
(2014) 02 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 19882 of 2010

Sanni Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Citation : (2015) 3 PLJR 43

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Rajeev Kumar Singh, Advocate for the Appellant; N.A. Shamsi, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.

1. Heard learned counsel for the petitioner and learned Assistant Solicitor General appearing on behalf of the Union of India. The petitioner in the present writ application is aggrieved by the order dated 16.11.2009 passed by the Commandant, 21 Bn. Central Reserve Police Force (C.R.P.F.), Srinagar, Jammu and Kashmir-Respondent No. 6 whereby punishment of dismissal from service has been imposed upon him. The petitioner is also aggrieved by the order of the Appellate Authority i.e. the Deputy Inspector General of Police, C.R.P.F., Patna dated 19.3.2010 whereby the petitioner's appeal against the order of dismissal has been rejected. The order passed by the Revisional Authority i.e. Inspector General, Bihar Sector, C.R.P.F. dated 7.10.2010 is also under challenge whereby petitioner's revision petition against the order of the disciplinary authority and the Appellate Authority has been rejected.

2. By memorandum dated 3.6.2009 containing articles of charge, three in number, a disciplinary proceeding was initiated against the petitioner, who was a Constable (GD) in Central Reserve Police Force and at the relevant point of time the petitioner was posted with his battalion at Srinagar. It is the petitioner's case

that on 7.1.2009 he was admitted in a Government Hospital in Srinagar and was advised light duty for five days by the Doctor. He was however not given light duty by the Authorities in respect of which the petitioner complained to higher authorities. He was awarded thirty-days imprisonment from 20.4.2009 to 19.5.2009 of line prison and also one hour morning and evening pact drill by Respondent No. 6.

3. It is the petitioner's further case that vide order dated 5.5.2009 issued by Respondent No. 3 i.e. Deputy Inspector General of Police, Central Reserve Police Force (C.R.P.F.), Srinagar, Respondent No. 6 was asked to inquire into the allegation of harassment being caused to the petitioner. Thereafter, the petitioner's wife fell ill at home and on this ground the petitioner was granted fifteen days leave from 12.6.2009 to 26.6.2009. The petitioner however, could not report on duty after availing the leave up to 26.6.2009 because his wife's conditions deteriorated. He applied for extension of leave which was refused and on 11.7.2009 he reported to duty at Srinagar. Again on 25.7.2009, the petitioner fell ill and he was admitted in Government S.H.M.S. Hospital and was treated between 25.7.2009 to 29.7.2009. The petitioner, thereafter, applied for leave as was advised by the doctor to home rest over a period of one month from 29.7.2009. The Respondents however, did not grant the leave and the petitioner had no option but to leave his duty for one month rest on 4.8.2009. He thereafter reported on duty on 27.8.2009 to the Headquarter but in the meantime he was declared deserter and was confined in a room.

4. It is further case of the petitioner that on 30.8.2009, the petitioner was produced before Respondent No. 6, the Commandant, 21 Bn. C.R.P.F., Srinagar. Thereupon, the Respondent No. 6 gave him permission to join duty. It is asserted that the petitioner's wife again fell ill and was given leave for twenty-one days from 21.10.2009 to 9.11.2009 by Respondent No. 6 whereafter the petitioner came home. The petitioner returned back on 10.11.2009 and reported to his Headquarter. It is petitioner's specific case that all of a sudden, by order dated 16.11.2009, issued by Respondent No. 6, the petitioner was dismissed from service and several other punishments were also inflicted.

5. The petitioner asserts in the writ application that before issuance of the impugned order, no notice nor any show-cause nor any opportunity of hearing was provided to him and he was never informed about the departmental proceeding. His further assertion is that the appellate authority as well as revisional authority also rejected the petitioner's plea without assigning any cogent reason and without any application of mind, by the orders dated 19.3.2010 and 7.10.2010 respectively which are under challenge.

6. As has been noted above, it is specific case of the petitioner that no notice was given to him before impugned action taken by the disciplinary authority. A counter affidavit has been filed on behalf of Union of India and its officials. It has been stated in the counter affidavit that the memorandum containing charge-sheet, was forwarded to the concerned Company Commander, A/21 Bn. for

handing it over to the petitioner. It has been specifically stated that the petitioner after having heard the contents of the memorandum of the charges, refused to receive a copy of the memorandum of charges. It has also been stated that on the same date i.e. 5.6.2009, the petitioner was called in the office of Adjutant-21 Bn. and the contents of the said memorandum of charges were again delivered to him in presence of witnesses and the petitioner was asked to receive the copy of the memorandum of charges in writing but the petitioner again refused to receive it. It has specifically been stated that since the petitioner refused to receive copy of the charge, the disciplinary authority had no other option than to proceed against the petitioner ex parte.

7. An officer of the rank of the Deputy Commandant in C.R.P.F. was appointed as Inquiry Officer to enquire into the charges framed against the petitioner. It is Respondents' case that the petitioner did not co-operate in course of inquiry and accordingly in an ex parte inquiry held by the Inquiry Officer, all the three charges against the petitioner stood proved.

8. It has been stated further that the report of the Inquiry Officer was sought to be provided to the petitioner through his Company Commander giving him fifteen days time to submit his representation against the Inquiry Officer's report. It is asserted that though the petitioner received the copy of the inquiry report, he did not put his signature in token of receipt of the report of the inquiry officer and he did not submit any representation against the report of the Inquiry Officer. Disciplinary Authority, considering all these aspects of the case and material/evidence on record, imposed upon the petitioner, the said punishment of dismissal from service with effect from 16.11.2009.

9. As this Court noticed serious dispute, which is the only dispute in the present case, over service of memorandum containing charges upon the petitioner and the report of the Inquiry Officer in view of the rival pleadings in writ application and counter affidavit, I had directed learned Assistant Solicitor General to produce the original records of the concerned disciplinary proceeding. The said records of the concerned disciplinary proceeding have been placed before me. I find a communication dated 8.6.2009 on the records of the disciplinary proceeding written by the Commandant, 21 Bn. C.R.P.F. addressed to the Inquiry Officer to the effect that the memorandum containing charges were attempted to be served upon the petitioner through Company Commander A/21 Bn. (C.R.P.F.) who had communicated that though the charges were read over to him and explained but the petitioner refused to receive a copy of the said memorandum of charges and also refused to put his signature on the documents. He is said to have refused to receive the memorandum of charge in presence of few personnel of C.R.P.F. namely, Sub-Inspector (GD) Anil Kumar, Hawaldar (GD) Sahdeo Prasad Singh and Constable (GD) Tipu Singh. It was also communicated that on the same date i.e. 5.6.2009, the said documents were read over to the petitioner in the office of Adjutant-21 Bn. in presence of Inspector (GD) Sandeep Dhondhiyal, S.I. (G.D.) Anil Kumar, S.I. G.D. Ram Anugrah Prasad, Hawaldar

(GD) K.N. Methani but he again refused to receive the charge memorandum. It also appears from the records that on 9.6.2009, the Inquiry Officer wrote a letter to the petitioner asking him to be present in his office on 10.6.2009. It was indicated in the said letter that the petitioner had earlier refused to receive the charge memorandum. On the back of the, said letter, I find endorsement made by three personnel of C.R.P.F. in which it has been mentioned that again the petitioner refused to put any signature in token of receipt, though he received the memo of charge.

10. This is to be noted that the place of petitioner's posting and the office of the inquiry officer, both were at Srinagar. This is to be further noted here that as stated in the writ application, the petitioner was granted fifteen days leave from 12.6.2009 to 26.6.2009. It has been stated in the counter affidavit that the said leave was granted on the ground of his personal problems and not on the ground of illness of his wife. By letter dated 13.6.2009 issued by the Inquiry Officer addressed to the petitioner's home address, he was asked to appear before the Inquiry Officer on 30.6.2009. The said letter was sent to him through post. It was indicated in the said letter that if he failed to appear on the said date, the inquiry will proceed against him ex parte. Vide letter dated 3.7.2009, inquiry officer again asked the petitioner to report to him on 27.7.2009 for the purpose of departmental enquiry as he had failed to appear on the earlier date fixed. This order was also sent to his home address in Muzaffarpur. This is also to be noted that the petitioner had been granted leave for fifteen days from 12.6.2009 to 26.6.2009. He had not joined duties after availing the leave. He reported back to the Unit only on 29.8.2009 after twenty days of desertion, as per the Respondent's case. It further appears that vide letter dated 17.8.2009, written by the Inquiry Officer to the Company Commander A/21 Bn., (C.R.P.F.) request was made to produce the petitioner before the Enquiry Officer for the purpose of departmental inquiry. On 21.8.2009, the Inquiry Officer again wrote a letter to the petitioner asking him to appear before the inquiry officer. It further appears that the Adjutant-21 Bn., C.R.P.F., vide letter dated 30.8.2009 asked the petitioner to report before the Inquiry Officer. Again, the petitioner refused to receive the said letter in presence of other Central Reserve Police Force Personnel. On 31.8.2009, again the Inquiry Officer asked the petitioner to appear before him for the purpose of inquiry and on that date again, the petitioner is said to have refused to receive the documents though he was presented before the Inquiry Officer.

11. It further appears from the records that the disciplinary proceeding thereafter proceeded and the witnesses were examined. The petitioner did not present himself to. cross-examine the witnesses and allowed the proceeding to continue ex parte. After examination of some of the witnesses, vide letter dated 1.9.2009 addressed to the petitioner, the Inquiry Officer again directed him and informed him that two witnesses were going to be examined on 2.9.2009 and if he wanted to cross-examine them, he should appear before the Inquiry Officer on 2.9.2009. This letter also contains notings that he refused to receive the said

letter dated 1.9.2009. Again on 2.9.2009, the petitioner was asked to appear before the Inquiry Officer on 5.9.2009, on which date another witness was going to be examined. Again he refused to accept the said letter. The witnesses were thus examined in the absence of the petitioner. The Inquiry Officer submitted his report holding the petitioner of the charge levelled against him. A copy of the said inquiry report was sought to be served upon the petitioner for the purpose of his comments through letter dated 18.10.2009 issued by the disciplinary authority i.e. Commandant 21 Bn. Again the petitioner refused to receive the said communication. Disciplinary Authority, thereafter, proceeded as per the evidence available on record and report of the Inquiry Officer and agreeing with the report of the inquiry officer and after discussing the evidence available on record, the disciplinary authority passed the impugned order dated 16.11.2009.

12. From the original records of the disciplinary proceeding, I find that the communications with respect to the disciplinary proceeding including the memorandum of charge, direction to the petitioner to appear before the Inquiry Officer for the purpose of submitting his reply and for the purpose of cross-examination were refused to be received by the petitioner and there is endorsement to this effect on such communications by the personnel of C.R.P.F. I do not find any reason to disbelieve the original records of the disciplinary proceeding.

13. Learned senior counsel appearing on behalf of the petitioner has drawn my attention to the letter dated 9.6.2009 available with the original records which is communication by the Inquiry Officer to the petitioner asking him to appear before the Inquiry Officer on a particular date, to contend that there is interpolations in the said letter after using whitener. The submission, however, cannot be accepted for the reason that this is not the only event of alleged refusal by the petitioner to receive the communications relating to departmental proceedings. From the letter dated 8.6.2009 written by the Commandant 21 Bn. C.R.P.F. also, it appears that the petitioner had refused to receive the memorandum of charge on 5.6.2009 in front of several personnel of C.R.P.F. There are subsequent events also when the petitioner is said to have acted in similar manner as would appear from the original records.

14. It further appears that the petitioner was charged with the allegation that he unauthorizedly took the duty register outside the camp and got it xeroxed risking the security of the force and he had recorded conversation of the Deputy Commandant of the force in his mobile with the help of his cellphone which were the acts of gross indiscipline for a member of para-military force like C.R.P.F. The statements of the witnesses examined in course of departmental inquiry, supported the allegation made against the petitioner. In the counter affidavit filed on behalf of the Union of India, there are specific assertions that the petitioner refused to receive the communications by the disciplinary authority as well as the Inquiry Officer for the purpose of the departmental proceeding. The said counter affidavit was served upon the petitioner's counsel on 19.1.2011. The petitioner

however, has not rebutted the statement made in the counter affidavit. Such statements as regards refusal on the part of the petitioner to receive communications for his appearance before the Inquiry Officer for the purpose of cross-examination as also by the disciplinary authority, for the purpose of filing of written statement of defence stands admitted. Further, as I have indicated above, I do not find any reason to doubt the correctness of the original records produced by the Respondents. There is no personal malice alleged against either the Inquiry Officer or the disciplinary authority or the appellate authority or the revisional authority.

15. As the petitioner himself did not avail the opportunity of participating in the disciplinary proceeding by filing his written statement of defence or by cross-examining the witnesses or filing his representation against the report of the Inquiry Officer, the impugned action of the Respondents cannot be questioned now, on the ground that the disciplinary proceeding was held ex parte.

16. I do not find any merit in this application. This application is accordingly rejected. Let original records, produced on behalf of the Respondents, with respect to the disciplinary proceedings be returned to Mr. N.A. Shamsi, learned Assistant Solicitor General for Union of India.