
(2006) 08 DEL CK 0097
In the Delhi High Court
Case No : WPC No. 3654 of 2000

Sh. Balwinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 08 DEL CK 0097

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Barkha Babbar, for the Respondent

Judgement

Swatanter Kumar, J.—In this petition under Article 226-227 of Constitution of India, the petitioner prays for issuance of appropriate writ for setting aside and quashing the order dated 9th September, 1999 passed by the Commandant, Central Industrial Security Force (hereinafter referred to as CISF). By way of this petition, the petitioner is challenging his removal from service. The petitioner further prays for setting aside and quashing of order passed by the appellate authority in March, 2000 and prays that an order of reinstatement with all consequential benefits till date be passed.

2. The necessary facts are that on 26th June, 1992, the petitioner was appointed as Constable in CISF. He was confirmed as constable on 15.3.1996. On 1st March, 1999, the petitioner along with Ct. Balarangana was on patrolling duty from helipad to 33 KV Area of Smelter COY. He had noticed certain intruders on that evening and to catch them he climbed down the tower. He also blew the whistle to seek help from other colleagues, which were only at a distance of 50 meter from the petitioner's tower. During this exercise, the leg of the petitioner got trapped in a rifle chain as a result of which the petitioner fell down. However, the petitioner got up and ran after the thieves. By the time the petitioner could reach near them, they crossed over the wall but only after dropping all the stolen articles. He asked Ct. G. Balarangana and G.C. Lazar as to why they did not

come when he had given whistle. However, they started blaming the petitioner that he was abetting the theft. As a result of this false allegation, disciplinary proceedings were initiated against the petitioner and the petitioner was placed under suspension with effect from 2nd March, 1999. On 18th March, 1999, the petitioner was served with memorandum of article of charges. According to the petitioner, there was violation of principle of natural justice and the rules. The Enquiry Officer, however, concluded the enquiry and recorded his findings but a copy of the report was not given to the petitioner. On 10th July, 1999, the petitioner moved an application to the Commandant requesting him to supply a copy of the findings of the Enquiry Officer. On 7th July, 1999, the respondents held that the Enquiry Officer had not conducted the enquiry properly and ordered a de novo enquiry. The petitioner was not informed as to what were the irregularities and faults committed by the earlier Enquiry Officer. However, the Officer appointed subsequently served a notice upon the petitioner and directed him to appear on 21st August, 1999. The Enquiry Officer's report was supplied to the petitioner. The petitioner made his representation against the enquiry report, which was not properly considered by the respondents and punishment of removal from service was imposed by the respondents upon the petitioner vide order dated 9th September, 1999. The petitioner had filed an appeal against the order of the disciplinary authority. However, the appeal was also dismissed by the order of the DIG, CISF dated 24th March, 2000. It is these two orders, which have been challenged by the petitioner in this writ petition.

3. Upon notice, the respondents filed their detailed affidavit. They have taken a preliminary objection to the maintainability of the present writ petition on the ground of territorial jurisdiction. According to them, no cause of action or part thereof has arisen within the territorial jurisdiction of this Court. It is also their contention that both the impugned orders, challenged before this Court, were passed in the State of Bihar (Patna) and as such the petition should be dismissed. On merits, it is stated that the petitioner has not used the departmental remedies available to him under the provisions of CISF Act and he ought to have filed a revision against the order of appellate authority and then alone could have come to this Court. It is stated that even on this ground, the writ petition is liable to be dismissed. It is also stated in the counter affidavit that there was technical mistake in the enquiry report conducted by the earlier Enquiry Officer and as such disciplinary authority had ordered holding of denovo enquiry. On facts it is averred as under:

That the petitioner belonging to Smelter Coy of CISF Unit, NALCO Angul was detailed for "B" shift duty from 1300 hrs to 2100 hrs on 01.03.1999 for patrolling from Helipad to 33 KV area (1st point). That another Constable namely G.Balaranganna of Smelter Coy, CISF Unit, NALCO Angul was also detailed for patrolling duty from Helipad to 33 KV Corner (2nd point) in "B" shift from 1300 hrs on 01.03.1999 the petitioner came near Constable G.Balaranganna and asked him to help to allow some criminals to enter into the plant, but Constable G.Balaranganna refused and protested. At about 1940 hrs Constable G C Lazar of

Crime and Intelligence Wing when reached near the patrolling beat of Helipad to 33 KV corner, Constable G. Balaranganna informed him about the approach of the petitioner. Thereafter, Constable G C Lazar laid an ambush in the area and Constable G. Balaranganna remained extra alert on his duty. At about 2000 hrs when patrolling vehicle passed Helipad towards Orient Post, petitioner came near Watch Tower No. 6 and passed some signals. Thereafter about 08 to 10 criminals with aluminium scraps on their shoulder came out from the bushes of the plant, proceeded towards perimeter wall near Watch Tower No. 6 and crossed over the perimeter wall. Seeing the criminals Constable G C Lazar ran towards them shouting ?PAKDO-PAKDO? and blowing his whistle. Constable G. Balranganna also followed him, but the petitioner caught hold the hands of Constable G C Lazar begged excuse and requested not to shout. But both Constables Lazar and Balaranganna proceeded towards perimeter wall and failed to apprehend the criminals as they had already fled along with stolen materials. However, 02 pieces of aluminium scrap weighing about 60 Kgs could not be taken by the criminals and were left there. The same were later thrown by the petitioner to a distant place to conceal the fact about theft and his connivance. The matter was informed to Control Room Duty Officer SI/Exe P N Das of CIW and Deputy Commandant by Constable G C Lazar. SI/Exe P N Das proceeded to the spot along with Constable G C Lazar and HC/GDB Prasad and recovered 02 pieces of aluminium scrap weighing 60 Kgs (approximately) from 20/25 meters of Watch Tower No. 6

That a departmental enquiry Under Rule 34 of CISF Rules 1969 was conducted into the case and on its finalisation, the petitioner was awarded the penalty of ? Removal from Service? by the Disciplinary Authority vide final order No. V-15014(7)/BS/LandR/N(A)/99/8659 dated 09.09.1999. Being aggrieved, the petitioner had submitted an appeal to the DIG/EZ which was rejected after consideration by the DIG, CISF/EZ Patna vide order dated 24.03.2000 and thereafter the petitioner has without preferring Revision petition directly approached this Hon"ble Court and filed this writ petition.

4. Two preliminary objections taken by the respondents are with regard to territorial jurisdiction of this Court as well as availability of alternative remedy. There is no doubt that the orders were passed at Patna and it cannot be disputed by the respondents that they have their head office at Delhi and in fact their second objection itself is that the petitioner should have filed a revision before the authorities under the provisions of the Act.

5. In terms of the judgment of the Supreme Court in the case of Dinesh Chandra Gahtori v. Chief of Army Staff wherein the Supreme Court enunciated the principle that where the head office of Army is located and the Chief of Army Staff has been made party, the Court will have jurisdiction to entertain and decide the petition. It may not be possible for the Court to accept the objection of the respondents in its entirety and in any case it may not be just and fair to dismiss the writ petition of the petitioner on that ground, as the petition has

been pending in this Court for a period more than six years.

6. The learned Counsel appearing for the respondents had even produced the record before us to show that the averment of the petitioner that he had been found not guilty by the enquiry officer who conducted the first enquiry, is factually incorrect. In fact, the enquiry conducted earlier as well as the enquiry conducted subsequent to the order of De Novo, have found the petitioner guilty. Be that as it may, we do not wish to go into the merit of the contention raised before us with reference to the enquiry conducted against the petitioner. The respondents have raised a primary issue that the petitioner has not availed of the departmental remedy which was available to him under the terms of the Statute. The learned Counsel appearing for the petitioner, during the course of arguments sought liberty to prefer a revision petition before the competent authority and to raise various factual and legal grounds challenging the enquiry in that petition. To this, the learned Counsel for the respondents had no objection which, of course, she stated without prejudice to the rights of the respondents but would still raise the question of jurisdiction.

7. In view of the common stand taken by the parties, we dispose of this writ petition with liberty to the petitioner to file a revision petition before the competent authority within one month from today and if such revision is filed, the concerned authorities shall dispose of the same in accordance with law expeditiously. The writ petition is disposed of accordingly, while leaving the parties to bear their own costs.