
(2011) 05 DEL CK 0185
In the Delhi High Court
Case No : Writ Petition (C) 2574 of 2011

Victor Bennet

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11, 11(1)

Citation : (2011) 05 DEL CK 0185

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S. Beno Bencigar, for the Appellant; Pankaj Batra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner was enlisted as a constable with the Central Reserve Police Force on 30.04.1991. A complaint was made against the Petitioner by Havaladar Gulab Singh and Havaladar Azad Singh stating that on 3.2.2009, in a state of intoxication, the Petitioner assaulted the said two Head Constables.

2. DIG CRPF directed disciplinary proceedings to be initiated against the Petitioner and under cover of memo dated 12.3.2009 issued the charge-sheet alleging two charges against the Petitioner. The first was of being found drunk at 15:00 hours on 3.2.2009 while posted as a Constable GD stated to be punishable u/s 11(1) of the CRPF Act 1949 and the second charge was of behaving improperly with Azad Singh and Gulab Singh and slapping the two at the same time and the same date as per charge No. 1, which act was stated to be punishable u/s 11 of the CRPF Act.

3. Vide office order dated Nil.3.2009 D.V. Makvana Assistant Commandant was appointed as the Inquiry Officer to record evidence and submit a report.

4. Being in receipt of the charge memorandum and of the date notified by the Inquiry Officer to appear before him, the Petitioner appeared before the Inquiry

Officer on 18.3.2009 and as recorded in the proceedings of said date the Petitioner confirmed having received the charge-sheet and the annexures annexed therewith. He confirmed having understood the charges against him. He confirmed that he had no objection if Asstt. Comdt. D.V. Makvana conducted the inquiry. He further confirmed that he was in a position to defend himself and that he did not desire to be represented by any Defence Assistant.

5. To question No. 6: Whether he pleaded guilty or not guilty to the charges, the Petitioner stated that he pleads guilty and accepts the correctness of the charges against him.

6. We note that the signatures of the Petitioner have been taken not only after his statement aforesaid was recorded but even in acknowledgment of receipt of having been handed over a copy of said statement.

7. In spite of the Petitioner pleading guilty, the Inquiry Officer examined 4 prosecution witnesses and we note that on each date the Petitioner was present and has signed each sheet on which the deposition of the witnesses has been noted by the Inquiry Officer.

8. Havaladar Gulab Singh PW-1 deposed that on 3.2.2009 at about 3:00 PM when he was conducting the fall-in of the recruits outside their tent the Petitioner came and started abusing everybody. Havaladar/GD Azad Singh objected to such behavior upon which the Petitioner not only abused the said officer but also hurled abuses at him and pounced upon him at which Havaladar/GD Azad Singh intervened and tried to save him but the Petitioner pushed him i.e. Havaladar/GD Azad Singh. Somehow, he and Havaladar/GD Azad Singh over powered the Petitioner and brought him in front of the office where they telephonically informed the Officiating Commandant and as per his orders sent the Petitioner for medical examination with Duty NCO.

9. On being examined by the Inquiry Officer he stated that the Petitioner had consumed liquor and was abusing.

10. Havaladar/GD Azad Singh PW-2 deposed that on 3.2.2009 along with PW-1 he was conducting the fall-in of the recruits when Petitioner came along mumbling something to himself. He enquired from the Petitioner as to what was wrong and why was he mumbling, but the Petitioner said there was nothing wrong. Havaladar/GD Gulab Singh PW-1 again asked the Petitioner as to why was he mumbling upon which the Petitioner responded using foul language and instinctively Gulab Singh returned the compliments in the same language. To divert the attention and continue with the fall-in, he i.e. Havaladar/GD Azad Singh blew a whistle but by then the Petitioner and Havaladar Gulab Singh were already wrestling with each other. He tried to intervene and in the process got slapped and his jersey got torn. Taking help from the recruits he managed to separate the two and reported the matter to the Coy Commander on whose orders the Petitioner was sent for medical examination.

11. On being examined by the Inquiry Officer he stated that amidst the brawl he could not make out as to who slapped him but confirmed that smell of alcohol was coming from the mouth of the Petitioner.

12. SI Devki Nandan PW-3 deposed that on 3.2.2009 he was performing the duty of day (SOS). He was informed at Control room that the Petitioner was in drunken condition and he has to be taken for medical examination to GC Hospital. Thereafter he was taken to the hospital where his was examined. After the examination the Petitioner was brought back and was left in the custody of PW-1. This information was given to the Coy Commander.

13. On being examined by the Inquiry Officer he stated that he could smell liquor from the mouth of the Petitioner.

14. Dilbag Singh Assistant Commandant PW-4 deposed that according to the record available in the Unit shows that on 3.2.2009 the Petitioner consumed liquor at the time of duty. When the Havaladar Gulab Singh produced the Petitioner in front of him he was drunk. The previous record of the Petitioner shows that he is an alcoholic and his working conduct is also not good. On 3.2.2009, he was examined by the medical officer at GC Hospital and it was found that the Petitioner was drunk.

15. After the prosecution led evidence, the Petitioner made statement and when examined by the Inquiry Officer he stated that he had consumed moderate amount of liquor but denied having assaulted Havaladar/GD Gulab Singh and Havaladar/GD Azad Singh. He said that he does not want to produce any defense witness and admitted his guilt.

16. Vide letter dated 27.4.2009 the Petitioner was given 15 days time to produce defense evidence if any and Petitioner stated that he would like to produce Havaladar Anokhe Lal as his defense witness who was examined on 16.5.2009. He stated that he was not present in the unit on 3.2.2009.

17. Vide report dated 3.6.2009 the Inquiry Officer held that charge No. 1 was full proved and that charge No. 2 was proved partially to the extent it alleged that the Petitioner behaved improperly but his assaulting Azad Singh and Gulab Singh was not proved.

18. Supplying the report of the Inquiry Officer to the Petitioner and considering his response the Disciplinary Authority has levied the penalty of compulsory retirement upon the Petitioner against which appeal filed has been rejected vide order dated Nil.8.2009. Revision filed has been negated vide order dated 30.11.2010.

19. Instant petition has been filed by the Petitioner stating that there is no evidence of the Petitioner having assaulted either Azad Singh or Gulab Singh. It was urged that the inquiry officer has indicted the Petitioner of being drunk and of misbehaving and no more. It was urged that assault on Azad Singh or Gulab Singh not being proved, penalty of compulsory retirement was excessive. A

technical plea urged was that Petitioner was alleged to have committed offences punishable u/s 11 of the CRPF Act which related to minor offences and that the Petitioner could not have been visited with a major penalty.

20. From the facts which we have noted it would be enough to say that the Petitioner admitted his guilt and notwithstanding that the Inquiry Officer proceeded to record evidence. From the testimony of the witnesses it emerges that the Petitioner abused Havaldar Gulab Singh and was drunk. It may be true that Azad Singh has said that he could not say for sure as to who slapped him, but we find that Gulab Singh has clearly stated that it was the Petitioner who not only assaulted Gulab Singh but even hit Azad Singh. Notwithstanding this evidence the Disciplinary Authority has shown leniency in its order by holding that the second charge was partially proved. We thus proceed that the second charge was partially proved. Even then we find that the Petitioner was drunk and misbehaved when he was asked to fall in for the roll call. It has to be kept in mind that this was not the first time the Petitioner created a nuisance under influence of alcohol. His service record shows that there were past 7 incidents where after being drunk the Petitioner either misbehaved or assaulted his fellow jawans. On one occasion the Petitioner was found absent from duty. In the past there were 8 penalties levied upon the Petitioner. It is settled law that past service record can be considered while levying a penalty. We note that taking note of the fact that the Petitioner has served for nearly 18 years the penalty levied is of compulsory retirement and this has saved pension for the Petitioner commensurate to the service rendered.

21. As regards the technical plea that Section 11 of the CRPF Act prescribes minor punishments, the argument appears to be based upon the caption of the Section which states: "Minor Punishments" and then lists the section. It ignores the language of the section which reads: "The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments" thereafter in clauses "a" to "e" minor punishments are listed. A bare perusal of Section 11 would reveal that while listing the minor punishments it clearly states that these may be imposed in lieu of or in addition to the penalty of dismissal from service.

22. Considering the past conduct of the Petitioner and the current we do not find that the penalty imposed is disproportionate. The Petitioner is a chronic defaulter and has not been chastened by the previous penalties levied. He has continued to drink and create nuisance or assault. Thus, we dismiss the writ petition but refrain from imposing any costs.