
(1998) 05 DEL CK 0005
In the Delhi High Court
Case No : C.W. No. 3290 of 1996

Sushil Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34, 42
Constitution of India, 1950 — Article 226

Citation : (1998) 05 DEL CK 0005

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Pradeep Gupta and Mr. Rattan Lal, for the Appellant; Ms Mona Aneja, for the Respondent

Judgement

Dr. M.K. Sharma, J.

1. In pursuance of a departmental proceeding instituted against the petitioner, a charge-sheet was issued to the petitioner on 8.5.1995 under Rule 34 of the Central Industrial Security Force Rules, 1969 (hereinafter referred to as the "Rules"). The said charge-sheet contained three Articles of charges which were set out in the charge-sheet. The petitioner submitted his reply to the charge-sheet which was considered by the disciplinary authority and found to be not satisfactory and accordingly by order dated 15.5.1995 an Enquiry Officer was appointed to enquire into the charges levelled against the petitioner. It was directed that the enquiry would be conducted on a day-to-day basis and accordingly the said enquiry was conducted from 16.5.1995. On completion of the enquiry, the Enquiry Officer submitted his report. The disciplinary authority on consideration of the Enquiry Report and the proceedings of the enquiry by his order dated 26.5.1995 dismissed the petitioner from service with immediate effect. Being aggrieved by the aforesaid order, the petitioner submitted an appeal to the appellate authority in terms of Rule 42 of the Rules. The appellate authority namely, the Deputy Inspector General by his order dated 11th

September, 1995 rejected the appeal being devoid of merit with a speaking order as against which the present petition has been preferred.

2. Counsel appearing for the petitioner submitted before me that the entire enquiry was conducted by the Enquiry Officer in a hurried manner without following the principles of natural justice. He pin-pointed the aforesaid statement by submitting before me that the respondents while conducting the enquiry did not appoint any Presenting Officer nor the petitioner was allowed representation and assistance by a member of the Force as is envisaged under Sub-Rule 5 of Rule 34 of the Rules.

3. Counsel appearing for the respondents, however, submitted that there is no provision in the relevant rules for appointing a Presenting Officer while conducting a departmental enquiry. She further submitted that the Enquiry Officer enquired from the petitioner whether he desires to be represented by member of the Force to which reply from the petitioner was in the negative and that the petitioner was allowed the opportunity to cross-examine all the witnesses produced on behalf of the respondents and in fact, the petitioner has cross-examined some of the witnesses and in respect of the other witnesses he declined to cross-examine. According to the learned counsel, the enquiry was conducted in accordance with the relevant rules and that there was no violation of the principles of natural justice and that only when all the charges were proved against the petitioner, the disciplinary authority imposed the punishment in question on the petitioner.

4. Records of the enquiry proceedings have been placed by the respondents for my perusal. On perusal of the said records, I find that opportunity was provided to the petitioner by the Enquiry Officer to defend himself in the departmental enquiry. The petitioner was specifically asked as to whether he would like to be represented and have assistance from a member of the Force to which the petitioner replied in the negative. The petitioner was allowed the opportunity to cross-examine the witnesses as against which, I find from the records that the petitioner cross-examined some of the witnesses and so far the rest of the witnesses were concerned, he declined the opportunity to cross-examine them. The petitioner also stated to the Enquiry Officer that he fully understood the charges and he did not want to produce anybody as defense witness or defense assistant. Each page of the depositions of the witnesses produced and recorded is signed by the petitioner.

5. I have carefully also looked into the evidence of the witnesses produced on behalf of the respondents and I find from their statements that they corroborate each other to prove involvement of the petitioner in the case. Even otherwise sufficiency of the materials on record is not challenged. In fact against the query of the Enquiry Officer, the petitioner admitted his guilt during the enquiry proceedings. In spite of the afore-said admission of guilt by the petitioner in the enquiry proceeding, the Enquiry Officer chose to continue with the enquiry and during the enquiry proceedings witnesses were examined on behalf of the

respondents. Out of the aforesaid witnesses examined, the petitioner cross-examined some of them as delineated hereinabove.

6. So far the issue with regard to appointment of a Presenting Officer is concerned, no provision could be pointed out by the counsel for the petitioner in the relevant Rules which necessitates appointment of a Presenting Officer on behalf of the respondents. Submission that the proceeding was conducted hurriedly and, Therefore, vitiated is also without merit as there was a direction of the disciplinary authority to conduct the enquiry on day-to-day basis. The said direction cannot be said to be without jurisdiction.

7. On careful perusal of the records of the enquiry proceeding, I find that there was no violation of the principles of natural justice in conducting the enquiry against the petitioner. The petitioner declined to produce any defense witness or any defense document in his support. I have also minutely perused the order passed by the appellate authority and on consideration thereof, I find that the said order is a speaking order and passed in accordance with the relevant Rule. On consideration of the entire facts and circumstances of the case, I do not find any merit in this writ petition and the same accordingly stands dismissed, but, without any cost.