

(2011) 04 DEL CK 0359

In the Delhi High Court

Case No : Writ Petition (C) No. 6028 of 2010

Savita Dutt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 25
Central Reserve Police Force Act, 1949 — Section 11, 11(1)

Citation : (2011) 04 DEL CK 0359

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ranbir Yadav and Anzu K. Varkey, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On receipt of a complaint from Lady Ct. Meena Singh that the Petitioner, her superior officer, a Sub-Inspector with CRPF had not only ill-treated her, misbehaved with her, but had abused her and had slapped her, and finding prima facie grounds to proceed with a departmental inquiry against the Petitioner, a charge sheet dated 27.4.2006 was issued to the Petitioner which she refused to take when sent by post and was ultimately personally delivered to her on 15.5.2006.

2. The Petitioner was charged as under:

ARTICLE-I

That the No. 860881571 SI/GD (Mahila) Savita Dutt while posted and performing the duties in C/88 BN at Shillong has committed an act of neglect of duty/remissness in discharge of her duty and other misconduct and misbehaviour in the capacity as a member of the Force under Section-11(i) of CRPF Act 1949 in that she abused No. 030880061 CT/Mahila Meena Singh in her room on 14.08.2005 severely by using vile/acrimonious language and slapped her without

any reason and behaved in insolent manner with said Ct/Mahila which is prejudicial to the good order and discipline of the Force.

ARTICLE-II

That the aforesaid No. 860881571 SI/GD (Mahila) Savita Dutt while posted and performing the duties as platoon commander in C/88 at Shillong on 15.08.2005 committed an act of dereliction of duty/disobedience of orders and other misconduct and misbehaviour in the capacity as a member of the Force under Section-11(1) of CRPF Act, 1949 in that she did not provide any medical assistance/aid to No. 030880061 CT/Mahila Meena Singh deliberately inspite of knowing that above Mahila CT was suffering from illness/unconscious while on duty and she also did not report the details/briefs of duties performed, slackness, gain, outcome, illness of CT/Mahila Meena Singh etc. to her OC Coy on return back to Coy location which is prejudicial to the good order and discipline of the Force.

3. Ms. Shashi Shahidi was appointed as an Inquiry Officer to conduct an inquiry and submit a report. The Petitioner filed a representation expressing lack of confidence in the Inquiry Officer appointed, who was removed and in place Sh. Madan Kumar was appointed as an Inquiry Officer. On 12.7.2006 the Petitioner expressed no confidence in said Inquiry Officer and also said that she wanted representation through a lawyer, which representation was rejected vide communication dated 28.7.2006 informing Petitioner that as per the service rules applicable he could not be represented by a counsel and that she could nominate a Defence Assistant, whose name was required to be furnished.

4. Since the writ petition was argued without a counter affidavit and with reference to the record of inquiry, relevant would it be to note that records show the Petitioner being intimated by the Inquiry Officer that he would be holding a preliminary hearing on 25.7.2006 and she appeared before the Inquiry Officer on said date. Record shows that she accepted having received the charge sheet as also the list of documents and the list of witnesses. With reference to her written request to be represented through an advocate, which request was refused and she was asked to furnish the name of a person whom she desired to act as her Defence Assistant, it stands recorded in the proceedings that the Petitioner refused to give the name of any Defence Assistant and told the Inquiry Officer that she would give the name by next day. The Inquiry Officer adjourned the matter to 28.7.2006 and obtained the signatures of the Petitioner on each page of the order sheet.

5. Record shows that the Petitioner did not appear before the Inquiry Officer on 28.7.2006. No Defence Assistant appeared and this compelled the Inquiry Officer to defer hearing and necessitated the Inquiry Officer to send a written communication dated 28.7.2006 informing Petitioner that she had neither appeared nor sent the name of the Defence Assistant. The Petitioner was requested to send the name of the Defence Assistant so that the Inquiry Officer

could fix a date for hearing. Record shows that the Petitioner refused to accept the said letter which was sent by post to her. The Inquiry Officer then sent by post a communication to the Petitioner that he would be holding proceedings on 14.8.2006, which communication was not received by the Petitioner. She was accordingly proceeded against ex-parte. Record further shows that proceedings held from time to time i.e. 17.8.2006, 18.8.2006, 21.8.2006, 1.9.2006, 5.9.2006, 6.9.2006, 7.9.2006, 10.9.2006, 11.9.2006, 12.9.2006, 9.10.2006, 10.10.2006, 21.11.2006 and 2.12.2006, were communicated to the Petitioner by post and all postal dockets were returned with a remark that either the Petitioner was unavailable or she had refused to receive the same.

6. Left with no option, evidence was recorded at the back of the Petitioner and on 7.3.2007 inquiry report was furnished to the Disciplinary Authority which was sent to the Petitioner through a special messenger on 13.3.2007 who reported that the Petitioner refused to receive the report of the Inquiry Officer; stating that she was unwell. Thereafter, evidenced by the dispatch register entry No. 3778 maintained by the unit concerned, on 24.3.2007, under Regd. Post the report of the Inquiry Officer was sent to the Petitioner which she refused to receive and hence the docket was received back. Evidenced by the dispatch register, on 30.4.2007 the report of the Inquiry Officer was once again sent to the Petitioner vide Regd. Post entry No. 3944. The record does not evidence the docket to be returned un-served and thus there is a presumption that the Petitioner received the same. We note that the address at which the docket has been sent is the residential address given by the Petitioner in the memo of parties i.e. House No. 789, Type III quarter, Timarpur Delhi.

7. Assertion by the Petitioner with reference to a purported communication dated 18.8.2006 in which she claims to have informed the department that she desired Sub-Inspector Ramjit Bhagta to be her Defence Assistant, is not supported by the relevant record produced where we found no such letter existing in the relevant record.

8. The plea of the Petitioner that the inquiry is vitiated on account of the defence assistance being denied to her is a clear afterthought not only for the reason the record of the Respondent does not show any such request being delivered, but there are otherwise good ground to infer the said document to be a created document.

9. As noted hereinabove the Petitioner appeared before the Inquiry Officer on 25.7.2006. Her signatures are to be found on the proceeding sheet thereof. She refused to give the name of her Defence Assistant stating that she would do so on the next day and the Inquiry Officer fixed the next date as 28.7.2006, on which date the Petitioner did not appear requiring the Inquiry Officer to send to her a written communication of even date requesting her to furnish the name of a Defence Assistant so that he could fix a date of hearing. The record shows that the Petitioner refused to receive the said letter. Her subsequent conduct of refusing to accept any further communication sent to her shows the scheming

mind i.e. to try and create a pitfall for the department and as would be evident from the further facts which we note the Petitioner fell in the pit which she dug. There is no explanation from the side of the Petitioner as to why did she not personally appear before the Inquiry Officer on 28.7.2006 and hand over the letter in question, if indeed one existed.

10. The further plea of the Petitioner that the inquiry held ex-parte has deprived her the right to cross-examine the witnesses is obviously to be negated inasmuch as it is a case of self-denial of an opportunity to be heard and not that the department is in the wrong. Letters intimating dates from time to time have been refused to be received by the Petitioner. Similarly the plea that she was denied an opportunity to respond to the report of the Inquiry Officer is negated; as the denial is self-created. Every possible Endeavour to serve the report of the Inquiry Officer upon the Petitioner has been frustrated by her. She cannot raise any grievance thereon.

11. The plea is the writ petition that the Inquiry Officer, being a subordinate to the Commandant Ms. Aparajitha R. was under the influence of the Commandant and hence his report is bias is a plea worthy of no credence for the reason at every inquiry an Inquiry Officer would always be an officer junior in rank to the Disciplinary Authority. The Disciplinary Authority frames the charge sheet and surely cannot command his superior officer to be the Inquiry Officer.

12. As regards the merits of the matter, learned Counsel for the Petitioner had conceded that if the technical pleas raised by the Petitioner are rejected, there is enough evidence to hold against the guilt of the Petitioner. Thus, we need not note the evidence led at the trial against the Petitioner.

13. Since the Petitioner never participated at the inquiry and for which we find that she is fully responsible for what has happened and further for the reason she self denied an opportunity to respond to the report of the Inquiry Officer, the Disciplinary Authority levied the penalty of dismissal from service as per order dated 4.6.2007 and also passed consequential orders pertaining to the manner in which the period she remained suspended would be treated and also held that the period 18.10.2006 to 16.11.2006 shall be treated as dies non.

14. Petitioner preferred an appeal against the order levying penalty and since the appeal was not being decided she filed WP(C) No. 3421/2008 which was disposed of vide order dated 2.5.2008. The direction issued was to the Appellate Authority to pass a reasoned order on the appeal filed by the Petitioner. Vide order dated 7.5.2008 the appeal was dismissed. Petitioner filed a Revision Petition (stated to be a Review Petition) on 19.8.2008 and before awaiting any decision thereon filed WP(C) No. 8631/2008 which was disposed of vide order dated 5.3.2008 with a direction that the appeal be re-decided with specific reference on the issue of the proportionality of the penalty, should the Appellate Authority not agree on merits with the Petitioner.

15. The reason why this Court directed the Appellate Authority to specifically

consider and give reasons for the penalty was the reason that Petitioner had rendered 20 years service and had earned 3 gallantry medals.

16. Vide order dated 3.2.2009 the Appellate Authority disposed of the appeal and as against the penalty of dismissal from service, inflicted the penalty of compulsory retirement upon the Petitioner and further directed that the period of suspension would be treated as directed by the Disciplinary Authority i.e. she would not be entitled to any pay and allowances for said period except the subsistence allowance already received. The period 18.10.2006 to 16.11.2006 was held regularized as dies non, but the period of dies non would be treated as exempted for pension etc.

17. The revision petition filed by the Petitioner was rejected vide order dated 22.8.2009.

18. Since we have dealt with the technical pleas urged by the Petitioner at the relevant stage of our decision hereinabove, we are required to deal with only 2 further issues. The first being whether the penalty of compulsory retirement is disproportionate and secondly the direction in the impugned order as regards the period 18.10.2006 to 16.11.2006 which has been treated dies non, but the dies non being exempted for purposes of pension.

19. On the first issue, suffice would it be to note that the instant misdemeanor held established against the Petitioner is a fairly serious misdemeanor and for which the charges itself are proof enough and we need not elaborate any further. The Petitioner not only ill-treated a junior officer, but humiliated her and even slapped her. We may highlight that there is evidence that when lady Ct. Veena Singh was ill and was suffering from dizziness, not only the Petitioner who was her senior officer failed to ensure medical aid given to her, but the Petitioner abused her and assaulted her.

20. It is no doubt true that the Petitioner had earned 3 gallantry medals while in service, but it has also to be noted that she was levied penalties of severe censure, warnings and censure on as many as 5 occasions.

21. The penalty of compulsory retirement would entitle the Petitioner to pension. For the misdemeanour committed by the Petitioner we do not find the penalty to be shockingly disproportionate.

22. On the issue pertaining to the period 18.10.2006 to 16.11.2006, when the Petitioner was under suspension and it is alleged that she left the headquarter without permission, we find a little confusion in the appellate order where the finding qua the said period is in the following words:

(d) The period of unauthorized absence of Appellant from 18.10.2006 to 16.11.2006 during the suspension period, her leaving the Headquarter without permission and her absence without the permission of any competent authority is regularized as Dies-non, but this period of dies-non is exempted for pension etc. according to the provisions made under Rule 25 of the Central Civil Services

Pension Rules, 1972.

23. We note that vide order dated 17.10.2006 leave was sanctioned to the Petitioner for said period with a direction that after the leave was over she will report back to the Unit. Thus, it is wrong to say that for the said period the Petitioner was on unauthorized absence and the period was to be treated as dies-non. But, this controversy has no bearing on the disciplinary inquiry and the final penalty levied upon the Petitioner. The Petitioner has received her dues for the said period and evidenced from the language of the order reproduced in the preceding paragraphs it appears that the department has excluded the dies-non part of the said period for purposes of pensionary benefits. This means that while computing the pension the said period would be reckoned as pensionable service rendered. But lest there be any dispute, we hold that the order passed by the Disciplinary Authority as also the appellate order finally passed and as confirmed by the revisional authority would be read minus said observations and we issue a direction that the period 18.10.2006 to 16.11.2006 would be treated as period spent on duty for purposes of pensionary benefits and since during this period the Petitioner was under suspension, she would be entitled to subsistence allowance for the said period, which allowance we note has already been received by the Petitioner.

24. The petition is dismissed insofar it lays a challenge to the penalty levied and as confirmed; with a clarification as per preceding para for the period 18.10.2006 to 16.11.2006.

25. No costs.