

(2007) 08 DEL CK 0059
In the Delhi High Court
Case No : WP (C) . No. 5226 of 2005

Satender Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 32(1), 36, 52
Constitution of India, 1950 — Article 14

Citation : (2007) 08 DEL CK 0059

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Abinash K. Mishra, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The petitioner was a Constable in CISF. Vide order dated 11.09.2002 passed by the Senior Commandant, CISF 2nd Res. Bn, Saket, New Delhi the petitioner was removed from service for his unauthorized absence for 17 days from 05.02.2002 to 21.02.2002. This order of removal from service was passed by the Disciplinary Authority in exercise of powers vested in it under Sub-rule 1 of Rule 32 of CISF Rules, 2001. In appeal filed by the petitioner against the aforesaid order of the Disciplinary Authority, the Appellate Authority modified the punishment from "removal from service" to "compulsory retirement" vide impugned order dated 12/13.01.2003 passed by the DIG, N.Z. Aggrieved from the said order of the Appellate Authority, the petitioner has filed the present writ petition seeking a writ of certiorari against the respondents setting aside the order of the Appellate Authority and also of the Disciplinary Authority referred above. He has prayed for his reinstatement with all consequential benefits. The short question that calls for determination in the present writ petition is whether the punishment of "compulsory retirement from service" on account of alleged absence of the petitioner for 17 days is, in the facts and circumstances of the case, disproportionate to the gravity of the misconduct committed by him. The

legal position regarding scope of interference by a writ Court with the quantum of punishment imposed upon a delinquent employee is well settled by a long line of decisions rendered by the Supreme Court. The question relating to interference with the quantum of punishment was recently considered by us in detail in our recent judgment in Mahesh Chand v. UOI and Ors. WP(C) No. 734/2006 decided on 31.05.2007. In the said case, relying on various judgments of the Supreme Court, this Court held that doctrine of proportionality as a part of the concept of judicial review to ensure that even on an aspect which is otherwise within the exclusive province of the Court Martial if the decision of the Court Martial as to sentence is in outrageous defiance of logic, the sentence would not be immune from correction.

2. It was held by the Apex Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, that the quantum of punishment to be imposed upon a delinquent employee for misconduct is a matter that lies in the discretion of the Disciplinary Authority. It was further held in the said case that penalty imposed should always be commensurate with the gravity of the misconduct proved against the employee and any penalty which is disproportionate to the gravity of the misconduct against the employee would violate Article 14 of the Constitution. That proposition was reiterated in Ranjit Thakur Vs. Union of India (UOI) and Others, wherein it was held as under:

Judicial review generally speaking, is not directed against a decision, but is directed against the ?decision-making process?. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

3. The above proposition of law has been reiterated by the Supreme Court in a number of subsequent decisions including B.C. Chaturvedi Vs. Union of India and others, where the Court observed:

The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion of penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reason in support thereof.

4. Reference may also be made to the decisions of the Supreme Court in Om

Kumar and Others Vs. Union of India, Union of India (UOI) and Another Vs. K.G. Soni, and The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., . In all these cases, it was held by the Apex Court that if the punishment is disproportionate to the gravity of the misconduct proved against the charged employee, the Court would normally remit the matter to the administrator for a fresh decision on the quantum of punishment. Only in rare cases where there has been a long delay because of the time taken in completing the disciplinary proceedings or the time taken in the Courts can the Court substitute its own view as to quantum of punishment.

5. In the present writ petition, the petitioner has assailed the order of his compulsory retirement passed by the Appellate Authority. The petitioner was charge-sheeted under Rule 36 of CISF Rules, 2001. The two charges were framed against him and they were to the following effect:

CHARGE-I

Member No. 901400538 Constable Satender Pal singh was deputed on duty on 5.2.2002 at Post No. 3 of VP House Along with the arms and ammunitions from 1 p.m but without getting any prior permission/consent from any competent officer, he was found absent from his place of his duty and that since 5.2.2002 to 21.2.2002 he remained absent for total 17 days and then he joined his services on 22.2.2002. Therefore being a member of a disciplined central forces, his action is completely intolerable. By his aforesaid action he has shown grave negligence and indiscipline towards his duties. Therefore you are charged with this charge.

CHARGE-II

During the last 12 years of his service the Member No. 901400538 Constable Satender Pal Singh of company 22 CISF, Saket has been punished for 13 times with the following punishments for the charges relating to his being remaining absent from the place of his duty, his being overstaying the leave periods, indiscipline and negligence etc. but he has not improved his conduct in any manner and not only that he is showing more OSI/offender/indiscipline which is totally intolerable towards his duty shows his negligence etc.

6. Inquiry into the above charges was held against the petitioner and upon inquiry he was found guilty by the Inquiry Officer of both these charges. Aggrieved with the findings of the Inquiry Officer, the Disciplinary Authority viz. Senior Commandant, CISF 2nd Res. Bn, Saket, New Delhi, imposed the punishment of "removal from service" against the petitioner vide order passed on 11.09.2002. Aggrieved by the order of the Disciplinary Authority, the petitioner filed an appeal before the Appellate Authority who in exercise of its powers under Rule 52 of the CISF Rules, 2001 modified the penalty to that of "compulsory retirement from service". The present writ petition is directed against the order of the Appellate Authority seeking the reliefs as mentioned above.

7. Appearing for the petitioner Mr. Mishra argued that the respondents have taken a very harsh view of the matter while passing orders of "compulsory retirement from service" against the petitioner. He urged that the alleged absence of the petitioner for 17 days from 05.02.2002 to 21.02.2002 was not in the peculiar facts and circumstance of the case a misconduct of such a grave nature as to call for his "compulsory retirement from service" which was the only source of livelihood for him and his family. He further argued that the impugned order of compulsory retirement has deprived the petitioner of benefits of 12 years of service rendered by him prior to his impugned retirement. He contended that the respondents had overlooked the fact that the petitioner had adequately explained his absence from 05.02.2002 to 21.02.2002 before the Disciplinary Authority. It was contended that the petitioner had performed his duties on 04.02.2002 from 1300 hrs. to 1700 hrs. and had visited the hospital in the morning of that day as he was down with fever where he was advised rest for three days. It was submitted that on 04.02.2002 the petitioner had requested the Company Commander for leave on medical grounds but he was not allowed leave due to shortage of staff. On the next day i.e. on 05.02.2002 the petitioner had sent intimation about his inability to attend duties due to his sickness over phone to convey the same to the Company Commander and to make the General Duty (GD) entry. Constable Jamuna Prasad attended his phone. It was argued that though the Appellate Authority had accepted the plea of the petitioner that he had informed the Company Commander through Constable Jamuna Prasad about his inability to attend duties due to his sickness on 05.02.2002 but still the Appellate Authority convicted the petitioner for his absence from 05.02.2002 to 21.02.2002. In this regard, learned Counsel drew our attention to the order of the Appellate Authority (Annexure P-2), the relevant portion whereof is reproduced here-in-below:

...I have also carefully gone through the appeal of the appellant with reference to the departmental enquiry file. I do agree with the first plea of the appellant that he might have visited the hospital in the morning before reporting for duty w.e.f 1300 to 1700 hours on 4.2.2002. In the departmental enquiry it has also been established that Const. Jamuna Prasad received the message regarding the sickness of appellant who in turn had communicated the same to shift in-charge SI/Exe J.P.Chouhan. As per medical certificates produced by the appellant during the course of departmental enquiry it has been found that the appellant had been taking medical treatment from Primary Health Centre, MCD Mehrauli, New Delhi wherein he was initially advised 03 days medical rest on 4.2.2002 which was further extended to 06 days on 7.2.2002, 8 days on 13.2.2002 and he was declared fit to resume duty on 21.2.2002 but the appellant failed to produce any evidence to support that he had ever informed to any of the authorities about further medical rest advised to him after expiry of first 03 days medical rest w.e.f 4.2.2002. Thus, the facts remain that after informing his sickness/medical rest of 03 days on 5.2.2002 he remained absent from duty un-authorised with effect from 7.2.2002 to 21.2.2002 without any information or permission of the

competent authority and joined duty only on 22.2.2002 at 1435 hours....

8. The above findings of the Appellate Authority contained in the impugned order were not disputed on behalf of the respondents. It is evident from the findings of the Appellate Authority referred above that the petitioner was ill during the period of his alleged absence from 05.02.2002 to 21.02.2002 and that he had duly informed the Company Commander about his inability to attend the duties due to his sickness on 05.02.2002. The first charge against the petitioner was that he had absented from duty on 05.02.2002 without information and this charge, in view of the above findings of the Appellate Authority, cannot be taken as proved. The Appellate Authority has held in its order that the petitioner had not informed about his absence after three days of his initial sickness and Therefore held him guilty for unauthorized absence from 07.02.2002 to 21.02.2002. Admittedly, this was not the charge against the petitioner that he had absented from duty w.e.f 07.02.2002 as mentioned in the order of the Appellate Authority. It is further clear from the order of the Appellate Authority that the Appellate Authority had accepted the case of the petitioner that he was advised medical rest by the Doctor treating him for the period from 05.02.2002 to 21.02.2002. It is the sickness of the petitioner that prevented him from attending to his duties during the aforementioned period. The sickness was beyond the petitioner's control. There is, in our view, considerable merit in the submission made by Mr. Mishra that the petitioner was prevented for reasons beyond his control from attending to his duties during the period from 05.02.2002 to 21.02.2002. We are conscious of the fact that the unauthorized absence from duty is a misconduct especially when the person concerned is serving in military or para-military force as was the position in the present case. If a person is allowed to remain absent from duty for which he has no Explanation much less cogent Explanation, there would be more people enjoying the comforts of their home and the company of their families than serving on the borders or keeping vigil in disturbed areas where they are supposed to be posted. Discipline is the very foundation of any armed force. At the same time, we cannot ignore the need for humanizing the treatment which ought to be given to those serving in armed and para-military forces. Anyone serving in such forces may like any other public functionary be prevented by circumstances beyond his control from resuming duties. There may be cases where resumption of duties may not be an impossibility but given regard to what human life and affairs are, circumstances may sufficiently justify a delayed joining back for duties. This all depend on the facts and circumstances of each case whether the overstaying of leave or unauthorized absence was or was not justified. No strait jacket formula can be formulated or applied in such cases nor can any norms be prescribed for a uniform application to all situations. What is to be kept in mind by the disciplinary authority and those hearing appeals against the orders of punishment is whether absence from duties was for such a long period and so unjustified that the same smacked of indiscipline, defiance or desertion. Whether the justification advanced for late resumption of duty was, factually false or

wholly unacceptable being moonshine and whether the person concerned was a habitual offender in the sense that he was incorrigible in his conduct and disrespect for the rules regulating his service conditions. It is only where the authorities find the case to be hopeless on all these fronts that they may be justified in getting rid of the man by removing him from service. In other cases, a lesser punishment ought to be sufficient to meet the ends of justice.

9. Appearing for the respondents Ms. Jyoti Singh argued that during the period of 12 years, the petitioner was punished 13 times for his overstaying leave/absence. She contended that a separate charge was framed against the petitioner in regard to his past conduct. The contention of Ms. Singh was that looking at the past conduct of the petitioner, the only inescapable conclusion could be that the petitioner was a habitual absenter and was Therefore incorrigible. She urged that no interference is called for in the impugned order of punishment imposed upon the petitioner.

10. In reply Mr. Mishra argued that the petitioner cannot be punished twice-over in respect of his overstaying leave in the past. He contended that since the first charge relating to alleged absence from 05.02.2002 to 21.02.2002 was not proved, no reliance could have been placed by the Disciplinary Authority or the Appellate Authority on the past conduct of the petitioner. We find merit in this contention of the petitioner's learned Counsel. In our view, in the peculiar facts and circumstances of the case, the petitioner could not have been compulsory retired from service in view of his alleged unauthorized absence from duty from 05.02.2002 to 21.02.2002. The punishment of "compulsory retirement" inflicted upon the petitioner is, in our view, totally harsh and disproportionate to the gravity of the misconduct alleged against the petitioner.

11. In the result, we allow this petition set aside the impugned order and direct the reinstatement of the petitioner in service. We leave it open to the disciplinary authority to decide about the lesser punishment, if any, that may be imposed upon the petitioner. The petitioner has filed an affidavit before us that he would not claim back-wages during the interregnum between the date of his compulsory retirement and the date of his reinstatement. In that view of the matter, we direct that the petitioner would not be entitled to back-wages from the period between the date of his compulsory retirement from service and the date he is reinstated in accordance with Rules keeping in view the lesser punishment that may be imposed upon him. Parties are left to bear their own costs. The petitioner shall report back to his unit for further orders to be passed by the Disciplinary Authority on 31st August, 2007.