
(2011) 07 DEL CK 0443
In the Delhi High Court
Case No : Writ Petition (C) 4586 of 1997

Om Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0443

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : D.R. Roy, for the Appellant; Kumar Rajesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—After an inquiry was held against him post issuance of a charge sheet, the Petitioner was visited with a penalty of compulsory retirement. It be noted that the Petitioner had rendered 22 years service and this appears to be the reason why penalty of compulsory retirement was inflicted upon the Petitioner for the reason he earns a pension.

2. Departmental remedies against the penalty order having not resulted in any benefit to the Petitioner, being turned down; instant petition was filed.

3. The charge against the Petitioner was that on 13.8.1993 he disregarded lawful orders of his superior, ASI Sri Bhagwan Singh by not performing escort duty on passenger train 3/4 NP and using un-parliamentary language against ASI Sri Bhagwan Singh and as also threatening to physically assault him.

4. The Inquiry Officer has held that the first limb of the charge, that the Petitioner disregarded lawful orders, has not been proved.

5. It was thus urged by learned Counsel for the Petitioner that if it was not proved that the Petitioner disobeyed lawful command of ASI Sri Bhagwan Singh, it does not stand to any logic or reason as to why would the Petitioner abused his superior officer and threatened to assault him. With reference to the details of

the misconduct, forming an annexure to the charge, technically called statement of imputation, counsel brings out that as per the same, upon Petitioner refusing to perform escort duty on passenger train 3/4 NP, being scolded by ASI Sri Bhagwan Singh, Petitioner retaliated. Thus, counsel urges that if the first limb of the charge fails, the remainder must fail.

6. From the evidence which we note hereinafter, it would be apparent that the Inquiry Officer has been too technical in opining a report and thereby giving birth to an argument as advanced. But, a closer look would show that the second limb of the charge could stand independently.

7. Seven witnesses have been examined.

8. We recap what they deposed, as per the testimony recorded.

9. ASI Sri Bhagwan Singh has deposed that when he called the Petitioner, a Constable, on 13.8.1993 and ordered him to do escort duty on train 3/4 NP Petitioner said that he would not proceed on duty. The Petitioner started abusing him. He asked the Petitioner to go out of his office. The Petitioner hit him on his head with a Tiffin carrier and accused him of being a thief saying that he had taken away the Tiffin carrier presented to Mr. Kataria at the farewell party. ASI Hari Singh deposed that when ASI Sri Bhagwan Singh directed Petitioner to perform escort duty on train No. 3/4 NP, an argument broke out between the two about a Tiffin box presented at the farewell party of SI Kataria and Ct. Om Prakash accused ASI Sri Bhagwan Singh of being a thief at which ASI Sri Bhagwan Singh asked Ct. Om Prakash to go out of his office at which Om Prakash used abusive language and thereafter Ct. Surender Pal and Ct. Jai Prakash pushed Ct. Om Prakash outside the office.

10. HC Charan Das stated that he was on seal checking out and after answering the call of the nature when he was sitting on the bench he saw Ct. Surender and Ct. Jai Pal pushing Ct. Om Prakash outside the office. Ct. Om Prakash was crying and asking them why was he being abused and pushed. He learnt that the Petitioner and ASI Sri Bhawan Singh had an issue on something.

11. Nk. Samrinder Singh deposed that when ASI Sri Bhagwan Singh directed Petitioner to perform escort duty on train 3/4 NP, Petitioner asked as to where was the Tiffin presented at the farewell party of ASI Kataria. ASI Sri Bhagwan Singh said that he had given the Tiffin to him at which Ct. Om Prakash charged ASI Sri Bhagwan Singh of being a thief and abused him. He threatened that he would ensure that ASI Sri Bhagwan Singh would not receive full retirement dues. At that ASI Sri Bhagwan Singh rose from his chair and pushed Ct. Om Prakash so that he would be out of his office. Ct. Om Prakash threatened to slap ASI Sri Bhagwan Singh at which Ct. Jai Pal and Surender caught hold of Ct. Om Prakash and took him out of the office.

12. Ct. Jai Pal Singh and Ct. Surender Pal deposed in harmony stating that when they were sitting in the duty room they heard Ct. Om Prakash and ASI Sri

Bhagwan Singh abused each other. They brought out Ct. Om Prakash who kept on abusing ASI Sri Bhagwan Singh even outside the office.

13. From a perusal of the evidence it is apparent that there is ample evidence that the Petitioner not only refused to perform duty but even raised an issue with ASI Bhagwan Singh pertaining to a Tiffin which was gifted to SI Kataria at his farewell party.

14. Notwithstanding the Inquiry Officer having exonerated the Petitioner for the first limb of the charge, the reason for which we find is that apart from the complainant, two other witnesses have deposed, and the Inquiry Officer has found that since others have not deposed to said fact, it would be a case of benefit to be granted to the Petitioner. The finding is wrong for the obvious reason it may happen that somebody present near the place where an altercation takes place may not hear the origin thereof and thus would depose to facts, sans the origin, and those who have witnessed the origin may so depose.

15. But, the fact of the matter remains that two witnesses have clearly deposed that with respect to the Tiffin in question, the Petitioner not only called his superior officer to be a thief but even abused him and adopted threatening postures. We find that ASI Sri Bhagwan Singh has said that the Petitioner hit him on his head, other witnesses have said that but for the two constables intervening, the Petitioner would have assaulted a superior officer.

16. We cannot lose sight of the fact that the Petitioner was a member of a Central Para Military Force and is expected to maintain discipline and not go about assaulting a superior officer. We note that the penalty levied upon the Petitioner is one of compulsory retirement which has enabled the Petitioner to earn pension, we do not find the penalty to be disproportionate and hence we dismiss the writ petition but refrain from imposing any cost.