
(2010) 01 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (C) No. 3822 of 1998

Sat Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0099

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : D.S. Kuntae, for the Appellant; Atul Nanda, Ankur Chibber and Sumeer Sodhi, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The present petition has been filed assailing the order dated 05.08.1997 passed by Commandant of 32 Battalion of the CRPF pursuant to the departmental inquiry conducted against the petitioner under Rule 27 of the C.R.P.F. Rules 1955. The petitioner also assails the order dated 03.12.1997 dismissing his appeal under Rule 28 of the said Rules as well as the order dated 17.04.1998 confirming the aforesaid two orders in revision under Rule 29 of the said Rules.

2. The facts giving rise to the present petition are undisputed and are within a narrow compass. To the extent necessary, the same may be briefly noticed hereinafter.

3. The petition arises out of an undisputed occurrence on 05.10.1996 when the petitioner was posted as Lance Naik Driver with the 32 Battalion of the CRPF then located in Srinagar, J & K. The truck No. DEG 1360 was detailed as an indenting vehicle for the purpose of distributing E.I. clothing to the company personnel proceeding on leave and to collect daks from battalion headquarters. The petitioner was assigned the duty of driving this truck. While on duty as the driver of this vehicle, the petitioner consumed liquor and thereafter was involved

in an accident with a stationary civilian bus near the Dal Lake Chowk in Srinagar. Other than the petitioner, H.C. R.C. Sharma and four other CRPF personnel were passengers in the vehicle. As a result of this accident, the civilian bus was damaged. The petitioner's vehicle was also severely damaged.

4. The incident was reported to the higher officials of the petitioner resulting in issuing of following articles of charge against the petitioner:

Article-I

That the said No. 871190779 Lnk/Dvr Satpal Singh, while functioning as Lnk/Dvr in 32 Bn CRPF on 05/10/96 committed an act of misconduct in his capacity as a member of the Force punishable u/s 11(1) of CRPF Act 1949 in that he drove Govt. vehicle No. DEG 1360 TATA Truck rash and negligently after consuming liquor on duty, resulting accident of the Govt. vehicle with a civil Bus Regn. No. JKB 8847, causing damage to CRPF vehicle No. DEG 1360.

Article-II

That during the afore-said date while functioning in the afore-said office, the said No. 871190779 LNK/Dvr Satpal Singh was guilty of disobedience of orders in his capacity as a member of the Force punishable u/s 11(1) of CRPF Act 1949 in that he did not obey the orders of No. 690210172 HC R.C. Sharma of E/32 Bn who directed him not to drive vehicle No. DEG 1360 as the said LNK/Dvr had consumed liquor.

5. The respondents had proposed to initiate disciplinary enquiry and, in compliance with the applicable rules, had duly served a memorandum as well as a statement of imputation of misconduct/disobedience of orders in support of the said articles of charges; lists of documents and witnesses to the petitioner dated 13.2.1997.

6. The petitioner had filed a reply dated 20.02.1997 admitting the factum of his having consumed alcohol while on duty and of his having met with the accident. The petitioner sought to explain his conduct of consuming liquor while on duty by stating that he was insufficiently clad and it was a cold evening. He had consumed the liquor by way of medication to keep himself warm to perform his assigned duty. It was the petitioner's contention that one light of the vehicle was damaged and consequently he was driving the vehicle with only one headlight. He stated that it was a mere accident beyond his control. So far as the second Article of Charge is concerned, the petitioner denied the allegation against him that he drove the vehicle in disobedience of the order of Head Constable R.C. Sharma.

7. During the course of inquiry proceedings, the inquiry officer examined the petitioner and put the Articles of Charges to him. In proceedings recorded on 26.03.1997 the petitioner pleaded guilty to the first Article of Charge and pleaded not guilty to the second Charge framed against him. The inquiry proceeded to record evidence of nine witnesses thereafter which included Head

Constable R.C. Sharma as well as the four co-passengers in the truck. The petitioner's statement was also recorded during the course of inquiry proceedings. It is noteworthy that even in the statement recorded by the Inquiry Officer, the petitioner by and large had not disputed the events leading to the occurrence other than bringing in picture a car being driven at fast speed, and stating that he was compelled to swerve the truck in order to avoid colliding with this vehicle. The petitioner, in his reply contended that one headlight bulb of the vehicle was not functional. However, it is the undisputed position that the vehicle, which the petitioner was driving, had hit the stationary bus from the rear side in which two or three passengers were sitting on the front side. The petitioner also admits that he did not stop the vehicle after the occurrence, but drove away to the gate of the headquarters.

8. It is an accepted fact that the inquiry was conducted as per the applicable rules and the petitioner was given full opportunity to cross-examine the witnesses. He, however, did not cross-examine any of the prosecution witnesses. No allegation of violation of principles of natural justice was made by the petitioner in relation to the inquiry, or at any stage thereafter. Even before us, it is not the petitioner's contention that the inquiry proceedings are rendered illegal on account of violation of the applicable statutory provisions or any of the principles of natural justice.

9. After detailed consideration of the evidence placed before him, the inquiry officer submitted his report dated 05.06.1997 wherein he found the petitioner guilty of the first Article of Charge. However, for the reason that the statement of Head Constable R.C. Sharma was not supported by the evidence of the other co-passengers, who stated that they were not in a position to hear the conversation between the Head Constable and the petitioner as they were sitting in the rear of the vehicle, the inquiry officer was of the view that the second Article of Charge had been only partially proved.

10. This inquiry report was placed before the Commandant of the 32 Battalion, he being the Disciplinary Authority. By an order passed on 05.08.1997, the Disciplinary Authority agreed with the findings of the Inquiry Officer and exercised powers vested in him in Section 11(1) of the CRPF Act, 1949 read with Rule 27 of the Rules framed there under, directing removal of the petitioner from service w.e.f. 08.08.1997 after all clearance. The Disciplinary Authority further directed that an amount of Rs. 4853/- being 50% of the cost of the damage caused to the CRPF vehicle be recovered from his dues. It was further directed that the period of suspension from the service of the petitioner w.e.f. 05.10.1996 to 07.08.1997 be treated as such, and that he would not be entitled to any emoluments except whatever he has drawn in the form of subsistence allowance.

11. Aggrieved thereby, the petitioner filed the appeal dated 03.09.1997 under Rule 28 of the CRPF Rules to the Deputy Inspector General of the CRPF Group Centre, Hyderabad. This appeal came to be rejected by an order passed on 03.12.1997. The petitioner's revision under Rule 29 of the said Rules was also

rejected by the Inspector General of Police, Hyderabad by an order passed on 17.04.1998.

12. The respondents have produced the original record, which has been seen by us.

13. Before us, Mr. D.S. Kauntae had urged at length that the conduct of the petitioner was at best a minor misdemeanor, which could not have attracted the harsh punishment of removal from service, which has been imposed upon him. He has admitted that 60 ml. of liquor is normally issued to serving personnel in the force and that the petitioner was neither rash nor negligent, but it was on account of the turn of events including insufficiency of light, and the intention of avoiding the speeding car coming from the opposite direction, that the petitioner hit the stationary bus. He assails the action taken by the respondents on ground of disproportionality of the sentence which has been awarded to him.

14. Having heard learned Counsel for the parties, we find that so far as the first Article of Charge against the petitioner is concerned, the petitioner accepted his guilt in respect thereof. As a result, it would appear that the petitioner had admittedly driven a service vehicle on duty while under the influence of liquor. Apart from the admission of the petitioner, it has come in the unrebutted testimony of five other witnesses that the petitioner drove the vehicle rashly and negligently resulting in the accident on 05.10.1996. The CRPF vehicle is stated to have suffered damage to the tune of Rs. 9706/-.

15. The conduct of the petitioner requires to be tested as against the effect of his actions. The petitioner drove into the rear of a stationary civilian vehicle in a crowded civilian area. It has come on record that as a result of the accident, the bus suffered damage to the tune of Rs. 12,000/- and two passengers also got minor injuries, who were given first aid in a nearby hospital. However, matter does not end here. Instead of bringing his vehicle to a stop and ascertaining the damage caused to the two vehicles, and also finding out as to whether any injuries have resulted to any person, the petitioner opted to flee away from the spot with his vehicle. The witnesses have deposed that the members of the traffic police, who were posted in that area, tried to stop the petitioner from driving away, but were unsuccessful. The petitioner's vehicle was given a chase by the traffic police and he could be persuaded to stop the vehicle only when he had reached the CRPF headquarters.

16. We find that the respondents have carefully examined the conduct of the petitioner as well as its effect. The petitioner is a member of a paramilitary force and discipline is required to be maintained. The petitioner was entrusted with the safety of men and material.

17. It has come in the evidence of his superiors viz. Head Constable R.C. Sharma as well as his colleagues that he was driving the vehicle rashly and negligently. Head Constable R.C. Sharma also cannot be disbelieved when he states that he had instructed the petitioner not to drive the vehicle under the influence of

alcohol. As aforesaid, his statement had not even been challenged by the petitioner as he was not cross examined.

18. The respondent have also explained that rash and negligent driving after consumption of liquor is by itself a serious offence and merits stringent punishment. Even if we were to agree with learned Counsel for the petitioner that the offence of which the petitioner has been found charged was that of minor misdemeanor, the conduct of the petitioner after the occurrence certainly merits no leniency. The petitioner cared not for the safety of the persons whom he was carrying, but opted to flee from the spot after being involved in an accident, which resulted in severe damage to a stationary vehicle without at all caring for the life or safety of the passengers whom he may have injured.

19. In view of the above, the reliance placed by learned Counsel for the petitioner on the pronouncement of the Apex Court reported in State of Punjab and Ors. v. Ram Singh Ex-Constable 1992 SCC (L&S) 793 appears to be misplaced. We find that the case before the Apex Court concerned a police personnel who had consumed alcohol and was found wandering near a bus stop with his service revolver. He was brought to the civil hospital for medical examination where he had abused the doctor on duty. The Apex Court had held that the act constitutes the gravest act of misconduct in the disciplined service like the police service, which justifies his dismissal. In this judgment the Apex Court has considered the meaning of the word "misconduct". The Supreme Court excluded mere error of judgment, carelessness or negligence in performance of the duty from the realm of misconduct. However, we find nothing in this pronouncement which could come to the aid of the petitioner in the given facts and circumstances notice hereinabove. The conduct of the petitioner could certainly not be described as mere negligence in performance of his duty or error of judgment or carelessness. learned Counsel for the petitioner also relies on U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, . In this case, the charge was that the respondent had issued short distance tickets to 11 passengers, resulting in deficiency in fare amounting to 30 paise per head. A perusal of this judgment would show that for the reason that no evidence was placed before the inquiry officer by the department, it was concluded that the punishment of removal from service was highly disproportionate. It is not so before us. The respondent not only established the charges against the petitioner by examination of nine witnesses, but as noticed above, the petitioner has also admitted the allegations in Article I of the Charge against him.

20. In view of the above, we find the challenge by the petitioner wholly misconceived and legally untenable. This writ petition is, accordingly, dismissed.