
(2003) 03 MAD CK 0048
In the Madras High Court
Case No : Writ Appeal No. 219 of 1999

Union of India (UOI)

APPELLANT

Vs

Sudhir Kumar Das

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15, 9

Citation : (2003) 03 MAD CK 0048

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Veeraraghavan, for the Appellant; M.J. Jaseem Mohammed, for the Respondent

Final Decision : Allowed

Judgement

R. Jayasimha Babu, J.—The respondent who was the writ petitioner was employed in the Central Industrial Security Force in it's unit at

Madras Port Trust. He had joined the force in the year 1987. On 13.11.1990 he was served with a memorandum proposing to hold an enquiry

against him on the imputations of misconduct which were set out in the annexure to that memorandum. The Articles of charge are as set out below:

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST NO. 873280147
CONSTABLE S.K. DAS (U/S) OF "B" COY OF

THIS UNIT.

Article of Charge No. I

No. 873280147 Constable S.K. Das of ""B" Coy of CISF Unit, MPT, Madras deliberately deserted from Unit (his residence) w.e.f. 04.09.1990

(FN) to 17.09.1990 in which he failed to turn up for "C" Shift duty on 04.09.1990 without prior permission from the competent authority. This act

of Constable S.K. Das tantamounts to gross misconduct and dereliction of duties being a member of an Armed Force.

Article of Charge No. II

CISF No. 873280147 Constable S.K. Das of "B" Coy, CISF Unit, MPT Madras deserted from his residence after taking 3 days medical rest

w.e.f. 26.09.1990 (AN) to 29.09.1990 (AN) without permission from the competent authority. Further, when he was directed to appear before

AC, Sec-I Orderly room by OC, "B" Coy on 01.10.1990, he declined to obey the order of Inspector, OC, "B" Coy. This act of Constable S.K.

Das amounts to gross misconduct and disobedience of lawful orders of superiors.

Article of Charge No. III

CISF No. 873280147 Constable S.K. Das of "B" Coy of this Unit himself deserted from Unit lines w.e.f. 10.10.1990 (FN) while under

suspension and was remaining on AWL till 05.11.1990 (AN). This act of Constable S.K. Das amounts to gross misconduct and dereliction of

duties being a member of Armed Force.

Article of Charge IV

No. 873280147 Constable S.K. Das of this Unit accumulated 2 (two) punishments in short span of three and half years of service and thereby

showed his indisciplined attitude and unbecoming of a member of Force.

IMPUTATION OF ARTICLE OF CHARGE FRAMED AGAINST NO. 873280147
CONSTABLE S.K. DAS OF "B" COY CISF UNIT

MPT MADRAS.

Article I

CISF No. 873280147 Constable S.K. Das of "B" Coy of CISF Unit, MPT Madras was living outside the Unit line at Quarter No. 28/1, Ghouse

Mohideen Pettai, 3rd Street, Royapuram, Madras 13. He was detailed for "C" shift duty on 04.09.1990 from 2130 hours to 0530 hours on

05.09.1990. But he did not turn up for duty in time. When checked his house by the then CHM of "B" Coy and HC A.K. Singh of "B" Coy, they

found his house was locked and also they noticed on enquiry from neighbours that Constable S.K. Das left his residence w.e.f. 03.09.1990

evening. Thus, Constable S.K. Das himself deserted from Unit 04.09.1990 (FN) to 17.09.1990 without prior permission from the competent

authority. This act of Constable amounts to gross misconduct and dereliction of duties being a member of an Armed Force.

Article II

No. 873280147 Constable S.K. Das of "B" Coy of this Unit himself deserted from his residence i.e. Quarter No. 28/1, Ghouse Mohideen pettai

3rd street, Royapuram, Madras 13, near gate No. I of MPT with effect from 26.09.1990 (AN) to 29.09.1990 (AN), after taking 3 days medical

rest from MPT hospital, without permission from the competent authority. On 01.10.1990 he was directed to go for AC, Sec-I's orderly room by

Inspector A. Jayakumar, OC, "B" Coy, in which he disobeyed the order of OC "B" coy and replied like ""I WILL NOT GO FOR ANY

ORDERLY ROOM AND ALSO I WILL NOT TALK TO ANYBODY BELOW THE RANK OF COMMANDENT"", thereby he violated

the order of superior authority. This act of Constable S.K. Das amounts to gross misconduct, dereliction of duties and disobeyed the orders of

superiors.

Article III

No. 873280147 Constable S.K. Das of "B" Coy of this Unit has been placed under suspension w.e.f. 01.10.1990. During the tenure of

suspension he himself deserted the Unit lines w.e.f. 10.10.1990 to 05.11.1990 (AN) without prior permission from the competent authority though

he has been directed particularly in the suspension order. Thereby he violated the orders of superior. This act of Constable S.K. Das amounts to

gross misconduct, disobedience of lawful orders of superiors and dereliction of duties being a member of an Armed Force.

Article IV

CISF No. 873280147 Constable S.K. Das is appointed in CISF w.e.f. 01.01.1987 and at present he is posted in this Unit. During the tenure of a

short period of three and half years of service he has been awarded two punishments as given below:-

1. For AWL from 16.04.1990 to 17.04.1990 - 7 day pay fine.

2. For disobedience of orders of

Inspector on 23.01.990 at about - Stoppage of one

22.30 hours increment with

cumulative effect.

Thereby showed his indisciplined attitude and unbecoming of a member of an Armed Force.

2. An enquiry was thereafter held in which he admitted his guilt and on the basis of that, the enquiry officer submitted a report. That report, as set

out in the counter affidavit filed in the writ petition by the Commandant of that unit, was set aside by the disciplinary authority who directed the

enquiry officer to conduct a detailed departmental enquiry after examining the witnesses and documents. Thereafter the enquiry was held at which

the witnesses were examined and documents were marked. In that counter affidavit it is stated that the petitioner in his statement during the enquiry

on 13.02.1991 accepted all the charges and pleaded that mistakes had been committed due to lack of service knowledge and experience and due

to the affection for his mother and sought forgiveness. After completion of the enquiry and on the basis of the report of the enquiry, the disciplinary

authority awarded punishment of removal of service on 16.03.1991.

3. Prior to this enquiry, the writ petitioner had suffered punishments for a similar misconduct of being absent from duty. On 16.05.1990 he had

been punished with fine amounting to seven days pay. On 13.08.1990 he was punished with stoppage of one increment for one year with

cumulative effect for disobedience of orders of the Inspector.

4. An appeal was preferred by the writ petitioner against the order of termination, but without success. Thereafter, he questioned the order of

termination before this Court in a writ petition. The learned single Judge having allowed the petition, the Union of India is in appeal before us.

5. The commission of misconduct is not disputed. It is the case of the writ petitioner that he did absent himself, and that such absence was without

obtaining prior permission of the superior. His plea is however that his absence was for a good cause as his mother was ill and as the only son he

felt that he should be by her side and therefore had rushed to his hometown to be with her. The disciplinary authority considered all the pleas which

the writ petitioner had put-forth and after taking note of the punishments imposed on him on earlier occasions for the misconduct committed by

him, stated that instead of dismissal he was taking a lenient view and awarded the punishment of removal from service with immediate effect.

5A. In the order of termination it was stated, ""The delinquent has deserted the Unit lines without prior permission from Competent Authority not once but four times. Moreover, the delinquent has disobeyed the orders of Inspector more than once. Deserting the unit without prior permission and disobedience of orders of superiors are very serious delinquencies and such delinquencies have been committed by the delinquent at regular intervals. Such indisciplined persons have no place in a disciplined force like C.I.S.F.

6. The appellate authority in the course of his order observed, ""The evidence held on record is clearly indicative of the fact that the charges levelled against the appellant are clearly established. Further, the appellant himself accepted his guilt in his statement during the course of his departmental enquiry. It is quite evident that the appellant is guilty of the charges levelled against him. Deserting from the duty station without any valid authority and disobeying the orders of the superiors are considered to be a severe delinquencies in the disciplined Armed Force like CISF.

7. Learned counsel for the writ petitioner/respondent submitted that the order of termination is illegal inasmuch as, in his submission, two enquiries have been held even though the rules do not permit the same, and the holding of such a second enquiry is also contrary to the decision of the apex

Court in the case of K.R. Deb vs. Collector of Central Excise, 1971 1 LLJ 427. In that case in an enquiry that was held in respect of the

delinquent therein it had been found that the charges framed were not proved. Thereafter, a second enquiry was held in which also it was held that

there was no case against the delinquent. Despite that, a third enquiry was sought to be held and that was challenged by the delinquent. In the

background of those facts, it was held by the Court that the conduct of the employer indicated that he was determined to penalise the delinquent

and harass him by subjecting him to repeated enquiries with the hope that he would be found guilty at a later stage. The Court after examining the

provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, observed thus with regard to the rule 15 therein:

It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper

enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were

not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in

rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the

Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule

9.

8. The Court thus held that, in cases where there has been no proper enquiry because some serious defect had crept in and some important

witnesses were not available at the time of the enquiry, or was not examined for some reason, the disciplinary authority may ask the enquiry officer

to record further evidence. That is exactly what has been done in this case by the disciplinary authority. When he found that the enquiry officer had

initially closed the enquiry merely after recording the admission of guilt by the writ petitioner, the disciplinary authority directed the enquiry officer to

examine witnesses, and record evidence as those were the requirements of a proper enquiry and that would ensure fairness to the charged person.

The enquiry so directed to be held was clearly for the benefit of the delinquent as the stage had not been reached where action was being taken

against the delinquent. The correction of such an error at the stage of enquiry is not in any way contrary to law. The petitioner as a consequence of

the direction given by the disciplinary authority, had an opportunity to take part in the enquiry and exercise his rights in accordance with the

requirements of natural justice.

9. Holding an enquiry for the purpose of ensuring fair treatment is not violative of any law. On the other hand, holding of a fair enquiry is the

requirement of law. Correcting a defect in order to ensure compliance with the requirement of the Rules and principles of natural justice is only

fulfilling the purpose of the law.

10. We do not find any force in the submission that there is illegality in the enquiry that has been held against the writ petitioner.

11. Learned counsel then submitted that the punishment imposed is disproportionate. Counsel invited attention to the decision of the apex Court in

the case of State Bank of India and Others Vs. Samarendra Kishore Endow and Another, wherein the Court while considering the misconduct

committed by an employee of a bank who had falsely claimed travelling expenses on transfer and for releasing construction loan without verifying

the progress of construction, held that the punishment of removal was harsh, but that was a matter that the disciplinary authority or the appellate

authority must consider.

12. As to whether the punishment imposed for misconduct is disproportionate would always depend upon the facts and circumstances of the case,

the nature of the misconduct committed, the nature of the organisation in which the person is employed, the gravity of misconduct, the extenuating

circumstances, if any, the previous record of the delinquent and other factors all of which cannot be enumerated exhaustively.

13. In this case, we are concerned with a member of the uniformed force where discipline is of utmost importance. The members of this Uniformed

force are to provide security to major institutions belonging to the Government and public sector undertakings in the country. If they are to fulfill the

purpose for which they have been recruited, they must maintain high sense of duty and observe strict rules of discipline as, any failure on those

grounds will render them unfit to the services for which they have been recruited. The petitioner who had a past record of disobedience and

absence without prior permission for which he had been punished, instead of mending his ways had chosen to act in defiance of the orders of his

immediate superior. Such conduct on his part not on one occasion but as many as four occasions certainly warranted a kind of action which has

been taken against the petitioner. He had served the force only for a period of four years. He had committed misconduct an year earlier for which

he had suffered penalties, and in the year in which the misconduct for which he was punished, he had committed misconduct repeatedly on four

occasions. The gravity of the misconduct committed by the petitioner, having regard to the nature of the employment and the purpose for which the

Central Industrial Security forces had been brought into existence, clearly warranted imposition of the penalty that has been inflicted on the

petitioner. The learned single Judge ought not to have set aside that penalty.

14. The writ appeal is allowed. CMPs. No. 2443 of 1999 and 935 of 2000 are closed.