

(2011) 04 MAD CK 0206
In the Madras High Court
Case No : Writ Petition No. 28610 of 2010

Vedpal Boora

APPELLANT

Vs

The Deputy Inspector General Central Industrial Security
Force DAE Head Quarters, Commandant Central Industrial
Security Force Department of Atomic Energy and Ajay Kumar

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 33(1)
Penal Code, 1860 (IPC) — Section 379

Citation : (2011) 04 MAD CK 0206

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; D.S. Ravikumar, Central Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Petitioner was selected as a Sub Inspector through Staff Selection Commission held on All India basis on 06.01.1995 and posted for training at Hyderabad and after completion of training; he was posted in the Central Industrial Security Force Unit at Gujarat. During that period, there was some injury caused to him and he underwent surgery in his spinal cord at Ahmedabad and he was diagnosed as having been affected by tuberculosis and advised not to take strenuous training and he was transferred to Central Industrial Security Force, Department of Atomic Energy, Kalpakkam on 15.5.2009.

2. Even though the Petitioner has made representation to the authorities to cancel the order of transfer due to health reasons, since it was not considered, he joined at Kalpakkam. During the physical training exercise on 17.3.2010, it is stated that one Assistant Commandant Khillare S.P. abused one lady constable by name, Babitha in respect of which the Petitioner had to give a statement in

the enquiry. In respect of the same, there was a threat from the said Khillare S.P. to withdraw the statement. It is stated that the third Respondent Ajay Kumar, while taking charge of Commandant of the Central Industrial Security Force at Kalpakkam on 14.6.2010, requested the Inspector General, Western Sector that the Petitioner should be shifted from Kalpakkam on the basis that he was carrying on anti-establishment activities and instigated the lady constables Babitha and Pratima who made complaints against seniors.

3. The third Respondent earlier issued an order of suspension against the Petitioner, which was challenged by the Petitioner in W.P. No. 21258 of 2010 on the basis that it was without jurisdiction. Thereafter, the said order of suspension was withdrawn and according to the Petitioner, the withdrawal was made on the understanding that the he would be posted at Delhi, North Sector as it is seen in the order of the Assistant Inspector General/Establishment dated 24.8.2010. According to the Petitioner, in the above said writ petition, the Respondents made a representation that when once the Petitioner was given non-employment certificate, he would be transferred to Delhi as per the transfer order dated 24.8.2010. However, the impugned charge sheet came to be issued by the second Respondent on 8.9.2010, stated to have been pasted on the quarters of the Petitioner on 4.10.2010 which contains various charges.

4. The impugned charge sheet has been challenged by the Petitioner on various grounds including that the same has been issued by the third Respondent who had earlier made a complaint against the Petitioner for transfer on the basis that the Petitioner was carrying on anti-establishment activities and instigated the lady constables and therefore, there was bias, in spite of the fact that order of transfer was passed against the Petitioner on 24.8.2010 posting him at Delhi, the third Respondent issued the orders of suspension on 25.8.2010 by ante-dating the same as 24.8.2010 and that after suspension order was revoked on 4.11.2010, the transfer order was to be given effect to, but the charge sheet was issued on 4.12.2010.

5. Even in respect of the charges, in the affidavit, the Petitioner has stated that the first charge is that the Petitioner has deliberately kept in his possession the Hero Honda Splendor Plus motor cycle, TN-19-4268 from 7.7.2010 to 8.8.2010 in violation of unit order No. E-42099/CISF/Office/DAE(K)/10-43 dated 16.4.2010 and therefore, it amounts to gross indiscipline and unbecoming conduct of a member of an Armed Force. According to the Petitioner, there was no register maintained for the purpose of the said motor cycle and it was maintained only from 9.8.2010 after the Petitioner made complaint.

(a) In respect of the second charge, which is to the effect that the Petitioner has deliberately kept with himself the Government motor cycle TN-19-4268 Hero Hondo Splendor Plus from 7.7.2010 to 8.8.2010 and on 8.8.2010 informed the department that the said Motor Cycle was missing from his possession and thus, he caused financial loss to the Government by his negligence and carelessness, which amounts to misconduct. It is the case of the Petitioner that the motor cycle

was lost in the premises of CISF in spite of high security and on the advice of the Commandant, the Petitioner also gave a complaint to the police to investigate about the theft and therefore, the charge is baseless.

(b) The third charge is to the effect that to cover up his negligence in missing the motor cycle, the Petitioner fabricated the story of on duty on 8.8.2010 and entered his visit at Pudhupatnam gate duty point beat book subsequently by wrongly putting the time as 14.30 hrs. while in fact he had not been visited the gate on the said day or any duty point in colony area and therefore, it would amount to suppression of facts which is gross indiscipline. It is the case of the Petitioner in respect of the said charge that the Assistant Commandant H.S. Mohanthy sent him to NESCO festival to find out the closing ceremony and at that time, he inspected Pudhupatnam gate and mentioned the timing there since he was in charge of that gate as well.

(c) The 4th charge is that the Petitioner lodged an FIR at Kalpakkam Police Station on 9.8.2010 u/s 379 IPC for theft of motor cycle in question and deliberately mentioned the names of Khillare S.P., Assistant Commandant, Kunwar Singh, Inspector/Exe., and M.K. Dhyan, Inspector/Exe. with ulterior motive of suspicion against them and to defame and harass them and therefore, it amounts to indiscipline. It is the case of the Petitioner that he gave complaint on the advice of the Commandant and the police asked as to whom the Petitioner suspected and therefore, he gave the names and that cannot be a subject matter of charge memo since investigation is going on.

(d) The last and 5th charge is that the Petitioner is in the habit of indulging in various indiscipline acts and misconducts and earlier he was imposed with two major and five minor penalties during his service career and in spite of the same, he failed to improve his conduct and therefore, it is a failure to maintain discipline and unbecoming of a Sub-Officer of his status and service of Armed Force of the Union like CISF. According to the Petitioner, this cannot be a charge and in respect of five minor penalties, two were censure, one related to one day fine and another related to two day fine and the last related to deferment of one increment for one year and in respect of two minor penalties of censure and one minor penalty of deferment of increment for one year, he filed appeal and the same is pending. Regarding the major penalty, appeal had been filed to the Inspector General and the same was dismissed. Therefore, according to the Petitioner he has been charge sheeted only with ulterior motive in spite of order of transfer having been passed.

6. In the counter affidavit of the third Respondent it is stated that preliminary enquiry was conducted by the Assistant Commandant of the Unit, in which gross negligence on the part of the Petitioner was noticed. It was to cover the negligence, the Petitioner tried to show as if he was on duty by putting his signature on the beat book and it was due to that reason, he was placed under suspension and he deliberately refused to receive the suspension order and hence, the second order was passed and the same was within the jurisdiction of

the CISF Rules, 2001 and that order was passed as per the provisions of Rule 33(1) of the said CISF Rules was revoked on 4.11.2010 and the writ petition filed by the Petitioner was therefore disposed of on 9.11.2010.

a) It is stated that in the revocation order dated 4.11.2010, nowhere it is admitted that he would be posted at Delhi North Sector as per the transfer order dated 24.8.2010 and it is also denied that the counsel for the Respondent in the earlier writ petition had accepted that on giving non-employment certificate, he would be posted at Delhi as per the transfer order dated 24.8.2010. While disposing of the writ petition also there is no direction to transfer the Petitioner as per the said transfer order and the Petitioner did not make any representation as per the order of the Court in respect of payment of salary and he has also not submitted any application in the form of non-employment certificate for the period of suspension and the communication sent for the purpose of the same was deliberately avoided by the Petitioner.

b) It is stated that the Petitioner was placed under suspension on 24.8.2010 and simultaneously the charge memo came to be issued on 8.9.2010. Since the Petitioner was under suspension from 24.8.2010, he was called over phone on 9.9.2010 to receive the charge memo, for which he did not respond and an entry was made in the general diary. The charge memo was also sent by registered post on 9.9.2010 and when the officer went to the residence of the Petitioner for serving the charge memo, the spouse of the Petitioner informed that the Petitioner was not present and the Petitioner was directed to come to the Office, which he disobeyed.

c) It is also stated that the charge memo sent to the Petitioner's residence was returned by the postal authorities with an endorsement that the door was locked and in order to give sufficient opportunity to the Petitioner, the charge memo was again sent to the residence of the Petitioner through CISF personnel with one police Head Constable of Kalpakkam Police Station, but the Petitioner refused to receive the charge memo and therefore, there was no other alternative but to paste the same on the door of the Petitioner's house on 18.9.2010.

d) It is stated that it is only after issuing suspension order, the Petitioner deliberately went to the hospital and was taking medical rest. It is the habit of the Petitioner that as and when such orders were passed, he used to go for medical rest. It is stated that only after preliminary enquiry, the impugned charge memo was served on the Petitioner. It is also stated that he was directed to give representation within 10 days and Thiru R.K. Sharma, Deputy Commandant of CISF Unit, KKNPP Kudunkulam was appointed as Enquiry Officer and one Inspector by name K. Prabhakar was appointed as the Presenting Officer by order dated 28.4.2010, to conduct regular departmental enquiry as per CISF Rules, 2001.

e) It is stated that the Enquiry Officer conducted the departmental enquiry as per the Rules and the Petitioner was given all reasonable opportunities to associate

himself in the enquiry and notice of enquiry was sent to the Petitioner on 1.10.2010, directing him to appear before the Enquiry Officer on 26.10.2010 at 15.00 hours, but he refused to receive the notice and GD entry was made and the Petitioner did not appear on 26.10.2010 for preliminary enquiry.

f) Another enquiry notice was sent through the Inspector of Police, Kalpakkam Police Station on 28.10.2010 and also by registered post fixing the preliminary enquiry on 8.11.2010 and the Petitioner again refused to receive and on 8.11.2010, the Petitioner submitted an application before the Enquiry Officer stating that against suspension, there is an order of stay by the High Court and the Petitioner was informed by the Enquiry Officer that the stay only in respect of suspension and the Petitioner should co-operate with the departmental enquiry, however, the Petitioner refused and did not report for enquiry on 10.11.2010 and therefore, the enquiry was proceeded ex parte and statements of prosecution witnesses were recorded and exhibits were marked and after completing the enquiry, the Enquiry Officer forwarded the brief made by the Presenting Officer to the Petitioner for his written brief within five days and the same was served on him through the Inspector on 23.11.2010, but he declined to receive it and an entry was made in the GD.

g) The Petitioner has not submitted his representation to the Presenting Officer's brief and therefore, the Enquiry Officer has completed the enquiry and submitted his findings on 6.12.2010. The Enquiry Officer's report was sent to the Petitioner's residence on 11.12.2010 by registered post but it was returned with the endorsement, "door locked" on 15.12.2010 and "not present" on 16.12.2010 and "refused" on 18.12.2010. The report was however served through special messenger on 17.12.2010 and the Petitioner refused to receive the same and entry was made to the effect in the GD and hence, the Petitioner was aware of the charge memo and he was given sufficient opportunity, but he did not avail the same and there was no order of stay against the enquiry proceedings.

h) The allegation that the third Respondent was biased is also denied. The third Respondent, on referring to the records, found the anti-administrative activities of the Petitioner by instigating Mahila Constables Babitha and Pratima to involve in anti-administrative activities and also provoking them to write false complaints against the Supervisory Officer, Khillare SP, AC. In order to preserve the sensitivity of the Department of Atomic Energy at Kalpakkam, a letter was written to the Inspector General/WS by the Commandant to transfer two Inspectors of the Unit and post one lady Officer. Therefore, it is not an isolated case against the Petitioner alone.

i) The Board, on preliminary enquiry, found that the Petitioner was liable for loss of motorcycle and it was also found that the Petitioner gave false and wrong facts to the department by tampering the records. It is also denied that after the Petitioner was transferred to Delhi, the Commandant has no jurisdiction to issue suspension order. The reasons given by the Petitioner for each of the charges are also denied as false and fabricated. It is also stated that the case of the

Petitioner has to be taken in entirety with reference to minimum requirements of the organization. It is also stated that the Petitioner is serving at CISF Unit, Kalpakkam till date and therefore, the second Respondent is empowered to issue the suspension order as well as the charge memo.

7. According to the learned Counsel appearing for the Petitioner, Mr. N.G.R. Prasad, when once the transfer order has been passed, transferring the Petitioner to the North Sector, simply because the transfer order has not been given effect to, that does not give any jurisdiction to the second Respondent to issue the charge memo. However, it is relevant to point out at this stage that in the earlier writ petition filed by the Petitioner in W.P. No. 21258 of 2010 relating to the order of suspension passed against the Petitioner dated 24.8.2010 and 25.8.2010, the Petitioner raised the issue of jurisdiction on the basis that transfer order having been passed on 24.8.2010, the suspension order will have no jurisdiction. In any event, by the exercise of powers under the Rules, the order of suspension came to be revoked on 4.11.2010 and thereafter, this Court passed the final order in that writ petition in the following terms:

The order of suspension, which is challenged in this Writ Petition, has been revoked by the competent authority in proceedings dated 04.11.2010. A copy of which has been produced by the learned Counsel for the Respondents at the time of hearing of this matter. The Petitioner has also received the revocation order and the subsequent order passed for posting at Headquarters. He has received the order on 04.11.2010 itself.

2. In such view of the matter, no further adjudication is required in this writ petition. Insofar as the payment of salary for the period is concerned, the Petitioner is entitled to make a representation to the competent authority and the same shall be considered by the authority on its own merits, within a period of two weeks from the date of receipt of a copy of this order.

3. With the above observation, the writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

8. At the time when the said order was passed by this Court on 9.11.2010, the impugned charge sheet has already been issued on 8.9.2010 and the Petitioner has not chosen to raise anything about the validity or otherwise of the charge sheet impugned herein. In the order of transfer passed by the Assistant Inspector General/Estt. dated 24.8.2010 which reads as under:

True Translated Copy

Directorate Central Industrial Security Force (Ministry of Home Affairs) 13 CGO Complex Lodhi Road, New Delhi 03. No. V-38019/1(6)/SOPS/2010/Estb-02/2483 Dated:24 Aug 2010. Service Order No. 578/2010 Subject: CISF Personnel Transfer, Regarding

The following CISF personnel have been transferred immediately from the Unit/ Sector shown against their names. Kindly the personnel may be relieved

immediately and submit the compliance report S. No. CISF No. Rank Name From To

1. 952070010 Inspector Vedpal Boora DAE NS(Adm Exe Kalpakkam. Ground IG/NS is requested to post him in a Res. Bn. On Adm. Ground.

2. It is issued after the approval of competent authority.

Sd/-xxxxx Asstt. Inspector General/Estt.

even though it is stated that on administrative grounds the Petitioner was directed to be transferred from Kalpakkam to North Sector, the order specifically contains a request to the Inspector General/NS to post him after granting approval. Therefore, the transfer order which is subject to the condition that the same has to be approved by the competent authority cannot be said to have been given effect to. It is not in dispute that after the transfer order was passed on 24.8.2010, the Petitioner has not been relieved from Kalpakkam. Therefore, the contention raised by the learned Counsel for the Petitioner as if the Respondents 2 and 3 have no jurisdiction to issue the charge memo has no basis. Further, that is also not the case as per the pleadings of the Petitioner.

9. As far as the next contention regarding the nature of charges is concerned, while it is true that all five charges are relating to loss of motorcycle which may not be in true sense imputed to the Petitioner as a misconduct, it is not for this Court to decide about the merit of the misconduct, especially when it is the specific case of the third Respondent, as it is seen in the counter affidavit that Enquiry Officer was appointed apart from Presenting Officer and after giving sufficient opportunity to the Petitioner, the enquiry was completed ex parte and report was submitted to the competent authority. When once the competent authority passed such orders in accordance with law, it is for the Petitioner to work out his remedy in the manner known to law and it is not for this Court at this stage to interfere and decide the question as to whether the charges are proper or not. Having found that the Petitioner cannot raise the issue of jurisdiction of the second Respondent in issuing the impugned charge sheet, I am of the considered view that it is the duty of the Petitioner to face the charges and even if any order has been passed against him, it is not as if no other remedy is available to the Petitioner.

10. In any event, the order of transfer passed against the Petitioner has nothing to do with the charge sheet. It is clear that the order dated 24.8.2010 is a posting order of transfer and it is for the authority there to give effect to the order and only thereafter, the transfer order comes into effect and therefore, that is not a ground for the Petitioner to refuse to reply to the charges. In such view of the matter, I am of the considered view that the writ petition at this stage is not maintainable and it is for the Petitioner to work out his remedy either after the authority passes final order on the basis of the charge memo and findings of the Enquiry Officer, or it is always open to the Petitioner to participate in the enquiry, by giving necessary representation to the Respondents to reopen the

enquiry so as to given him an opportunity to participate effectively in the enquiry, if in the meantime the authority has not passed final order.

11. In such view of the matter, the writ petition stands dismissed making it clear that the dismissal of the writ petition shall not stand in the way of the competent authority in granting approval for the order of transfer dated 24.8.2010. It is made clear that, if the Petitioner desires to participate in the enquiry which is stated to have been completed ex parte by the Enquiry Officer and in the event of the authority not having passed any final order on the charge memo, it is open to the Petitioner to make necessary representation to the second Respondent, seeking permission to participate in the enquiry and in such event, on such representation having been made by the Petitioner, the second Respondent shall consider the same in a fair manner and give him opportunity to participate in the enquiry and then, proceed with the same and to pass final orders.

The writ petition stands dismissed accordingly. No costs. Connected miscellaneous petitions are closed.