

(2013) 05 DEL CK 0301

In the Delhi High Court

Case No : Writ Petition (C) No. 324 of 2013

Rajender Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 18, 22

Citation : (2013) 05 DEL CK 0301

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Major K. Ramesh and Archana Ramesh, for the Appellant; Ankur Chhiber, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the present writ petition, the petitioner has assailed the order dated 6th November, 2010 passed by the Deputy Commandant, CISF finding the petitioner guilty of the following charge:-

No. 034470754 Constable (GD) Rajender Singh of SSG, CISF, Greater Noida (U.P.) while deployed at Shri Madhavan Nair outpost Bangalore was detailed for "C" shift duty from 2100 hrs on 15.9.2010 to 0500 hrs on 16.9.2010 with Arms at the residence of the PP. The said Constable was found sitting on a chair and sleeping on duty at 2358 hrs. on 15.9.2010 when checked by Shri Devender Kumar Insp./exe. The post I/C. This act of CISF No. 034470754 Constable (GD) Rajender Singh tantamount to gross negligency and dereliction of duty on his part which is an unbecoming conduct being a member of a disciplined Armed Forces of Union of India like CISF. Hence the charge.

The petitioner was, by the same date, awarded the penalty of fine equivalent to an amount of two days pay of the Central Industrial Security Force (CISF). Aggrieved thereby, the petitioner preferred an appeal dated 4th January, 2011 to the Deputy Inspector General of the CISF. As it was proposed to enhance the

punishment imposed on the petitioner, under Rule 52(2)(c)(i) of the CISF Rules, a show cause notice dated 19th January, 2011 was issued to the petitioner for this purpose. The petitioner had made a representation dated 2nd February, 2011. However, the representation of the petitioner was rejected and a final order dated 4th June, 2011 was passed against the petitioner imposing the punishment of "withholding of the next increment for a period of one year without cumulative effect". By this punishment, the original punishment of payment of an amount of two days pay to the CISF was substituted. The petitioner assailed this order by way of an appeal dated 18th July, 2011 which was rejected by an order dated 24th August, 2011. The petitioner's revision came to be rejected by the Inspector General of the CISF by an order passed on 23rd July, 2012. The petitioner has assailed the orders dated 6th November, 2010; 4th June, 2011; appellate order dated 24th August, 2011 as well as the revisional order dated 23rd July, 2012 by way of the present writ petition.

2. The challenge by the writ petitioner rests primarily on the pure disputed question of facts. The petitioner has contended that the impugned orders have failed to consider the explanation of the petitioner to the effect that he was performing his duties on the 16th September, 2010 as stood assigned to him and that Constable H.P. Singh was also on duty with him. Reliance is placed on a statement of Shri H.P. Singh given on the 19th February, 2011. It is noteworthy that in the statement dated 19th February, 2011, Shri H.P. Singh has not stated that he was on duty on 16th September, 2010. He has merely proceeded to state that Inspector/Executive Devender Kumar had gone for checking at the post where the petitioner was performing duty with Ct. Ranjith K. and that both the constables had come out from their post and saluted the checking officer. Interestingly, Ct. H.P. Singh does not state that he was present there and obviously his statement is not based on personal knowledge.

3. In fact, this statement deserves to be disbelieved for the reason that there was no warrant for Shri H.P. Singh to be at the post at which the petitioner was performing guard duty which was at the residence of a protected person. In any case, reliance has been placed by the petitioner on an alleged entry in a register which is urged to be even made contemporaneously as the inspection by Inspector Devender Kumar. It has been explained by learned counsel for the petitioner that the entry which the petitioner alleges that an inspection was conducted of the post at about 1.00 a.m. by Inspector Devender Kumar and the entry had checked the post actually at 1153 hrs. has been made more than one hour thereafter. The entry has been made by the person who was on duty with the petitioner and was obviously interested in protecting both of them. The entry does not contain any record maintained by the CISF but is allegedly contained in the register maintained by the local police. The entries are not in seriatim by the local police.

4. Mr. Ankur Chhiber, learned standing counsel for the respondents has placed before us the original register maintained by the respondents in respect of guard

duties being performed by CISF personnel. Our attention has been drawn to the entry at serial no. 955 made at 2358 hours on the 15th September, 2011 which is the entry in the register of the incident.

5. The respondents have contended that while the petitioner was deployed at Shri Madhavan Nair outpost Bangalore was detailed for "C" shift duty from 2100 hrs on 15.9.2010 to 0500 hrs on 16.9.2010 with Arms at the residence of the protected person, he was found sitting on a chair and sleeping on duty at 23:58 hours on 15.09.2010 when checked by Shri Devender Kumar Insp./Exe. the then post I/C. On these allegations, the petitioner was dealt under Rule 37 of the CISF Rules 2001 and on being found guilty of the charge, the Disciplinary Authority awarded him the penalty of pay fine equivalent to an amount of two days pay vide final order dated 6.11.2010.

6. The above entry in the register produced from the Unit is supported by the statement of Devender Kumar Inspector/Executive. No reason is forthcoming as to why the Inspector would make false allegations against the petitioner. In any case, these contentions of the petitioner are pure disputed questions of fact which cannot be appropriately gone into in these writ proceedings.

7. Mr. Ramesh, learned counsel for the petitioner has challenged the imposition of the higher penalty upon the petitioner by the order dated 4th June, 2011. It is urged that Section 18 of the Central Industrial Security Force Act does not envisage any enhancement of punishment by the person imposing the same. It is, further, contended that proviso to sub-section 3 of Section 18 specifically stipulated that no person shall be punished twice for the same offence.

8. A perusal of Section 18 of the Central Industrial Security Force Act would show that sub-Section 3 enables a member of the CISF to be prosecuted under any other law for an offence punishable by that law. The reference in sub-Section 3 is to prosecutions by other authorities including the police or any other specialised agency exercising power under enactments other than the Central Industrial Security Force Act, 1968. The reference is to a person being punished twice for the same offence. In this context it is apparent from the bare reading of the statutory provision that the legislature has in fact prohibited the trial of a person twice for the same offence, i.e. to say that the CISF personnel cannot be tried under the CISF Act by the CISF and additionally by any other authority exercising jurisdiction under any other law for the same offence.

9. The instant case is not concerned with two trials by two authorities resulting in different punishments for the same offence but is concerned with enhancement of sentence which has been imposed upon the petitioner.

10. In this regard, reference deserves to be made to Rule 52(2)(c) of the CISF Rules which reads as follows:-

52. Consideration of appeals.-

(1) xxx xxx xxx

(2) (a) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(b) xxx xxx xxx

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders-

(i) Confirming, enhancing, reducing or setting aside the penalty; or

(ii) Remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such directions it may deem fit in the circumstances of the case;

(iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.

11. The Central Industrial Security Force Rules have been enacted in exercise of powers u/s 22 of the Central Industrial Security Force Act, 1968. Rule 52 refers to the jurisdiction of the appellate authority. Rule 52(2)(c) empowers and enables the appellate authority to consider whether the penalty or an enhanced penalty imposed upon a person is excessive or adequate or inadequate and enables the appellate authority to confirm or enhance or reduce or set aside the penalty. In the instant case, it is an admitted position that the appellate authority issued a notice to show cause to the petitioner dated 19th January, 2011 and the petitioner submitted a reply dated 2nd February, 2011 to the final order which was passed on 4th June, 2011 by appellate authority. The Appellate Authority considered the submissions of the petitioner and imposed the enhanced punishment upon him. There is no challenge to the constitutionality of the Rule 52(c) before us. It cannot, therefore, be disputed that the appellate authority was adequately empowered by virtue of provisions of Rule 52(2)(c) to enhance the punishment imposed upon the petitioner by the Deputy Commandant. For all the foregoing reasons, we find no merits in the writ petition which is hereby dismissed.