
(2010) 08 GAU CK 0116
In the Gauhati High Court
Case No : Writ Petition (C) No. 9 (K) of 2001

S. Takowati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 4 GLT 547

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : I. Longjem, Limawapang and S.M. Ozukum, for the Appellant; T.B. Jamir, for the Respondent

Final Decision : Dismissed

Judgement

B.P. katakey, J.—The Petitioner, who was a constable of Central Industrial Security Force (CISF), by the present petition has challenged the order dated 13th December, 2000 passed by the Commandant, CISF Unit, ONGC, Jorhat removing him from service with immediate effect, in exercise of the powers conferred by Rule 29(A), read with Schedule-II and Rule 31(b) of the CISF Service Rules, 1969 (in short, "the 1969 Rules") and restricting his pay and allowances in respect of the period of suspension to the subsistence allowances drawn.

2. The Petitioner was served with a memo of charges dated 19th February, 2000 issued by the Commandant asking him to show cause as to why the disciplinary action should not be taken against him by formulating the following 3 (three) charges:

Article-I

That the said No. 922296499 Constable S. Takawati of CISF Unit, ONGC Jorhat while posted at CISF Unit, NPPCL Tuli was absent from evening roll call on 11.02.2000 at his own.

Thereby, he committed an act of misconduct, negligence, indiscipline which is unbecoming on his part being a member of a disciplined Force like CISF. Hence, the charges.

Article-II

That the said No. 922296499 Constable S. Takawati of CISF Unit, ONGC Jorhat while posted at CISF Unit, NPPCL Tuli absented himself at his own from Halipad duty from 0500 hours to 1300 hrs on 12.02.2000.

Thereby, he committed an act of misconduct, negligence, dereliction to duty, indiscipline which is unbecoming on his part being a member of a disciplined Force like CISF. Hence, the charge.

Article-III

That the said No. 922296499 Constable S. Takawati of CISF Unit, ONGC Jorhat while posted at CISF Unit, NPPCL Tuli, abused saying "Madar Chod" and assaulted his Superior No. 934050058 HC/GD Hamam Singh of CISF Unit, NPPCL Tuli at about 0725 hours on 12.02.2000 at Quarter Guard causing cut injury over upper lip 2.5 Cms resulting in removal of three teeth of HC/GD Harnam Singh.

The above act of Constable S. Takawati amounts to gross misconduct, indiscipline, assault to superior officer and an act of unbecoming of a member of a disciplined Force like CISF Hence, the charge.

3. The Petitioner on receipt of the charge memo submitted his reply on 25th February, 2000. The Petitioner while admitted the allegations in charge Nos. 1 and 2 to the extent of his absence from evening roll call on 11th February, 2000 and from duty on 12th February, 2000, explanations, however, have been given to the effect that on 11th February, 2000 he could not attend the evening roll call because of the sudden illness of his wife and on 12th February, 2000 he did not attend the duty as he was not informed about detailing him on the duty at the helipad though normally, he having done the night duty on the previous day he would not have detailed for duty in the morning shift on 12th February, 2000. The charge No. 3 levelled against the Petitioner has, however, been denied by him in the written statement filed.

4. The Disciplinary Authority by taking the contention of the Petitioner in the written statement so filed, as admission of the charges levelled, imposed the penalty of reduction of pay by one stage vide order dated 9th March, 2000. The Deputy Inspector General, CISF (NEZ) thereafter, by invoking the power under Rule 49(1) of the 1969 Rules issued the show cause notice to the Petitioner asking him as to why the penalty, as imposed vide order dated 9th March, 2000 by the Disciplinary Authority should not be enhanced to the removal from service. A decision thereafter, was taken by the Deputy Inspector General on 28th June, 2000 for a de novo enquiry from the stage of appointment of the Enquiry Officer after setting aside the order passed by the Disciplinary Authority on 9th March, 2000. Accordingly, an Enquiry Officer was appointed and the

disciplinary proceeding against the Petitioner commenced, wherein the Department in support of the charges levelled examined 5 (five) witnesses. Though no defence witness was examined by the Petitioner in such proceeding, he volunteered for making a statement in defence and accordingly, his statement was recorded in such proceeding. The witnesses were cross-examined by the respective parties.

5. The Enquiry Officer on the basis of the evidences adduced before him submitted his report on 12th November, 2000 by holding that all the 3 (three) charges levelled against the Petitioner have been proved. A representation thereafter, was submitted before the Disciplinary Authority by the Petitioner on 30th November, 2000 against the findings recorded by the Enquiry Officer. The Disciplinary Authority on the basis of the materials made available before him passed the impugned order of removal from service dated 13th December, 2000. The Departmental Appellate Authority on 12th October, 2001 has also rejected the appeal preferred by the Petitioner against the order of removal passed by the Disciplinary Authority.

6. The Petitioner, therefore, has filed the present petition challenging the order of removal passed by the Disciplinary Authority. The writ petition was once heard and disposed of by a Single Bench of this Court vide order dated 29th May, 2003 by setting aside the order of removal of the Petitioner from service on the ground that the Deputy Inspector General, who is the appellate authority, in the absence of any appeal, is not competent to invoke the power under Rule 49(1) of the 1969 Rules and to direct de-novo enquiry. Having held so, the order of removal of the Petitioner from service was set aside. Being aggrieved, the Respondents herein preferred an appeal being W.A. No. 38(K)/2006 before the Division Bench, which has been allowed vide judgment and order dated 24th January, 2007 by holding that even though no appeal has been preferred against the decision of the Disciplinary Authority, the Deputy Inspector General, in view of the provisions contained in Rule 49(1) of the 1969 Rules has the power to direct de-novo enquiry by setting aside the order passed by the Disciplinary Authority. Since the writ petition was earlier disposed of only on the ground that the Deputy Inspector General has no jurisdiction to invoke the power under Rule 49(1) of the 1969 Rules, the matter was remitted to the Single Bench for deciding the writ petition afresh on merit and accordingly, the writ petition has been placed before this Court.

7. I have heard Mr. I. Longjem, learned Counsel for the Petitioner and Mr. T.B. Jamir, learned Central Government Counsel appearing for all the Respondents.

8. Mr. Longjem, the learned Counsel for the Petitioner has submitted that after the judgment and order dated 24th January, 2007 was passed by the Division Bench in W.A. No. 38(K)/2006, the question which requires determination by this Court is whether the Disciplinary Authority was justified in passing the impugned order of removal from service dated 13th December, 2000. According to the learned Counsel, though there were some materials before the Enquiry Officer to

hold that the charge Nos. 1 and 2 are proved, there is absolutely no material before the Enquiry Officer to record the finding that the charge No. 3 levelled against the Petitioner has been proved Referring to the desposition of witness No. 1, namely Shri P.K. Choudhary, as well as the witness No. 2, namely Shri Hamam Singh, who was allegedly abused and assaulted by the Petitioner as well as the depositions of witness Nos. 3 and 4, namely, Shri S.K. Mallik and Shri Amod Kumar, respectively, it has been submitted by the learned Counsel that while according to the witness No. 1, Shri P.K. Choudhary, the witness Nos. 3 and 4, who were present at the place of occurrence were called and they separated both Harnam Singh and the Petitioner, the said version of the witness No. 1 has not at all been corroborated by the witness Nos. 3 and 4 in their depositions. The learned Counsel drawing the attention of the Court to the deposition of witness Nos. 3 and 4 has submitted that these witnesses have submitted that while witness No. 3 has deposed that on hearing the sound "pakdo" "pakdo" he went inside and saw both the Petitioner and Head Constable Hamam Singh were standing separately in the Quarter Guard, the witness No. 4 in his deposition has stated that at that relevant point of time he had gone for attending the natures call and when came back he was told that there was some quarrel between the Petitioner and the Heiad Constable Hamam Singh. The learned counsel, therefore, submits tiat the version of witness No. 1, Shri P.K. Choudhaiy is not at all reliable and trustworthy and, therefore, the Enquiry Officer ought not to have held that the charge No. 3 levelled against the Petitioner has been proved. The learned Counsel in support of the contention that though the scope of judicial review of the Departmental Enquuy imder Article 226 of the Constitution of India is very limited, the Court can in exercise of the power of judicial review interfere with the finding recorded by the Enquiry Officer in the enquiry proceeding, if there is no evidence to support tihe findings or the findings recorded were such as could , not have been reached by an ordinary pmdent man or the findings were perverse, placed reliance on the decision of the Apex Court in Kuldeep Singh Vs. The Commissioner of Police and Others,

9. The learned Counsel, therefore, submits that the order of the Disciplinary Authority removing the Petitioner from service as well as of the Appellate Authority dismissing the appeal filed by the Petitioner require interference by this Court in exercise of the power of the judicial review and remit the matter to the Disciplinary Authority to take a fresh decision to the quantum of punishment to be awarded, as the order of removal from service was passed taking into account the finding of the Enquiry Officer that the charge No. 3 has also been proved.

10. Mr. Jamir, the learned Central Government Counsel, per contra, supporting the finding recorded by the Enquiry Officer in his report has submitted that it is not that there is absolutely no evidence before the Enquiry Officer to record the finding that the charge No. 3 against the Petitioner has been proved, as the witness Nos. 1 and 2, namely Shri P.K. Choudhary and Shri Harnam Singh, respectively, have in clear terms deposed about using of the abusive language by the Petitioner and assault of Head Constable Hamam Singh by the Petitioner. The

learned Central Government Counsel submits that there is no dispute to the proposition of law that the High Court in exercise of the power of judicial review can interfere with the disciplinary proceeding if the Enquiry Officer records any finding on a charge without there being any evidence on record. The learned Counsel, however, submits that though the witness Nos. 3 and 4 have not supported the witness No. 1 in so far as the said witness's deposition that on being called the witness Nos. 3 and 4 came and separated both the Petitioner and the Head Constable Hamam Singh, that would not make the version of the witness No. 1 unreliable and untrustworthy, more so, when according to the witness No. 1 himself, the Petitioner abused and assaulted the Head Constable Hamam Singh before P.Ws. 3 and 4 were called. The learned Counsel, therefore, submits that it is not a fit case where this Court would interfere with the finding recorded by the Enquiry Officer and consequently the order of removal passed by the Disciplinary Authority.

11. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings of the parties as well as the materials made available including the depositions of the witnesses and also the report of the Enquiry Officer.

12. As noticed above, the Department in support of the charges levelled against the Petitioner examined 5 (five) witnesses. The charge Nos. 1 and 2, which have already been reproduced above, are relating to the absence of the Petitioner from the evening roll call on 11th February, 2000 and for not reporting for duty in the morning shift on 12th February, 2000. The Petitioner in fact in the written statement filed has admitted such charges. Moreover, it appears from the depositions of witnesses, more particularly of witness Nos. 1 and 2, that the Petitioner did not attend the evening roll call on 11th February, 2000 and did not report for duty on 12th February, 2000. No argument has also been advanced by the learned counsel for the Petitioner challenging the finding recorded by the Enquiry Officer in relation to these 2 (two) charges.

13. The argument of the learned Counsel for the Petitioner relates to charge No. 3 only, wherein it has been alleged that on 12th February, 2000 at about 7.25 AM, the Petitioner abused Head Constable Hamam Singh, his superior officer, with filthy language and also assaulted him, while Shri Harnam Singh was in the Quarter Guard. The contention of the learned counsel for the Petitioner is that there is no evidence to record the finding that the charge No. 3 has been proved.

14. The witness No. 1, Shri P.K. Choudhary, who narrating the incident has stated in his evidence that on 12th February, 2000 at about 7.25 AM while he was with Head Constable Hamam Singh inside the quarter guard, the Petitioner came in and used filthy language against the Head Constable, who immediately protested and thereafter, the Petitioner hit the Head Constable on his face. It has also been stated that he then shouted for help and accordingly the witness No. 3 Shri S.K. Mallik and witness No. 4 Shri Amod Kumar came forward and rescued the Head Constable and separated them. The witness No. 2, Hamam Singh, has also given

the details of the incident. There is no discrepancy between the deposition of witness Nos. 1 and 2. Witness No. 3, Shri S.K. Mallik, however, has not supported the witness No. 1 relating to his version that the witness Nos. 3 and 4 came in on hearing the shout of the witness No. 1 and separated both the Petitioner and the Head Constable. Witness No. 3 in his deposition has stated that on hearing the shout of the witness No. 1, Shri P.K. Choudhary, he came in and saw both the Petitioner and the Head Constable Harnam Singh standing separately in the Quarter Guard. He has also stated that he saw bleeding injury in the mouth of Head Constable Harnam Singli and also the injury on the right hand of the petitioner, apart from the bleeding injury in his mouth. Witness No. 4, Shri Amod Kumar, in his evidence has stated that at that relevant point of time he was not there as he went for attending the natures call.

15. According to the witness No. 1, on being asked for help, the witness Nos. 3 and 4 came in and separated both the Petitioner and the Head Constable Hamam Singh. It is not the version of the witness No. 1 that the witness Nos. 3 and 4 witnessed the occurrence, i.e. using abusive language and assaulting Head Constable. The Petitioner though has cross-examined the witness No. 1 as well as the witness No. 2, no contradiction on the material points could be elicited. Even though the witness Nos. 3 and 4 did not support the witness No. 1 relating to his version that witness Nos. 3 and 4 came in and separated both the Petitioner and the Head Constable Hamam Singh, it would, in no way effect the positive version of witness No. 1 relating to the verbal abused by the Petitioner and assaulting the Head Constable, who is the superior officer. The same would also not render the evidence of witness Nos. 1 and 2 unreliable and untrustworthy.

16. As held by the Apex Court in Kuldeep Singh (supra) though the scope of judicial review of the High Court under Article 226 of the Constitution of India in the matter of Disciplinary Enquiry is limited and the High Court would not interfere with the finding recorded in the Disciplinary Enquiry as a matter of course and cannot sit in an appeal over those findings and assume the role of the Appellate Authority, it does not mean that the High Court in no circumstances can interfere with the findings recorded by the Enquiry Officer. The High Court in exercise the power of judicial review can interfere with the conclusion reached in the Disciplinary Enquiry if there was no evidence to support the finding or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

17. In the instant case, as discussed above, it cannot be said that there was absolutely ncy material to support the finding as recorded by the Enquiry Officer in so far as the charge No. 3 is concerned. The evidence of witness Nos. 1 and 2, for the reasons recorded above, cannot also be regarded as unreliable and untrustworthy. In adisciplinary proceeding the strict rules of evidence is not explicable. The standard of proof in criminal proceeding and the disciplinary

proceeding is quite different. While in a criminal proceeding, the charges levelled against an accused are required to be proved beyond all reasonable doubt, in a disciplinary proceeding it is preponderance of probabilities.

18. In view of the aforesaid discussion, I am of the view that the Enquiry Officer has rightly recorded the finding that the charge No. 3 levelled against the Petitioner has been proved and consequently keeping in view the gravity of the charges levelled, the Disciplinary Authority has rightly passed the order of removal from service, which requires no interference by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India

19. The writ petition is, therefore, dismissed, however, without any order as to costs.