

(2011) 12 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (C) No. 8063 of 2011 and CM No's. 18170 of 2011 and 19570 of 2011

Om Prakash Rai, Ct./Dvr

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 226

Citation : (2011) 12 DEL CK 0156

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Gopal Singh, for the Appellant; Himanshu Bajaj, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order of dismissal dated 4th November, 2006 passed by the Disciplinary Authority dismissing the petitioner from service pursuant to a departmental inquiry conducted against him. The charges against the petitioner were that he had committed an act of remissness of duties in his capacity as a member of the CRPF punishable u/s 11(1) of CRPF Act, 1949 by consuming liquor on 21st June, 2005 when he was on duty at G/113 Chedima and while returning back he had driven the vehicle Registration No. DIL-1133 TATA Truck 3/5 Tonner and that he drove the said Truck in a rash and negligent manner and at high speed resulting in the said vehicle falling into a sloppy ditch 30 ft. down at about 1445 hours and thus causing heavy damage to the vehicle and the Govt. property and causing injuries to the escorting party travelling in the said ill-fated vehicle.

2. The appeal filed against the order of the dismissal dated 4th November, 2006 was dismissed by the Appellate Authority, Inspector General, CRPF, Southern Sector, Hyderabad by order dated 25th April, 2008 and the revision petition

dated 29th January, 2010 was dismissed by the Director General, CRPF by order dated 30th September, 2010.

3. The petitioner has challenged the orders dated 4th November, 2006, 25th April, 2008 by the Appellate Authority and the order dated 22nd November, 2010 intimating to the petitioner that his revision petition had been considered and rejected by the Director General, CRPF by order dated 30th September, 2010, therefore, his application for review by the Director General against the order dated 30th September, 2010 cannot be entertained and therefore dismissed the same.

4. The petitioner alleged that on 21st June, 2005 he was posted at A-113 Bn., CRPF Zabza Kohima, Nagaland. According to him, though the departmental inquiry was conducted against him on the charge that on the said date he had consumed liquor at G/113 Chedima and had driven the vehicle under the influence of alcohol, however, the medical report relied on by the respondents was full of over-writings and cuttings and no proper blood test and urine test was conducted to show that the petitioner had consumed liquor. He also contended that he has been dismissed by the Disciplinary Authority without sufficient evidence before him and the order of the dismissal in the facts and circumstances is vitiated.

5. The petitioner also asserted that on 21st June, 2005 the Company Commandant had instructed him to carry out his work to T. Josh, who was acting as quarter master in the company and the petitioner was instructed to move towards A/113 Bn. According to him, at that time it was raining and the road was full of fog which had reduced the visibility to very low. The petitioner has contended that he was driving the vehicle slowly and he was about to reach near E/9 Assam Rifles when suddenly a Maruti Van came from the opposite direction and in order to save collision with the Maruti Van which had come from the wrong side, he instantly applied break resulting in the skidding of vehicle and hitting the mile stone after which it fell in the ditch. Due to the accident the petitioner and the other personnel in the vehicle suffered certain injuries.

6. During the departmental inquiry, seven witnesses were examined by the department and the petitioner was given adequate opportunity to defend himself in compliance with the Rules and Regulations, however, the petitioner was dismissed by order dated 4th November, 2006.

7. The petitioner has challenged his dismissal, inter-alia, on the ground that the order of dismissal has been passed on irrelevant considerations and against the evidence; that none of the witnesses had deposed that the petitioner had consumed liquor and also that the respondents failed to consider that the petitioner had driven the vehicle up to a distance of 20-25 Kms. and had he been under the influence of alcohol, he could not have driven the vehicle to such a distance. The petitioner also blamed the wear and tear in the truck tyre which resulted into skidding as the petitioner was trying to save the collision with the

Maruti Van which had come from the wrong direction.

8. Learned counsel for the petitioner mainly emphasized that the medical certificate showing that the petitioner was under the influence of alcohol had not been proved and there was no evidence to infer that the petitioner was under the influence of alcohol and consequently, the findings of the Inquiry Officer and the Disciplinary Authority are based on no evidence and are liable to be quashed. The learned counsel also placed reliance on a decision of the Central Administrative Tribunal, titled as *Surender Singh - III, Constable of Delhi Police vs. ,* holding that in the instant case the certificate produced by the Delhi Police of the doctor from R.M.L. Hospital only revealed that Surender Singh, Constable, was smelling of alcohol and in the medical certificate nothing had been recorded against the columns like "pupil, gait and speech" and consequently, it was held that on the basis of such medical examination it could not be conclusively held that the delinquent was under the influence of alcohol or had consumed alcohol. In the present matter, the Inquiry Officer after considering the evidence had held as under:-

4. I have carefully gone through the Departmental Enquiry proceedings, the evidence on record, the report of the EO and the statements recorded in the COI ordered into the incident. As per proceedings of COI, Ct./Dvr. Om Prakash Raj is familiarized with the area and as well as men in the area where G/113 Bn. was located. While coming to G/113 Bn., said Ct./Dvr. Procured meat and handed over it to the Store Man of SSB, i.e. No. 91851000 HC/GD Prasad Minj of F/17 Bn., SSB, to prepare lunch and forced him to arrange liquor. Ct./Dvr. Om Prakash Rai and HC/GD Jose.T i.e. driver of the vehicle and party Commander-cum-Co-driver had consumed liquor and taken their lunch from 1130 hrs to 1300 hrs. On reaching 3/5 Tonner vehicle of Ct./Dvr. Om Prakash Rai at Naga Hospital where the Inspector Balbir Singh was waiting, both the said vehicles were left for A/113 Bn. Due to heavy traffic at Check Post, Kohima on NH-39, 3/5 Tonner vehicle which was running behind the one Tonner vehicle of Insp. Balbir Singh could not continue to run behind the one Tonner, after crossing check post. Ct./Dvr. Om Prakash Rai was driving the vehicle very fastly and therefore, Ct.Safiqur Rahman sitting inside the cabin, cautioned the driver to go slow. In reply, the vehicle driver Ct./Dvr. Om Prakash Ra has asked the Ct.Safiqur Rahman to keep quite. However, the Co-driver/Party Commander, HC Jose.T did not caution the vehicle driver to drive the vehicle safely at normal speed as he had also accompanied vehicle Driver for consumption of liquor at G/113 Bn, CRPF. While returning on road at about 1345 hrs, at a distance of 8 kms from Kohim and 9 Kms from Unit Hq, the 3/5 tonner vehicle (TATA Truck) driven by Ct./Dvr. Om Prakash Rai came to the right side of the road at a high speed and ultimately fell down into 30 feet ditch.

9. The Inquiry Officer also considered the loss caused to the vehicle and the amount incurred in the repair of the vehicle as well as the cost of ammunition lost, which was to be recovered from the petitioner. Relying on the statement of

No. 91851000 HC/GD Prasad Minj of F/17 Bn. SSB, it was held that it is apparent that the constable Ct./Dvr. Om Prakash Rai/petitioner had consumed liquor and taken lunch in the store room of SSB located near G/113 Bn location. The Disciplinary Authority also noted that despite the opportunity given to the petitioner, no witness/evidence was produced by him and therefore by order dated 4th November, 2006 dismissed him from the service. The Appellate Authority also noted the evidence against the petitioner, especially the statement made by the petitioner during the court of inquiry where he had admitted that he had consumed liquor at Chedima. It was also noted that none of the PWs except HC/GD T.Josh (PW7) had deposed that at the time of the alleged incident, unexpectedly a Maruti Van had come from the wrong side and in order to save collision with the said Maruti Car, the petitioner had turned the vehicle towards the right side resulting in the said accident.

10. Though the petitioner did not produce the copy of the order dated 30th September, 2010 dismissing his revision petition and has only produced the copy of the letter dated 22nd November, 2010 intimating the petitioner that his application for review cannot be considered by the Director General since he cannot review his own order. The revision petition of the petitioner had been dismissed by order dated 30th September, 2010. The Director General while dismissing the revision petition had also held that from the statement of Sh.B.S.Dara, 2-I/C (Addl. PW-1) and Exhibit 6, it was apparent that the petitioner was under the influence of alcohol at the time of accident. Reliance was also placed on Exhibit 5, report of motor vehicle Inspector, Kohima holding that there was no technical defect in the vehicle as also the statement of the SI M.M. K Puspagandhan (PW2) who disclosed that the road at the side of the accident was very wide and vehicles coming from the opposite side were easily visible.

11. This cannot be disputed that the finding of the disciplinary proceedings should be based on some cogent and reliable evidence to prove the charge, although the charges are not required to be proved like a criminal trial i.e. beyond all reasonable doubts. The Disciplinary Authority, on analyzing the evidence and documents, is to arrive at a conclusion that there is a preponderance of probability in favour of establishment of the charge on the basis of the material on record. While doing so, the Disciplinary Authority cannot take into consideration any irrelevant fact, nor can it refuse to consider the relevant facts. Assumptions cannot be made by the Disciplinary Authority, nor can the burden be shifted, nor can the relevant testimonies of the witnesses be rejected only on the basis of the surmises and conjectures, nor can he enquire into an allegation with which the charged officer had not been charged with.

12. In exercise of its jurisdiction under Article 226 of the Constitution of India, it has always been the discretion of the High Court to interfere or not to interfere depending upon the facts and circumstances of the case. In Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, ,

it was held that the court in exercise of its jurisdiction can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give a party complete and substantial justice. The jurisdiction of the High Court, in exercise of its extraordinary jurisdiction, is normally exercisable keeping in mind a principle of equity. Regarding scope of judicial interference, it was held in *M.V. Bijlani Vs. Union of India (UOI) and Others*, , that judicial review is of the decision making process and it is not the reappreciation of the evidence. The Supreme Court had held at page 95 as under;-

It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

13. The learned counsel for the petitioner has contended that the case against the petitioner is of no evidence, and therefore, though the High Court cannot take over the function of the Disciplinary Authority, or sit in appeal on the findings of the Disciplinary Authority and assume the role of the Appellate Authority, however, since there is no evidence to support the finding that the petitioner had consumed the liquor as the medical certificate was not admissible and since the same was not established, therefore, this Court should interfere and set aside the extreme penalty of dismissal which is also disproportionate to the offence alleged against the petitioner. This Court had directed the learned counsel for the respondents to produce the record of Court of Inquiry, which was produced and perused by this Court. The witness No. 6, HC/G.D. Prasad Minj, had categorically deposed that the petitioner had asked for liquor and that even though he had tried to dissuade him from consuming liquor, he had insisted that the said witness get the liquor and he had also paid the money to him. He deposed that he had become friendly with the petitioner as he was earlier also posted with him, and therefore, he procured the liquor from outside which was consumed by the petitioner and Constable T.Josh. During the Court of Inquiry, the petitioner in reply to question No. 47 had stated that the alcohol was not brought by him, however, he had consumed the alcohol which was taken from other persons. In reply to question No. 49 "whether any officer at the site of incident had asked him that he had consumed alcohol or not", the petitioner had replied that he had told the officer that he had consumed the liquor. In reply to question No. 50 as to where the petitioner had consumed alcohol, he had stated

that he had consumed alcohol at Chedima. The petitioner had been given right to cross-examine, however, it was never deposed by him during the Court of Inquiry proceedings that he had not consumed any alcohol.

14. During the disciplinary proceedings, witness B.S.Dara was examined on 26th June, 2006 who categorically deposed that the petitioner had admitted that he had consumed the alcohol after purchasing the rum from Chedima. Relevant testimony of the said witness is as under:-

... at that time I was standing very near to Ct./Dvr. Om Prakash Rai and talking to him when I felt smell of liquor from the mouth of the driver. I immediately asked from Ct./Dvr. Om Prakash Rai whether he had consumed liquor upon which he immediately refused but when he apprised him of his condition, then he admitted that he had consumed liquor and that he had purchased rum from Chedima and had consumed it.

15. In the circumstances, the plea of the learned counsel for the petitioner that the Disciplinary Authority has held the charges against the petitioner on the basis of no evidence against the petitioner cannot be accepted. On the basis of the evidence before the Disciplinary Authority if an inference can be reasonably drawn regarding the guilt of the petitioner, then this Court will not exercise its jurisdiction under Article 226 of the Constitution of India as an Appellate Authority and re-appreciate the evidence. Even if this Court on re-appreciation of the evidence arrives at a different inference, then also the inferences drawn by the Disciplinary Authority are not to be substituted with the inferences of this Court. In the circumstances, the plea of the petitioner that there was no evidence before the respondents establishing that the petitioner had consumed liquor cannot be accepted. In the medical certificate relied on by the respondents, the date and time of the examination is given as 4.30 pm on 21st June, 2005 and regarding the query whether the petitioner had taken liquor and whether he was under the influence of liquor, it is stated "Yes". The remark given is "subject has consumed alcohol, however, only his fine skilled movements are affected". In the circumstances, it is apparent that the Disciplinary Authority has not relied solely on the medical certificate in order to infer whether the petitioner had been under the influence of alcohol or not. Precedent relied on by the petitioner in the matter of Surender Singh (supra) is also distinguishable as in the said case it appears that the only evidence establishing the guilt of the delinquent officer was the certificate issued by the doctor from R.M.L. Hospital, however, in the present matter, the petitioner himself had admitted that he had consumed liquor during the Court of Inquiry proceedings and the other witnesses also corroborated this fact by deposing before the Court of Inquiry and before the Inquiry Officer that the petitioner had consumed alcohol in their presence. In the circumstances, it cannot be held that the findings of the Inquiry Officer are vitiated being contrary to the evidence on record or that the Disciplinary Authority has committed any such error or irregularity which is to be corrected by this Court in the facts and circumstances in exercise of its jurisdiction under

Article 226 of the Constitution of India.

16. Learned counsel for the petitioner has also contended that the punishment of dismissal awarded to the petitioner is disproportionate to the acts imputed against him. Perusal of the record reveals that on account of misconduct on the part of the petitioner extensive damage had been caused to the vehicle as well as damage to 9 MM ammunition which was lost and damage was also caused to the two Magazines of 5.56 INSAS Rifles of Ct./GD Manoj Kumar Bhardwaj and Constable/GD B.Anand respectively. HC/GD Jose. T also suffered multiple lacerated injuries on the Rt. Hand and injuries below the knee as well as injuries to Ct./GD Manoj Kumar, who suffered dislocation of the Lt. side, besides injury in the eye and chin. Injuries were also caused on the legs of Ct./GD B.Anand and Ct./GD Safiquil Rahman on account of misconduct on the part of the petitioner and imputable to him.

17. It has been held by the Supreme Court that the relief granted by the courts should be legal and tenable from the frame work of law and should not incur and justify the criticism that the jurisdiction of the courts tend to degenerate into misplaced sympathy/generosity and private benevolence. The Supreme Court in Life Insurance Corporation of India Vs. R. Dhandapani, has held as under:-

9. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, .].

18. In the above noted facts and circumstances, the order of dismissal was passed by the Disciplinary Authority which has been sustained by the Appellate Authority and the Revisional Authority. No mitigating circumstances have been pointed out by the learned counsel for the petitioner which would show in any manner that the punishment of dismissal awarded to the petitioner is disproportionate to the misconduct on his part.

19. In the totality of the facts and circumstances, therefore, the petitioner has failed to point out any such illegality, irregularity or perversity in the orders of the respondents dismissing him from service on account of the misconduct on his part which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the

facts and circumstances is without any merit and, therefore, it is dismissed. All the pending applications are also disposed of.