

(2016) 10 DEL CK 0126

In the Delhi High Court

Case No : CM No. 35197 of 2016 & Rev. Pet. 431 of 2016 in WP(C) No. 6953 of 2016

Rohit Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2017) 236 DLT 201

Hon'ble Judges : Ms. Indira Banerjee and Mr. V. Kameswar Rao, JJ.

Bench : Division Bench

Advocate : Ms. Minal Sehgal, Advocate, for the Appellant; Mr. Rajesh Kumar, Mr. Atul Krishna and Ms. Santwana, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

CM No. 35197/2016 (condonation of 2 day"s delay)

Ms. Indira Banerjee, J.(Oral) - This is an application for condonation of two days" delay in filing the Review petition. The delay in filing the Review Petition is condoned.

The application is disposed of accordingly.

Rev.Pet. 431/2016

This application filed by the writ petitioner, is for review of an order dated 9th August, 2016, passed by this Bench, dismissing the writ petition filed by the writ petitioner, challenging a final order No. 3261 dated 8th May, 2014 imposing on the petitioner, a constable of the Central Industrial Security Force (CISF), the penalty of "Removal from Service".

2. The penalty was imposed after issuing a charge-sheet and conducting an enquiry into the following charges:

"Article of Charge-I

That No. 084480048 Constable/GD Rohit Kumar of CISF 10th Reserve Battalion Arakkonam, while deployed on IS duty at CISF RGIA, Hyderabad passed urine in Wash basin of Wash Room of "A" Coy barracks at around 2145 hrs on 25.01.2014 and quarreled with No. 093240099 Constable Ashok Kumar of CISF RGIA Hyderabad in the "A" Coy barracks. The above act on the part of the said Constable/GD amounts to gross indiscipline, misconduct and unbecoming member of an Armed Forces of the Union.

Article of Charge-II

That No. 084480048 Constable/GD Rohit Kumar of CISF 10th Reserve Battalion Arakkonam, while deployed on IS duty at CISF RGIA, Hyderabad created nuisance in the Unit Lines in the intervening night of 25/26.01.2014 under influence of alcohol and used filthy language against all Senior Officers and Organisation. The above act on the part of the said Constable/GD amounts to gross indiscipline, misconduct and unbecoming member of an Armed Forces of the Union.

Article of Charge-III

That No. 084480048 Constable/GD Rohit Kumar of CISF 10th Reserve Battalion Arakkonam failed to improve his conduct in spite of awarding him 02 minor penalties and one major penalty in his service career in CISF."

3. The petitioner replied to the charge-sheet, which was dated 23rd April, 2014, after which, disciplinary proceedings were conducted. The Enquiry Officer found the petitioner guilty of all the three charges.

4. The petitioner filed an appeal before the Appellate Authority and then a revisional application before the Revisional Authority, both of which were rejected, after which, the writ petitioner filed the writ petition, which has been dismissed by the judgment and order under review.

5. The writ petition has been dismissed with the following observations/findings:-

"There is apparently no violation of the principles of natural justice. No irregularity or infirmity has been alleged with regard to the procedure followed by the respondent-authorities.

It is submitted by learned counsel appearing for the petitioner that this Court ought to take a lenient view considering the age of the petitioner, who is a married man and only of 28 years of age with 30 years of service pending.

In writ proceedings this Court does not exercise appellate power over enquiry findings and/or disciplinary action. The Court cannot overlook the fact that punishment has earlier been imposed four times. Three times the penalty has been minor and once a major penalty has been imposed. We do not find any such infirmity in the impugned action or in the procedure adopted which calls for

interference of this Court in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution of India."

6. A Judgment and order dismissing a writ petition assumes finality and may only be reviewed on grounds akin and/or analogous to the grounds for review of a judgment as contained in Order 47, Rule 1 of the Code of Civil Procedure 1908.

7. An application may be made for review of a judgment and order in a writ petition, which is not appealable, or an appealable judgment and order from which no appeal has been preferred, upon discovery of new materials, not within the knowledge of the petitioner, notwithstanding exercise of due diligence, and to which the attention of the Court could not be drawn at the time when the judgment and/or order was delivered.

8. An application may be made for review of a judgment and order in a writ petition, when there is some mistake or error apparent on the face of the record or for any other sufficient reason. However, in the garb of hearing an application for review the Court cannot rehear a case and reconsider its decision on merits. The expression, "any other sufficient reason" is to be read to mean that the Court may review its judgment and order to correct a gross and palpable error committed by it, or to prevent gross miscarriage of justice to any party.

9. A review is by no means an appeal in disguise, whereby an erroneous decision may be reheard but corrected. The scope of review is restricted to rectification of a patent error, but for which the decision would have been otherwise.

10. In this application no grounds have been made out for review of the judgment and order dated 9th August, 2016, dismissing the writ petition. The writ petitioner is trying to re-agitate the same issues in the garb of an application for review. The writ petitioner has not been able to point out any patent or obvious error in the order under review. In an application for review, the Court cannot look into and reanalyze evidence, which was already there before the Court, when the judgment and order under review was passed.

11. The contention of the writ petitioner, that the third charge constituted double jeopardy is also thoroughly misconceived. Even assuming that there is any infirmity in the third charge, the first and second charges, which have been held to be proved, constitute sufficient grounds for removal of the petitioner from service.

12. For the reasons discussed above, the Review application is dismissed.