
(2010) 11 DEL CK 0301

In the Delhi High Court

Case No : Writ Petition (C) No. 3391 of 2010 and CM No. 6805 of 2010

Tej Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 380

Citation : (2010) 11 DEL CK 0301

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : H.S. Dahiya and Anita Sharma, for the Appellant; Sanjeev Sachdeva and Vibhu Verma, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.

1 The writ Petitioner has challenged the action of the Respondents in directing a departmental inquiry against him on ground of arbitrariness and illegality. It has further been contended that the disciplinary proceedings have been commenced on charges which are the subject matter of a criminal case pending in a court of law and for this reason, the disciplinary inquiry cannot be proceeded against.

2 The Petitioner is a serving constable with the Central Industrial Security Force (hereinafter referred to as 'CISF') in the CISF Unit, Special Security Group, Greater Noida, Uttar Pradesh. A criminal case bearing FIR No. 56 was registered by the police station Sadar, Khanna, District Ludhiana, Punjab on 13th March, 2010 u/s 380 of the Indian Penal Code against the Petitioner. This case was registered with regard to an incident which occurred on 28th February, 2010 in which a service weapon being an AK-47 rifle bearing Butt No. 151 which had been issued to one constable Krishan Kumar, was found missing. The matter is stated to be pending trial before the Judicial Magistrate First Class at Khanna, Punjab. The Petitioner remained in judicial custody in this case for twelve days

and was admitted to bail on the 26th March, 2010.

3. In respect of the same incident, the Respondents have issued a charge memorandum on the 14th April, 2010 levelling the following charge against the Petitioner:

That CISF No. 912292290 Constable/GD Tej Singh of CISF Unit SSG, Greater Noida, U.P. While deployed at CISF, SSG Unit, outpost Libra (Punjab) for the security of Hon"ble Shri S.S. Libra, MP, Lok Sabha failed to maintain high degree of discipline. On 28.02.2010 at about 2110 hrs after completion of his "B" shift duty, he took AK-47 rifle Butt No. 151 which was laying un attended on the bed of Constable Krishan Kumar on his own with a malafide intention and threw it outside the SSG camp Libra outpost camp premises on the night of 28.02.2010, the said weapon was later on found in a Dry Well of Libra Village on 08.03.2010 at about 1730 hrs with the help of Local Police. Thus, he has exhibited and act of gross indiscipline, mischief, misconduct and dereliction of duty which has tarnished the image of the Force in the eyes of public and made himself unfit to be a member of the Armed Force like CISF. Hence the Charge.

4. The Petitioner had denied the charge in his reply dated 23rd April, 2010. It is his contention that the post incharge was biased against him on the issue of sanctioning of outpass. Such pass had been wrongly denied to the Petitioner on the 28th February, 2010 despite his dire need thereof. It is even the Petitioner's case in the writ petition that he was aggrieved by the denial of the pass on the ground that another Constable Krishan Kumar who had performed similar duty as the Petitioner as well as one Constable Shish Ram were sanctioned outpass on 27th February, 2010. It is the case of the Petitioner that he had hot exchanges with the post incharge in this behalf.

5. On a consideration of the Petitioner's response, an order dated 1st May, 2010 was issued by the disciplinary authority appointing an inquiry officer to inquire into the said charge. The Petitioner made a representation to the Inspector General of the CISF Headquarters contending that a departmental inquiry in respect of the same charge which was the subject matter of a criminal trial, was illegal. This representation has been rejected by a communication dated 26th June, 2010. Aggrieved by the action of the Respondents in proceeding with the disciplinary action, the Petitioner filed the present writ petition before this Court.

6. On a prima facie consideration of the matter, on the 12th August, 2010 we had directed that till the next date of hearing, though the Respondents may continue with the inquiry proceedings against the Petitioner, no final order shall be passed.

7. It appears that the inquiry officer has since completed the inquiry and has submitted a report dated 21st July, 2010. This report has been served upon the Petitioner under cover of a letter dated 26th July, 2010 and the Petitioner has been called upon to make a representation against the same. The Petitioner has placed a copy of the inquiry report before us along with his rejoinder.

8. The Respondents have vehemently contested the writ petition contending that the charge against the Petitioner in the two proceedings as well as the standard of proof which would apply in the two proceedings is different. It has been contended that even if the charge of theft which is laid against the Petitioner in the criminal case is not made out, still he would be found culpable for the charge of dereliction of duty with which he has been charged in the disciplinary proceedings.

9. It is noteworthy that both parties have placed reliance on the pronouncement of the Apex Court which is reported at Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Before proceeding to examine the facts of the case, the principles laid down by the Supreme Court on the issue of departmental inquiries and criminal proceedings on same charges, deserve to be considered. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. the Supreme Court has laid down the applicable principles which read as follows:

The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

10. It is apparent from the above that there is no prohibition to departmental proceedings and proceedings in a criminal case proceeding simultaneously though separately. The Supreme Court has held that only if the charges in the

criminal case and the departmental proceedings against the delinquent employee are of a grave nature and involve complicated questions of law and fact, it would be desirable to stay a departmental proceedings till the conclusion of the criminal case.

11. The consideration by this Court of the facts placed before us would therefore depend upon the nature of the offences and the nature of the case which has been commenced against the Petitioner.

12. We find that at the same time, the Supreme Court has repeatedly also cautioned that in a case raising an issue as has been raised by the Petitioner, due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

13. Learned Counsel for the Petitioner has vehemently contended that there is no evidence against the Petitioner other than a statement attributed to him in the preliminary inquiry which cannot be relied upon to base a finding of guilt with regard to the charges on which disciplinary inquiry has been conducted. This submission has to be noted only for the sake of rejection. The Petitioner has received the inquiry report and is stated to have made a representation of the same. It is stated before us that the Petitioner has raised this very objection in his representation to the disciplinary authority as well. This inquiry report as well as his contentions in the representation which he has made against the same would require to bear the scrutiny by the disciplinary authority who is seized of the matter. In view of the order of stay dated 12th August, 2010 passed by us, it is an admitted position that the disciplinary authority has not taken a final view in the matter. Therefore, it would not be proper for us to comment on this contention of the Petitioner and we leave the matter, including the said objection, to the scrutiny and examination of the disciplinary authority who would pass appropriate orders on this contention of the Petitioner as well.

14. So far as the nature of charges with which the Petitioner is charged is concerned, we find that the Respondents have not conducted the disciplinary proceedings on the contention that the Petitioner is guilty of theft of the service weapon. On the contrary, the charge against the Petitioner on which the inquiry is being conducted is the allegation that the Petitioner has exhibited an act of gross indiscipline, mischief, misconduct and dereliction of duty which has tarnished the image of the force in the eyes of the public.

15. So far as the burden of proof in establishing the charge of theft u/s 380 of the Indian Penal Code which is pending before the court of Judicial Magistrate First Call is concerned, the prosecution would be required to establish the allegations and ingredients of the offence beyond reasonable doubt. On the other hand, the allegations of dereliction of duty, the material in support of which has been placed in the inquiry which already stands concluded, has to be tested and examined on the standard of preponderance of probability. This well settled legal position does not need any further elaboration.

16. Learned Counsel for the Respondents has submitted that even in the writ petition, the Petitioner has submitted that because of jealousy over the issuance of outpass to constable Krishan Kumar, the Petitioner was nurturing a grouse against him. These issues are to be considered by the concerned authorities.

17. We have also been informed that so far as the criminal case is concerned, only charges have been framed against the Petitioner and the trial is yet to commence.

18. We are also informed that disciplinary proceedings against other persons against whom the same charges were levelled with regard to the same incidence, the disciplinary action stands completed.

19. On a consideration of the charge and the allegation against the Petitioner, we are not satisfied that the instant case involves any such complicated questions of law or facts which would render it desirable that the departmental proceedings be stayed till the conclusion of the criminal case.

20. In view of the above, we are satisfied that stay of the disciplinary proceedings would be unwarranted and the ensuing delay in finalisation thereof would be opposed to the interests of justice.

For all the foregoing reasons, we find no merit in this writ petition which is hereby dismissed. The interim order dated 12th August, 2010 shall stand vacated.

We make it clear that nothing herein contained is an expression of opinion on the merits of any issue relating to the merits of the case or the grounds of challenge of the Petitioner with regard to the inquiry which has been conducted against him. The disciplinary authority shall proceed in the matter uninfluenced by any observation herein contained.