
(2009) 08 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 5451 of 2006

T. Thomas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 41, 41(1)
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27

Citation : (2009) 5 GLT 279

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : D.C. Mahanta and K.K. Das, for the Appellant; N. Baruah, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The subject matter of challenge is the disciplinary action taken by the Respondents against the Petitioner resulting in his dismissal from service on the charge of misconduct.

2. I have heard Mr. D.C. Mahanta, Senior Advocate assisted by Mr. K.K. Das, Advocate for the Petitioner and Mr. N. Baruah, learned Central Government Standing Counsel for the Respondents.

3. The pleaded case of the Petitioner in short is that, while was serving as a Driver with the Central Reserved Police Force (hereafter for short referred to as "Force") and posted at Guwahati, he was served with the memorandum of charges dated 30.7.1999 levelling the following imputations:

Article-I

No. 810698439 HC/Dvr. T. Thomas of HQ/60 Bn CRPF while performing as HC/Dvr in HQ/60 Bn CRPF during 26.4.99 as a member of the force u/s 11(1) of CRPF Act, 1949 in that No. 810698439 HC/Dvr T. Thomas deliberately made an

attempt to cheat his superiors by fraudulent act for his personal gain to get the leave sectioned. Thus he violated CRPF Act which is prejudicial to good order and discipline of the force.

Article-II

No. 810698439 HC/Dvr. T. Thomas of HQ/60 Bn CRPF while performing in HQ/60 Bn CRPF at Phulaguri, Nagaon as a member of the force u/s 11(1) of CRPF Act, 1949 in that he deserted from his camp and line of HQ/60 Bn. CRPF Phulaguri, Nagaon on 24.6.99 at 2100 hrs. without any permission and information to the competent authority who could have sanction leave or permission to him to leave the camp and lines of HQ/60 Bn CRPF Phulaguri Nagaon, which is prejudicial to good order and discipline of the forced on his part.

He was also placed under suspension by the 2 I/C Commandant 60 Bn, CRPF (CCD) by order dated 12.11.1999. It was thereafter that by order dated 15.1.2000 passed by the Commandant 60 BN CRPF he was dismissed from service on the ground of misconduct treating all the charges brought against him to be proved. Being aggrieved, the Petitioner availed other statutory remedies by way of appeal and revision, but to no avail. According to him, he was not afforded any opportunity of defending himself against the charges in the disciplinary proceeding and that therefore, the impugned action is per se invalid. The procedure prescribed by Rule 27 of the CRPF Rules, 1949 (hereinafter referred to as the "Rules") not having been observed, the Petitioner has asserted that the order of dismissal is non est in law.

4. The Respondents in their affidavit, while detailing the facts in support of the charges, have contended that the same were proved in a duly conducted departmental proceeding as contemplated under Rule 27 of the Rules. They have maintained that the proceeding was completed in consonance with the principles of natural justice as well as the procedural safeguards contained in the above provision of the Rules. The charges levelled against the Petitioner being serious constituting a grave misconduct, the answering Respondents have also endorsed the order of penalty.

5. In his affidavit-in-reply, the Petitioner has reiterated and reaffirmed the averments made in the writ petition.

6. Mr. Mahanta in course of his arguments has limited his assailment only on the question of penalty. According to the learned Senior Counsel, having regard to the charges brought and professed to be proved, the order of dismissal is shockingly disproportionate thereto and therefore, this Court in the exercise of its writ jurisdiction ought to interfere therewith in the interest of justice. Mr. Mahanta has urged that as the impugned action relates to the year 1999, considering the fact that meanwhile a decade has elapsed and that the Petitioner is a man of slender means and presently without any source of livelihood, the order of dismissal if maintained, would deny him his pensionary benefits to his great detriment and prejudice. To reinforce his arguments, Mr. Mahanta has

drawn the attention of this Court to the operative portion of the order of penalty to contend that it would appear therefrom that notwithstanding the penalty of dismissal, the disciplinary authority presumably in the light of his good service background, had allowed him to draw the compassionate allowance to the extent indicated therein together with the gratuity as would have been otherwise available to him had he retired on compassionate pension. The learned Senior Counsel therefore has submitted, when queried by this Court that, in the facts and circumstances, the penalty of compulsory retirement would be commensurate to the charges.

7. Mr. Baruah in response, has argued that the charges levelled against the Petitioner being of very serious nature, the same being proved, in absence of any challenge either to the validity of the proceeding or the findings culminating in the order of dismissal, no interference therewith is warranted.

8. I have extended my due consideration to the rival pleadings and the arguments advanced. Having regard to the limited challenge mounted on behalf of the Petitioner, it is therefore inessential to examine the aspect pertaining to the validity of the disciplinary proceeding sans, the order of penalty. It cannot be gainsaid that the Petitioner at the relevant time was a member of a disciplined force and his conduct as the charges demonstrate was wholly unbecoming of that status of his. It is, however, noticeable that the disciplinary authority in the impugned order dated 15.1.2000 being satisfied that all the charges had been proved against the Petitioner and also taking note of the fact that he is a member of a disciplinary force ought to be dealt with firmly, had awarded the penalty of dismissal. The said authority however, observed as hereunder:

A special consideration as per Rule 41(1) of CCS (Pension) Rules, 1972 has been given in this case and No. 810698439 HC/Dvr. T. Thomas is hereby allowed to draw compassionate allowance not exceeding 122/3 of pension and gratuity both which would have been admissible to him if he had retired on compassionate pension.

9. A bare reading of Rule 41 of the CCS (Pension) Rules, 1972 proclaims that compassionate allowance thereunder as has been awarded to the Petitioner is always sanctioned in a case deserving of special consideration even if the government servant involved is dismissed or removed from service and is otherwise liable to forfeit his pension and gratuity.

10. The very fact that inspite of the said misconduct of the Petitioner as spelt out by the two charges levelled against him, the disciplinary authority who is supposed to be the best judge of the attending facts and circumstances, had accorded to him the benefit of compassionate allowance and gratuity by invoking Rule 41 of the aforementioned Rules, is a clear indicator of the fact that presumably, the service profile of the Petitioner had been otherwise blemish free entitling him to this lenient treatment. It is, in this perspective, of the draught of relief as has been provided by the disciplinary authority, that the submission of

the learned Senior Counsel for the Petitioner will have to be appreciated. There is no material on record whatsoever to indicate any such irresponsible conduct/act or omission on the part of the Petitioner in the past. That the Petitioner being out of service for about a decade has suffered painful distress and agony is easily conceivable. Considering the nature of the charges proved, this Court thus while concurring with the disciplinary authority that he is not to be retained in service, is of the considered opinion that, he ought to be awarded a penalty which may not deny him his pensionary benefits for the services that he had rendered prior to the episode leading to his ouster.

11. In the above view of the matter, balancing all considerations, this Court is of the opinion that the penalty of dismissal with the rider of compassionate allowance to him ought to be substituted by that of compulsory retirement. It is made clear that this Court while modifying the order of penalty as awarded by the disciplinary authority is fully conscious of the limits of its jurisdiction in this regard in the exercise of its power of judicial review. However, in the exceptional fact situation as obtains in the instant proceeding and having regard to the fact that almost a decade has passed in between, this course has been adopted for providing a quietus to the lingering controversy. It is made clear that this order has been passed in the facts and circumstances of the case and would not be construed to be a precedent in the future.

12. The petition thus is allowed in the above terms. The Respondents would now process the Petitioner's dues as a consequence of this decision and make necessary arrangements to ensure that the same is disbursed to him at the earliest. No costs.