

(2014) 08 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 16088 of 2011

P.V. Kumar

APPELLANT

Vs

Central Industrial Security Force

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) LabIC 4323

Hon'ble Judges : Mohinder Pal, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Sonal D. Vyas, Advocate for the Appellant; Sejal K. Mandavia, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—Petitioner, a member of the Central Industrial Security Force ("CISF" for short), has challenged the order dated 12.11.2010 passed by the Revisional Authority by which he was ordered to be removed from service. The facts are as under: In the year 2009, the petitioner was working as a Constable in CISF. He was posted at ONGC, Ahmedabad. He was served with a charge-sheet dated 23.11.2009. It contained the following charges:

(i) that he was under order dated 31.10.2009 to perform election duty to Jharkhand for the 2009 State election. On 02.11.2009, the petitioner appeared before the Company Commandant and told him that: "Even though I have been posted for election duty, I am not going to go. You may do what you want. I have already spoken to the Assistant Commandant". He further told him that: "You are showing partiality. I am not going to go for election duty. I will drag you to the Court even if I have to face suspension or lose my service". It was, therefore, alleged that the petitioner misbehaved with his superior officer in this manner;

(ii) On 31.10.2009, the petitioner was instructed that, for election duty at Jharkhand he should report on 03.11.2009 at Concentration Centre, Mehsana

ONGC. The petitioner, in order to escape from election duty, by faking illness, got himself admitted in Rajasthan Hospital on the previous day before 03.11.2009 and was discharged on 05.11.2009. He remained on medical rest between 06.11.2009 and 11.11.2009. However, upon perusal of medical reports, it was revealed that he was not suffering from any serious illness. Thus, the petitioner, who was a member of the armed force, in order to avoid election duty, got himself wrongly admitted in the hospital;

(iii) On 21.11.2009, the petitioner tried to misguide driver of Balero jeep car in order to prevent him from using the said vehicle for purchase of vegetables for the mess. He also threatened the driver of the vehicle not to use the said vehicle to go to Kheda or Ahmedabad for purchases. If he did so, the petitioner threatened that he would teach him a lesson;

(iv) It was alleged that on three previous occasions, the petitioner was visited with minor penalties for his indiscipline. This last charge was made for the past conduct of the petitioner.

2. Upon the petitioner denying the charges, a departmental inquiry was set up. Inquiry Officer submitted his report dated 15.03.2010 holding the charges to have been proved. A copy of the Inquiry Officer's report was supplied to the petitioner. He was allowed to make a representation. The disciplinary authority, after considering the material on record, passed an order dated 27.4.2010 imposing punishment of deduction of the petitioner's pay by two stages for a period of three years, which would have the effect of postponing his future increments also.

3. Against such order of the disciplinary authority, the petitioner did not prefer any appeal, though available under the service rules. Higher authority, however, issued a show-cause notice dated 21.9.2010 why the penalty imposed by the disciplinary authority should not be enhanced to that of removal from service. In such notice, he recorded his tentative reasons why, in his opinion, the penalty was not adequate.

4. The petitioner made a representation dated 22.10.2010 in response to such show-cause notice in which his sole contention was that, during the course of inquiry he was denied an opportunity of examining as his witnesses the persons who were present on the date of the alleged incident. He may, therefore, be granted such opportunity. Significantly, he did not make any submissions why the penalty imposed by the disciplinary authority should not be treated inadequate.

5. The disciplinary authority, after considering the material on record, passed the impugned order on 12.11.2010 removing the petitioner from service. It is this order the petitioner has challenged in this writ petition.

6. Learned counsel for the petitioner raised the following contentions:

(i) The inquiry was conducted in breach of the principles of natural justice.

Adequate opportunity was not granted to the petitioner to defend himself. Important witnesses were not allowed to be examined;

(ii) Charges were wrongly held to have been proved. There was no evidence for holding the charges as established.

(iii) In any case, the revisional authority could not have passed the impugned order, since Rule 54 of the Central Industrial Security Force Rules, 2001 ("the said Rules" for short) would permit a revisional order to be passed only within six months from the date of communication of the order under revision.

7. On the other hand, learned counsel Ms. Mandavia for the Department opposed the petition contending that the inquiry was conducted after affording full opportunity to the petitioner. There was ample evidence to prove that the charges were established. The revisional authority correctly held that the punishment imposed by the disciplinary authority was inadequate. The charges against the petitioner were very serious. He was a member of the armed force. She further submitted that notice for taking the order of disciplinary authority in suo motu revision was issued well within the period of six months and, therefore, the requirements of rule of the said rules were satisfied.

8. From the record it emerges that the charges against the petitioner were extremely serious. As a member of the armed force, he was ordered to undertake election duty at Jharkhand. The very intention of the petitioner of not carrying out the said order was clear at the outset. He misbehaved with his superior officer and told him that he would not carry out such order. Later on, it is alleged that he got himself admitted in a hospital on the eve of departure for election duty and remained there for about three days and thereafter remained under medical rest for another about five days. There was additional allegation of interfering with the administration and past misconducts also. That apart, if these allegations are established, they are certainly serious in nature, particularly considering the fact that the petitioner belonged to the armed force.

9. Insofar as the allegation of breach of natural justice is concerned, nothing substantial has been pointed out in this respect. After issuance of charge-sheet, departmental inquiry was conducted. Witnesses were examined and allowed to be cross-examined. Inquiry officer submitted his detailed report, a copy of which was also supplied to the petitioner for his representation. Disciplinary authority, after considering such material and the representation of the petitioner, concurred with the view of the inquiry officer that all charges were proved. It is true that the petitioner had made applications dated 11.4.2010 and 15.4.2010 for examining additional witnesses. However, admittedly, such applications were filed after the inquiry was concluded. The persons named in such applications were previously never sited as defence witnesses by the petitioner. In that view of the matter, the inquiry officer ignored such applications and proceeded to submit his report to the disciplinary authority.

10. Regarding establishment of the charges, there was sufficient evidence on

record. Department examined several witnesses, including Shri Dilip Singh, superior officer to whom the petitioner had given threats. Department examined several other witnesses. Inquiry officer and the disciplinary authority assessed such evidence and recorded factual findings which cannot be stated to be perverse. When this Court is examining validity of the findings arrived at by the disciplinary authority during the course of inquiry, our purview would be extremely narrow. Unless it is pointed out that the findings of the disciplinary authority are perverse inasmuch as they suffer from the vice of no evidence, interference at the hands of the High Court will not be permissible.

11. Coming to the question of justness of the order passed by the revisional authority, we are of the opinion that the authority committed no error in enhancing the punishment. Rule 54 of the said Rules clothed the revisional authority with power to take any order passed by the disciplinary authority in suo motu revision and pass any order as deemed proper, including enhancement of the punishment already imposed. The disciplinary authority took into account the allegations of adamant attitude on the part of the petitioner in not carrying out the election duty and also taking the plea of illness to avoid such duty. Revisional authority also took into account the interference by the petitioner in the administration. Previous conduct of the petitioner was also borne in mind. Petitioner being a member of armed force, it was all the more his responsibility not to avoid important duties, such as election duty, and that too by creating or exaggerating his illness. Had the petitioner's alleged illness been the only piece of evidence on record, we would have perhaps ourselves persuaded to take a deep look in the matter and enquired whether, even though investigations may have revealed minor illness, was the petitioner required to be hospitalized for such investigations?. However, even before the incident of the petitioner's illness, he had already disclosed his intention of not carrying out the election duty at any cost. This revelation was made by the petitioner himself to his superior. The entire incident thus leaves no manner of doubt that the petitioner wanted to avoid the election duty at any cost and for which purpose he got himself admitted in a hospital for some flimsy reasons. Under the circumstances, the revisional authority was justified in forming the opinion that the disciplinary authority imposed punishment which was inadequate.

12. The revisional authority, after putting the petitioner to notice that he proposed to revise the order of punishment and giving opportunity to the petitioner to show-cause, passed the final order. In such notice, the revisional authority also communicated tentative reasons why the punishment imposed by the disciplinary authority was inadequate. In our opinion, therefore, the revisional authority committed no error.

13. Last surviving question is that of limitation. Rule 54 of the said rules pertains to "Revision". It reads as under:

"54. Revision--

(1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such orders as it may deem fit, within six months of the date of communication of the order propose to be revised;

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of Rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under Rule-36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.

(2) The provisions of Rule 52 relating to appeals shall apply so far as may be to such orders in revision.

(3) Orders and instructions issued by the Central Government on this subject from time to time shall be applicable Mutatis mutandis as applicable under Central Civil Services (Classification Control and Appeal) Rules 1965."

14. As per Rule 54, any authority superior to the authority making the order has power, on his own motion or otherwise, to call for the records of an inquiry and revise the order passed thereon. While doing so, he may even enhance or set aside the penalty, or impose any penalty where no penalty has been imposed. The only restrictions on this power are that no such order imposing or enhancing the penalty would be made without giving reasonable opportunity to the delinquent of making representation against the proposed penalty; where the penalty proposed is a major penalty and the procedure for imposing major penalty is not followed, without following such procedure and that such order would not be revised after six months of the date of communication of the said order.

15. In this context, the contention of the petitioner of breach of limitation under Rule 54 of the said Rules needs to be examined. Relevant dates are as under:

(i) Disciplinary authority passed the order of punishment on 27.4.2010.

(ii) As is borne out from the affidavit-in-reply filed by the respondent, such order was received by the petitioner on 01.5.2010.

(iii) Show-cause notice for taking such order in revision was issued by the revisional authority on 21.9.2010.

(iv) Such notice was received by the petitioner on 06.10.2010.

(v) He filed his reply to the notice on 22.10.2010.

(vi) Revisional authority passed the impugned order on 12.11.2010.

16. In the petition, the petitioner has contended that the show-cause notice dated 21.9.2010 was actually issued only on 20.11.2010. This is completely falsified by the attendant materials on record. In the affidavit-in-reply it is stated that the revisional authority in connection with the show-cause notice dated 21.9.2010, after taking into consideration the reply of the petitioner dated 22.10.2010, passed order enhancing the penalty. It is further stated in the said affidavit that the show-cause notice 21.9.2010 was received by the petitioner on 06.10.2010. The respondents have also now produced on record a copy of such reply of the petitioner which bears his signature with the date of 22.10.2010.

17. It thus clearly emerges that the revisional authority had issued notice for taking the order passed by the disciplinary authority in suo motu revision well within six months as envisaged under Rule 54 of the said Rules. Though Rule 54 provides that the revisional authority may pass order within six months from the date of communication of the order under revision, the clear intention of the Rule is that the revisional authority must take the order in revision within such time. As we have noted, Rule 54 confers on the revisional authority a wide range of choices, including enhancement of punishment which is imposed by the disciplinary authority, or impose punishment when none has been imposed. The provision of rule requires that no such order enhancing or imposing punishment not previously imposed would be passed unless a reasonable opportunity to show-cause to the proposed punishment is given to the delinquent. The provision further requires that, when the proposed punishment is a major penalty and no procedure for imposing major penalty is followed, the same shall not be done without following such procedure. Obviously, this would require considerable time. It is impossible for the revisional authority to complete all these requirements within six months starting from deciding to take the order of disciplinary authority in suo motu revision. In a given case, disciplinary authority may have exonerated a Government official. The inquiry may be found wanting or the penalty in a given case be inadequate. Conducting of procedure for major penalty before imposing such penalty, when previously no such procedure was followed, would also consume considerable time. The intention of the rule is certainly not that, even though revisional authority has taken such order of disciplinary authority in suo motu revision by issuing show-cause notice to the delinquent, all such requirements must be completed within six months from the date of communication of the order of disciplinary authority. Clearly cases where

the revisional authority has decided to take the order in revision and for which purpose notice is also issued, within six months, would also be covered by Rule 54.

18. Learned counsel Ms. Sonal Vyas for the petitioner, however, relied upon the following decision in support of her contention that the penalty imposed was excessive:

State of Uttar Pradesh and Others Vs. J.P. Saraswat, ;

However, in the present case, the charges against the petitioner were extremely serious. The petitioner was a member of armed force. The revisional authority having imposed punishment, we do not find the same excessive.

19. Citing the following decision, she argued that the disciplinary authority could not have followed the minor as well as major penalty procedure.:

Lt. Governor, Delhi & Ors. v. H.C. Narinder Singh, reported in (2004) 13 SCC 342

20. In our opinion, however, this is complete misnomer. It was only with a view to highlighting the petitioner's past service record and to enable the disciplinary authority to rely on such additional circumstance while the question of imposing punishment would arise that the authority referred to his past misconducts which had resulted in imposition of three minor punishments. This was not a case where the Department mixed up the minor and major penalty procedures. In the result, petition is dismissed. Rule is discharged.