
(1999) 03 GAU CK 0046
In the Gauhati High Court
Case No : C.R. No. 1244 of 1997

Sukhvinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-03-1999

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 31, 32, 34
Constitution of India, 1950 — Article 14, 226

Citation : (1999) 3 GLT 551

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : Joginder Singh, for the Appellant; Sadhan Kalita, C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—This application under Article 226 of the Constitution of India is directed and arises out of disciplinary proceeding initiated against the Petitioner which culminated in his dismissal. The Petitioner was working under the Respondents namely Central Industrial Security Force as a Constable wherein he was enrolled on 16.12.83. While working as such the Petitioner was exposed to a disciplinary proceedings under the Central Industrial Security Force Rules 1969. Respondent No. 3, the Commandant of the unit decided to hold an enquiry against the Petitioner under Rule 34 of the Central Industrial Security Force Act, 1968. The charges on which the enquiry was proposed to be held are as follows:

1. An act of gross indiscipline, dereliction of duty and wilful absence on the part of No. 834332043 Const. Sukhvinder Singh of Lakwa Sector in that on 26.11.93 at about 2030 hrs. he was indulged in disorderly conduct in a State of intoxication at Lakwa Coy. Lines along with Const. Ajay Sharma, Constable Darshan Singh, refused to go for medical examination and did not turn up for "C" shift duty on the said date.

2. An act of gross indiscipline, misconduct and disobedience of lawful orders of

superior on the part of No. 834332043. Constable Sukhvinder Singh of Lakwa Sectar in that on 27.11.93 at about 1240 hours he has created unhealthy atmosphere and unruly scene at Lakwa Camp under the influence of liquor. He refused to go for medical examination when the concerned Asstt. Commandant ordered.

2. The Petitioner submitted his reply to the showcause and thereafter a full-fledged enquiry was held by the said Respondent. Witnesses were examined by the Enquiry Officer in presence of the Petitioner. On the conclusion of the enquiry the Enquiry Officer submitted his report holding the Petitioner guilty of the charges. The disciplinary authority namely Commandant accepted the findings of the Enquiry Officer and awarded penalty of dismissal from service w.e.f. 8.8.92. The Petitioner preferred an appeal before the appellate authority and the appellate authority dismissed the appeal. Mr. Joginder Singh, learned Counsel for the Petitioner assailed the orders of the authority and submitted that the impugned order is illegal, discriminatory, passed in contravention of the principles of natural justice and therefore violative of Article 14 of the Constitution. Mr. Singh submits that the Petitioner was denied the reasonable opportunity to defend his case. Mr. Singh further submits that two other persons namely Constable Ajay Sharma and Constable Darshan Singh were also involved in the same offence but the Respondent in a discriminatory fashion picked up Constable Darshan Singh and Constable Ajay Sharma for lighter punishment and awarded penalty of dismissal to the Petitioner. Mr. Singh submitted that the award of punishment is also to meet the test of Article 14 which should be just, reasonable and fair. Mr. S. Kalita, learned C.G.S.C. on the other hand submitted that the Respondents acted lawfully and adhered to the procedure prescribed in law. The Petitioner was offered opportunity to defend his case and further the concerned authority at all relevant time considered the case lawfully. Mr. Kalita, learned C.G.S.C. sought to distinguish between the case of the Petitioner with that of Constable Darshan Singh and Constable Ajay Sharma. The Case of Constable Darshan Singh and Constable Ajay Sharma cannot stand in the same footing so much so that there is no allegation of default or disobedience of lawful order against them. Mr. Kalita submits that since the Petitioner was engaged in disciplinary force, discipline comes first over Ors. and accordingly in order to enforce discipline, the authority in exercise of its powers, exercised the discretion and therefore, on the facts, there is no scope for judicial review under Article 226. In the instant case the Respondent followed the procedure for imposing the penalty contained in Rule 32. There may be some short comings here and there in conducting the proceeding, but in the absence of any illegality the lawful action and the disciplinary authority is not to be interfered, submits Sri Kalita. The Petitioner was served with the chargesheet intimating him about the allegations.

3. Considering the status of the person, the authority could have made the person charged aware about his right to take assistance of any other member of the force as pointed out by Mr. Singh. By and large on analysing the issue

involved and considering the records, it cannot be said that the Petitioner was denied with fair opportunity to defend his case. The entire proceeding was recorded in his presence and he in his own way participated in the proceeding. Analysing the materials on record it cannot also be said that the findings arrived at by the Enquiry Officer is perverse. The next question that comes for consideration is regarding the nature of imposition of penalty. Rule 31 of the Rule arms the authority to impose the following penalties for sufficient reasons on a member of the force, namely:

- a) dismissal;
- b) removal;
- c) compulsory retirement;
- d) reduction to a lower class or grade or rank or to a lower time scale or to lower stage in the time scale of pay;
- e) withholding of increment of promotion;
- f) removal from any office or distinction or deprivation of special emolument;
- g) fine to any amount not exceeding 7 days' pay; and
- h) Censure.

4. The authority is armed with the power to impose penalty only on good and sufficient reasons. The punishment imposed must be rational and has to commensurate with the offence proved. Disciplinary measure commends that punishment imposed must conform to the test of the great equality clause as enshrined in Article 14 of the Constitution. It must maintain the proportion.

5. In the exercise of powers of Judicial review the Court should not assume the power of the authority who is conferred with the authority to exercise the discretion, but it is the Court alone to appraise the legality of the action. It is an essential part of Judicial review entrusted by the Constitution to the superior Court to judge the legitimacy and reasonableness of the exercise of discretionary power by the authority. Whether the decision maker strayed outside the purpose defined by the statute is to be assessed by the Court. The decision maker, in exercise of its discretion cannot take leave of its duty in maintaining a right balance between any detrimental effects on the rights, liberties and privilege of the person concerned and the purpose of exercise of the discretionary power. In their choice within the area of discretion, the decision maker is required to maintain fair balance between the end result and the objective sought to be achieved by sanctioning of the power. In the matter of awarding punishment, the authority should not go away from logic and the accepted legal and moral standards. The order of punishment should not be extravagant. Oppressive and out of tune to the occasion. The authority is duty bound to take into account the relevant factors over looking extraneous considerations and bestow appropriate weight on the pertinent and admissible considerations. *R. v. Barnsley MBC, ex-P.*

Hook 1976 1 WLR 1052 (1057): Ranjit Thakur Vs. Union of India (UOI) and Others,

6. The Petitioner in the instant case served for about 11 years in the department, the disciplinary authority while awarding the extreme punishment overlooked this aspect of the matter. The Petitioner is not without blemish there he committed lapse, his indiscretion overreached him. Two other persons also went overboard. The other two volunteered for the medical test but imprudence overruled the Petitioner, and he had to be forced for the medical test. The Respondents took a lenient view in those two cases and rightly so.

7. Looking through the facts and situations in its entirety, it cannot be said that an order of dismissal was called for. In my view, the interest of Justice will be served if the order of dismissal is set aside and the Petitioner is ordered to be re-instated in service with only 50% of the back wages as it was said that since the order of dismissal awarded in August 1994 the Petitioner is without any employment The Petitioner shall also submit unqualified written apology for the lapse of his part on the fateful day. It would also be open to the Respondents to impose any of the penalty prescribed in Clause (g) or (h) as the case may be. The Petitioner will be re-instated forthwith with continuity of service with all other consequential benefits. 50% of the backwages will be paid within two months from his reporting for his duty. The Writ Petition is allowed to the extent indicated, there shall however be no order as to costs.