

(2011) 11 KAR CK 0334
In the Karnataka High Court
Case No : Writ Petition No. 11905 of 2009

Sri. Adrushappa Gurakanavar

APPELLANT

Vs

The Inspector General CISF SS Hqrs Chennai-600 090, The
Deputy Inspector General CISF South Zone Headquarters "D"
Wing, Rajaji Bhavan Besant Nagar Chennai-90 and The
Group Commandant CISF Group Headquarters Dost: CSEZ,
Cochin

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Central Industrial Security Force Rules — Rule 32, 36
Penal Code, 1860 (IPC) — Section 34, 504, 506

Citation : (2011) 11 KAR CK 0334

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Nataraja Ballal, for the Appellant; S.A. Khadri, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda

1. The petitioner was enrolled as a member of Central Industrial Security Force (hereinafter referred to as "CISF") on 21.12.1990 and having been appointed as a constable, was posted at ONGC Nazira in Assam. While was working at New Mangalore Port Trust, Mangalore, he was dealt with under Rule 36 of CISF Rules (for short "the Rules") as per Office Memorandum dated 29.03.2006 on the following charges:

i. Failed to vacate family quarter No.A-8, 4th Cross of CISF Colony, NMPT Mangalore and shift to quarter No.A-11, 4th Cross of CISF Colony, NMPT Mangalore, when ordered by the Deputy Commandant CISF Unit, NMPT Mangalore. on 23.02.2006.

ii. Created an unpleasant situation on 08.03.2006 at about 20:10 hours at 4th

Cross; CISF Colony, Panambur by using abusive words and shouted against Smt. C. Jayalakshmi and her husband. Constable C.D. Devaraja, which spoiled the peace and tranquility of family quarter premises of CISF Unit, NMPT Mangalore.

iii. Instigated and encouraged his wife Smt. Sujatha for using unparliamentary languages against Smt Nisha, wife of B.S. Dahiya, a constable, at 20:35 hours on 08.03.2006 at 4th Cross. CISF Colony. NMPT Mangalore.

iv. Was arrested by Panambur Local Police on 08.03.2006 at 22:30 hours under Crime No.34/2006 for offence under Sections 504 & 506 of IPC and detained under judicial custody on 09.03.2006 pursuant to the orders of JMFC (II) Court, Mangalore, based on a complaint made by Smt. C. Jayalakshmi, which matter was published in Kannada evening Daily "Karavali" on 09.03.2006, which tarnished the image of CISF in public.

It was alleged that, the said acts of the petitioner amounted to gross indiscipline, misconduct, misbehaviour end prejudicial to good order and discipline of the Force. Acknowledging the receipt of said charge memorandum, petitioner submitted a representation dated 12.04.2006 and denied the articles of charge framed against him.

2. Departmental enquiry was ordered and an Enquiry Officer was appointed, who after conducting the departmental enquiry, submitted report, wherein it was held that the charges levelled against the petitioner as proved. A copy of the enquiry report was furnished to the petitioner along with show cause notice dated 04.09.2006. The petitioner submitted representation against the enquiry report. Considering the record of enquiry, the Disciplinary Authority agreed with the findings of the Enquiry Officer and held the petitioner guilty of the charges framed against him and in exercise of the powers conferred under Rule 32, awarded the punishment of "Removal from Service" as per final order dated 05.10.2006. The period of suspension, was ordered to be treated as suspension only.

3. Being aggrieved by the said order, the appellant filed an appeal, which was considered by the Appellate Authority, who did not find any ground to absolve the petitioner from the charges levelled in the charge sheet dated 29.03.2006. However, in order to give one more chance to the appellant to mend himself and to serve the Force, the Appellate. Authority modified the penalty of "Removal from Service" to that of "Reduction of pay by two stages from Rs. 3,800/- to Rs. 3,650/- in the time scale of pay of Rs. 3050-75-3950-80-4590 for a period of two years". It was further directed that, "he will not earn increments of pay during the period of reduction and that on expiry of the period, the reduction will have the effect of postponing his future increments of pay". The petitioner was ordered to be reinstated into service and was directed to report at CISF 6th Res Bn Arakkonam.

4. The Panambur Police prosecuted the petitioner for commission of offences u/s 504 & 506 r/w 34 of I.P.C, in C.C. No. 2198/2006 on the file of JMFC (II) Court,

Mangalore, D.K. The prosecution having failed to prove the guilt of the accused beyond all reasonable doubt, the petitioner was acquitted of the charge for which he was tried, as per judgment dated 06.02.2007.

5. This writ petition was filed on 21.04.2009 to quash the orders passed by the Disciplinary Authority and the Appellate Authority and to direct the payment of arrears of salary with interest.

6. Sri Nataraja Ballal, learned Advocate appearing for the petitioner primarily contended that, a criminal case was also instituted against the petitioner in respect of the very same incident, in which the petitioner was acquitted and therefore in the departmental proceeding also, which was initiated, petitioner should have been exonerated of the charge. Alternatively, learned counsel contended that, the punishment imposed on the petitioner is disproportionate to the charges levelled.

7. Sri S.A. Khadri, learned counsel appearing for the respondents, on the other hand contended that, the point considered by the Criminal Court being in respect of two charges only i.e., of using insulting words and threatening CW-1 as against 4 specific charges in the departmental enquiry, the petitioner cannot take advantage of the judgment dated 06.02.2007/ passed in C.C. 2198/2006 by the learned JMFC-II Court, Mangalore and seek exoneration of the 4 charges which were the subject matter of departmental enquiry. Learned counsel submitted that, the charges proved against the petitioner are grave in nature and that the Appellate Authority though did not find any reason to interfere with the findings of the Enquiry Officer and the Disciplinary Authority, despite the petitioner having been awarded minor punishment on 10 occasions during past 15 years, showing lenience and to give an opportunity to the petitioner to mend himself and to serve in the Force, has modified the punishment order and in the circumstances, no case exists for interference with the impugned orders.

8. I have perused the record.

9. The Enquiry Officer after holding the enquiry in accordance with the Rules has recorded the finding that the 4 charges framed against the petitioner as proved. The Disciplinary Authority even after consideration of the reply of the petitioner, could not find any ground to hold that the findings recorded by the Enquiry Officer are not justified. In view of the gravity of the proved misconduct, the final order dated 05.10.2006 was passed. The Appellate Authority after consideration of the appeal, having found no ground to interfere with the findings of misconduct in the departmental enquiry or by the Disciplinary Authority, did not interfere with the findings with regard to conduct on the part of petitioner. Despite such findings being recorded, the punishment imposed by the Disciplinary Authority was modified and the petitioner was directed to be reinstated with reduction of pay by two stages In the time scale of pay with cumulative effect. The findings recorded in the enquiry, with which the Disciplinary Authority concurred, are supported from the evidence on record.

10. It is true that the appellant was prosecuted by the police for offences under Sections 504 & 506 r/w Section 34 I.P.C in respect of an incident dated 08.03.2006. The charges against the petitioner, noticed supra, not only relate to incident dated 08.03.2006, but in respect of other matters also. In the circumstances, acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings. The standard of proof in the criminal case and the departmental proceedings being different, in that, in the criminal case the prosecution has to prove the matter beyond all reasonable doubt, as against which in departmental proceedings, the department has to prove only preponderance of probabilities. In the instant case, the department has been able to prove the case on the standard of preponderance of probabilities. Insofar as the criminal case is concerned, the point considered was, whether the prosecution proved beyond all reasonable doubt that on 08.03.2006, the accused person voluntarily instigated CW-1 and in furtherance of common intention, the accused person threatened the life of CW-1 by committing criminal intimidation? The charges in the departmental enquiry are different as noticed supra. The charges in both proceedings being not identical and charges 1 & 4 and part of charge No. 3 in the departmental enquiry being not the charge and subject matter of trial by the Criminal Court, the submission of Sri Nataraja Ballal that the petitioner has to be exonerated of the charges levelled by the respondents is devoid of merit.

11. With regard to the alternate submission of Sri Nataraja Ballal is concerned i.e., with regard to quantum of punishment, the petitioner belongs to disciplinary force and the members of such a force are required to maintain discipline and act in a befitting manner in public. Instead, the acts of the petitioner having been highlighted even in local Press, have certainly affected the image of the Force in the eyes of the public. That apart, there is undisputed evidence in respect of 1st charge. There is no denial of the 4th charge i.e., the petitioner having been detained under judicial custody and the matter having been published by the local press on 09.03.2006. The order of the Appellate Authority shows that the petitioner was imposed 10 minor punishments during last 15 years, which is an undisputed fact. The Appellate Authority interfered with the order of removal from service and directed reinstatement. There being modified punishment, I am not inclined to interfere with the modified punishment by the Appellate Authority. Considering the modified punishment and gravity of proved misconduct, the punishment as it stands in terms of the order passed by the Appellate Authority cannot be said to be shockingly disproportionate to interfere with the same.

In the result, the writ petition being devoid of merit is dismissed with no order as to costs.