

(2007) 01 GAU CK 0078
In the Gauhati High Court

P.C. Molla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11
Constitution of India, 1950 — Article 226, 311

Citation : (2007) 2 GLR 785 : (2007) 2 GLT 208

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Judgement

B.K. Sarma, J.—By means of this writ petition, the petitioner a CRPF personnel has assailed the legality and validity of the order imposing the penalty of reduction in rank pursuant to a departmental enquiry.

2. The petitioner was first appointed in the CRPF as Fitter and his such appointment was on 9.12.1969. While he was serving as Motor Mechanic/Sub-inspector (hereinafter referred to as MM/SI) at Shillong, a memorandum of charge sheet dated 17.4.2004 was issued proposing to hold an enquiry against the petitioner and one Sri Abhay Singh HC/Dvr, on the charge indicated therein, The. charge reads as follows:

That the said number 720150406 HC/dvr Abhay Singh and number 690444343 SI/MM PC Mulla of 53 Bn. while functioning as HC POL & SIMM of 53 Bn respectively committed neglect of duty/remissness in the discharge of their duties as members of the force u/s 11(1) of the CRPF Act 1949 in that they indulge in and act or dishonestly jointly resulting in to pilferage of Govt. store i.e. 243 liters petrol alongwith barrel which was noticed during the physical checking of POL stock by Shri Raj Kumar, D/C (MTO) of 53 Bn on 18.11.2003 and to cover up the act of dishonesty they submitted a false information that one barrel containing 200 liters of petrol has been swept away in strong current in flood on 10.10.2003.

3. Alongwith the memorandum of charge sheet containing the aforesaid charge,

statement of imputation of misconduct in support of the Article of charge, list of documents and list of witnesses were also furnished. The petitioner in response to the charge sheet submitted his written statement of defence on 7.5.2004 denying the charge leveled against him. In his defence it was stated that on 10.10.2003, there was heavy rain badly affecting the polo ground, Shillong where the 53 Bn. was stationed, The heavy rain badly damaged various items in the store depots. The petitioner when visited the site found the co-accused packing his belongings. He asked him to go to the POL dump where the rainwater had entered. The petitioner also informed the Deputy Commandant who was also the Motor Transport Officer (MTO) over telephone about the rainwater entering the POL dump. The MTO then rush to the spot and advised to evacuate the goods and to put them on the adjacent tennis ground. Thereafter, light goods such as break oil/distil water, acid etc. were rescued including other such items like diesel, petrol, grease etc. However, the barrels full of diesel, petrol, etc., could not be pulled out and they remained in the POL dump.

4. The further statement made in the written statement was that when the flood water receded, the MTO asked the co-accused, Sri Abhay Singh to go to the POL dump with others to put the goods lying here and there in orderly manner. The petitioner himself supervised the works. Sri Abhay Singh informed the petitioner that the petrol barrel containing 200 litres of petrol was missing. They immediately made a search but could not trace out the same. Sri Abhay Singh prepared a note and asked the petitioner to put his signature. Before putting the signature, the petitioner reported the MTO about the missing barrel and as to how the same was swept away by flood water. However, the MTO refused to sign on the note sheet and the petitioner returned the note sheet to Sri Abhay Singh. Thus, according to the petitioner, the POL barrel was swept away by flood water and the note prepared to that effect was refused to be accepted by the MTO.

5. There is no dispute that the petitioner was the in-charge of the stores. The petitioner in paragraph 8 of the writ petition has stated that apart from his entrusted duties in respect of the stores, he also assisted the rescue works relating to POL dump. Motor Transport Package etc. After submission of the written statement, the appointed Inquiry Officer conducted the enquiry and on the basis of the evidence on record held that the prosecution failed to establish the charge and accordingly it was recorded that the charge could not be proved. The inquiry report was prepared on 2.3.2005 and on receipt of the same, the disciplinary authority, disagreed with the same. The reasons for such disagreement were communicated to the petitioner by letter dated 30.4.2005 alongwith the copy of the enquiry report for submission of representation by the petitioner against such reasons for disagreement. Altogether 6 reasons were assigned towards disagreeing with the findings recorded by the Inquiry Officer.

6. In response to the disagreement note furnished by the disciplinary authority, the petitioner submitted his reply thereto by his representation dated 20.5.2005. Thereafter, the disciplinary authority passed the impugned order dated 21.7.2005

imposing the penalty, of deduction in rank. The petitioner has been reduced to the rank of Head Constable (FTR) for a period of two years besides recovery of cost of 243 liters of petrol equally from both the accused persons in instalments. Being aggrieved by the order of penalty, the petitioner preferred departmental appeal to the Director General, CRPF. The appeal was preferred on 25.7.2005, but the same having not been disposed of, the petitioner invoked the writ jurisdiction of this Court by filing the writ petition on 13.12.2005.

7. Referring to the evidences on record including the statements of the witnesses who had deposed during the enquiry and the report furnished by the Inquiry Officer, it is the case of the petitioner that based on the evidences on record, he having been acquitted of the charge by the Inquiry Officer, the disciplinary authority upon a disagreement with the same on futile grounds, could not have imposed the penalty of reduction in rank. It is the simple defence of the petitioner that the barrel containing 200 litres of petrol having been swept away by rain water and the same having been reported to the higher authority instantaneously, the charge brought against him that he alongwith the co-accused was responsible for loss of the same is not tenable.

8. The respondents have filed their counter affidavit denying the contentions raised in the writ petition. They have generally stated about the entire episode under the head "BRIEF CASE OF THE RESPONDENT". They have contended that the story made out by the petitioner about loss of the petrol barrel in rain water is not at all believable and this is precisely the reason as to why in the Stock Register, there was no mention about the same. They have contended that in the initial signal followed by detail report relating to the flood incident, specific remark was "no loss of petrol". However, later on a concocted story was made of loss of a petrol barrel containing 200 litres of petrol. It is the specific case of the respondents that the barrel was never lost in flood water, but the same was projected to be (sic) the petitioner and the co-accused Sri Abhay Singh. They were responsible for the loss of the same.

9. I have heard Dr. Y.K. Phukan, learned senior counsel, assisted by Ms. D. Borgohain, learned Counsel for the petitioner as well as Brig. N. Deka, learned CGSC appearing for the respondents. Dr. Phukan, in his elaborate and forceful argument referring to the evidences on record submitted that the petitioner has been made a victim of the circumstances. According to him, the petitioner was in no way responsible for the loss of the petrol barrel and the same having been reported timely to the superior authority, the disciplinary authority ought not to have leveled the charge against the petitioner. He submitted that the Inquiry Officer having exonerated the petitioner from the charge, the disciplinary authority ought to have accepted the same instead of giving a dissenting note so as to hold the petitioner guilty of the charge.

10. Brig. N. Deka, learned Counsel representing the respondents, on the other hand submitted, that having regard to the facts and circumstances involved in the case, the only conclusion which could be arrived at and has been rightly

arrived that by the disciplinary authority is that the petitioner is guilty of the charge. Extensively referring to the evidences on record, he submitted that the charge against the petitioner is well established and the writ court will be reluctant to re-appreciate the evidence sitting on appeal over the findings recorded by the disciplinary authority. He has placed reliance on the decisions of the Apex Court as reported in Principal Secy. Govt. of A.P. and Another Vs. M. Adinarayana, Yoginath D. Bagde Vs. State of Maharashtra and Another, and (1998) 7 SCC 2713 Punjab National Bank v. Kunj Behari Misra.

11. I have given my anxious consideration to the submissions made by the learned Counsel for the parties as well as the materials on record. The charge against the petitioner is two-fold. The first leg of the charge is that the petitioner alongwith the co-accused indulged in the act of dishonesty, which resulted in to pilferage of Government store, i.e., 243 litres of petrol alongwith the barrel containing the same. The second leg of the charge is that to cover up the dishonest act, they submitted a false information that the barrel containing 200 litres of petrol was swept away by strong current. The petitioner in his written statement stated about the strong current, of rain water, which according to him swept away the barrel containing 200 litres of petrol. According to him although he had stated about the same to his superior authority, i.e., the MTO, but he did not do anything in the matter. He even did not sign the note sheet prepared by the co-accused.

12. As reflected in the enquiry report surprise check was conducted on 16.10.2003, 16.11.2003 and 18.11.2003 followed by verification of stock on 19.11.2003. In the POL register, there was no mention of any loss of petrol. However, the co-accused Abhay Singh in his statement stated that the matter was in the knowledge of the MTO. Even on 19.11.2003 the loss was not recorded in the POL stock register. It is also in the report that even in the detail report submitted on 24.11.2003 by the MTO, there was no mention of any deficiency of 243 litres of petrol. This position is well reflected from the records produced by Brig. N. Deka, learned CGSC. The MTO on 13.10.2003 verified the stock of POL and there was no remark of any loss of petrol. It was only on 1.11.2003 after the word "checked" under which the MTO put his signature, an additional remark was put as "also checked POL physically and found less 200 ltr. Petrol, which was fled in flood". Although in the first remark, i.e., "checked" the MTO had put his signature, the MTO put his further signature after the second remark, although both the remarks were shown to be in continuation of one another. Both the signatures are of dated 1.11.2003. Thus, according to Mr. Deka, was an act of afterthought.

13. If there was loss of petrol due to incessant rain and flood water on 10.10.2003, and the same was detected by the petitioner as has been claimed by him/there would have been written report to the same and/or endorsement in the POL register. Instead of such a normal course of action, the aforesaid remarks were latter on inserted. The Inquiry Officer in his report stated that, had

there been proper action on 10.10.2003 or 11.10.2003, the fact about the POL loss in flood water could have been detected and proper situation report would have been sent. As regards the POL verification on 18.11.2003 and no deficiency detected-on that day the Inquiry Officer has observed that such checking having been done at 19.30 hrs., there was no proper visibility. As regards the balance 43 liters of petrol it has been observed that there might be variation of the same, but no such entry was made in the POL Register.

14. The disciplinary authority disagreeing with the findings recorded by the Inquiry Officer asked the petitioner to submit representation against the disagreement note. The disagreement note contained as many as 6 grounds of disagreement. The grounds are - If the empty barrels could survive the flood current, the version of sweeping away of one barrel containing 200 liters of petrol is not convincing; on 16.10.2003 and 16.11.2003 as per the checking made by the MTO, there was no deficiency shown in the POL stock register; the petitioner failed to report the loss of petrol on 10.10.2003 as has been contended by him, the alleged note sheet also did not contain any date; even assuming that one barrel of 200 liters petrol was lost in flood water, same does not account for the balance 43 liters of petrol; although as per the statement of the co-accused Sri Abhay Singh, he detected loss of one barrel of 200 litres petrol on 10.10.2003, but the situation report prepared on the same day did not indicate any such loss, which in the normal circumstances would have been mentioned. Finally, it was stated that the remarks endorsed by the MTO was an after thought.

15. In response to the aforesaid note of disagreement/the petitioner submitted his reply reiterating his stand in the written statement. He stated that he had reported the matter verbally to both the MTO as well as the Commandant. He also stated that the deficiency was not shown in the POL Stock Register as in the meantime an enquiry was being conducted to assess the damage caused by flood. On perusal of the written statement submitted by the petitioner/it appears that the strong and cogent grounds of disagreement recorded by the disciplinary authority have not been met with in the manner as required of in a departmental proceeding in which it is the pre-ponderance of probability and not establishing the charge beyond all reasonable doubt as in the criminal proceeding is the well established principle of establishing the charge. If there is some evidence to establish the charge, it is none of the business of the writ court to sit on appeal over the findings recorded by the disciplinary authority on the basis of such evidence.

16. In *Kunj Behari Misra* (supra) the Apex Court emphasized on the need to give opportunity of representation to the charged employee in respect of disagreement with the findings recorded by the Inquiry Officer. Similarly, in the case of *Yoginath De Bagde* (supra) the Apex Court following the decision in *Kunj Behari Misra* (supra) held that the requirement of affording opportunity before reversing the findings of the Inquiry Officer is in consonance with Article 311(2) of the Constitution of India. In *M. Adi Narayana* (supra) the Apex Court

reminding the scope, ambit and jurisdiction of the Administrative Tribunal in the matter relating to disciplinary proceeding observed that interference with decision of disciplinary authority is not permissible unless findings of the disciplinary authority are found to be perverse and based on no legal evidence. The Tribunal cannot sit on appeal over a decision based on findings recorded in a disciplinary proceeding. It has also been observed that judicial review under Article 226 of the Constitution of India cannot extend to the examination of the correctness of the charge and the findings recorded relating to the same as the judicial review involves only of the manner in which the decision was arrived at.

17. In the instant case, the charge leveled against the petitioner was very serious in nature. The petitioner being a member of the disciplined armed force is expected to discharge his duty diligently, honestly and with utmost care and caution. In the given circumstances the disciplinary authority on the basis of the reasons assigned in the note of disagreement and the representation submitted by the petitioner found the charge against the petitioner to have been proved. The impugned order in this regard cannot be said to be based on surmises and conjectures. The disciplinary authority has assigned cogent and valid reasons for disagreeing with the Inquiry Officer. The findings recorded by the Inquiry Officer have been noted above. He only found fault with the PW 1 in not purportedly taking any action on 10.10.2003 and 11.10.2003. As regards the deficiency detected on 18.11.2003 he has attributed the fault to the timing of the checking without ascertaining as to whether there was enough light to carry out the checking. As regards the shortage of atleast 43 liters of petrol, he only opined that there might be variation of the same and that there was no entry made in the POL Register on 19.11.2003.

18. From the above, it is seen that it is the report of the Inquiry Officer which is based on conjectures and surmises and it was on that count the disciplinary authority disagreed with the findings recorded by him and after observing the due formalities passed the impugned order imposing the penalty of reduction in rank for two years. Having regard to the limited scope of interference in such matter and also having regard to the extent of proving the charge in a departmental proceeding, which is preponderance of probability coupled with the fact that it is not a case of no evidence at all and/or the findings recorded by the disciplinary authority can be said to be a perverse finding, I am of the considered opinion that in exercise of writ jurisdiction, no interference is called for to the impugned order. However, I hasten to add that it will be open for the appellate authority to look into the matter independent of the findings recorded herein, is so advised.

19. In view of the above, while not interfering with the impugned order dated 25.7.2005 (Annexure-7), the matter is left open for the appellate authority. In this regard he may entertain the appeal preferred by the petitioner on 25.7.2005 (Annexure-8) and take an independent decision appreciating the evidence on record. He may also consider proportionality of the punishment and as to

whether the circumstances involved call for any lesser penalty than the one imposed on the petitioner.

20. With the above observation, the writ petition is disposed of. There shall be no order as to costs.