
(1996) 02 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1143 of 1989

Veer Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) WLC 399 : (1996) 1 WLN 560

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The penalty for removal from service was given to the petitioner in respect of three misconducts alleged to have been committed by him. The petitioner was appointed as a Rakshak (Constable) on 28.7.61 and was confirmed on 3.5.64.

The incident is of 7.12.1985. The statement of allegations and charges were framed according to which the petitioner used filthy language and when he was stopped he tried to assault, Asstt. Sub-Inspector Gopi Singh. The petitioner was asked to give the statement which was also refused. As such for three charges the matter was proceeded.

2. The submission of the learned counsel for the petitioner is that the statement was recorded on 8.12.1985 by the complainant officer and it has vitiated the entire inquiry. It is also stated that the petitioner was not given fair and reasonable opportunity of having the defence nominee and that the charges are vague inasmuch as even the alleged abusive language has not been reproduced in the statement of allegations and charges. It is also stated that punishment is disproportionate to the alleged misconduct. Reliance has been placed on the decision of the Apex Court in the case of Ved Prakash Gupta v. Delhi Cable India (P) Ltd. 1994 (2) SLR-5 where the punishment on the charge of using filthy

language of dismissal of service was found to be shocking and disproportionate and was considered as victimisation or unfair labour practice. The decision in the case of Mast Ram v. Union of India and Ors. 1994 Lab IC 30 was also relied upon where the charge of using criminal force against the superior officer was found and the punishment of removal from service was awarded. It has been held that the punishment is not commensurate with the offence. The case was remanded to summary court-martial to award lesser punishment. The case of Sardar Singh v. Union of India AIR 1992 SC 417 was also relied upon wherein it was observed that while awarding the punishment the court martial has to keep in view the spirit behind Section 72 of the Act and it has to give due regard to the nature and degree of offence. In that case the accused, an army jawan was found with 7 extra-bottles of rum within area under prohibition while going to home town, having valid permit to carry 5 bottles. The punishment of three months' RI and dismissal from service was set aside and the case was remanded to the court martial for reconsidering the quantum of punishment. In this matter the statement was recorded on 8.12.1985 and it is true that the complainant as Asstt. Sub Inspector recorded his statement. It was in order to substantiate his complaint. Even at that stage when the petitioner was asked to give reply, he stated that he would give the statement before the Inspector Agra Eastern side. Ultimately, the said Inspector was made the Inquiry Officer. When the Inquiry Officer issued the notice it was alleged that he should be changed as he has a biasness against the petitioner. The commandant found that there is no evidence or document on the basis of which it can be said that the Inquiry Officer is to be changed. The petitioner continued his non-co-operation in spite of the communications to him to that effect. It may also be observed that the plea that the petitioner was not permitted to have the defence nominee and thus the proceedings are vitiated being violative of the principles of natural justice has also no substance because in accordance with Rule 44(5) of the RPF Rules any member of service may be permitted to present his case with the assistance of any other member of Force of the same division to which the member so belongs. It is submitted that the petitioner tried to contact two members of the division who were not interested in taking the matter so as to come in conflict with the complainant and therefore a prayer was made that defence nominee should have been permitted to be called from other division. The rule does not permit defence nominee of other division. Therefore, this argument has no force. The permission for taking the assistance could be given and the words "may be permitted" has been used in that sense. The rule can not be said directory. The permission has to be given for taking assistance of any member of force serving in the same division. It cannot be said that the said assistance could be taken from the other zone, of division, or that because of the proviso if the person to whom the petitioner has contacted was having more than one inquiry, then for that reason the rigour of the main Rule 44(5) stands relaxed. The provision is only for putting restriction on appointment of the member of the force who is to be appointed that he should not have more than one case at a time. No illegality can be said to have been committed in this case. The contention that the petitioner was not given

opportunity to have the service of defence nominee is not correct. It was for the petitioner to have suggested the name of any member of the force of the same zone or division.

3. Other contention which has been raised is that the charges are vague and the language used has not been reproduced in the statement of allegations and charges. In this regard, learned counsel for the respondents has produced the file wherein the language used by the petitioner has been stated by the complainant in his complaint. It cannot be said that it was necessary to use the same in the charges. It cannot be said that the charge-sheet is vague.

4. Learned counsel for the petitioner has submitted that the revisional authority has taken into consideration the past conduct which was not considered by the Disciplinary Authority. In the present matter it was not the case of mere use of filthy language, but there were three charges. Reference of earlier case is only to point that the petitioner is habitual to such misconducts. The petitioner has used the language which was filthy apparently. The use of force which was with the intention to insult the Sub Inspector is stated to be only on the basis of the statement recorded by the Sub Inspector himself. The petitioner himself is responsible for it. On his request he was given the opportunity to give statement and he did not give the statement. The petitioner has tried to defer the matter so that the inquiry may not be completed or the correct facts may not be brought on record. The finding of fact which has been recorded cannot be interfered under Article 226 of the Constitution of India. The fact that the petitioner was earlier punished and was give the benefit could have been taken by the revisional authority. The discipline is more expected from the member of the force and if the discipline is not there then it may be detrimental to the service as a whole. The Inquiry Officer as well as the Disciplinary Authority have provided the opportunity to the petitioner and because of his non-co-operative attitude the petitioner has not adduced evidence in his support and the appellate authority in its order found that the charges are serious and revisional authority observed that the petitioner though removed from service previously and reinstated in service, has not learnt the lesson. The revision petition was dismissed and the order passed against the petitioner was confirmed. In these circumstances, I do not consider that any case is made out for interference in the quantum of punishment where there were three charges and in the past also the petitioner was found guilty of misconduct of the same nature. There is no error apparent in the findings on record. There is no violation of the principles of natural justice. The respondents had given opportunity to the petitioner and before the Inspector he said that he would give the statement before the Asstt. Commandant and when the Asstt. Commandant conducted the inquiry he again did not give his statement. In these circumstances, this Court cannot interfere in exercise of its powers under Article 226 of the Constitution of India.

5. Consequently, the writ petition has no force. It is hereby dismissed.