
(2009) 02 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 70 of 2004

Shri S.V. Murthy

APPELLANT

Vs

Union of India and Inspector General Central Industrial
Security Force (Ministry of Home Affairs)

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 4 BomCR 836

Hon'ble Judges : P.B. Majmudar, J; N.A. Britto, J

Bench : Division Bench

Advocate : J. Godinho, for the Appellant; J. Vaz, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This Writ Petition has been filed by the Petitioner who was a Head Constable, General Duty (HC/GD) in CISF (Central Industrial Security Force) and posted at MPT Headland, Sada, Goa, and who has been dismissed from service after holding an inquiry by Order dated 18-10-2002 under the provisions of CISF Rules, 2001 by the Disciplinary Authority/Senior Commandant, CIFS Unit, MPT, Goa. An appeal filed against the said order came to be dismissed by Order dated 24-12-2002 of the Deputy Inspector General (Western Zone) and a revision filed also came to be dismissed by Order dated 10-6-2003 of the Inspector General/SWS, CISF in the Ministry of Home Affairs. The Petitioner has filed the present Writ Petition for quashing the aforesaid orders and for a further direction for his reinstatement.

2. We have heard learned Counsel on behalf of both parties at length. There is no dispute that the Petitioner was initially appointed as a Constable in CIFS and worked at various places from time to time and was promoted as Head Constable and was transferred to MPT, Goa on or about 8-6-2001 and was entrusted with the responsibility of a non commissioned officer in charge of the Unit Kote where all the arms and ammunitions pertaining to CIFS Unit MPT as well as Goa Airport,

are stored and was given the sole and exclusive responsibility for the said custody and accountability of arms and ammunition stored in the said Unit Kote and as part of his duty he was required to issue weapons to the personnel for operational duty or arms for cleaning/maintenance, under the orders of the Unit Commandant, with proper entries in the issue register after obtaining signatures of the persons receiving or depositing the weapons. There is no dispute that one pistol was found missing, after about 17 pistols were brought for cleaning and maintenance on 21-4-2002. The missing of the pistol was noticed on 24-4-2002 when the box containing the pistols were taken out from Unit Kote for inspection. There is also no dispute that on 21-4-2002 the Petitioner was on duty and Head Constable S.S. Rathore had reported to the Petitioner for the cleaning and maintenance of 17 numbers pistols and then had requested the Petitioner to deposit back the weapons and store them in the Unit Kote.

3. As regards the said 9 mm missing pistol, having registration No. 15336739, a preliminary inquiry came to be conducted, at the orders of the Commandant, by Shri Arun Singh, Assistant Commandant, CISF Unit, Goa Airport who by his preliminary report came to the conclusion, as far as the Petitioner is concerned, that:

No. 811260057 IIC/GD S.V. Murthy has committed an act of grave negligence and gross dereliction towards his duties by not collecting the weapons from HC/ GD S.S. Rathore in person, authorising a Constable to collect the weapons on his behalf, storing in an unsafe and un authorised place and not counting the weapons before shifting the weapons in the wooden chest from Armourer workshop to Kote. He is also prima-facie guilty of not maintaining the requisite records including issue and receipt registers for cleaning purposes, and not maintaining the stock position properly.

4. As a result, inquiry was ordered to be conducted against the Petitioner under three Articles of charge, in relation to gross in discipline, disobedience of orders, negligence of duty whilst discharging his duties. The Petitioner has not submitted, along with this petition, the said Inquiry Report, but it can be seen from the order of the Disciplinary Authority dated 18-10-2002 that the Disciplinary Authority came to the conclusion that the Petitioner who was deployed at Unit Kote NCO was solely responsible for the up keeping of arms and ammunition held in the Unit Kote and the Petitioner was the custodian of the arms and ammunition held in the Unit Kote and though he was assigned a sensitive task the Petitioner failed in exercising his duties which resulted in misappropriation/theft of one pistol thereby tarnishing the name of the Unit in particular and CISF as a whole and thus the Petitioner deserved stern disciplinary action for the grave delinquency committed by him, being an enrolled member of a disciplined armed force of the Union like CISF and therefore the Disciplinary Authority proceeded to impose penalty of dismissal from service.

5. The Appellate Authority noted that the past record of the Petitioner indicated that the Petitioner had earned punishments also and therefore it could not be

said that his past service was good and moreover the missing of the pistol was not a small mistake. The Appellate Authority also noted that the Petitioner had failed to safeguard the arms kept in the Unit Kote under his custody. The appellate Authority also noted that in the appeal petition the Petitioner had accepted the fault of the missing of one pistol and further had accepted that he was the custodian. His contention that he belonged to a poor family and was facing financial crisis was rejected. The Appellate Authority concluded that the punishment imposed by the Disciplinary Authority was commensurate with the gravity of default.

6. The Revisional Authority also noted that the Petitioner had acted in a careless manner with utter disregard to the orders and laid down instructions with regard to safe custody of the arms and thereby the Petitioner not only was responsible for the loss of the arm but also by his act, he tarnished the image of the force. He also noted that the loss of a pistol in a paramilitary force like CISF, an armed force of the Union, cannot be taken leniently. The Revisional Authority also noted that the Petitioner had not raised any point as against the orders made against him but had only pleaded for mercy.

7. In the affidavit-in-reply filed by the Commandant of the CIFS Unit, MPT, Goa, mention has been made about the Censures imposed upon the Petitioner vide Orders dated 2-12-1983, 28-8-1988, 29-10-1991, 4-7-1992 and the imposition of one day pay fine by Order dated 5-7-1995.

8. Shri J. Godinho, learned Counsel appearing on behalf of the Petitioner has made twofold submissions. Firstly, learned Counsel has submitted that the Petitioner did not have adequate opportunity to defend in the inquiry. Secondly, it is submitted that the penalty imposed upon the Petitioner was harsh and a penalty like compulsory retirement could have met the ends of justice. It is further submitted that the Petitioner was imposed the severest penalty of dismissal while others against whom inquiries were conducted like Head Constable S.S. Rathore and Constable S.B. Mulge were awarded much lesser punishment and in support of the submissions Shri Godinho has placed reliance on the case of Chandra Vilash Rai Vs. State of Bihar and Others, and The Director General of Police and Others Vs. G. Dasayan, .

9. The first case dealt with persons who had served as Secretaries of a Co-operative Bank, who upon an inquiry were ordered to be dismissed from service. The Apex Court considered the nature of charges alleged and proved against them and noted that they were serious more because they related to the affairs of a Co-operative Bank and further noted that the so-called delinquency was committed by them not on their own but at the behest of the Board of Directors and considering that they had put in about 20 years of service the Hon'ble Supreme Court reduced the punishment imposed, from dismissal to one of premature retirement which is also a major punishment. In the case of Director General of Police and Ors. v. G. Dasayan the Apex Court dealt with parity of punishment as regards co-delinquents. In that case two Constables and one

Head Constable were charge-sheeted for some acts of misconduct. Constables were punished by dismissal from service and the Head Constable by compulsory retirement and with a view to meet the ends of justice the Apex Court ordered the compulsory retirement in place of the order of dismissal from service in the case of the said Head Constable.

10. Shri J. Vaz, learned Central Government Standing Counsel on behalf of the Respondents has also placed reliance on two decisions of the Apex Court. In the case of *Union of India and Anr. v. B.C. Chaturvedi* (1995) 6 SCC 750 the Apex Court dealt with the scope of judicial review and held that where findings of Disciplinary Authority and Appellate Authority are based on some evidence, the Court/Tribunal cannot re-appreciate the evidence and substitute its own findings. In the case of *Apparel Export Promotion Council Vs. A.K. Chopra*, the Apex Court noted that what punishment is to be imposed was solely within the jurisdiction of the competent authority and it is outside the purview of the High Court's interference and on facts, found that the punishment of removal from service was commensurate with the acts of the respondent unbecoming of good behaviour and conduct expected of a superior officer. That was a case which involved sexual harassment at the work place.

11. As regards the first submission, the first appellate Court noted, and, in our view rightly that the Inquiry Officer had given ample of opportunity to the Petitioner to defend his case and all witnesses were examined in the presence of the Petitioner and not only that the statements of PW8, PW9 and PW10 were fully corroborated with each other. In this context reference could be made again to the case of *Apparel Export Promotion Council v. A.K. Chopra* where in the Apex Court has reiterated the principle that judicial review, not being an appeal against the decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual had received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority. The first submission therefore needs to be rejected. As regards the second submission, it may be noted that the first appellate Authority has also come to the conclusion that the Petitioner was deployed as Unit Kote NCO and was solely responsible for the up keeping of arms and ammunition held in the Unit Kote and as such was the custodian of the arms and ammunition held in the said Unit and though he was assigned the very sensitive task the Petitioner had miserably failed in exercising his duties which resulted in misappropriation and theft of one pistol. It is therefore obvious that the Petitioner had much greater responsibility in the misappropriation or theft of the pistol as compared to others and therefore the Petitioner cannot now be allowed to contend that the others were let off leniently and severe punishment was imposed upon him. The first appellate Authority has also come to the conclusion

that the Petitioner disregarded specific instructions contained in the Unit Standing Orders that proper acknowledgment ought to have been obtained and the arms must be recorded at the time of issue for cleaning, etc. and also at the time of taking back the weapons in safe custody and the Petitioner in utter disregard to the said instructions issued 17 numbers pistols without making any entry in the arms issue register and when Head Constable S.S. Rathore had insisted with the Petitioner that the pistols be deposited in the Unit Kote, the Petitioner asked the Head Constable Rathore to hand over the pistols to Constable S.B. Mulge and further directed that the said pistol chest be kept in Unit Armourer shop which was not a secured place to keep the said arms and where they had remained from 11.30 to 17.30 hours on 21-4-2002, when it is suspected that the pistol came to be stolen or misappropriated. What penalty is to be imposed depends upon the nature of service, the position held by an employee and similar factors and is within the discretion of the Disciplinary Authority and this Court's interference can be justified only in limited cases when this Court finds that penalty imposed is shockingly disproportionate and not otherwise. (See V. Ramana Vs. A.P.S.R.T.C. and Others,). The Petitioner was in charge of the said pistols and the pistol came to be misappropriated or stolen whilst it was in his custody in Unit Armourer shop of which the key was held by him. It appears that the pistol was ordered to be kept by him in Unit Armourer shop instead of Unit Kote with a purpose. Considering the past conduct of the Petitioner which has not been aboveboard and degree of misconduct exhibited by the Petitioner the punishment imposed cannot be said to be disproportionate. In fact it is very much commensurate with his past and present misconduct. The Petitioner belongs to an Industrial Security Force which is a disciplined force of the Union. If he could not look after the said pistols certainly the Petitioner cannot be expected to provide Industrial Security to any of the establishments where he could be posted and in such a situation the punishment imposed upon him could not be faulted.

12. We are therefore not inclined to entertain the petition. Petition is therefore hereby dismissed. Rule discharged.