

(2011) 09 DEL CK 0091
In the Delhi High Court
Case No : Writ Petition (C) 638 of 1999

Rajbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 18

Central Industrial Security Force Rules, 1969 — Rule 34(6), 34(6), 34(9)

Citation : (2011) 09 DEL CK 0091

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Kul Bharat, for Shyam Babu, for the Appellant; Abdus Salam, Asst. Cmt. CISF, for the Respondent

Judgement

Pradeep Nandrajog, J.—Upon a complaint made by SI Mahender Singh alleging that the Petitioner, a constable with Central Industrial Security Force, deserted his duty post on 6.7.1997, the Commandant of the unit BNP Dewas (Madhya Pradesh) issued a charge sheet dated 23.08.1997 against the Petitioner listing 2 Articles of Charge which read as under:

CHARGE No. 01

Serious negligence of duty, violation of lawful orders and gross indiscipline i.e. Force No. 902334728 Constable (Under suspension) Rajbir Singh, C.I.S.F. Unit Bank Note Press, Devas (M.P.) who was deputed at Chandigarh Dispatch Security duty along with Rifle 7.62 MM Butt No. 52 and 50 Rounds under the subordination of Party In charge Dy.Inspector/Work Mahender Singh on dated 05.7.97, remained absent unauthorizedly without the prior permission/sanction of competent authority along with 50 Rounds from 06.7.97 and remained absconder till 17.7.97, which is a serious offence u/s 18 of the C.I.S.F. Act.

CHARGE No. 2

Serious carelessness and indiscipline i.e. Force No. 902334728 Constable (Under

Suspension) Rajbir Singh, C.I.S.F. Unit, Bank Note Press, Devas (M.P.) who was deputed at Chandigarh Dispatch Security duty along with Rifle No. R/BA/52/A-01291, 7.62 and 50 rounds under the subordination of Party In charge Dy.Inspector/Works Mahender Singh on dated 05.7.97 but on 06.7.97 during the duties at Dispatch Security left his rifle carelessly and remained absconded with 50 rounds.

2. It needs to be highlighted that the indictment is fairly serious inasmuch as the statement of imputation along with the charge-sheet would evidence that government currency i.e. notes printed at the Government press at Devas had to be sent by train to Chandigarh to be delivered at the Reserve Bank of India. An escort party was constituted under the command of SI Mahender Singh. The escort party was issued arms and ammunition. Petitioner was a member of the escort party. When the currency chests were loaded into the bogie of the train at Ujjain Railway Station and as the escort party members were putting their luggage inside the next bogie i.e. the escort bogie, the Petitioner disappeared leaving his rifle behind on a berth in the train, without entrusting custody thereof to any colleague and took along with him the 50 rounds of ammunition issued to him. A party of 2 officers went to his village Rewari (Haryana) and found him at his house on 16.7.1997. The ammunition was recovered at the instance of the Petitioner as he told the said officers that he had left the ammunition with a friend at Delhi.

3. Insp.A.K. Sharma was appointed as the Inquiry Officer and at the inquiry 12 witnesses were examined by the department and as recorded in the proceedings dated 15.9.1997 when Petitioner was examined by the Inquiry Officer, in spite of opportunity granted, the Petitioner examined no witnesses in defence stating that he did not desire to produce a witness or a document.

4. After recording prosecution evidence, the Petitioner was examined by the inquiry officer on 15.11.1997 on which date, the Petitioner, as noted herein above categorically stated that he desires to examine none as his witness or file any document and thereafter the Petitioner made a statement in defence in which he admitted that a party consisting of 7 CISF Officials, including the Petitioner, under the charge of SI Mahender Singh, was detailed to carry currency from Devas, Madhya Pradesh to RBI Chandigarh. He stated that on 6.7.1997, after loading the currency notes in the train the party left for Chandigarh. On the way, at Ujjain railway station, the officer-in-charge discharged him of his duty and verbally permitted him to leave and join the party at Nizamuddin Railway Station in Delhi on 11.7.1997 from where they were to depart for Devas on 12.7.1997. That on 11.7.1997 at about 19:30 hours he reached Nizamuddin Railway Station and waited for the officials but could not find them. Again on 12.7.1997 he searched for the party but could not find them. That on 13.7.1997 he made a telephone call from Nizamuddin Railway Station to C.R.O control room to find out if the party had returned to the unit but SI Madan Singh who answered the phone call informed him that the party had not returned. That he

kept waiting for the party officials to reach Delhi but finally on 15.7.1997 he gave up the search and returned home since due to paucity of funds/money he could not buy a train ticket to go back to the unit. That on 16.7.1997 he reached home and within a few hours, SI Toofan Singh and L/Nk. S.V. Golhar arrived at his house, and he left for Delhi with them, where he had kept his briefcase containing 50 live rounds of bullets with a friend. That he handed over the rounds to SI Toofan Singh who deposited the same in the kote (store) upon reaching the unit lines on 17.7.1997 at 12:00 hours.

5. On being questioned by the Inquiry Officer Petitioner stated that he had handed over his rifle bearing Butt No. 52 to Nk.Garib Dass and that the Officer-in-charge was aware of his handing over the rifle and had verbally discharged him from duty. That he had to take away the 50 rounds of Bolt Action bullets because Nk.Garib Dass requested him to do so telling him that his i.e. Nk.Garib Dass's luggage had become heavy.

6. It is apparent that the Petitioner admitted having parted company with the escort party at railway station Ujjain but raised a defence that he was verbally discharged from the escort party by the Officer-in-charge with a direction that he should meet the escort party at Nizamuddin Railway Station on 11.7.1997.

7. It is apparent that what the Petitioner said was that he was permitted to rejoin the escort party at Nizamuddin Railway Station when the escort party would be returning from Chandigarh after safely delivering the currency chests at RBI Chandigarh on the way back to Devas.

8. In view of the testimony of the 12 witnesses of the prosecution, 6 of whom were the members of the escort party, 2 were SI Toofan Singh and L/Nk.S.V. Golhar and the remaining witnesses were the ones who deposed that the Petitioner was deputed as a member of the escort party and deposed regarding deposit of arms and ammunitions etc., the Inquiry Officer vide his report dated 26.11.1997 held both charges proved. Supplying a copy of report of the inquiry officer to the Petitioner for his response which was made on 15.12.1997 and received on 16.12.1997, but agreeing with the findings returned by the Inquiry Officer the Disciplinary Authority levied penalty of removal from service upon the Petitioner as per order dated 17.12.1997 against which appeal filed was rejected on 4.2.1999. Instant petition challenges the said 2 orders.

9. During arguments Learned Counsel for the Petitioner urged 3 submissions. Firstly, that the finding of the Inquiry Officer was devoid of reasons supporting the conclusion which puts a shadow/taint on its veracity and that there wasn't sufficient evidence to prove the charge. Secondly, that the Petitioner was denied opportunity to defend himself by not being examined as required under Rule 34(6) of CISF Rules 1968. Lastly, that the Disciplinary Authority did not comply with provision of Rule 34(9) while passing the final order and only accepted the inquiry report blindly.

10. In regard to the first contention we think it best to visit the evidence

produced at the departmental inquiry and reproduce a gist of the same for the sake of clarity. At the outset, we note that in light of the admissions made by the Petitioner in his defence statement, briefly noted in para 4 above, what needs to be seen is whether or not the Petitioner was permitted to part company with the escort party at Ujjain Railway Station as claimed by the Petitioner for the reason he did not dispute that he was a member of an escort party entrusted with the duty of securing the security of currency chests containing currency notes to be deposited at RBI Chandigarh and that en-route he parted company and never went to Chandigarh.

11. At the inquiry SI Mahender Singh PW-1 deposed that on 6.7.1997 after the luggage was loaded in the train the officers of the escort party boarded the train in a rush and only after the train started moving he went to check whether all members of the party were present and found the Petitioner missing. He enquired from other officers but no one whether the Petitioner had boarded the train or not. He searched and found Petitioner's briefcase missing, however rifle bearing Butt No. 52 issued to the Petitioner was found lying unattended along with the luggage of other officers. He enquired from the officers whether the Petitioner had left the rifle in someone's custody, but none affirmed the same. En-route to Chandigarh he attempted to contact the Unit and report about the incident but could make no contact. Upon his return he immediately deposited Petitioner's rifle at the kote and made a General Diary Entry at S. No. 428 dated 13.7.1997 at 19:25 hours Ex.PW-1/10 and recorded therein that on 6.7.1997 at about 18:10 hours, leaving his rifle unattended on a berth, the Petitioner absconded from his duty post without permission or intimation to any other officer. He i.e. PW-1 also reported about the incident to the Commandant of the unit.

12. It be highlighted that the witness was cross-examined by the Petitioner and the Petitioner did not suggest to the witness that he had verbally permitted the Petitioner to leave and to join the team on 11.7.1997 at Nizamuddin Railway Station, New Delhi. Rather, all questions put by the Petitioner were focused on whether or not a police report was lodged regarding desertion by the Petitioner.

13. We need to note no further for the reason SI Mahender Singh was the in-charge of the escort party and obviously reference in the Petitioner's defence statement that he took verbal permission from the officer in-charge to leave the escort party was to SI Mahender Singh. By not cross-examining SI Mahender Singh in line with the defence ultimately taken and not even suggesting to SI Mahender Singh that he had verbally permitted Petitioner to leave, the inevitable conclusion has to be that the Petitioner cooked up a cock and bull story, which otherwise, as would be discussed hereinafter, is a fancy of his imagination and lacks even in rationale.

14. Ct.Tej Singh PW-2 deposed in sync with SI Mahender Singh and relevant would it be to highlight that even this witness was not cross-examined on the line of defence ultimately taken.

15. Nk.Garib Dass PW-3, to whom the Petitioner claimed in his defence statement to have given his rifle before leaving also deposed in sync with PW-1 and never stated that the Petitioner left his i.e. Petitioner's rifle with him i.e. Nk.Garib Dass. During cross-examination he was put a question: "On 6.7.1997 at about 10:00 AM Ct.S.K. Tripathi was discharged from duty and was permitted leave from the Ujjain Railway Station. What you have to say for that" which suggestion the witness denied and stated that Ct.S.K. Tripathi was present with the team all throughout the trip. On being questioned by the inquiry officer he categorically stated that as per his knowledge the Petitioner did not take prior permission from anyone before absconding.

16. Relevant would it be to highlight that the ipse dixit question of Ct. S.K. Tripathi being discharged from duty has no relevance. In any case, Petitioner never suggested to PW-3 that the Petitioner had entrusted his rifle to him after he was permitted to leave.

17. R.M.D. Shukla PW-4, R.V.K. Tripathi PW-5, Ct.D.S. Gill PW-10 and Ct.R.S. Haldkar PW-11 deposed in sync about not having seen the Petitioner after the luggage was loaded in the train at Ujjain Railway Station and that PW-1 found Petitioner's rifle without the 50 rounds of bullets issued to the Petitioner, lying unattended on a berth during a search for the Petitioner.

18. SI Toofan Singh PW-6 deposed that vide order dated 15.7.1997 Ex.PW-6/11, he was directed to take one more officer with him and go to the home town of the Petitioner who had absconded from his duty with 50 bullets of 7.62mm Bolt Action rifle. Accordingly, he along with L/Nk.S.V. Golhar went to Rewari, a village in Haryana, where they reached on 16.7.1997 and met the Petitioner at his house and upon inquiry about the 50 rounds, Petitioner told them that the bullets were in Delhi. Along with the Petitioner, they went to Delhi where the Petitioner took off for 10 minutes and returned with a brief-case containing 50 live rounds. On reaching the unit, Petitioner deposited the 50 bullets in the store room and he i.e. PW-6 submitted a report Ex.PW-6/12 to the Deputy Commandant. Nk.S.V. Golhar PW-7 deposed in sync with SI Toofan Singh.

19. HC M.M. Tiwari PW-8 In-charge of arms and ammunitions deposed that for the escort party sent for RBI consignment on 6.7.1997 rifle bearing Butt No. 52 was issued to the Petitioner. That on 13.7.1997 when the party returned, all arms and ammunition was deposited with him except 50 bullets issued to the Petitioner and that the rifle issued to the Petitioner was deposited by SI Mahender Singh, who informed him that the Petitioner had absconded from duty along with 50 bullets. A report regarding the same was lodged in the GD register at entry No. 423 PW-8/18 on 13.7.1997. That on 17.7.1997 the Petitioner along with SI Toofan Singh came in person and deposited the 50 bullets issued to him. Insp.Hari Singh PW-12 deposed in sync with PW-8.

20. Insp.Vijay Kumar PW-9 deposed that he had put up the note sheet deputing the Petitioner for the RBI Chandigarh consignment duty. That on 13.7.1997 SI

Mahender Singh informed him telephonically that the party had returned back from Chandigarh duty and that the Petitioner had absconded on 6.7.1997 with 50 bullets. He accordingly submitted a report Ex.PW-9/22 narrating the incident to the Dy.Commandant vide letter dated 13.7.1997.

21. It needs to be re-emphasized once again that to the 6 other members of the escort party the Petitioner never even suggested that he was verbally permitted to leave the escort party at Ujjain Railway Station and that he left the rifle by telling L/Nk.Garib Dass who agreed to keep the same in safe custody with him.

22. A perusal of the aforementioned ocular and documentary evidence produced at the inquiry shows that there is sufficient credible evidence in the form of contemporary reports and general diary entries to prove that the Petitioner had absconded from duty without permission on 6.7.1997 leaving his rifle unattended on a train berth.

23. Even otherwise the story weaved by the Petitioner is incredulously fanciful and is full of self-contradictions. Assuming the Petitioner was permitted to leave at Ujjain Railway Station with an obligation to join the escort party on the return journey at Nizamuddin Railway Station and assuming that L/Nk.Garib Dass agreed to keep Petitioner's rifle with him and not the 50 rounds of bullets and thus the Petitioner took the bullets with him, where is the explanation for the bullets not to be with the Petitioner, but with the Petitioner's friend at New Delhi when SI Toofan Singh and L/Nk.S.V. Golhar reached Petitioner's village, searching for him and the ammunition Further, as per the Petitioner when he could not meet the escort party members at Nizamuddin Station on 11.7.1997 and his continuous search till 15.7.1997 evaded his meeting the escort party, he claims to have returned to the village as he had no money to buy a train ticket. If the Petitioner could stay at Delhi from 11.7.1997 to 15.7.1997, it is obvious that he had money with him. The fancy in the story is obvious. The Petitioner was found in his village on 16.7.1997 and he had to account for his absence till he was found and unmindful of the logic of what he was saying, Petitioner kept on uttering whatever he thought he could. It is just like a child caught with a cigarette in his mouth, telling his mother that since his hands were full, at the request of his friend who had to tie the shoe lace, he held the cigarette in his lips.

24. The second argument refers to a violation of Rule 34(6) of the CISF Rules 1968 and thus we note the rule. It reads as under:

34 Procedure for imposing major penalties:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...

(6). The Inquiring Authority referred to above shall, in the course of the Inquiry, consider such documentary evidence, and take such oral evidence as may be relevant or material in regard to the charges. The member of the Force shall be entitled to cross-examine witnesses examined in support of the charges, to give evidence in person and to produce defence witnesses if, the said Inquiring Authority declines to examine any witnesses on the ground that his evidence is not relevant or material it shall record its reasons for the same in writing.

25. As noted herein above the Petitioner was given opportunity to cross-examine all 12 witnesses examined at the inquiry, which opportunity he duly availed. It appears that what the Petitioner intends to say is that he was not examined by the inquiry officer and was not given an opportunity to produce defence evidence because in para 7 of the writ petition, in the first part thereof it is pleaded that the Petitioner was not permitted to cross-examine the witnesses and in the latter part it is stated that the inquiry officer did not examine the Petitioner in person. The inchoate pleading in para 7 reads as under:

7. Rule 34(6) of CISF Rules, 1969 clearly provides that enquiring authority in the course of enquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to charges. The member of the force shall be entitled to cross examine the witnesses, to give evidence in person and to produce defence witnesses. The enquiry officer did not give any opportunity to the Petitioner to comply with the provisions of Rule 34(6) of CISF Rules, 1969. It was obligatory on the party of the enquiry officer to examine the Petitioner in person in support of his defence in the departmental enquiry. Since this opportunity of examination of the Petitioner in the departmental enquiry has been denied to the Petitioner, it will amount to be denial/denying the reasonable opportunity to defend himself in the departmental enquiry.

26. As noted by us, on 15.11.1997 the Petitioner was examined by the inquiry officer and he categorically said that he does not wish to produce any witness in defence. The Petitioner made a statement which was recorded on 15.11.1997 and as noted herein above attempted to justify his action.

27. There is thus no violation of any procedural rule.

28. The plea that the Commandant gave no independent reasons and mechanically adopted the reasoning of the Inquiry Officer is neither here nor there for the reason the 6 page order passed by the Commandant has, in para 8 thereof summarized the evidence and needless to state law does not require the disciplinary authority to give elaborate reasons while agreeing with the report of the inquiry officer.

29. Absconding from duty post while on duty is a serious offence and especially when one is a member of an escort party to ensure safety of currency notes being transported in a train from one city to another. Leaving behind a rifle unattended compounds the offence. The nail in the coffin would be leaving 50 rounds of ammunition with a friend. Thus, finding the penalty imposed upon the

Petitioner to be the only appropriate penalty which could be levied in the facts of the instant case, we dismiss the writ petition but refrain from imposing costs since the Petitioner is without a job.