

(2011) 02 DEL CK 0535

In the Delhi High Court

Case No : Writ Petition (C) 19781 of 2004 and 8970 of 2006

S.S. Sidhoo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(15)
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)

Citation : (2011) 02 DEL CK 0535

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

Bench : Division Bench

Advocate : Rekha Palli, Ravi Prakash, Raunak Jain and Avni Singh, for the Appellant; Jyoti Singh and Geeta Sharma, for the Respondent

Judgement

Pradeep Nandrajog, J.—The two writ petitions are taken together for the reason they have been filed by the same Petitioner i.e. S.S. Sidhoo and the adjudication of one has an impact on the adjudication of the other. In WP(C) No. 19781/04 the Petitioner has prayed to set aside the penalty order dated 22.7.2003 and in WP(C) No. 8970/06 he has prayed for fixing his seniority by placing him in the select panel as of 26.04.2004.

2. The Petitioner, S.S. Sidhoo joined CRPF as an Assistant Commandant on 14.08.1988 and earned a promotion to the post of Deputy Commandant in the year 1992. He was posted to Group Centre (GC) CRPF, Durgapur as a Deputy Commandant (Stores) in September 1994 and was entrusted with housekeeping duties such as preparation of budget, procurement and supply of stores, clothings etc. for the Battalions affiliated to the Group Centre.

3. Complaints were received of procedural and financial irregularities committed by senior officers at the Group Centre, Durgapur, upon which a preliminary inquiry was conducted to probe into the matter and ascertain whether there was any prima facie material sufficient to proceed with a departmental action.

4. On the basis of the preliminary inquiry report, vide order dated 17.05.1999 the Directorate General directed Departmental Inquiry against the Petitioner and issued a Memorandum of Charge as under:

Article-I: Shri S.S. Sidhoo, Dy. Commandant while posted and functioning at GC CRPF Durgapur as DC(Stores) during the period September '94 to March '96 committed a serious misconduct in that, having initiated and completed purchase formalities of Govt. stores, caused to drop some cases of purchase of Govt. stores at final stages and later on initiated fresh proposal and executed purchase of such stores after completing all formalities at higher rates with ulterior motives. Thus the said Shri S.S. Sidhoo failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-II: That the said Shri S.S. Sidhoo while posted and functioning in the aforesaid office and in the aforesaid capacity and during the aforesaid period committed a serious misconduct in that he failed to maintain financial discipline by deliberately initiating split up sanctions to avoid adoption of required codal formalities and sanction of competent financial authority and made purchases on single tender basis exceeding the financial competency of the ADIG, GC, CRPF, Durgapur and further resorting to irregular purchase of items reserved on SSI Units/Handloom etc. from sources other than such sectors. Thus the said Shri S.S. Sidhoo failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

Article -III: That the said Shri S.S. Sidhoo while posted and functioning in the aforesaid office and in the aforesaid capacity and during the aforesaid period, committed misconduct in that he arranged to make fake purchase formalities for purchase of one colour TV set from M/s. Electro House, Bidhan Nagar, Zonal Market, Durgapur whereas the said TV set was actually purchased through his sub-ordinate from Delhi while they were on Govt. duty at Delhi during December 94 out of the FWC advance. Thus the said Shri S.S. Sidhoo failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

5. The Petitioner was given 15 days time to submit a written defence statement in reply to the charges, which reply he submitted on 30.8.1999. He pleaded Not Guilty to the articles of charge levied against him. Finding the reply unsatisfactory, the disciplinary authority decided to hold an inquiry and appointed Dr. D.N. Gautam, IGP CRPF as the Inquiry officer.

6. In view of the evidence led at the departmental inquiry, the Inquiry Officer submitted a report dated 07.02.2002 holding the 3 articles of charge as proved/ established against the Petitioner. The said report was submitted to the

disciplinary authority for further action. Vide letter date 14.03.2002 the Petitioner was called upon to submit a reply to the inquiry report, copy whereof was supplied to the Petitioner. On 4.04.2002 the Petitioner submitted his reply to the disciplinary authority. Thereafter, vide letter dated 14.08.2002 the inquiry report along with the reply of Petitioner was sent to UPSC for consultation as required by the rules and UPSC responded vide letter dated 16.06.2003 advising that a penalty of reduction to a lower stage in the time scale of pay for 2 years during which period the Petitioner would not earn increments of pay effecting postponing Petitioner's future increments of pay would be an appropriate penalty to be levied.

7. After perusing the report of the inquiry officer and considering the reply thereto filed by the Petitioner and keeping in view the advice of UPSC, the Disciplinary Authority imposed a penalty upon the Petitioner vide order dated 22.7.2003. The penalty was of Petitioner's pay being reduced to a lower stage from Rs. 12,935/- to Rs. 12,600/- with effect from 1.8.2003 for a period of 2 years with further direction that the Petitioner will not earn any increment of pay during the period of reduction and the reduction will have the effect of postponing his future increment of pay.

8. On 21.08.2003 the Petitioner preferred a review petition which was rejected vide order dated 30.10.2003 as being devoid of merit.

9. Aggrieved by the order dated 22.7.2003, the Petitioner filed WP(C) No. 19781/2004 challenging the same.

10. During arguments, learned Counsel for the Petitioner challenged the penalty levied on the following grounds:

(i) That the departmental inquiry suffered from procedural irregularities on account of which, it was urged that the enquiry stands vitiated.

(ii) That the disciplinary authority failed to appreciate the mitigating circumstances which may have affected the penalty imposed. It was urged that the Petitioner had acted under pressure and threat of his senior officer, Swaran Singh Additional DIG.

(iii) That no evidence was brought on record to show that the Petitioner committed financial irregularities for personal gain or out of any ulterior motive.

(iv) That a disproportionate sentence was imposed upon the Petitioner and his unblemished service record was not taken into consideration while fixing the penalty. It was urged that the penalty imposed upon the Petitioner is harsher than the penalty imposed upon Swaran Singh, the stated main culprit, upon whom penalty levied was a cut in pension for only 5 years.

11. Before dealing with the four contentions urged by the Petitioner, it may be noted that it was not in dispute that Shri Swaran Singh was, at the relevant time, functioning as the additional DIG and the Petitioner was his subordinate officer

and that by the time the misdemeanour was detected, Swaran Singh was on the verge of retirement and by the time disciplinary proceedings were completed against Swaran Singh, he having retired, the only penalty which could be levied upon him was under the CCS (Pension) Rules 1972 i.e. a cut in pension. Thus, the limb of the fourth contention urged, of Swaran Singh being levied a lesser penalty, is rejected inasmuch as the penalty which could be levied upon the Petitioner was in relation to the Petitioner being a serving officer and the penalty which could be levied upon Swaran Singh could be the one which could be levied upon a pensioner.

12. It may be noted at the outset and this fact we deem relevant to mention, that the Petitioner has nowhere argued that he was innocent and had not committed the alleged irregularities. His entire plea is based upon the mitigating circumstances in view of which he claims that the penalty levied is harsh. It may be highlighted that Petitioner admitted the procedural irregularities alleged. He sought refuge on the facts that there was no evidence of his having made financial gain. By way of justification of his actions he pleaded having acted under pressure exerted by Swaran Singh Additional DIG and urged that if he had not acted under the dictates of Swaran Singh who was to write Petitioner's ACRs, Petitioner feared his ACRs being incorrectly recording his performance.

13. Now, it often becomes impossible to detect the ill-gotten gains and merely because the prosecution is not able to lay its hands on the ill-gotten gains, it does not mean that none were made. Thus the third plea of there being no evidence of Petitioner making personal gains due to the irregularities committed, is neither here nor there.

14. In regards to the first contention of the Petitioner, it was urged that the departmental inquiry suffers from the following procedural irregularities:

(a) The inquiry officer refused to accept a set of documents sought to be produced by the Petitioner in his defence. Thereby it was urged that Petitioner was prejudicially denied a reasonable opportunity to defend himself.

(b) That the inquiry officer acted arbitrarily, evidenced from the fact that he permitted production of new and additional evidence in the form of 13 documents, without any request by the presenting officer and contrary to the procedure laid down in Rule 14(15) CCS (CCA) Rules, 1965.

15. The set of documents sought to be produced by the Petitioner were documents containing details of departmental inquiry conducted against Swaran Singh, the Additional DIG in-charge of the Group Centre, Durgapur where the Petitioner was posted; as also details of penalties and postings thereafter of other senior officers of CRPF who were charged with similar offences. The Inquiry officer recorded reasons for rejecting every document sought to be produced by the Petitioner as recorded in the Daily Order Sheet dated 07.06.2000. The substance of the reasons given by the Inquiry Officer is that these documents were not relevant for purposes of proving or disproving the charges levied

against the Petitioner and only highlighted the penalties imposed upon various officers against whom financial and procedural irregularities were proved.

16. We find the reasons given by the inquiry officer to be satisfactory and valid in refusing to bring on record the documents sought to be brought on record and thereafter proved by the Petitioner. Suffice would it be to state that each misdemeanour has its own facet and no 2 misdemeanours can be compared. We lodge a caveat. If out of the same set of facts, 2 persons are charge-sheeted findings returned in the inquiry against 1 may be relevant against the other as also the penalty levied upon one may be relevant qua the other. Thus, we concur with the reasoning of the inquiry officer to not direct production of the documents production whereof was sought by the Petitioner. Thus, the first limb of the first argument is rejected.

17. Pertaining to the second limb of the first submission, of the inquiry officer permitting production of additional evidence in the form of taking on record 13 documents in contravention of Rule 14(15) of the CCS (CCA) Rules 1965, we note that in the counter affidavit filed the Respondents have admitted that the inquiry officer had committed a procedural error in allowing production of new and additional evidences through the witness in the form of 13 documents. But we note that nothing turns on this issue of debate, for the reason these documents merely establish the commission of procedural irregularities qua financial transactions conducted by the Petitioner, which procedural irregularities have even otherwise been admitted by the Petitioner. Even if we were to remove from the area of consideration, these 13 documents, learned Counsel for the Petitioner admitted that there was still sufficient evidence available to hold that the Petitioner indulged in violating the prescribed procedures pertaining to purchases to be effected for the stores. Thus, the procedural irregularity has resulted in no adverse impact upon the Petitioner.

18. Thus, the first submission urged is rejected in full.

19. We are thus left to deal with the second submission and the first limb of the fourth submission, which we deal together for the reason both relate to the quantum of the penalty imposed. The facets of the second submission and the first limb of the fourth submission are the disciplinary authority staidly failing to appreciate the mitigating circumstance of Petitioner acting under the pressure of his senior officer, Swaran Singh Additional DIG and pertaining to the past unblemished service record of the Petitioner. Now, if the plea of acting under a pressure of a senior officer is to be accepted, it would be a negation of the administrative control and principles of administration. An administrative system has a command structure with a defined hierarchy of officers. The pyramidal structure acts as a system of checks and balances. If the Petitioner was under any pressure from the Additional DIG, we see no reason why he did not bring the same to the notice of the next superior officer. On the issue of the past service record of the Petitioner being unblemished, suffice would it be to state that not all wrongs get detected and that when a wrong is detected, it does not

necessarily mean that it was the first or the only wrong committed. Further, the penalty imposed is of reduction in the pay for a period of 2 years with permanent effect and surely by no standard can be called harsh. Inherent in the penalty is the consideration of the circumstance that past service record of the Petitioner was clean.

20. Thus, we find no merit in the challenge to the penalty levied and hence we dismiss WP(C) No. 19781/2004.

21. Relevant facts to be noted qua WP(C) No. 8970/06 are that the Petitioner was considered for promotion to the rank of 2-IC by the DPC convened on 26.04.2004 for vacancy year 2004-2005, but was declared "Unfit". Relevant would it be to note that by the date when DPC met the ACRs upto 31.03.2004 were available and of the preceding 5 years were considered and as on said date the Petitioner had already been incited the penalty, which fact was also taken note of by the DPC. Thereafter, Petitioner was once again considered for promotion to the rank of 2-IC by the DPC convened on 24.03.2005 for vacancy year 2005-2006, when Petitioner was declared "Fit". Since the period of penalty imposed i.e. 2 years was over by August 2005, Petitioner was promoted as 2-IC with effect from 26.08.2005.

22. The grievance of the Petitioner was that the same members of the DPC who met on 26.04.2004 had sat as members of the DPC which met on 24.3.2005 and considered the same preceding 5 year ACRs as also took note of the penalty order dated 22.7.2003; the reason being that by 24.3.2005 ACR for the year 01.04.2004-31.3.2005 had yet to be recorded. It was highlighted that it was a strange result that considering the same material, the same members of the DPC found the Petitioner "Unfit" and "Fit". According to the Petitioner there was an inherent conflict in the 2 decisions.

23. The Petitioner made a representation to the Director General CRPF on 17.09.2005 requesting the DG to re-assign Petitioner's seniority with respect to the DPC held on 26.04.2004, which was rejected vide letter dated 13.01.2006 as being devoid of merit. Petitioner made a further representation to the Home Secretary, Union of India praying that a review DPC be held to consider Petitioner's case of re-assigning his seniority w.e.f 26.04.2004 which representation was rejected vide letter dated 17.05.2006.

24. Aggrieved by the finding of the DPC held on 26.04.2004 and the representations aforementioned being rejected, the Petitioner filed WP(C) No. 8970/2006 praying that his seniority as a 2-IC be fixed with reference to his being declared "Fit" for promotion in the DPC held on 26.04.2005.

25. We note that 3 out of 5 members comprising the DPC which met on 26.04.2004 and 24.03.2005 were common. Both DPCs considered the preceding 5 years ACRs and which we note were the same. We also note that at both DPCs the penalty levied upon the Petitioner was considered. We further note that both DPCs took note that the benchmark prescribed was "Very Good".

26. The only reason stated in the counter affidavit filed is that maybe the DPC which met on 26.04.2004 took into account that the period of penalty imposed upon the Petitioner would be over after a long time i.e. by August 2005, and hence in its wisdom decided to declare Petitioner "Unfit" for promotion and that when the DPC met of 24.03.2005, noting that the period of penalty was likely to be over in the near future, the Petitioner was declared "Fit" for promotion in the wisdom of the members of the DPC.

27. The Respondent's have not refuted that at the 2 DPCs same benchmark was considered as the qualifying hurdle and that the same material i.e. same years ACRs as also the same penalty was taken into consideration.

28. It is apparent that the DPC which met on 26.04.2004 has erred in its wisdom. The guiding law on the subject is circular No. NGE/38/1990 (497-N-2/39-90) dated 30.08.1990 which, vide para 13 thereof, stipulates as under:

29. "Punishment no bar in assessing suitability for promotion- An Officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale, cannot be considered on that account to be intelligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, the DPC will taken in account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of penalty should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty.

30. It is apparent that the job of the DPC was to consider the ACRs of the Petitioner and keeping in mind the penalty imposed, to determine whether the Petitioner was "Fit" or "Unfit" to be promoted. It was then for the department, to consider further, if Petitioner was found "Fit" to be promoted by the DPC, that the penalty imposed upon the Petitioner was to enure for 2 years, thereby requiring the Petitioner to be promoted after the currency of the penalty was over. It is apparent that the DPC which met on 26.04.2004 has acted wrongly. We may hasten to add here that the minutes of the DPC held on 26.04.2004 do not record the reasons why Petitioner was declared "Unfit" for promotion and we have proceeded to hold in favour of the Petitioner, with reference to the justification projected by the Respondents in the counter affidavit filed.

31. Under normal circumstances the direction to be issued by us would be requiring a review DPC to be held as of 26.04.2004, but noting that considering the same material the DPC which met on 24.03.2005 found the Petitioner "Fit" to be promoted and the benchmarks to be achieved at both stages was the same, this peculiar fact compels us not to tread on the given path but to charter a different route. No useful purpose would be served to direct a review DPC to be

held for the reason this would be an idle formality. The theory of idle i.e. useless formality is recognised by jurisprudence in the context of, when the end result is known, it would be useless to complete the procedural formalities of law and we only highlight that this jurisprudence can be abundantly found where the grievance is of principles of natural justice being violated and the court finds that on the admitted facts the end result would be known.

32. Thus, we dispose of WP(C) No. 8970/2006 declaring that the Petitioner is entitled to be treated as "Fit" for promotion and his name is liable to be entered in the select panel prepared as per the recommendations of the DPC 26.04.2004, but the Petitioner would not be entitled to be promoted from any retrospective date; his promotion would be with effect from the date he was actually promoted as 2-IC i.e. 26.08.2005 and our reason for the said direction is that as per the circular dated 30.08.1990, Petitioner's promotion had to be deferred till currency of the penalty imposed upon him and which we note lasted till the month of July 2005.

33. On the issue of seniority of the Petitioner, since neither party threw any light, with reference to the legal position, as to what happens when a person in a select panel is promoted at a later date on account of currency of a penalty and as against the other persons who are promoted with immediate effect earns a promotion at a subsequent date, we refrain from issuing any further direction but direct the Respondents to assign seniority to the Petitioner as contemplated by the guidelines issued in this regard.

34. To summarise, WP(C) No. 19781/2004 is dismissed. WP(C) No. 8970/2006 stands disposed off in terms of para 32 and 33 above.

35. No costs.