

(2010) 11 DEL CK 0086

In the Delhi High Court

Case No : Writ Petition (C) No. 19726 of 2004

Om Prakash Jat Constable

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 61

Citation : (2010) 11 DEL CK 0086

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : P.S. Bindra and Harish Sharma, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Gita Mittal, J.—The Petitioner challenges the final order dated 10th October, 2002 terminating the services of the Petitioner, order dated 5th November, 2003 rejecting his appeal and order dated 13th August, 2004 dismissing the revision petition filed by him by this writ petition.

2. A disciplinary inquiry was proposed against the Petitioner by the memorandum dated 10th September, 1999 under Rule 34 of the Central Industrial Security Force Code Act 1969 and the amended Rule 36 of the Act of 2001 on the following charges:

CHARGE

That on 29.06.99 at 1115 hrs. CISF No. 884656887 Const. O.P. Jat of CISF Unit O Cs Shakurbasti, Delhi was intercepted by Delhi Police SI Hem Raj and Constable Rajender Singh near cement siding of IOC Complex while moving in that area. On questioning by Police to show the bag he was carrying in this hand, he ran towards IOC Complex along railway lines at the back of IOC Complex. Having been checked by Delhi Police for allegedly in possession of opium, Constable O.P. Jat was apprehended inside the IOC Complex on the stairs leading to the plant control room where he entered through the back gate. He escaped

from Police custody no sooner SI Hem Raj was taken by the plant STM to his office. The said Constable O.P. Jat deserted from Unit lines and absented from shift duty from the same date and is still absenting himself from duty.

This act of said constable O.P. Jat has thus brought a bad name and tarnished the image of the force, which amounts to grave misconduct, gross negligence, indiscipline and un-becoming of a member of the disciplinal force like CISF. Hence, the charge.

3. It is noteworthy that the Petitioner had failed to respond to the notice to show cause, the charge sheet and order of suspension which were duly received by his father on his behalf on 24th September, 1999. In view thereof, by an order passed on 18th October, 1999, Sh. N.C. Pathak on that date the Additional Commandant was appointed as the Inquiry Officer to conduct the enquiry against him.

4. It is evident from the charge noticed hereinabove, the Petitioner had deserted the service on the 29th of June, 1999. After service of the said order on 18th of October, 1999, the Petitioner reported to the unit on the 23rd of October, 1999 when he was handed over to the Delhi Police in the case registered as FIR No. 529/1999 dated 29th June, 1999 under Sections 18/61/95 of Narcotic Drugs and Psychotropic Substance Act. It appears that the Petitioner had made a representation dated 16th March, 2000 from the Tihar Jail stating that since he has been implicated in a false criminal case, therefore, the departmental inquiry should be initiated after disposal of the criminal case in the Court. The disciplinary proceedings were kept pending as the case was sent to the higher authority vide letter dated 28th March, 2000 to get directions in this regard. Subsequently, a decision was taken to proceed with the inquiry against the Petitioner which so proceeded. In these proceedings, a report dated 10th November, 2001 was submitted by the inquiry officer which was sent to the Petitioner by the disciplinary authority.

5. The Petitioner filed an application dated 20th November, 2001 requesting for a fresh copy of these documents for the reasons that the same was missing during cleaning of the barrack. It was further contended that the investigating officer had recorded statements ex-parte without giving opportunity to the Petitioner to cross-examine the witnesses. An explanation was sought to be rendered by the Petitioner that he ran away from the unit because he feared that he would be arrested despite his innocence and that the case against him was false. The Petitioner stated that fear of such arrest kept him away from the inquiry. In this background, the disciplinary authority took a decision to give an opportunity to the Petitioner to defend himself and a direction was issued permitting him to cross-examine the witnesses.

6. In the meantime, the then inquiry officer Sh. N.C. Pathak was transferred and Sh. Shyam Lal, Additional Commandant was appointed as an inquiry officer by an order dated 16th January, 2002 of the Commandant, Oil Complex Shakurbasti,

Delhi. The inquiry officer had proceeded de novo on 29th April, 2002 and sent a copy of the notice to show cause to the Petitioner. The Petitioner submitted a fresh reply on 8th May, 2002 denying the charges levelled against him. On 22nd April, 2002, the Petitioner had stated that he wanted to defend the case by himself without any assistance.

7. It is an admitted position that the inquiry proceedings were conducted in the presence of the Petitioner who defended the case himself. Adequate opportunities have been given to the Petitioner to cross-examine the witnesses produced by the prosecution ensuring all rights of the Petitioner. In this background, the inquiry officer forwarded his report under the letter dated 28th August, 2002 finding the Petitioner guilty of the charge for which the enquiry had been conducted.

8. The Petitioner received a copy of the inquiry report from the disciplinary authority on the 4th of September, 2002 and filed his response thereto on the 25th of September, 2002 through the office of the Deputy Superintendent, Central Jail No. 4.

9. The original record of the inquiry has been produced before us. We find that inquiry officer has recorded the statement of 13 witnesses and afforded full opportunity to the Petitioner to cross-examine them. The record produced before us shows that the Petitioner had addressed a letter dated 17th June, 2002 citing the names of certain doctors who had purportedly examined and treated him at the government hospital, Chirawa in District Jhunjhunu, Rajasthan between 29th June, 1999 to 3rd October, 1999 and prayed for permission to produce them as witness. The Petitioner also sought to examine one Sri Chand and Sh. Rajender. This application was considered and rejected by the inquiry officer by a communication dated 15th July, 2002 whereby the Petitioner was informed that the allegation against him with regard to absence without leave from the unit line of the CISF Unit, OCS Shakurbasti and consequently, evidence of persons from his village in Rajasthan which had no connection with the unit at Shakurbasti, was totally irrelevant.

10. It is, therefore, apparent that there is no denial by the Petitioner that he had absconded from the unit line on the 29th of June, 1999 and had set up the excuse that he was in fear of arrest and ran away for the reason of such apprehension. It also remains undisputed that the Petitioner was absent without any sanctioned leave from 29th June, 1999 to 23rd October, 1999.

In this background, the finding of the inquiry officer and disciplinary authority to the effect that the Petitioner had absconded from his duty without prior information and dismissal from the unit remain factually unassailable.

11. The Petitioner's contention that he had been prejudiced and not been given adequate opportunity to defend by the first inquiry officer stood accepted. Thereafter the matter was conducted by the second inquiry officer.

12. So far as the contention that the Petitioner was unable to effectively defend himself is concerned, we find that the Respondent had taken a careful view in the matter and the Petitioner has been given complete and effective opportunity to defend himself by the inquiry officer. It has been submitted before us that the Petitioner was in Jail and for this reason the inquiry has been proceeded. It needs no elaboration that the fact that the Petitioner was in jail would by itself not be sufficient to arrive at a conclusion that the Petitioner's defence has been prejudiced.

13. The Petitioner has placed on record the documents which manifest that the Petitioner was duly served with all the documents and was given complete and effective opportunity to defend himself in the inquiry. There is nothing placed before us which could even remotely suggest the Petitioner's contention that the Respondents action was malicious for the reason that he was in custody. There is no challenge to the appointment of the inquiry officer or the conduct of the inquiry officer on behalf of the Petitioner. No violation of any statutory rule or principle of natural justice has either been pleaded or contended before us.

14. Learned Counsel appearing for the Petitioner has vehemently contended that given the nature of allegations against the Petitioner, it would be illegal and improper for the Respondents to proceed with the disciplinary proceedings on a charge which was identical to the charge against which the Petitioner was defending himself before the Criminal Court. It has further been submitted that by the judgment dated 15th April, 2004 passed by the Learned Additional Sessions Judge, Delhi, the Petitioner has been acquitted for the reason that the prosecution could not succeed in bringing home the guilt of the Petitioner beyond any reasonable doubt.

15. So far as the charges with which the inquiry was conducted against the Petitioner necessitating the disciplinary proceeding is concerned, we find that the same is restricted to the allegation that the Petitioner had absconded from duties from 29th June, 1999 and remained absent without any sanction of leave till 23rd October, 1999.

16. The criminal trial on the other hand related to the allegation that there were recovery of opium from the Petitioner and the Petitioner was tried for commission of offence u/s 18/61/85 of the Narcotic Drugs and Psychotropic Substance Act which had resulted in registration of FIR No. 529/1999 by the police station Punjabi Bagh, New Delhi.

17. We may note that the charge levelled against the Petitioner in the disciplinary proceedings was limited to the factum of his unauthorized absence from duty and nothing more. For this reason as well, we are unable to return a finding in favour of the Petitioner. We are unable to hold that there was parity of charges on which the Petitioner was tried before the criminal court and those on which the disciplinary proceedings were conducted against him.

18. In this background, the Petitioner's acquittal by the judgment dated 15th

April, 2004 by the learned Special Judge would be irrelevant so far as the disciplinary proceedings are concerned.

19. In any case, it needs no elaboration that even if the charges were similar, the standard of proof in the two proceedings is different. Whereas in the criminal trial, the prosecution is required to prove criminal charges beyond reasonable doubt against the accused person. So far as the disciplinary proceedings are concerned, the inquiry officer is required to test the evidence and material placed before it on the standard of preponderance of probabilities.

20. For this reason as well, there is no merit on the submissions made on behalf of the Petitioner. The report of the inquiry was placed before the disciplinary authority, who after careful consideration thereof passed an order dated 10th October, 2002 finding that the Petitioner absconded from his duty and unit without prior permission and information which was not only negligence but gross misconduct. After finding the Petitioner guilty of the charge, in exercise of powers under Rule 32 Schedule 1 and Rule 34 (ii) of the CISF Act, 2001, the disciplinary authority imposed the punishment of removal from service. The Petitioner made an appeal dated 2nd January, 2003 to the Deputy Inspector General, North Zone of CISF, which was rejected by a reasoned order dated 5th November, 2003. The Petitioner also availed the statutory remedy by way of a revision assailing two orders against him which was rejected by an order dated 13th August, 2004.

21. The above discussion shows that the departmental inquiry was conducted as per the prescribed procedure. No violation of any principle of natural justice has been argued or made out. The findings against the Petitioner are supported by the evidence available on record.

22. A plea has been taken by learned Counsel for the Petitioner that he was prevented by circumstances and reasons beyond his control and, therefore, could not join duty between 29th June, 1999 to 4th October, 1999. In this regard, reliance is placed on certain medical certificates produced before this Court to justify his absence. It has been urged that Petitioner was suffering from Depressive Neurosis. In this regard, learned Counsel for the Petitioner has placed reliance on certain documents relating to the period 1993-94 to contend that the Petitioner had received a head injury and, therefore, had been under psychological treatment earlier as well. The certificates produced before this Court do not inspire any confidence. The Petitioner relies on a medical board on the 30th of September, 1999 of three doctors constituted by the Chief Medical and Health Officer Jhunjhunu. This certificate states that after careful examination of the Petitioner, the board considered that the period of absence from 29th June, 1999 to 3rd October, 1999 was necessary for restoration of the Petitioner's health and that he was suffering from said Neurosis. We are unable to comprehend as to how on a medical examination of a person in September, 1999, a doctor could positively certify his state of health for the period prior to such examination. There is nothing on record to show that the Petitioner has

ever been examined either by a psychiatrist or Neurologist who could authoritatively give an opinion that the Petitioner was suffering from such Neurosis and was unable to rejoin his duty. The Respondents have placed further reliance on several notices given to the Petitioner to join duties to which the Petitioner did not respond. On the contrary, it has been contended that the Petitioner was keeping away because of his fear of being arrested. For this reason, nothing would turn on the claim of the Petitioner's sickness. The medical certificates which have been relied upon by the Petitioner do not inspire confidence.

23. We are also unable to hold that the punishment imposed on the Petitioner was grossly disproportionate to the series of the charges levelled against him and proven the misconduct.

24. For all the foregoing reasons, we find no merit in the writ petition which is hereby dismissed.

25. At this stage, learned Counsel for the Petitioner submits that there would be certain financial dues of the Petitioner which are lying unpaid with the Respondents. In case, there is any amount which is legally admissible to the Petitioner for the service which he has rendered or as a consequence thereof, we direct that the same shall be computed and paid to the Petitioner within a period of eight weeks from today. The Respondents shall also inform the Petitioner with regard to the computation of the dues, if any, to which he is entitled within the same period. In case, the Petitioner is found disentitled to any amount, the Respondents shall also send intimation in this regard to the Petitioner during the same period.