

(2015) 03 DEL CK 0161
In the Delhi High Court
Case No : Writ Petition (C) 4917/2014

Sanjeev Kumar

APPELLANT

Vs

CISF

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : (2015) 03 DEL CK 0161

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : G. Narayan, for the Appellant; Ajay Digpaul and Kunal Punj,
Advocates for the Respondent

Judgement

Pratibha Rani, J.—This writ petition has been filed by the petitioner challenging the final order passed by the Disciplinary Authority on May 15, 2012 whereby the petitioner has been awarded the penalty of reduction of pay by two stages for a period of two years with immediate effect with further direction that during the period of reduction he will not earn increments and on expiry of the period the reduction will have the effect of postponing his future increments of pay.

2. The appeal filed by the petitioner was rejected by the Competent Authority on June 07, 2012 and the revision preferred thereafter has also been dismissed by a reasoned order on March 14, 2013. After exhausting statutory remedies available to him under the CISF Act, 1968 and CISF Rules, 2001 the petitioner has invoked the writ jurisdiction of this Court praying for the direction to the respondent to withdraw the order dated May 15, 2012 and restore the original pay grade of the petitioner as well grant him subsequent increments with arrears.

3. Background facts in nutshell are as follows:-

Petitioner is a Constable in CISF. On November 08, 2011 while posted as Constable/GD at CCIL Unit, CCIL, Tughlakabad, New Delhi, he was performing duty during second shift, in respect of an incident reported by HC/GD Mahender Pal PW-1 for forcibly taking away the money from a civilian namely Manoj Kumar

Paswan, Seal Cutter and giving the same to Constable/GD D.K. Sharma, a memorandum of chargesheet was issued on December 12, 2011 against the petitioner with following Article of Charge:-

"CHARGE-1

Constable Sanjeev Kumar No. 941402596, CISF, Unit CCIL, Tughlakabad was posted at the backside area of import warehouse during second shift from 1300 hrs to 2100 hrs on 08.11.11 and Constable Deepal Kumar Sharma No. 982190083 was posted at the front side gate of the import warehouse during first shift from 600 hrs to 1300 hrs on 08.11.11. On 08.11.11 at about 1310 hrs when Constable Sanjeev Kumar reported for his duties at the backside of import warehouse then he asked the Constable Deepak Kumar Sharma No. 982190083 who was posted in the first shift that how much he had got for Seal Cutting. In his reply Deepak Kumar Sharma said that check the register he had received Rs. 400/- (Rupees Four Hundred only). Then Constable Sanjeev Kumar checked the register and said that it was less amount and then he called Seal Cutter Manoj Kumar Paswan of M/s. Asian Company and forcibly snatched his money purse and took out Rs. 200/- (Rupees Two Hundred) from it and gave this amount to Constable Deepak Kumar Sharma. Constable Sanjeev Kumar is not only a member of armed force, but a government employee also. Being a government employee, it was expected of him that he would always discharge his duties with honesty and integrity, but he failed in this expectations. Therefore, the Charge."

4. The petitioner in his reply dated December 19, 2011 to the memorandum of charge-sheet denied the entire incident which was followed by an inquiry into the charges against him. The inquiry report was submitted to the Disciplinary Authority. A copy of the report was also forwarded to him calling upon him to submit his representation within 15 days. The petitioner submitted his representation refuting all the charges against him. This was followed by an amended detailed inquiry report further calling upon him to reply the same within 15 days. The petitioner submitted his reply to the said report too. Thereafter vide the impugned order dated May 15, 2012 the petitioner was held guilty and awarded the penalty as stated above.

5. The petitioner is impugning the order of the Disciplinary, Appellate and Revisional Authorities mainly on the following grounds:-

i) Petitioner has been falsely implicated at the instance of HC/GD Mahender Pal PW-1 who was not having cordial relations with the petitioner, was envious of him and had earlier threatened to implicate him.

ii) That Disciplinary Authority as well the Appellate and Revisional Authority failed to appreciate that Manoj Kumar Paswan PW-4 the complainant did not make any statement against the petitioner.

iii) The contradiction in the testimony of HC/GD Mahender Pal PW-1 on the issue whether the Rs. 200/- was snatched by the petitioner from the purse of PW-4 or

the amount of Rs. 200/- was given by the PW-4 voluntarily to Constable/GD D.K. Sharma has not been considered and appreciated.

6. On behalf of the petitioner Mr. G.Narayan, Advocate has submitted that it is a case based on no evidence. The entire case of the prosecution rested on the testimony of the Manoj Kumar Paswan PW-4 from whom the petitioner has allegedly snatched Rs. 200/- and given to Constable/GD D.K. Sharma. Manoj Kumar Paswan PW-4 does not support this version. The petitioner's case right from the beginning was that PW-1 had earlier threatened to implicate him and this entire incident has been fabricated at the instance of PW-1, has not been taken into account while returning the finding of the guilt and awarding the penalty of reduction in pay by two stages.

7. On behalf of the respondent it has been vehemently urged that merely because the PW-4 has preferred to turn hostile during inquiry was no reason to disbelieve the other witnesses who had seen the incident as well the verification of the incident immediately thereafter by SI Dharampal Singh leading to suspension of the petitioner and initiation of disciplinary proceedings against him. He submitted that there was enough material before the Disciplinary Authority to pass the impugned order which has further being screened by the superior authorities while disposing of the appeals and revision. Thus the impugned order does not call for any interference rather the petitioner has been dealt with leniently for a serious charge of indulging into corrupt practices.

8. With a view to appreciate the rival contentions we have also gone through the record of the disciplinary proceedings.

9. HC/GD Mahender Pal PW-1 was on duty on November 08, 2011 during general shift (Samanya Pari) at Import Warehouse. At about 1310 hours Constable/GD Sanjeev Kumar reported for duty to him and also asked Constable/GD D.K. Sharma about the number of seals cut during his shift. Constable/GD D.K. Sharma asked him to check the figures from the register lying there informing that he had received Rs. 400/- for seal cutting. The petitioner asked from Constable/GD D.K. Sharma as to where was the seal cutter and that seeing a new person i.e. Constable/GD D.K. Sharma on duty, he had made less payment. The seal cutter was also there. The petitioner called him and asked him to show his purse. The petitioner snatched the money purse from the seal cutter, took out money from his purse and handed over to Constable D.K. Sharma and thereafter asked him to leave. The petitioner further uttered the words that anybody was free to report against him wherever he desired. HC/GD Mahender Pal PW-1 asked the petitioner not to do so but he refused to comply and then at 1320 hours he walked down to control room and apprised SI Dharampal Singh PW-2 about the incident who directed him to ask the petitioner to report to him (SI Dharampal Singh PW-2). HC/GD Mahender Pal PW-1 returned to Import Warehouse and conveyed the order of SI Dharampal Singh. He has also stated that incident was witnesses by Constable Vikas Rawat PW-3.

10. The petitioner has cross-examined HC/GD Mahender Pal PW-1 as to at what time the petitioner reported for duty, where he had seen him and D.K. Sharma standing, why he walked down to inform the control room and whether he was having any other means of communications to inform the control room. HC/GD Mahender Pal replied that the time of arrival of the petitioner to be at 1310 hours and had seen the petitioner inside the Duty Room/Gumti post but Constable D.K. Sharma was at the door of Gumti. He has also stated that though he was having walkie-talkie, he preferred to walk down as control room was situated in close vicinity.

11. SI Dharmapal Singh PW-2 produced the duty chart record of the members of the Force on duty on the date of incident i.e. November 08, 2011. He has further stated that at about 1410 hours HC/GD Mahender Pal came to the control room to inform that petitioner and Constable D.K. Sharma had a quarrel with the seal cutter of Asian Company and had taken money from him. This information was recorded vide GD No. 277 at 1532 hours. To ascertain the true facts he called the petitioner through walkie-talkie but he denied having entered into any quarrel with anyone or taking any money. He reported the incident to Inspector, Incharge of the plant telephonically. The Incharge of the plant personally visited him and left after seeking necessary details. During cross-examination PW-2 has admitted that he was asked to furnish "Khariat Report" at 1400 hours and had not mentioned about this incident either before sending report or thereafter.

12. Constable/GD Vikas Rawat PW-3 was referred by HC/GD Mahender Pal PW-1 to be an eye witness. He stated that on November 08, 2011 his duty hours were in the second shift 1300 hours to 2100 hours at Import Warehouse. He had to relieve constable D.K. Sharma on duty in the first shift. Constable/GD Vikas Rawat PW-3 handed over walkie-talkie to HC/GD Mahender Pal PW-1. At that time apart from them, petitioner and Manoj Kumar Paswan, seal cutter of M/s. Asian Company was also present. After taking over the duty register from Constable/GD D.K. Sharma he along with the Manoj Kumar Paswan left for the duty. Since the time of the incident is 1310 hours and Constable Vikas Rawat PW-3 has shown himself on duty at 1301 hours at another place, PW-3 was cross-examined on the issue that how he could be present at two places to which he referred to the practice of recording time like that only i.e. without specifying the time consumed in handing over and taking over of the charge.

13. Shri Manoj Kumar Paswan PW-4, the Seal Cutter of the Asian Company is the main witness from whom as per the charge the petitioner allegedly snatched Rs. 200/- and handed over to Constable D.K. Sharma. He has stated that on November 08, 2011 he was at duty at Import Warehouse for the job of seal cutting. There used to be a CISF jawan on duty with him to record in register the details of the seals cut by him. On that date he had cut about 130/135 seals and by 1300 hours he had cut about 96 seals and continued doing his job when another CISF jawan reported at 1300 hours. After taking his lunch at 1300 hours, he performed the duty till 1830 hours and left for his residence.

14. Since the question put by the Presenting Officer and Inquiry Officer are relevant for disposal of this writ petition we note that while 10 questions have been put up by the Presenting Officer and 18 questions have been put up by the Inquiry Officer, Shri Manoj Kumar Paswan denied having made any payment of Rs. 400/- to Constable D.K. Sharma or even carrying purse with him on that date. He has specifically stated that he was not having his purse. He has not made any payment of his own nor snatched from him by anyone.

15. In the final report while holding the petitioner guilty, the Inquiry Officer had referred to the statement of HC/GD Mahender Pal PW-1 as well the statement made by Manoj Kumar Paswan PW-4 recording that he turned hostile. The Inquiry Officer on consideration of the statement of PW-1 to PW-4 as well as statement of D.K. Sharma DW-1 arrived at the conclusion that the charge against the petitioner stands proved.

16. Constable/GD D.K. Sharma though not examined by the department during disciplinary proceedings, he has been examined by the petitioner as DW-1. As per Article of Charge Constable/GD D.K. Sharma is the person to whom the petitioner handed over Rs. 200/- after allegedly taking away the same from the purse of Manoj Kumar Paswan PW-4, Seal Cutter. Constable/GD D.K. Sharma DW-1 has stated that on November 08, 2011 he was on duty from 0600 hrs. to 1300 hrs. He remained with the Seal Cutter during his duty hours and thereafter handover the charge to reliever Ct.Vikas Rawat PW-3 alongwith the seal cutting register and walkie-talkie to HC/GD Mahendra Pal PW-1. Thereafter he reported to the Control Room where he deposited the battery of walkie-talkie, joined debriefing at the Out Gate and thereafter proceeded to Unit Line. In his cross examination, some questions have been put by the Presenting Officer about the presence of the petitioner and whether he had met him as well presence of HC/GD Mahendra Pal PW-1 in or around the Gumti as well the size of the Gumti. He has admitted presence of HC/GD Mahendra Pal PW-1 in the Gumti to whom he handed over the walkie-talkie. The size of the Gumti has been described as 7 to 8 feet in height and width having sitting capacity of about 2-3 persons with a door and glass windows. He has stated that he met the petitioner Constable/GD Sanjeev Kumar about 7-8 meters away from the Duty Post (Gumti).

17. The main reason that weighed with the Inquiry Officer, Disciplinary Authority as well the Appellate and Revisional Authorities to hold the petitioner guilty for the charge is statement of HC/GD Mahendra Pal PW-1 and that of Constable Vikas Rawat PW-3. It has also been observed that in view of the statement made by Manoj Kumar Paswan PW-4 immediately after the occurrence on November 08, 2011, the charge stands established on the basis of oral and documentary evidence adduced during the course of inquiry.

18. The legal position is well settled as to when a finding recorded in a domestic inquiry can be characterised as perverse.

19. In State of Haryana and Another Vs. Rattan Singh, it was observed as

under :

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground." 20. Before proceeding further, to examine whether findings recorded in this case can be termed as perverse, it is necessary to note the statement made during preliminary inquiry on the same day i.e. on November 08, 2011 by Manoj Kumar Paswan PW-4, Seal Cutter. Manoj Kumar Paswan PW-4, Seal Cutter has stated that he had been doing the job of seal cutting for CCIL Company for the preceding three months. On November 08, 2011 his duty hours were 1.00 am to 6.00 pm. One CISF Jawan R.D. Sharma was cutting the seal alongwith him. At about 1300 hrs. Constable/GD D.K. Sharma finished his duty and near the toilet of In-Post Duty Post, he demanded money for seal cutting. When he paid Rs. 400/- to Constable/GD D.K. Sharma he stated that it was less and thereafter he handed over another Rs. 200/- which he was having and stopped the working of seal cutting.

21. So far as the charge against the petitioner was concerned, Manoj Kumar Paswan PW-4 could not have been termed as hostile witness as he never uttered a single word against the petitioner at any stage of the inquiry.

22. As per the charge the petitioner Constable/GD Sanjeev Kumar when reported for duty at the Duty Post, asked from Constable/GD D.K. Sharma about the number of seals cut during his duty hours as well the amount received by him. When Constable/GD D.K. Sharma informed that he has received Rs. 400/-, the petitioner forcibly took out the purse of Manoj Kumar Paswan PW-4, Seal cutter and after taking out Rs. 200/- from the purse, handed over the same to Constable/GD D.K. Sharma.

23. Thus, so far as the petitioner is concerned, neither in the initial statement recorded on November 08, 2011 nor in the subsequent statement recorded on February 04, 2012 Manoj Kumar Paswan Pw-4, Seal Cutter made any accusations against the petitioner Constable/GD Sanjeev Kumar. There are certain other facts which need to be highlighted :

(i) HC/GD Mahendra Pal PW-1 was having walkie-talkie. Manoj Kumar Paswan PW-4 - Seal Cutter, Ct.Vikas Rawat PW-3 - reliever, Constable/GD Sanjeev Kumar - petitioner as well Constable/GD D.K. Sharma to whom the money was allegedly handed over by the petitioner after forcibly taking from purse of Manoj Kumar Paswan PW-4, were present in the Duty Post, Gumti, which is a small area. HC/GD Mahendra Pal PW-1 was equipped with walkie-talkie to inform his superior officers about the incident and in the meantime command the petitioner, Constable/GD D.K. Sharma, Constable Vikas Rawat as well the Seal Cutter Manoj Kumar Paswan not to leave the Gumti till the entire matter is inquired into, verified and thereby ensuring recovery of the amount of Rs. 600/- allegedly received by Constable/GD D.K. Sharma from the Seal Cutter. The explanation given by PW-1 for walking down to the Control Room is that it was nearby but we find that the incident which had allegedly taken place at 1310 hrs. was reported to the Control Room at 1415 hrs. i.e. after a gap of 1 hour and five minutes and recording in GD at 1532 hours.

(ii) In the "Khariat Report" sent at 2.00 pm the incident of 1310 hrs. was not mentioned.

(iii) As per statement of Manoj Kumar Paswan PW-4 recorded during preliminary inquiry on November 08, 2011 he had handed over Rs. 400/- to Constable/GD D.K. Sharma near the toilet and then again voluntarily gave 200/- when Constable/GD D.K. Sharma was not satisfied with what was offered to him. Thus, even as per Manoj Kumar Paswan PW-4, Seal Cutter the incident dated November 08, 2011 had not taken place at the Duty Post (Gumti) and HC/GD Mahendra Pal had no occasion to witness any such incident.

(iv) Constable Vikas Rawat PW-3 who relieved Constable/GD D.K. Sharma in his examination-in-chief did not state even a word about witnessing any such incident.

(v) As per HC/GD Mahendra Pal PW-1 he personally informed the petitioner Constable/GD Sanjeev Kumar to report to SI Dharampal Singh PW-2 in the Control Room but SI Dharampal Singh PW-2 has stated that to verify the facts,

he called Constable/GD Sanjeev Kumar through walkie-talkie.

(vi) It was a case where HC/GD Mahendra Pal PW-1 - the complainant who claimed himself to be an eye witness in respect of the incident that took place at 1310 hrs., instead of taking prompt action in the matter reached the Control Room at 1415 hrs (as stated by SI Dharampal Singh PW-2). The mere fact that this incident does not find mentioned in the "Khariat report" sent at 2.00 pm i.e. almost 50 minutes after the incident, necessitating probing questions by the Inquiry Officer to ascertain credibility of the version given by HC/GC Mahender Pal PW-1 and SI Dharampal Singh PW-2.

(vii) HC/GD Mahendra Pal PW-1 and SI Dharampal Singh PW-2 both were having walkie-talkie and prompt communication to SI Dharampal Singh PW-2 through walkie-talkie would have led not only to verification of the report but also recovery of Rs. 600/- from Constable/GD D.K. Sharma. This issue has been asserted by the petitioner in his defence statement recorded on February 17, 2012 questioning that if the incident had taken place at 1310 hrs. as alleged by HC/GD Mahendra Pal PW-1 then why he and Constable/GD D.K. Sharma were not detained and SI Dharampal Singh not called there and then and why their search was not conducted. The contradictions in the two statements made by HC/GD Mahendra Pal PW-1 on the issue whether Seal Cutter was already present there or summoned by him as well no explanation given for the time gap of more than one hour in reporting to the Control Room though he was equipped with walkie-talkie.

24. It is a case where one can safely conclude that charge-sheet was issued to the petitioner without proper appraisal of the facts or looking into the statement made during preliminary enquiry on the day of incident i.e. on November 08, 2011 by Manoj Kumar Paswan PW-4, Seal Cutter during the preliminary inquiry. On that date, the place of incident was mentioned as near the toilet and money transaction being only between him and Constable/GD D.K. Sharma. The petitioner was nowhere stated to be present at that time.

25. Thus the finding indicting the petitioner was perverse. We also note that though all these points have been raised by the petitioner before the Appellate and Revisional Authorities but the same have been negated without looking into the statement made by Manoj Kumar Paswan PW-4, Seal Cutter during preliminary inquiry as well during disciplinary proceedings and also that of Constable Vikas Rawat PW-3 who was cited as an eye witness. Legally speaking he could not have been even termed as "hostile" witness qua petitioner.

26. For the foregoing reasons, the writ petition is allowed. The Order dated May 15, 2012 passed by the Disciplinary Authority as well the orders dated June 07, 2012 and March 14, 203 passed by the Appellate Authority and Revisional Authority respectively are quashed.

27. Since the penalty awarded to the petitioner is of reduction of pay by two stages, and has been quashed, the respondents are directed to fix the pay of the

petitioner after giving him increment in due date as per his eligibility and pay the arrears within eight weeks from the date of this order.

28. No costs.