
(2010) 06 MAD CK 0203
In the Madras High Court
Case No : Writ Petition No. 557 of 2008

S. Ramalingam

APPELLANT

Vs

The Director General, The Deputy Inspector General and The
Commandant Central Reserve Police Force

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2010) 06 MAD CK 0203

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.Md. Ibrahim Ali, for the Appellant; M. Govindaraj, ACGSC for RR 1, 3 and J. Chandran, for R 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner has come forward to challenge the order dated 26.6.2007 passed by the third respondent Commandant, 97th Battalion, CRPF, Dhurwa, Ranchi sent along with a covering letter, dated 8.8.2007 and after quashing the same, direct the respondents to restore his duty as Constable GD in CRPF with all monetary benefits.

2. By the impugned order, the petitioner was dismissed from service with effect from 26.6.2007 and his name was struck off from the strength of the Battalion on the same day. The petitioner was directed to return all the articles entrusted to him and the period between dismissal from service from 17.3.1999 and 11.2.2007 was to be treated as dies Non. All the medals and decorations earned by him were taken back from him.

3. The writ petition was admitted on 6.2.2008 and notice was sent to the respondents. On behalf of respondents, a counter affidavit, dated 3.10.2008 was filed by them. A copy of the records relating to departmental enquiry was also filed. Even before filing of the present writ petition, the petitioner had earlier filed

a writ petition in W.P. No. 6241 of 1999 challenging the order dated 16.3.1999 by which he was dismissed from service. The grievance projected by the petitioner in that writ petition was that he was given a second show cause notice along with the enquiry report and before he could submit his explanation for which time was granted, he was dismissed from service. This Court by an order dated 6.9.2006 set aside the dismissal order and gave liberty to the respondents to pass suitable order after considering his explanation and by giving due opportunity to the petitioner. Pursuant to the directions issued by this Court, a notice was given to the petitioner on 29.2.2007. It was after due notice and after receiving his explanation, the impugned order came to be passed which made the petitioner to come before this Court once again challenging the order of dismissal.

4. The facts leading to the dismissal of the petitioner are as follows:

The petitioner was given a charge memo dated 22.1.1999. The charge against the petitioner was he disobeyed the order of Company CHM. Though he was detailed on night duty in camp on 16.01.1999, he refused to perform his duty. Further, he misbehaved with the Officer Commandant by refusing to stand "Sabdhan" before him. When the Officer Commandant asked, he refused to reveal his Force number. On the same day, he picked up quarrel with another GD P. Ayyavu and punched him on his stomach. Thereafter, he brought his loaded SLR and pointed towards P. Ayyavu with close range by stating that all that required was to press the trigger. On noticing the same, Ayyavu quickly lifted the barrel of SLR upwards. The petitioner fired two rounds from his SLR in his scuffle with Ayyavu. Time was given for filing written statement. An Enquiry Officer was appointed to conduct an enquiry in terms of Rule 27 of the CRPF Rules. The Enquiry Officer submitted his report in Hindi. The enquiry officer found the petitioner guilty of the charges. An explanation was called for from the petitioner. But before his explanation, he was dismissed from service which led him to file the earlier round of litigation as noted already. Subsequently, after following procedure, he was dismissed from service.

5. The contention raised by the petitioner was that no specific findings were given by the enquiry officer. Though several witnesses were mentioned, the statements of those witnesses were not recorded. The enquiry officer though relied upon the preliminary enquiry report, copy of that report was not furnished to him. The enquiry was not conducted as per the rules prescribed. The petitioner claimed that he was detailed to do work of laundryman on that day. Therefore, he was exempted from doing night duty. He had not disobeyed the order of the company CHM. The allegation that he misbehaved with the Inspector Amar Singh was also denied. It is only the Inspector who made unparliamentary remarks against the petitioner. No opportunity to cross examine Amar Singh was granted. As against the assault on Ayyavu, he claimed that the said Ayyavu did not give any statement. He also denied that he pointed his SLR with close range and later fired from the said SLR.

6. In the counter affidavit filed on behalf of the respondents, it was claimed that

the enquiry officer had conducted enquiry as per the procedure and instructions and there was nothing wrong in using Hindi language as it is the official language of Force. The petitioner also knows Hindi very well and he did not object to the use of Hindi. All correspondence including his reply took place in Hindi during the course of the departmental enquiry. The appointment of the enquiry officer without waiting for reply was not illegal. The petitioner was not prejudiced by the same. The enquiry officer when he started the enquiry read over the charges in Articles I, II and III on 29.1.1999. At that time, the petitioner had pleaded guilty to charges in Articles I and II and not guilty to Article III. The Enquiry officer recorded the statement of 11 departmental witnesses, who were examined in the presence of the petitioner. He was also given full opportunity to cross examine them.

7. On direction from this Court, the original file was produced along with English translation of the enquiry. Since the counsel for the petitioner made strong submissions on the lack of evidence against the petitioner, it is necessary to refer from the minutes of the enquiry for the proof of the charges levelled against the petitioner. In the departmental enquiry, the answers given by the petitioner for question Nos. 7,9,11 and 12 may be reproduced below:

Q.7: Now, you tell whether you accept guilt as per the article I.

Ans: Sir, I am guilty of Article-I but I did the same because my duty was not given properly.

Q.9: Now, you tell whether you accept guilt as per article II.

Ans: Yes Sir, I did not salute my O.C. Sir on 16-1-99 at (1815) and when he asked number I did not tell.

Q.11: Now, you tell whether you accept guilt as per the article III.

Ans: Sir, when the constable P. Ayyavoo abused me I could not control myself and I put my hand on his face and pushed him behind, the constable P. Ayyavoo picked his chappal and hit on my left shoulder thereafter constable lance Nayak Chamudi took me outside. When the Lance Nayak Chamudi left me at my mat I picked up my rifle and came outside and cocked my rifle, lance Nayak Chamudi advised me not to do so then I said to him "I don't want to live." Then the lance Nayak Chamudi caught hold of my rifle and tried to snatch from me and in this trigger was hit by me and two bullets were fired.

Q.12: Whether some one was hurt in this tell me?

Ans: Both bullets went in the air towards sky and no one was hit.

8. Thereafter, 11 witnesses were examined. The petitioner cross examined only P.W.4, P.C. Chamudi, Lance Nayak. P.W.2 Ayyavoo who spoke about the incident in his chief examination, he stated as follows:

On this constable Ramalingam came to my room and asked what were you

talking about me I am also doing service like you and thereafter he abused badly to mother and sister in Tamil language. On this I asked constable Ramalingam not to abuse me. On this constable Ramalingam came forward to hit me, the present Hw. Armugam and the lance Nayak Chamudi tried to move him one side, constable Ramalingam beat with his fist on my chest. The Hw. Armugham and Lance Nayak Chamudi took him towards the barrack. Thereafter when Ramalingam came there was SLR in his hand and he turned rifle towards me, I caught hold of his rifle barrel and turned it towards right side in the air, the constable S. Ramalingam pulled trigger and one round was fired. After firing of one round the S.I. Somanth caught hold of him from behind but the constable Ramalingam fired second round also. On this Lance Nayak Chamudi, Hw. Megharaj and constable H.S. Kale pulled down the magazine and also snatched the rifle from the hand of constable S. Ramalingam. The constable S.H. Jape also helped in controlling constable S. Ramalingam.

Q.1: When constable S. Ramalingam pointed SLR towards your chest what was the distance between your chest and the nozzle of the SLR.

Ans.: Sir, this distance was around two inches.

9. In the cross examination of P.W.4, the petitioner put question Nos. 1 and 3 and the answers elicited are as follows:

Q.1: When I took SLR towards constable Ayyavoo, did you see pointing me SLR towards constable Ayyavoo.

Ans.: Yes I saw that you pointed cocked rifle towards constable P. Ayyavoo and he turned the nozzle of the SLR towards air, I went at the place of incidence and helped constable Ayyavoo in turning the nozzle of the SLR in the air.

Q.3: On which part of constable P. Ayyavoo I hit with the fist?

Ans.: You hit with fist on the chest of constable P. Ayyavoo.

10. The evidence of other witnesses remained unrebutted. Further, in respect of question No. 4 put by the Enquiry officer at the time of second oral statement, he made the following answer:

Q.4: Now you tell whether you accept the article III which you have been accused of?

Ans.: I accept my mistakes. I did not try to kill anyone but I tried to commit to suicide and constable Ayyavoo, Lance Nayak V.C. Chamudi and other constables stopped me from committing suicide.

11. Thereafter, in his defence statement, dated 26.2.1999, he made the following statement which reads as follows:

I tried to commit suicide in anger, and they tried to snatch rifle from me and in the melee two rounds of bullet were fired. I have not tried to kill anyone. I am ready to accept any punishment for the above reasons. I don't want to make

any further submission.

12. The enquiry officer, after analysing the evidence, found the petitioner guilty of misconducts alleged against him. During the course of enquiry, the petitioner made no objection about the conduct of enquiry in Hindi language. Such an objection has been made for the first time before this Court. On the contrary, the petitioner fully participated and cross examined the witness of his choice and also gave defence statement. His theory that he went to commit suicide was dispelled by the evidence of other witnesses. The petitioner's conduct was not only disorderly, but he had created such an amount of tension that he was also kept in guard for a few days and the headquarters was also informed about his misbehaviour. This Court did not find any infirmity or illegality in the impugned order. The findings rendered by the enquiry officer was fully supported by evidence on record. The enquiry conducted did not suffer from any infirmity. For the proved misconducts, there can be no other punishment than that of dismissal.

13. In the light of the above, the writ petition will stand dismissed. No costs.