
(2009) 11 OHC CK 0036
In the Orissa High Court

Sudarsan Giri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 11

Citation : (2010) 109 CLT 426 : (2010) 2 ILR (Ori) 512 : (2010) 1 OLR 742

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—In this writ application filed under Article 226 & 227 of the Constitution, the Petitioner seeks to assail the order of punishment of removal from service imposed upon him by Order Dated 10th August, 1998(Annexure-13) passed by the Commandant, Central Industrial Security Force, in short, "CISF", which was confirmed by the Appellate authority as well as the revisional authority vide Annexures-15 & 17 respectively.

2. Bereft of unnecessary details, the short facts, which are necessary for effectual adjudication are:

The Petitioner was serving as "Water Carrier" under CISF Unit stationed at Rourkela Steel Plant. In the year 1996 his wife, who was in advance stage of pregnancy became sick. He filed an application before the Assistant Commandant, inter alia, praying for allotment of a quarter for accommodation of his family. The said application was considered & on compassionate ground a quarter was allotted by the Assistant Commandant in favour of the Petitioner by Order Dated 30.4.1996 for a period of three months. It is alleged that after the aforesaid period the Petitioner did not vacate the quarter & penal rent was levied against him. By Order Dated 2nd May, 1996 the Petitioner was intimated that if he fails to vacate the quarter suitable disciplinary action shall be initiated against him. While the matter stood thus, the wife of the Petitioner gave birth to a child on 18.5.1996 at Ispat General Hospital, Rourkela. Unfortunately, the child soon/ after birth suffered from jaundice & was admitted in the hospital & underwent

treatment from 24.5.1996 to 2.6.1996. As ill luck would have it, the child thereafter suffered from vomiting & fever, which culminated in pneumonia. While matter stood thus, the wife of the Petitioner also fell sick after delivery & was unable to move.

3. Learned Counsel submits that as it was not possible for the Petitioner to vacate the quarters within the time specified, he applied for permission to occupy the quarters, enclosing all the medical documents in support of his stand. It is alleged that no intimation was given to the Petitioner thereafter & he always presumed that his application for extension of time for occupying the quarter was allowed. Unfortunately on 30.6.1997 he received a communication that his prayer for extension of accommodation of quarter was considered & rejected. Thereafter penal rent & electricity charges were recovered from the salary of the Petitioner from the month of June, 1997. On 8.10.1997-the Deputy Commandant served an office memorandum directing the Petitioner to vacate the quarters within one week & further cautioned that if he fails to do so, he should be dealt with under Rule 34 of the C.I.S.F. Rules 1969 & the action of the Petitioner would amount to disobedience of the order & unauthorized occupation. After receiving the said notice (Annexure-5) the Petitioner submitted and the representation on 20.10.1997 ventilating his grievances before the Deputy Commandant (Headquarters) through, per channel expressing his difficulties & prayed that he should be permitted to occupy the quarter for few more months. The said application of the Petitioner, it is alleged, was not considered & a proceeding was initiated imputing misconduct & misbehavior & he was called upon to submit his written statement of defence within a period of ten days. The Petitioner was shocked to learn that a departmental proceeding has been initiated against him & submitted his written reply bringing it to the notice of the authorities all the true facts & the circumstances which compelled him not to vacate the quarters. While matter stood thus; he was placed under suspension with effect from 6.1.1998 & a departmental proceeding was initiated & the following charges were framed:

(i) Gross indiscipline & disobedience of orders in that No. 851170176 W/C Sudarsan Giri of CISF Unit, RSP, Rourkela was allotted Family quarter No. A/272 at Naya Bazar area of Rourkela on medical ground for a period of three months w.e.f. 02.05.1996. On expiry of due date, he was to vacate the quarter on 03.08.19,96, but he failed to do so & unauthorisedly occupying the said quarter till date in spite of repeated instructions & orders given to him by his superior authorities time & again to vacate the said quarter.

(ii) Gross misconduct in that No. 851170176 W/C Sudarsan Giri of CISF Unit, RSP, Rourkela has developed an irresistible habit of committing offences in that he was dealt under minor charges on eight occasions & under major charges on two different occasions & punished accordingly in his short service of about 12 years. He was also dismissed once from service & re-instated later by DIC/NZ Delhi. In spite of all this he failed to rectify himself & show any improvement in

his work & conduct.

4. After receiving the charges, the Petitioner submitted his explanation through proper channel to Opp. Party No. 4 humbly explaining the circumstances for which he was not able to vacate the quarters & he had no deliberate intention to disobey any orders & also submitted that some of his juniors were allotted the quarters & there was no rhyme or reason not to allot a quarter in his favour even on out of turn basis. He denied all the charges & took the stand that he had no intention to illegally occupy the quarters & in fact no latches can be attributed to him. The occupation of the quarters was due to force majeure as his wife & child were constantly ill.

5. Not being satisfied with the explanation given by the Petitioner, the authorities initially appointed Shri B.M. Rout, Inspector as Inquiry Officer & later the Assistant Commandant was appointed as Inquiry Officer. The Petitioner also submitted a written statement of defence before the Inquiry Officer on 5.6.1998 almost reiterating the stand taken by him in the show cause. The Inquiry Officer, it is submitted, without properly considering the materials on record & without according adequate opportunity, completed the enquiry in haste & submitted his report on 19.6.1998 to Opp. Party No. 4 with the finding that the charges were well established. After receipt of the enquiry report (Annexure-11), Opp. Party No. 4, the disciplinary authority, it is alleged without properly considering the explanation given by the Petitioner, in exercise of the Powers conferred upon him under Rule 29(A) of Schedule-III read with Rule 31(b) of the Rules, awarded the punishment of removal from service with immediate effect with a further direction to vacate the quarters.

6. Being aggrieved by the aforesaid order of punishment under Annexure-13, the Petitioner preferred an appeal under Rule 42 of the Rules before the Appellate authority, Opp. Party No. 3, but the said authority also, it is submitted, without appreciating the difficulties of the Petitioner & reasons for which he could not vacate the quarter in time rejected the said appeal & confirmed the order of removal. It appears that the Petitioner also preferred a revision before Opp. Party No. 1, but in vain. Being aggrieved by the aforesaid orders, the Petitioner has approached this Court.

7. The only submission made by Learned Counsel for the Petitioner before this Court is that the Petitioner is a poor employee of a disciplined force, & had absolutely no intention to flout the orders. It is submitted that on the basis of the application made by him & taking into consideration the difficulties, he was subjected due to illness of his wife & her advanced stage, a quarter was allotted in his favour for a period of three months. Unfortunately, the wife of the Petitioner gave birth to a child & the Child from the day one became sick as he suffered from jaundice & thereafter vomiting & fever followed by pneumonia. Added to that, the wife of the Petitioner also became sick. Under such circumstances, it is submitted that the Petitioner had no other way out but to occupy the quarter. He had submitted several representations enclosing the

medical certificates, requesting to permit him to occupy the quarter for some time more. The same were, however, not considered in proper perspective. It is submitted that neither the Inquiry Officer nor the Disciplinary Authority nor the Appellate or Revisional authority considered the plight of the Petitioner, who was sacrosanctity discharging his duties to the fullest satisfaction of the authorities & has not committed disobedience of any order. Not vacating the quarter after the period of allotment was over, was beyond the control of the Petitioner & the authorities have collected penal rent, which was deducted from his salary. As such, imposing punishment of removal from service is grossly disproportionate to the charges framed & also amounts to double jeopardy. So far as charge No. (ii) is concerned, it is submitted that the same, is vague & untenable under law.

8. After receiving Rule, a counter affidavit has been filed by the Opp. Parties, more or less reiterating the facts stated in the order passed by the disciplinary authority as well as the Appellate authority. According to Learned Counsel for the Opp. Parties, the Petitioner acted illegally & with material irregularity in not vacating the quarter & such irregularities amounts to disobedience of the order. The Petitioner being a member of a disciplined department, ought not to have retained the quarter, after being called upon to vacate the same.

9. Heard Learned Counsel on the parties at length. Perused the pleadings & documents annexed. Fact remains that considering the application filed by the Petitioner for allotment of quarters on out of turn basis on the ground that his wife was at the advance stage of pregnancy & was suffering from different ailment & complications & that unless the quarter is allotted, he will be subjected to un-surmountable hardship, the competent authority allotted the quarter in his favour for a period of three months from 30.4.1996 (Annexure-1). It further appears from the documents that the wife of the Petitioner gave birth a child on 18.5.1996, but then the new born baby suffered from jaundice & thereafter from other diseases. Added to it, the wife of the Petitioner also fell sick. It appears that the authorities have recovered penal rent from the salary of the Petitioner with regard to his unauthorized occupation. The application filed by the Petitioner for extension of period of allotment was not considered promptly. Instead the Petitioner was put under suspension & called upon to show cause as to why a disciplinary proceeding shall not be initiated against him. The explanation submitted was not found satisfactory & an Inquiry Officer was appointed, who submitted a report. The disciplinary authority after considering all the report has imposed punishment of removal from service. The said order was upheld by the Appellate authority as well as the revisional authority.

10. The scope of judicial review in the matter of imposition 4th penalty as a result of disciplinary proceedings is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. Of course in appropriate cases, in order to avoid delay the Court can itself impose lesser

punishment, (see *You One Maharia - JV through You One Engineering and Construction Company Ltd. and Another Vs. National Highways Authority of India*, .

11. The question of interference on the quantum of punishment has been considered by the Supreme Court in catena of Judgments, & it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary & thus, would violate the mandate of Article 14 of the Constitution. (See- *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , *Ranjit Thakur Vs. Union of India (UOI) and Others*, , *Union of India and others Vs. Giriraj Sharma*, , *B.C. Chaturvedi Vs. Union of India and others*, .

12. In the case of *Ranjit Thakur (supra)*, the Apex Court observed as under:

But the sentence has to suit the offence & the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience & amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even I on an aspect, which is otherwise, within the exclusive province of the Court Marital, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality & perversity are recognized grounds of judicial review.

13. In the case of *B.C. Chaturvedi (supra)*, after examining various earlier decisions, the Supreme Court observed that in exercise of the powers of judicial review, the Court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an Authority "shocks the conscience" of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed & in exceptional & rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof.

14. In the case of *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , the Supreme Court has considered the entire law on the subject & observed:

In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* or *CCSU* then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi's* case that the Court might, to shorten litigation think of substituting its own view as to the Quantum of punishment in the place of the punishment awarded by the competent authority.

15. Considering the facts of the present case in the touchstone of the aforesaid decision, this Court finds that the overt act attributed to the Petitioner is that he did not vacate the quarters after the period of allotment was over. The Petitioner has come forward with a genuine & humanitarian explanation to the effect that

his newly born child & wife had become sick & were hospitalized for which he could not vacate the quarter & he had applied for extension, but received no intimation. Even otherwise, if an employee does not vacate a quarter within the time fixed, he is liable to pay penal rent. In fact, penal rent has been recovered from the Petitioner, thereby he has been punished/penalised for occupying the quarter beyond permissible limit. Even otherwise, occupying a quarter after the period -of allotment amounts to un- authorized occupation & in consonance with the Orissa Public Premises (Eviction of Authorised Occupants) Act, 1972, it was open for the authorities to initiate a proceeding for eviction thus, initiation of a departmental proceeding on the said ground & imposing punishment of removal from service was not justified.

16. Perusal of the ground No. (ii) reveals that it is more or less a statement than charge. In other Word, it is vague & does not give details of instances referred to. In the case of *Surath Chandra Chakrabarty Vs. State of West Bengal*, the Supreme Court held that it is not permissible to hold an inquiry on vague charges as the same does not give clear picture to the delinquent to make an effective defence because, he may not be aware as to what is the allegation against him & what Kind of defense ha can put in rebuttal thereof. In the said decision, it is observed:

The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges, which have to be communicated to the person charged together with a Statement of the allegations on which each charge is based & any other circumstance, which it is proposed to be taken into consideration in passing orders, has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable to adequate opportunity for defending oneself, if a person, is not to clearly & definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly by projecting his own imagination discover all the facts & circumstances that may be in the contemplation of the. authorities to be established against him.

17. In the case of *Sawai Singh Vs. State of Rajasthan*, , the Supreme Court held that even in 9. domestic inquiry the charges must be clear,, definite & specific as It would be difficult for any delinquent to, meet vague charges perusal of charge No. (ii) gives an impression, that the same has no nexus with the allegations levelled against the petitioner to the effect that he has over-stayed in the quarter allotted to him. Considering all the facts, we feel that at best. It can be alleged that the Petitioner has disobeyed the direction, issued by his higher aughtorities & has not vacated the quarters. The same may amount to misconduct.

18. In view of the discussions made above, we feel, that the order imposing punishment of removal from service being grossly disproportionate, cannot be sustained. We find that the petitioner can only be punished for misconduct. Accordingly, consonance with Section 11 of the C.I.S.F. Act, 1949 we hold him guilty of misconduct, i.e., disobedience of orders and direct that he should be reinstated in service service forthwith and shall be entitled to only 50% of the

salary for the period for which & he has not discharged any duties. We further direct that the period of absence & shall however be treated towards his service & shall be considered for the purpose of calculation, of person.

19. With the aforesaid modification of sentence, the Writ Petition is disposed of.

B.N. Mahapatra, J.

I agree.