradesh Vs. Sree Rama Rao, observed:-

7. The High Court is not constituted in a proceeding Under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a

departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ Under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ Under Article 226 of the Constitution. 30. We notice that the finding by the Inquiry Officer to the effect that the charges against the delinquent officials have been proved as well the orders of the Appellate Authority and Revisional Authority are detailed and reasoned one. All the pleas put forth by the petitioners have been dealt with while maintaining the finding of the Inquiry Officer and the penalties awarded to the petitioners which commensurate with the Article of charges proved against them.

31. For the foregoing reasons, we do not find any merit in the writ petition.

32. Writ petitions bearing W.P.(C) Nos. 2884/2005, 2438/2006 and 19649/2005 are accordingly dismissed.

33. No costs.