
(2010) 06 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 4177 of 2006

R. Sundara Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 06 MAD CK 0068

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.N. Nataraaj, for the Appellant; C. Gurulingam, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner was a Inspector and a member of the Central Reserve Police Force (CRPF). He has filed the present writ

petition, seeking to challenge the order dated 05.04.2005 passed by the second respondent namely, the Director General of Police, CRPF, New

Delhi and after setting aside the same, he seeks for restoration of all benefits due to him.

2. The petitioner was imposed with the penalty of reduction to lower stage in the time scale of pay for a period of two years with cumulative effect

by the fourth respondent. The petitioner preferred an appeal before the Appellate Authority, the third respondent, which was also dismissed on

19.04.2004. The petitioner further preferred a revision to the second respondent, which was rejected by an order dated 05.04.2005. It is as

against the rejection of his revision, the present writ petition has been filed.

3. The writ petition was admitted on 15.02.2006 and notice was ordered to the respondents. Pending the writ petition, this Court declined to grant

any interim relief claimed to stay the operation of the penalty imposed on the petitioner.

4. On notice from this Court, the respondents have filed a counter affidavit dated 16.09.2006. The petitioner also filed an additional typed set of

papers enclosing the deposition of P.W.1 to P.W.5 recorded in the domestic enquiry. Though elaborate arguments were made on the nature of

evidence let in, this Court is not inclined to treat the writ petition as an appeal and had confined the adjudication only within the parameters of

Article 226 of the Constitution.

5. The brief facts leading to the imposition of the penalty on the petitioner were as follows:

The petitioner was given a charge memo dated 25.04.2002. While he was working in the 19th Battalion as OC from 29.11.2000 to 22.01.2001,

he had committed a misconduct in the discharge of duty viz., that he lost the cipher document Key for CRPF Code copy No. 630 Key No. 44 of

SOX-2526 (12) inspite of being the custodian of important documents of company. He was further charged that though he knew the loss of cipher

document had concealed the fact and did not inform the competent authority. It was also further alleged after motivating two other members of the

Force M/s. Rajesh Khanna and R.G. Meshram and arranged for the fabrication of cipher document in gross violation of the provisions of the

Official Secrets Act.

6. After a full fledged enquiry, the Enquiry Officer found all the three charges were proved. The petitioner was asked to give his explanation on the

enquiry report and he submitted his reply. It is on the basis of his explanation, the petitioner was imposed with the penalty as noted above. The

disciplinary authority found that the charges levelled against the petitioner have been proved beyond reasonable doubt and the petitioner who had

lost the important cipher document being the custodian of such document, he concealed and did not inform his commandant. He also attempted to

fabricate the document.

7. The petitioner filed an appeal against the order of the disciplinary authority. The Appellate Authority considered all the objections raised by the

petitioner and rejected each one of the grounds raised by him. It was thereafter, the petitioner preferred a revision before the second respondent.

The revisional authority agreed with the decisions of the disciplinary authority as well as the appellate authority and had passed the impugned order.

8. Mr. K.N. Nataraj, learned Counsel for the petitioner contended that the charge against the petitioner is not maintainable since P.W.1 deposed

that the documents have been taken charge by some other person as per the register entry. He also placed reliance upon the evidence of P.W.2 to

state that he did not have any information and the cipher document is kept in a signal separate box and the petitioner's conduct was above board.

However a stray admission here and there will not help the case of the petitioner.

9. In the cross examination of P.W.3 Meshram, the answers given by him to question Nos. 22 to 24 are as follows:

Q. No. 22. You hold that at first CT. Rajesh Khanna told you to accompany him for BN.HQ then taken to a computer centre for fabrication on

assuming the seriousness of foulplay/conspiracy - why you kept mum - Isn't it your lawful duty to inform the senior officers?

Ans. I have not informed to my senior officers because OC was told to us earlier that this information should not to be given to any officer or any person.

Q. No. 23. As per Indian Official Secret Act 1923 section No. 8 It was your duty to give information about the fabrication of cipher document to

an officer not below the Rank of Inspector. Why you did not inform either Insp. M. Sarangapani or to the Commandant 19 BN?

Ans. I have not informed to Insp. M. Sarangapani or CO 19 because our OC told us earlier regarding don't to give this information to any persons at any cost.

Q. No. 23(a) Then you are also a part to the offence and liable for punishment. Isn't it?

Ans. Yes. I also liable for punishment.

Q. No. 24. You are senior to CT. Rajesh Kanna and No. 1 coy writer in A/19. You might have stopped him and taken him to your superior

officers to disclose the fact - Why you did not do that?

Ans. Due to pressure of coy OC on CT. Rajesh Khanna. I failed to take appropriate decision.

10. Similarly, in the cross examination of P.W.5 S.Rajesh Khanna, the answers given by him to questions 26 to 28 are as follows:

Q. No. 26 Holding of the key without the authority is punishable offence. Are you aware?

Ans: It was not kept with me. As everybody knows that the Cipher Docs. Should be kept in the custody of the OC. But after the loss/missing of the paper my OC has ordered to search the Coy office.

Q. No. 26 What are you legally bound duties as a company writer?

Ans: Obeying the orders of my OC.

Q. No. 27 Is fabricating the Cipher Dos. Is legal duty?

Ans. No certainly not. But having good faith in my OC I had to obey the orders of my OC.

Q. No. 28 Then how did you do it?

Ans.As mentioned in Q. No. 27.

11. Therefore, the petitioner cannot totally feign ignorance about the transaction that took place as well as the fabrication of documents by his own order were brought out by the evidence of two accomplices.

12. In the counter affidavit, in paragraphs 6, it was averred as follows:

Thus statements given by prosecution witness 2,3,4 and 5 are very relevant to fix the mistakes on the side of the petitioner and also to prove the

article of the charges leveled against the petitioner. Further the certificate furnished by the Shri. Ajith Kumar the Owner of the Lan Computer

Institute, Barpeta Road clearly proved that Ct. Rajesh Kanna (PW-5 and CT. R.G. Meshram (PW-3) reported his computer centre on 21.1.2001

(Sunday) and fabricated copies of cipher documents similar of lost cipher documents and paid Rs. 100/- (one hundred) to the shop owners. A

certificate is also given by the computer owner. Also proved that prosecution witness 3 and 5 helped the petitioner to prepare duplicate copy of

cipher document before handing over the charge of OC-A/19Bn by the petitioner. But the petitioner tried to act that he was fully innocent and

never indulged in fabrication of such important documents. PW-1 i.e. Insp/GD Sarangapani who had taken the charge of OC-A/19BN with

fabricated copy of cipher documents is now no more. HC/RO Ishwar Singh, Ct/GD Meshram, Onkar Kuwar and CT/GD Rajesh Kanna are all

awarded punishment after conducting DE against them by the Commandant-19BN for their involvement directly and indirectly fabricating the

lost

cipher documents. Shri. G.P. Srivastava Asstt Comdt (OC-Crypto)-2 Signal BN also carried out inspection on the fabricated cipher documents

along with the other one held by crypto Copy 2 signal Bn. The inspection Report clearly proved that there was lot of differences between

fabricated copy and original document. The copy of technical opinion is placed in the DE file as Exhibit No. 13. Since the petitioner was holding

the rank of Insp/GD and charge of Officer Commanding - A Coy of 19 BN, lower ranks such as Constable GD and Head Constable RO are

bound to obey the order. The petitioner concealed misplacing/loss of such important document and he never thought to inform his senior authorities

i.e. Commandant 19BN. As per statement of PW-2 it is proved that the petitioner directed him not to say about misplacing/loss of cipher

documents and directed him to show only the fabricated copy of cipher documents held by him instead of original.

(Emphasis added)

13. It must be noted that the petitioner had the benefit of an appeal and a revision. Both authorities have concurred with the opinion of the

disciplinary authority. This Court under such circumstances cannot interfere with a minor penalty imposed on the petitioner. The Supreme Court

vide its judgment in Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu, has held that judicial review in such

circumstances were very limited and going into the question of proportionality, it held that a well reasoned order of the disciplinary authority cannot

be interfered with on the basis of sympathy or sentiment. Once procedural formalities are complied with by the authorities, the Courts should

ordinarily not to disturb with the penalty.

14. Subsequently, the Supreme Court in Praveen Bhatia Vs. Union of India (UOI) and Others, has held that the power of review over penalty is

extremely limited and the Court can interfere only when relevant factors were not taken into account by the authorities.

15. Under these circumstances, this Court is not inclined to interfere with the minor penalty imposed on the petitioner. Hence, the writ petition

stands dismissed. No costs.