

(2009) 05 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 1001 of 2001

Pravin Kumar

APPELLANT

Vs

Union of India (UOI), The Director General, Central Industrial Security Force, (An Armed Force of the Union of India (UOI)), The Deputy Inspector General, Central Industrial Security Force, Western Zone and The Commandant, Central Industrial Security Force, HP/BPCL Unit

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 31, 34(10)
Constitution of India, 1950 — Article 226

Citation : (2009) 93 BomCR 545 : (2009) 4 MhLj 812

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : R.R. Shetty, for the Appellant; Y.S. Bhate and N.R. Prajapati, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—By this petition, the petitioner has challenged the order passed by the Disciplinary Authority dated 20th November, 1999 as well as the order passed by the Appellate Authority dated 12th July, 2000.

2. The petitioner was recruited as a Sub-Inspector in the Central Industrial Security Force (CISF) in the year 1995 and was subsequently posted at the Western Zone, Mumbai Office. At the relevant time, the petitioner was discharging his duties at the BPCL unit. On 28th February, 1999, one R.A. Sharma who was discharging his services as a Constable in CSIF was apprehended by Inspector H.L. Chaudhary outside the north gate of BPCL. The said Sharma was found to be in possession of Rs. 10,780/and he could not indicate the source of the said money. Since the amount had taken from the Contractor of the Company at the instance of the present petitioner, the petitioner was placed under suspension on 31st May, 1999. The petitioner was

subsequently subjected to chargesheet. The memorandum of the charges is placed on record at page 31. The statement of article of charges framed against the petitioner is annexed at page 33 of the petition. Three charges were framed against the petitioner which read thus:

Article of Charge-I: Gross misconduct and indiscipline in that CISF No. 952430020 SI/EXE Pravin Kumar of CIW, CISF Unit BPCL Mumbai has become an extra constitutional authority and has been issuing unlawful orders to sub-officers and other ranks in that on 28.02.88 he ordered ASI/Exe. Surjan Singh Main Gate in charge to make a false GD entry No. 257 dated 28.02.99. This act on the part of SI/Exe Pravin Kumar tantamounts to gross indiscipline and misconduct being a member of an Armed Force of the Union" Hence the charge.

Article of Charge-II: That No. 952430020 SI/Exe Pravin Kumar of CIW, CISF Unit BPCL Mumbai has become an extra constitutional authority and has been issuing unlawful orders to SO's and other Ranks in which he ordered the Constable K.K. Sharma, Doghandler to give a false statement to substantiate false GD entry No. 257 dated 28.2.99 made by ASI/Exe Surjan Singh. He made all out efforts to influence the Doghandler Constable K.K. Sharma to give a false statement which is an act of serious gross misconduct and prove his involvement in collecting money illegally. This amounts to serious misconduct and indiscipline on the part of SI/Exe Pravin Kumar. Hence the Charge.

Article of Charge-III: That No. 952430020 SI/Exe Pravin Kumar of CIW, CISF Unit BPCL Mumbai was found involved in collecting the illegal money through his staff in that he had employed No. 942291331 Constable R.A. Sharma performing in CIW of CISF Unit, BPCL, Mumbai to collect money on 28.02.99 illegally from a Contractor of BPCL, Mumbai.

3. A regular departmental enquiry was conducted against the petitioner. The report of the Enquiry Officer is placed on record at page 43. The Enquiry Officer, after considering the evidence on record, came to the conclusion that all the three charges were proved against the petitioner. On conclusion of the enquiry, the petitioner was given a copy of the report of the Enquiry Officer and the petitioner was asked to submit his representation in this behalf. Ultimately, the Disciplinary Authority by its order dated 20th November, 1999 passed an order of dismissal of the petitioner from the services with immediate effect. The period of suspension was ordered to be treated as suspension period. The said order of the Disciplinary Authority was challenged by the petitioner by way of departmental appeal. The Appellate Authority concurred with the decision of the Disciplinary Authority and dismissed the appeal. Being aggrieved, the petitioner has approached this Court by way of this writ petition under Article 226 of the Constitution of India challenging the orders passed by the Disciplinary Authority and the Appellate Authority.

4. Mr. Shetty, learned Counsel appearing for the petitioner, vehemently submitted that on an overall analysis of the evidence, it could not have been held

that the petitioner was guilty of the charges levelled against him. It is submitted that the evidence on record is not sufficient for coming to the conclusion that the petitioner has committed the alleged misconduct. It is further submitted that there is inconsistency in the evidence led on behalf of the management. He further submitted that after the conclusion of the enquiry, the petitioner was not served with a second show cause notice regarding proposed penalty in terms of Rule 34(10)(ii) (b) of the Central Industrial Security Force Rules, 1969. Clause (ii) (b) thereof reads thus:

(ii) If it is of opinion that any of the penalties specified in Clauses (a) to (d) of Rule 31 should be imposed it shall:

(a) ...

(b) give the member so charged a notice stating the action proposed to be taken in respect of him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action

5. According to the learned Counsel for the petitioner, a member is required to be given a notice stating the action proposed to be taken against him and calling upon him to submit his representation which he may like to make against the proposed action. It is submitted by Mr. Shetty that in view of this, the petitioner was required to be given a second show cause notice in connection with the proposed punishment, which has not been done.

6. As against this, Mr. Bhate, learned Counsel for the respondents, submitted that the Rule on which reliance is made by the petitioner is of 1969 but subsequently there is an amendment in 1981 of the said Rules and as per the 1981 amendment, the provision of giving hearing is done away. The said amended Rule reads thus:

(ii) If it is of the opinion that any of the penalties specified in Clauses (a) to (d) of rule 31 should be imposed, such penalty may be imposed on the basis of evidence adduced during inquiry and it shall not be necessary to give the member of the Force any opportunity of making representation on the penalty imposed.

When the attention of the learned Counsel for the petitioner was drawn to this amended Rule, he submitted that in view of this amendment in the Rules, it is not obligatory on the part of the management to give any hearing regarding proposed penalty. In view of this, the submission made by Mr. Shetty in this behalf cannot be accepted and hence rejected.

7. Mr. Shetty next submitted that considering the totality of evidence on record, it cannot be said that the charges levelled against the petitioner were proved. It is submitted by him that in view of the discrepancy and inconsistency in the evidence led by the management, it could not be said that the charges are satisfactorily proved against the petitioner. In order to substantiate his argument, Mr. Shetty submitted that the initial statement made by Constable R.A. Sharma

was subsequently retracted by him and he had denied that at the instance of the present petitioner he collected the money. Mr. Shetty further submitted that even as per the statement of said Sharma, he had collected the money for the Commandant.

8. We have heard the learned Counsel for the parties at great length in this behalf in order to find out whether there was evidence on record for establishing guilt against the petitioner. While considering this argument, it is required to be noted that this Court is not required to reappraise the evidence on record which was led before the Enquiry Officer. It is also required to be noted that this Court is not sitting in appeal over the decision of the Disciplinary Authority. This Court is required to find out as to whether it is a case of absolutely no evidence or whether some evidence is there by which the guilt of the petitioner can be said to have been established. It is true, as argued by Mr. Shetty, that subsequently the said Sharma has tried to retract his statement made earlier. After analysing the entire evidence on record, the Enquiry Officer has given detailed finding for coming to the conclusion that the guilt against the petitioner has been proved in connection with each of the charges.

9. The Enquiry Officer, while considering charge No. 1, has considered the evidence of ASI Surjan Singh (PW 5) wherein he has stated that on 28th February, 1999 he was posted as Shift incharge at the BPCL main gate in the "B" shift during 13.00 hrs. to 21.00 Hrs. Around 18.30 Hrs., Pravinkumar, Sub Inspector told him on the telephone that Inspector Chaudhary had caught Constable Sharma at the north gate with Rs. 10.780/and a GD had been made and therefore requested to make a false GD in the roznama at the BPCL main gate to the effect that the said money was borrowed by Constable R.A. Sharma from Constable K.K. Sharma. The said witness has stated that he had refused to make a false GD upon which Pravinkumar threatened him saying "If you fail to make false G.D. See what happens to you. Therefore, he made a false G.D. out of fear". The Enquiry Officer considered this aspect in detail in his conclusion at page 80 onwards. The Enquiry Officer, after considering the examination of the statement of the prosecution witnesses and documentary evidence on record, found that GD No. 257 dated 28th February, 199 made at 18.05 Hrs. was a false report as SubInspector Pravin Kumar (petitioner herein) had asked ASI/Exe Surjan Singh on telephone to make it because the statement of PW5 that the accused had told him on telephone that Constable R.A. Sharma had to be saved, points to the fact that Constable R.A. Sharma could have only been saved if the time of borrowing of the money was shown to be prior to the seizure of the money in the GD. In our view, the Enquiry Officer, on the basis of evidence, has come to the conclusion that the said charge has been proved against the petitioner and we do not find any infirmity in the said finding in any manner.

10. Regarding charge No. 2 also the Enquiry officer has considered the statement of P.W. 2. The said witness has stated that he had not lent any money to Constable R.A. Sharma. The Enquiry Officer has analysed the entire evidence and

ultimately on evaluation of the evidence has come to the conclusion that the said charge has also been proved against the petitioner. The learned Counsel for the petitioner is not in a position to point out as to how the said finding can be said to be based on no evidence at all.

11. Regarding charge No. 3, which is in connection with collecting illegal money through his staff, the Enquiry Officer found that earlier Constable R.A. Sharma (CW1) in his statement dated 3rd March, 1999 confirmed that it bears his own signature and it carries the endorsement "given voluntarily without any force". Subsequently, no doubt he had tried to retract the whole statement. The Enquiry Officer has also considered his second statement dated 9th/18th August, 1999. The Enquiry Officer has also considered the statement of other witnesses viz. M.N. Dhanwat (DW1) and Jaimal Singh (D.W.2). The Enquiry Officer found that the petitioner made all attempts to save R.A. Sharma from whom the money was recovered as R.S. Sharma was working under the petitioner. As per the evidence before the Enquiry Officer, the said amount was collected by R.A. Sharma for the petitioner. The Enquiry Officer after considering the totality of the evidence on record reached the final conclusion that all the charges were proved against the petitioner.

12. Considering the fact that the petitioner was serving under CISF as a SubInspector, who was required to look after the security and was required to see that no theft or mischief is committed is ultimately found to have been involved in such type of serious misconduct. Considering the aforesaid aspect, in our view, the Disciplinary Authority has rightly passed the order of dismissal against the petitioner and the Appellate Authority has rightly dismissed the appeal. The learned Counsel for the petitioner has submitted that it is not his submission that the penalty imposed against the petitioner is disproportionate, if the charges are held to be proved against the petitioner. In our view, considering the totality of evidence produced before the Enquiry Officer and considering the fact that the Enquiry Officer has properly evaluated the evidence on record and has reached the conclusion to the effect that the petitioner has committed the aforesaid misconduct for which he was charged, it cannot be said that the report of the Enquiry officer suffers from any infirmity or that it is a case for no evidence worth the name against the petitioner. The petitioner, who was serving in a disciplined force which is like an armed force has acted in an absolutely dishonest manner. In our view, considering all aspects of the matter, we do not find any substance in the petition in any manner. It is not in dispute that the enquiry was properly held against the petitioner. He was given reasonable opportunity to defend his case and the enquiry was conducted in conformity with the principles of natural justice. As pointed out earlier, this Court cannot reappreciate the evidence on record but even if the same is permissible, then also, in our view no other conclusion other than the one reached by the Disciplinary Authority and confirmed by the Appellate Authority is possible in this case. The petition being devoid of any merit is dismissed. Rule is discharged.