
(2017) 09 CAL CK 0030
In the Calcutta High Court
Case No : 100 of 2006

Ombir Singh

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 11-09-2017

Acts Referred:

[Central Industrial Security Force Rules, 2001](#), [Rule 34](#) — Rule 34

Citation : (2017) 09 CAL CK 0030

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Indrani Gupta, Tarun Jyoti Tewari

Final Decision : Allowed

Judgement

1. A disciplinary proceeding was initiated against the appellant by a charge sheet dated 24th July, 2004. The first charge was that he had misbehaved with Insp/ Exe P.K. Das, Coy Commander at about 10.45 hrs on 16th July, 2004 at Coy commander's office and uttered filthy language against him in presence of HC/ GD C.G. Saha Roy and HC/GD M.N. Mondal which amounts to gross misconduct, indiscipline and unbecoming of a member of an Armed Force of the Union. The second charge was that he physically assaulted Insp/Exe P.K. Das, who was working in the Coy commander's office at about 13.20 hrs on 16th July, 2004 and as a result P.K. Das sustained injury on his nose which amounts to gross misconduct, indiscipline and unbecoming of a member of an Armed Force of the Union. An enquiry was conducted in which the appellant duly participated and upon considering the evidence of fourteen prosecution witnesses and five documents as exhibited, the enquiry officer arrived at a conclusion that the article of charge-I levelled against the appellant has been proved orally and documentarily by the witness beyond any doubt and that the article of charge-II against the appellant of assault on P.K. Das could not be proved as the statements of prosecution witnesses do not corroborate with each other. After

considering the report as filed by the enquiry officer, the disciplinary authority imposed a punishment of removal from service. Aggrieved by the said order dated 29th November, 2004, the appellant preferred a statutory appeal but the appellate authority by an order dated 22nd February, 2005 dismissed the same. The appellant challenged the entire disciplinary proceeding including the order passed by the appellate authority before this Court by a writ petition being WP 5428 (W) of 2005 and the same was dismissed by an order dated 28th March, 2005 observing that "the petitioner has contended the only point about the violation of the principle of natural justice by contending, inter alia, that though the petitioner was heard, but the evidentiary value was not properly assessed. The proper weightage of evidentiary value even if it is assumed was not done, the same cannot be the cause of action for judicial interference and/or judicial review by the writ jurisdiction under Article 226 of the Constitution of India. Since the petitioner got the opportunity to agitate the issue before the Appellate Authority, who was the appropriate authority to reassess the evidentiary value and since the Appellate Authority confirmed the decision of Disciplinary Authority on hearing the petitioner, this Court is not finding any merit in the writ application. It is a settled law that the writ application is not maintainable assailing the decision but the decision making process and that too in the event of infringement of statutory law and/or principle of natural justice, namely, "audi alteram partem". In the instant case all these two elements are absent for judicial review of the administrative action".

2. Challenging the said order, the appellant preferred the present appeal which was dismissed for default on 20th May, 2009 and such fact came to the notice of the appellant only in the month of July, 2013 and thereafter the appellant filed a restoration application along with an application for condonation of a delay of 1491 days. In explanation of such delay, the appellant stated that the learned advocate-on-record was not able to follow the list properly and as such could not appear at the time of call. Due to the sudden expiry of the appellant's relative, he was compelled to leave station on 10th May, 2009 and since then he was staying at his native place at Uttar Pradesh along with his family members for earning his livelihood somehow and as such he was not able to keep regular contact with his learned advocate-on-record. Suddenly, in the month of July, 2013 the appellant received a phone call from the advocate-on-record informing that the writ petition has been dismissed for default and immediately thereafter he came over to Kolkata and filed the restoration application and that the delay which has occasioned is neither malafide nor arbitrary.

3. In view of the fact that the matter involves the imposition of the severest punishment of removal from service, we asked the learned advocates appearing for the respective parties to advance their arguments on the merits of the matter. The prime contention of Ms. Gupta, learned advocate appearing for the appellant is that only upon establishment of the first charge of use of filthy language against a person senior in rank, the employer had imposed the punishment of removal from service. The second charge alleged against the

appellant could not be proved and as a consequence thereof the nexus among the first and the second charge could not be established which reduces the intensity and impact of the first charge and renders the punishment to be harsh and disproportionate. In support of such contention reliance has been placed upon the judgments delivered in the case of B.C. Chaturvedi -vs- Union of India and Others, reported in (1995) 6 SCC 749, in the case of Ranjit Thakur -vs- Union of India and others, reported in AIR 1987 SC 2386 and in the case of Union of India and others -vs- Giriraj Sharma, reported in AIR 1994 SC 215.

4. Drawing the attention of this Court to the order of punishment and the appellate order she argues that no weightage has been granted to the statements made by Mr. Das in course of his examination to the effect that he did submit a special report before the competent authority but he did not make any GD entry against the appellant for not bringing "A" shift personnel on 16th July, 2004 from unit line to DTPS main gate and "C" shift personnel from main gate to unit line. He also stated that due to shortage of drivers, the driver in the truck was being detailed for the transporting the CISF personnel of three shifts (i.e. "A" "B" & "C") from unit line to main gate and vice- versa. He further stated that as he was mentally disturbed, he forgot to include the matter of misbehaviour in the special report.

5. She further submits that the language used by the appellant in course of his interaction with Mr. Das has been misinterpreted by the respondents while imposing the punishment. The propensity of the enquiry officer, disciplinary authority and the appellate authority to exaggerate the impact of the language used, has led to imposition of a harsh punishment which affects the livelihood of the appellant and his family consisting of his wife, two daughters and a son.

6. Mr. Tewari, learned advocate appearing for the respondents submits that the appellant was granted ample opportunity to contest the disciplinary proceeding and that there has been no violation of the principles of natural justice warranting interference of this Court. The order of the disciplinary authority and the order of the appellate authority are well reasoned and there has been no error in the decision making process, warranting interference of this Court.

7. He further argues that as the first charge has been proved beyond doubt, the allegation of infirmities in the decision making process does not survive. The order of removal from service has been passed in appreciation of the fact that the appellant is a member of a discipline force and that the charge proved cannot be construed to be trivial in nature and that in a discipline force the appellant was required to maintain an impeccable disposition and respect towards superiors and as such the punishment imposed is appropriate. Question of any relaxation of the order of removal also does not occasion inasmuch as it needs to be borne in mind that in a discipline force absolute integrity and honesty is required to be preserved and in the event such discipline is not maintained, the confidence of public would be impaired and that the appellant, being a member of discipline force, is expected to be extremely cautious in his duties and having

committed an offence, the petitioner cannot lament and seek sympathy from this Court. In support of such contention reliance has been placed upon the judgments delivered in the case of Jayrajbhai Jayantibhai Patel - vs- Anilbhai Jayantibhai Patel & Ors ., reported in (2006) 8 SCC 200 and in the case of Ex-Constable Ramvir Singh -vs- Union of India, reported in AIR 2009 SC 33.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. In the backdrop of the charge proved, the impetus towards imposition of the severest punishment of removal from service, is lacking. The charge levelled against the appellant is not of misappropriation or of total loss of confidence of the management in the appellant. There is nothing on record to show that there was any previous adverse remark against the appellant. The appellant was asked to continue his work in consecutive shifts on 16th July, 2004 from 04.40 hrs till 21.20 hrs. As such duty was excessive, the appellant asked Mr. Das as to whether there was any written direction to allot such long hours of duty and such question led to an imbroglio. The use of filthy language by the appellant, if at all, was an impulsive reaction prompted by immaturity. The appellant was working as a driver who lacked the ability to protest in acceptable language and the soberness as attributable to a person working in a higher post is not attributable to a person working as driver.

10. In the special report filed by Mr. Das, marked as Prosecution Exhibit No.4, it was categorically stated by Mr. Das that he did not make any GD entry against the appellant for not bringing "A" shift personnel on 16th July, 2004 from unit line to DTPS main gate and "C" shift personnel from main gate to unit line and that there was a shortage of drivers. He further stated that as he was mentally disturbed, he forgot to include the matter of misbehaviour of the appellant in the special report. No weightage was granted to such admission of Mr. Das by the enquiry officer nor by the disciplinary authority. Such infirmity though agitated by the appellant in the statutory appeal was not dealt with by the appellate authority.

11. In a case of misconduct of abuses and use of filthy language against the persons in the management, an extreme penalty of removal, without discussing the aggravating and the mitigating factors involved, would be grossly disproportionate. In the instant case such factors have not been dealt with prior to imposition the punishment of removal from service and unless interfered with in exercise of the powers of the judicial review, such disproportionate punishment would earn immunity causing irreparable loss to the appellant. The appellant is presently aged about 47 years and he is a married person, having a family of five dependants including his wife, two daughters and a son and the order of punishment would adversely affect the livelihood of the appellant and his family. There is no dispute as regards the proposition of law as discussed in the said judgments upon which reliance has been placed on behalf of the respondents but the facts of the present case reveal that the punishment

imposed upon the appellant for the charged proved is shockingly disproportionate.

12. In all fairness and propriety demands that when major disciplinary punishment is sought to be inflicted, which would tantamount to removal from service, there should be absolute fair play in action. Sadly, this aspect of the matter is missing from the action taken by the authorities and the punishment imposed upon the petitioner is disproportionate to the charges alleged.

13. Regard being had to the facts involved, the nature of post held by the appellant and the conduct expected of him, we are of the opinion that the doctrine of proportionality is invocable in the instant case. For the reasons discussed above, we are of the opinion that the order of removal from service needs to be interfered with. Having arrived at such finding we cannot deny appropriate benefits to the appellant on the ground of limitation. Accordingly, we condone the delay towards preference of the present appeal subject to payment of costs of `5000/- to the appellants.

14. The order of removal from service passed by the disciplinary authority dated 29th November, 2004, the order of the appellate authority dated 22nd February, 2005 are set aside and the respondents are directed to reinstate the petitioner with all continuity of service forthwith, within a period of 4 weeks from the date of communication of this order. The amount of `5000/- shall be deducted by the respondents from the first month's salary of the appellant upon his reinstatement.

15. The disciplinary authority is also directed to impose a suitable lesser punishment upon the petitioner in terms of Rule 34 of the CISF Rules, 2001 except the penalties under Rule 34(I), Rule 34(II) and Rule 34(III) of the said CISF Rules, 2001. The appellant shall not be entitled to any back wages but all other consequential benefits will be available to the appellant. In our opinion, the aforesaid punishment will be a sufficient corrective measure for the appellant and will also meet the ends of justice, in the facts and circumstances of the present case.

16. The appeal and the applications are, accordingly, allowed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.