
(2012) 01 GAU CK 0067
In the Gauhati High Court

Satish Kumar, Force No.921110276, Constable/Driver, Central Reserve Police Force, Amerigog, Guwahati, Kamrup, Assam -
Petitioner

APPELLANT

Vs

Union of India, Represented by the Secretary, Ministry of Home Affairs, New Delhi

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 01 GAU CK 0067

Hon'ble Judges : B.D.Agarwal, J

Bench : Single Bench

Advocate : Advocates for the petitioner : Sri R Mazumdar, Smt P Rai, Sri A Kumar., Advocates for the respondents: Sri A K Bora, CGC,, Advocates appearing for Parties

Judgement

1. The writ petitioner is challenging the order dated 23.10.2007, passed by the Additional Deputy Inspector General of Police, Group Centre, CRPF, Bilaspur (Chattisgarh), whereby, the petitioner was removed from service for committing offence of misconduct by way of embezzlement of 95 litres of diesel. In addition to the punishment of removal from service, the aforesaid disciplinary authority has also ordered recovery of the fuel prices jointly with the driver of the bus. The aforesaid order of conviction was affirmed by the appellate authority (DIG), vide order dated 10.01.2008. However, the appellate authority interfered with the substantive sentence of removal from service. Instead of the said punishment, the appellate authority ordered that the petitioner be reverted to the post of constable from the post of Head Constable and this reversion shall be limited for a period of 3 (three) years from the date of reinstatement. However, the order of recovery of fuel prices was maintained. This order is also under challenge. The appellate order was also challenged by way of revision before the IGP, Special Sector, Delhi, who also dismissed the revision vide impugned order dated 09.07.2008. After all these orders, the office of the Disciplinary Authority (DIG) had issued an order on 11.09.2008 to the following effect:

2. ?The pay of Force No. 921173305 Head Constable/Driver Lalchand and Force No. 921110276 Head Constable/Driver Satish Kumar are reduced by three stages from Rs. 4050/ to Rs. 3795/ for a period of three years from the date of their reporting subsequent to their reinstatement. In addition, it is ordered that the persons will not earn any increments during the said period and on completion of the period of reversion, the punishment of reversion shall have cumulative effect on future.?

The aforesaid order has also been challenged.

3. Heard Sri R Mazumdar, learned counsel for the writ petitioner and Sri A K Bora, learned Central Government Counsel (CGC) for the respondents. I have also gone through the pleadings of both the parties.

4. The gist of the department's case is that at the relevant time, the writ petitioner was in the rank of Head Constable and he was given the duty to issue fuel in the vehicles belonging to the department. On 01.09.2006, the petitioner issued 110 litres of diesel in a bus of the department, which was driven by the delinquent driver Lalchand. The department's further case is that although there was a stock of 145 litres of diesel in the tank of the bus, the petitioner purportedly issued 110 litres of diesel which was practically not possible since oil tanks have a maximum capacity of 160 litres only. In this way there was embezzlement of 95 litres of diesel. On the basis of preliminary enquiry being Court of Enquiry, it was ordered that the fuel prices shall be recovered prorata from the petitioner and from the other driver. The Court of Enquiry also recommended for a regular departmental enquiry. Consequently, an enquiry officer was appointed and show cause notices were issued to the delinquents. However, the delinquents declined to submit any written statement nor prayed for appointing any Defence Assistant.

5. On conclusion of the enquiry, the Enquiry Officer submitted his report to the disciplinary authority stating that the charges stood proved. The aforesaid report was accepted by the disciplinary authority and the disciplinary authority passed an order of removal from service vide order dated 23.10.2007. As noted earlier, both the appeal and the revision of the writ petitioner were dismissed albeit with modification in the sentence.

6. Sri Mazumdar, learned counsel for the petitioner has challenged the impugned orders passed by the disciplinary as well as the appellate and the revisional authorities on the ground that the entire disciplinary enquiry was dehors to the rules and principles of natural justice. According to the learned counsel, no Presenting Officer was appointed, which is a necessary concomitant in a disciplinary enquiry. In support of this submission, the learned counsel relied upon the Judgments of this Court rendered in the cases of Salam Kesho Singh vs State of Manipur; reported in 2011 (1) GLT 287 (Division Bench) and Union of India vs Ram Laxman Sharma; reported in 2011 (3) GLT 281 (Division Bench).

7. In the aforesaid Judgment, this Court has held that even if the Rules do not

provide for appointment of a Presenting Officer in a disciplinary proceeding then also it would be proper for the disciplinary authority to appoint a Presenting Officer. Their Lordships have further held that the disciplinary proceeding is in the nature of quasijudicial proceeding and as such, the Enquiry Officer should act as a neutral person and he should not play the role of disciplinary authority himself.

8. As noted earlier, the impugned orders of the disciplinary authority was challenged before two successive authorities, i.e., the appellate and the revisional authorities.

9. The admitted fact is that the writ petitioner did not raise the issue of nonappointment of either the Presenting Officer or the Defence Assistant before the aforesaid authorities. The learned counsel for the petitioner submitted that since the infringement of the established procedure of law is in the realm of legal issue the same can be raised at any stage of the proceeding. In support of this submission, the learned counsel referred to the observations made by this Court in the case of *Salam Kesho* (supra).

10. In my considered opinion, the aforesaid authorities are distinguishable on facts. In the case of *Salam Kesho* (supra), a specific allegation was raised about nonappointment of a Presenting Officer. However, in the case before me, the issue was not raised at any stage of the proceeding. Not only that, this plea has not been taken in the writ petition as well. In this way, the argument of the learned counsel is beyond the pleadings. Hence, I am not persuaded to entertain the argument of the learned counsel that the entire proceedings stand vitiated for nonappointment of a Presenting Officer. On the same ground, the submission of the learned counsel regarding appointment of Defence Assistant is also untenable.

11. Be that as it may, in the case of *D.G.Railway Protection Force Vs K Raghuram Babu*; reported in (2008) 4 SCC 406, the Hon''ble Supreme Court has held that allowing representation of a delinquent employee is not a vested right. However, in the case before me, no prayer for appointment of any Defence Assistant was made before the Enquiry Officer.

12. For these reasons, I am not persuaded to interfere with the orders of the disciplinary as well as the appellate and the revisional authorities.

13. Coming to the impugned order dated 11.09.2008, I am of the view that this order has virtually superseded the appellate authority's order. As mentioned earlier, while interfering with the order of removal from service, the appellate authority ordered that both the delinquents should be reverted back to the post of constable/driver for a period of 3 (three) years from the date of their reinstatement. However, in the order dated 11.09.2008, the DIG of Police (CRPF) has ordered that even after completion of 3 (three) years'' reduction in rank the petitioner shall not be entitled to increments thereafter. Since this order is against the appellate and revisional authorities'' final order, the last part of the order dated 11.09.2008, is hereby set aside. It is held that the petitioner will be

entitled to increments on his reinstatement as Head Constable.

14. In the result, the writ petition stands partly allowed.