

(2015) 06 GAU CK 0059
In the Gauhati High Court
Case No : WP (C) No. 6481 of 2007

Pratap Kaivarta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226, 226(1), 226(2)

Citation : (2015) 06 GAU CK 0059

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : A. Tahbildar, R. Devi and B. Sinha, for the Appellant; C. Sharma Baruah, CGC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J—Case was heard on 02.06.2015 and today is fixed for delivery of judgment.

2. Heard Mr. A. Tahbildar, learned counsel for the petitioner and Mr. C. Sharma Baruah, learned Central Government Counsel (CGC) for the respondents.

3. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 08.08.2007, passed by the disciplinary authority imposing penalty of reduction of pay by one stage for a period of 4 (four) years on the petitioner. Further challenge made by the petitioner is to the order dated 25.09.2007, passed by the appellate authority, rejecting the appeal filed by the petitioner against the order of penalty and upholding the penalty imposed on the petitioner.

4. At the relevant point of time, petitioner was serving as Constable in the Central Industries Security Force (CIFS) Unit ISP Burnpur in the State of West Bengal. Memorandum dated 07.05.2007 was issued by the Commandant, CISF

Unit, ISP, Burnpur, informing the petitioner that an enquiry was proposed to be held against him under Rule 36 of the Central Industrial Security Force Rules, 2001, (CISF Rules, 2001) on the charge framed against the petitioner. Petitioner was asked to submit his written statement of defence. The substance of the charge against the petitioner was that D Company of CISF Unit, ISP Burnpur to which petitioner belonged was detailed for election duty in connection with the Assembly Elections of 2007 in Uttar Pradesh. The company had camped at DM Public School, Gar (Ghaziabad). On 13.04.2007, petitioner was detailed for duty at Booth No. 136, which was in a primary school at Khera of Gar Constituency. He came back to the camp after completion of duty on 13.04.2007 at around 2200 hours. After reaching the camp, he started abusing in the name of the Company Commander and when Constable Dinesh Kumar objected to it, petitioner also abused Constable Dinesh Kumar and attempted to assault him with his SLR without any provocation. Petitioner was accordingly charged with committing gross misconduct and indisciplined behaviour unbecoming of a member of a disciplined force like the CISF. Along with the memorandum, a list of documents and a list of witnesses were annexed.

5. Petitioner submitted his written statement of defence on 24.05.2007. Petitioner denied the allegation that he had used abusive language against the Company Commander and that he had also abused and tried to assault his colleague Constable Dinesh Kumar. He stated that after the election duty was over he had come back to the camp along with Head-Constable Sultan Ali, Constable G. Kuiry and Constable U.K. Dana, partly by police-vehicle and partly by walking. After reaching the camp he went inside and unloaded his bedding materials etc. in his room. When he came out of the gate to help Head Constable Sultan Ali, Constable Dinesh Kumar abused them and tried to assault all of them by saying that when they had seen his vehicle why they should come back walking. He, therefore, requested the authority to accept his explanation and to drop the proceeding.

6. It appears that the written statement submitted by the petitioner was not accepted. The Commandant acting as the Disciplinary Authority, thereafter, passed an order dated 26.05.2007, appointing Enquiry Officer as well as Presenting Officer to conduct enquiry against the petitioner.

7. Thereafter, enquiry was conducted and after completion of the enquiry, the Enquiry Officer submitted his report dated 09.07.2007 before the Disciplinary Authority. In his report, the Enquiry Officer stated that the charge framed against the petitioner was fully proved beyond any doubt.

8. A copy of the Enquiry Report was forwarded to the petitioner by the Commandant vide the forwarding letter dated 13.07.2007. Petitioner was given liberty to make representation or submission against the report of the Enquiry Officer, whereafter, the Disciplinary Authority would take a suitable decision after considering the representation, if any.

9. Petitioner submitted representation dated 31.07.2007 before the Commandant, requesting him not to accept the report of enquiry. Besides pointing out various discrepancies in the report he also pointed out that at the time of the alleged incident, he had reached the gate of the camp (DM Public School) with Head-Constable Sultan Ali, Constable G. Kuiry and Constable U.K. Dana, but the Enquiry Officer did not record the statements of Sri G. Kuiry and Sri U.K. Dana. Statement of Sri Sultan Ali was recorded and relied upon. The complainant, PW-3, Constable Dinesh Kumar himself stated that no such incident as alleged had taken place but Enquiry Officer declared him to be a hostile witness. Therefore, finding of the Enquiry Officer was not based on any evidence and prayer was made not to accept the same.

10. The Disciplinary Authority, however, accepted the report of the Enquiry Officer and vide order dated 08.08.2007, held the petitioner to be guilty of the charge. Accordingly, penalty of reduction of pay by one stage from Rs. 3,725/- to Rs. 3,650/- in the time scale of pay for a period of 4 (four) years was imposed on the petitioner. It was further directed that petitioner would not earn increments of pay during the period of reduction and that on expiry of this period, the reduction would have the effect of postponing his future increments of pay.

11. Thereafter, petitioner was transferred to the CISF Unit in Oil India Limited (OIL), Duliajan, in the State of Assam, on 10.08.2007.

12. After joining at Duliajan, petitioner submitted statutory appeal dated 06.09.2007 before the appellate authority (DIG, CISF Unit, ISP, Burnpur) against the order of penalty dated 08.08.2007. However, vide the order dated 25.09.2007 passed by the appellate authority, the appeal filed by the petitioner was dismissed.

13. Aggrieved, the present writ petition has been filed.

14. Contention of the petitioner is that the enquiry was conducted with a pre-determined mind to hold the petitioner guilty. Petitioner did not abuse in the name of the Company Commander nor did he abuse or try to assault Constable Dinesh Kumar. In fact, Constable Dinesh Kumar, who was PW-3 and who denied that petitioner had abused him or tried to assault him, was declared as hostile. It is contended that Constables G. Kuiry and U.K. Dana, who were with the petitioner at the relevant point of time as well as the sentry guard at the gate of the camp were not examined by the Enquiry Officer. These witnesses were most vital and would have assisted the enquiry in arriving at the truth. Instead, the Enquiry Officer placed undue reliance on the evidence of PW-1 and PW-4, which were not corroborated at all by the other witnesses. Thus, the enquiry suffered from fundamental flaw which vitiated the finding arrived at and consequently, the penalty imposed which was based on the enquiry report.

15. Respondents have filed counter affidavit. Stand taken in the affidavit is that petitioner was given full opportunity of defending himself which he availed of. Principles of natural justice and procedural fairness were complied with in the

course of the departmental proceeding including in the enquiry. In the enquiry, the Enquiry Officer found the petitioner to be guilty of the charge. On due consideration of the enquiry report as well as the response of the petitioner, the Disciplinary Authority held the petitioner to be guilty of the charge and imposed the penalty, which has also been affirmed in appeal. Therefore, there is no substance in the contention of the petitioner that the impugned penalty is untenable. Contending that there is no merit in the writ petition, respondents seek dismissal of the same. A specific point has been urged by the respondents that at the relevant point of time petitioner was posted at Burnpur in the State of West Bengal. Penalty on the petitioner was imposed at Burnpur. The appellate authority had decided the appeal in the State of West Bengal. Therefore, no cause of action arose within the territorial jurisdiction of this Court and hence, on the ground of lack of territorial jurisdiction, writ petition is not maintainable and is liable to be dismissed.

16. Learned counsel for the petitioner submits that the enquiry was conducted against the petitioner with a pre-conceived mind. Disciplinary Authority as well as the Enquiry Officer were determined to hold the petitioner guilty and to impose penalty on him. There were no reliable or cogent witnesses to establish the charge against the petitioner. PW-3, Constable Sri Dinesh Kumar, whom the petitioner was alleged to have abused and tried to assault himself stated that no such thing had happened. He was then, declared as hostile witness. Relying entirely on the evidence of PWs-1 and 4, the Enquiry Officer held that the charge against the petitioner stood proved. Material witnesses were not examined which has fundamentally affected the prosecution story. Therefore, the finding of the Enquiry Officer as well as the impugned penalty are wholly untenable and cannot be sustained.

17. Learned CGC on the other hand, submits that writ petition is not maintainable since no cause of action had arisen within the territorial jurisdiction of this Court. The incident had occurred in Uttar Pradesh while the disciplinary proceeding took place at Burnpur in the State of West Bengal. The penalty order was issued within the State of West Bengal so also the order of the appellate authority. In such circumstances, this Court lacks territorial jurisdiction to entertain the writ petition. On merit, it is submitted that the charge against the petitioner was proved following a full-fledged departmental proceeding wherein the principles of natural justice and all procedural requirements were followed. The charge against the petitioner having been proved, impugned penalty has been imposed, which is reasonable and commensurate with the gravity of the offence. Therefore, no interference is called for.

18. In his reply, learned counsel for the petitioner has referred to the averments made in paragraphs - 20, 21, 22 and 40 of the writ petition to contend that petitioner had preferred an appeal against the order of penalty from Duliajan. The appeal was rejected and the rejection order was received by the petitioner at Duliajan which is within the territorial jurisdiction of this Court. Therefore, it

cannot be said that this Court does not have the territorial jurisdiction to entertain the writ petition. As such, writ petition is maintainable.

19. Submissions made have been considered.

20. Since a preliminary objection has been raised regarding maintainability of the writ petition on the ground of lack of territorial jurisdiction, the same may be attended to at the outset.

21. Article 226(1) of the Constitution acknowledges the power of every High Court to issue directions, orders or writs to any person or authority including in appropriate cases any Government throughout the territories in relation to which it exercises jurisdiction for the enforcement of any of the rights conferred by Part-III and for any other purpose. Article 226(2) of the Constitution of India provides that the power of a High Court to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

22. From a careful analysis of the aforesaid provisions, it is quite evident that if a cause of action, either wholly or in part arises within the territorial jurisdiction of a High Court, such High Court will have the jurisdiction to exercise the power conferred by Clause-(1) of Article 226, i.e., power to issue writs, directions or orders notwithstanding the fact that the seat of the Government or the authority or the residence of the person responsible for the cause of action is situated outside the territorial limits of the High Court.

23. Question for consideration is whether in the facts and circumstances of the case cause of action or any part thereof arose within the territorial limits of this Court to enable this Court to exercise its writ jurisdiction.

24. As already noticed, petitioner was posted at Burnpur in the State of West Bengal. While posted at Burnpur he was detailed for election duty in Uttar Pradesh, where the incident took place. Departmental proceeding was drawn up against the petitioner at Burnpur following which order of penalty dated 08.08.2007 was imposed on the petitioner. Thereafter, petitioner was transferred to OIL, Duliajan in the State of Assam. From Duliajan, he submitted his statutory appeal on 06.09.2007, which was dismissed by the appellate authority at Burnpur on 25.09.2007. This order of the appellate authority was received by the petitioner at Duliajan. Appellate proceeding is a continuation of the departmental proceeding. The appellate authority has the jurisdiction to set aside the penalty, or to uphold the same or to modify the same or even enhance the same subject to providing reasonable opportunity of hearing to the affected person. The width of the appellate power is provided under Section 9 of the CISF Act, 1968 and Rule 52(2) of the CISF Rules, 2001. Subject to revision or suo-moto action by the Central Government, decision of the appellate authority is final.

25. By the appellate order dated 25.09.2007, the order of penalty dated 08.08.2007 attained finality. This appellate order dated 25.09.2007 was received by the petitioner at Duliajan in the State of Assam whereafter the effect of the order of penalty came into play. Receipt of the appellate order, therefore, can certainly be construed as part of the cause of action occurring within the territorial limits of this Court.

26. The Apex Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, (1994) 5 JT 1 : (1995) 109 PLR 245 : (1994) 3 SCALE 90 : (1994) 4 SCC 711 : (1994) 1 SCR 252 Supp , considered at length the question of territorial jurisdiction under Article 226(2) of the Constitution of India. The Apex Court held that on a plain reading of clauses (1) and (2) of Article 226 of the Constitution of India, it becomes clear that a High Court can exercise the power to issue directions, order(s) or writs for the enforcement of any of the fundamental rights conferred by Part-III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction notwithstanding the fact that the seat of the Government or authority or the residence of the person against whom the direction, order(s) or writ is issued is not within the said territory.

27. The judgment in Utpal Kumar Basu (supra) has been approvingly referred to in Navinchandra N. Majithia Vs. State of Maharashtra and Others, AIR 2000 SC 2966 : (2000) 4 CTC 60 : (2000) 10 JT 61 : (2000) 6 SCALE 262 : (2000) 7 SCC 640 : (2000) 3 SCR 82 Supp : (2000) 2 UJ 1502 : (2000) AIRSCW 3157 : (2000) 6 Supreme 114 . On due consideration, it was held that maintainability or otherwise of a writ petition in the High Court depends on whether the cause of action for filing the writ petition arose, wholly or in part, within the territorial jurisdiction of that Court. The Apex Court in the aforesaid case referred to the history behind insertion of Clause (2) in Article 226 of the Constitution of India and went on to explain the concept of cause of action. It has been held that it is well settled with the expression cause of action means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour. For determining cause of action or part of cause of action, the High Court must look into the pleadings in the writ petition to satisfy itself that cause of action or any part thereof has arisen within the territorial limits of that High Court. For that it is not necessary to examine the correctness or otherwise of the pleadings.

28. The above position has been reiterated in Om Prakash Srivastava Vs. Union of India (UOI) and Another, (2006) 7 JT 35 : (2006) 7 SCALE 318 : (2006) 6 SCC 207 : (2006) 3 SCR 803 Supp : (2006) 2 UJ 953 and Rajendran Chingaravelu Vs. Mr. R.K. Mishra, Addl. Commissioner of IT and Others, (2010) 3 CTC 773 : (2009) 227 CTR 520 : (2010) 320 ITR 1 . Finally in Nawal Kishore Sharma Vs. Union of India (UOI), (2014) AIRSCW 4713 : (2014) 9 SCALE 244 : (2014) 9 SCC 329 , it has been held that on a plain reading of the amended provision in Article 226(2), it is clear that the High Court can issue a writ even when the

authority or the person against whom the writ is issued is located outside its territorial jurisdiction if cause of action wholly or partially arises within the Court's territorial jurisdiction. It has been held that cause of action for the purpose of Article 226(2) of the Constitution of India for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Civil Procedure Code though the expression cause of action has neither been defined in the Civil Procedure Code nor in the Constitution. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceeding under Article 226 of the Constitution of India. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limits of the Court's jurisdiction. In that case, declaration of the petitioner as medically unfit and subsequent communication informing him that he was not entitled to receive disability compensation though issued outside the State of Bihar were received by the petitioner in his native place within the State of Bihar. It was, therefore, held that Patna High Court had the territorial jurisdiction to entertain the writ petition.

29. In the light of the law as discussed above and considering the pleadings of the petitioner as noticed above, i.e., in paragraphs 20, 21, 22 and 40 of the writ petition, Court is of the view that it has the territorial jurisdiction to entertain the writ petition. Even otherwise also, the writ petition was admitted for hearing on 19.12.2007. More than 7 (seven) years have gone by since then. Therefore, at this belated stage, contention of the respondents that this Court lacks territorial jurisdiction to entertain the writ petition cannot be accepted. Accordingly, preliminary objection raised as to the maintainability of the writ petition on the ground of lack of territorial jurisdiction is rejected.

30. Having answered the preliminary objection as above, the substantive issue may now be adverted to. It is the case of the petitioner that material witnesses were not examined by the Enquiry Officer, which is fatal as because the same has materially affected the outcome of the enquiry which has been relied upon by the disciplinary authority while imposing the impugned penalty. The Enquiry Officer mainly relied on the evidence of PW-1, Rahatu Lal and PW-4, Constable Lokendra Singh. PW-1 stated before the Enquiry Officer that petitioner had quarrelled with Constable Dinesh Kumar (PW-3) hurling abusive language. Head Constable Sultan Ali (PW-2), Constable Lokendra Singh (PW-4) and Constable B D Roy (PW-6) tried to control the petitioner but they could not succeed. PW-4 also narrated the same story. But the other witnesses did not corroborate the evidence of the said 2 (two) witnesses. In fact, PW-2 stated that no such quarrel had taken place between the petitioner and Constable Dinesh Kumar (PW-3) and that he did not hear the petitioner using abusive language against anyone. As a matter of fact, PW-3, the complainant, himself denied that petitioner had quarrelled with him or attempted to assault him. However, PW-3 was declared as a hostile witness, though, the aforesaid narration is supported by PW-5 and PW-6.

31. PW-1 in his evidence stated that at about 2200 hours the section comprising of Head Constable Sultan Ali (PW-2), petitioner, Constable G. Kuiry and Constable U.K. Dana had reached the gate of the DM Public School. The presence of Constable G. Kuiry and Constable U.K. Dana, along with petitioner has been admitted by the other witnesses as well. Petitioner in his statement before the Enquiry Officer also stated that he was detailed for Uttar Pradesh Assembly election duty. After completion of voting, he and the others had to go to Ghaziabad to deposit the EVMs. Due to non-availability of space in the vehicle of the Election Commission, the Sector Magistrate dropped them along with Head Constable Sultan Ali, Constable G. Kuiry and Constable U.K. Dana, at the Simvawali Police Station from where they had to report to their camp. Though the Company Commander was contacted on his mobile phone for sending a vehicle to the Simvawali Police Station to take them to their camp, they had to return to the Camp on their own arrangement as transportation could not be arranged. However, one police duty truck came along and dropped them near the camp. Thus, Constables G. Kuiry and U.K. Dana were present with the petitioner at the time of the alleged incident. Since the incident was alleged to have taken place near the entrance of the camp, the sentry guard posted at the entrance also became a relevant witness along with Constables G. Kuiry and U.K. Dana. Admittedly, they were not examined by the Enquiry Officer. When this was pointed out by the petitioner, the disciplinary authority took the view that if the petitioner had considered production of Constables G. Kuiry and U.K. Dana necessary in the enquiry, he was at liberty to produce them as his defence witness. In appeal, the appellate authority took the view that it appeared that the charge against the petitioner had been proved on the basis of evidence adduced during the enquiry but the petitioner failed to produce any convincing proof to disapprove the charge. In the writ petition, petitioner has taken up the point of non-examination of material witnesses, Constables G. Kuiry and U.K. Dana in the enquiry in Para 34. Respondents in their counter affidavit simply stated in Para-31 thereof that Constables G. Kuiry and U.K. Dana were not prosecution witnesses and recording of their statements were considered not necessary as the charge against the petitioner had been proved on the basis of statements of other prosecution witnesses. On his part, petitioner did not produce the above 2 (two) Constables for his defence. Therefore, his plea has no merit.

32. The plea taken by the respondents cannot be accepted for more than one reason. The burden was on the prosecution to prove the charge against the petitioner in the enquiry. Though standard of proof in a domestic enquiry is not so stringent like in a criminal proceeding, yet it is the duty of the prosecution (disciplinary authority) to prove the charge. Even in a domestic enquiry the charge against the delinquent has to be proved in accordance with law. Therefore, merely saying that petitioner had the opportunity to produce the 2 (two) material witnesses in the enquiry, which he did not, would not absolve the prosecution (disciplinary authority) of such omission or lapse. Consequently, non-

examination of material witnesses by the prosecution would be violative of the principles of natural justice which may vitiate the enquiry. In *Hardwari Lal Vs. State of U.P. and Others*, AIR 2000 SC 277 : (2000) 84 FLR 3 : (1999) 8 JT 418 : (2000) 1 LLJ 495 : (1999) 6 SCALE 642 : (1999) 8 SCC 582 : (2000) SCC(L&S) 85 : (1999) AIRSCW 4387 : (1999) 9 Supreme 34 , the Apex Court held in the facts of that case that the Tribunal and the High Court were not justified in thinking that non-examination of the 2 (two) vital witnesses could not be material. In the facts and circumstances of that case, it was held that the High Court and the Tribunal had erred in not attaching importance to the aforesaid contention of the appellant. On that ground, it was held that no proper enquiry was conducted by the authorities and the order of penalty was quashed.

33. Following the above decision of the Apex Court in *Hardwari Lal* (supra), this Court is also of the considered opinion that non-examination of the 2 (two) material witnesses, Constables G. Kuiry and U.K. Dana had severely impeached the prosecution case vitiating the outcome of enquiry and the consequential decision of the disciplinary authority.

34. Accordingly and in the light of above, the impugned order of penalty dated 08.08.2007 and the order of the appellate authority dated 25.09.2007 cannot be sustained and are hereby set aside and quashed.

35. Writ petition is allowed, but without any order as to costs.