
(2011) 10 DEL CK 0252
In the Delhi High Court
Case No : Writ Petition (C) 1387 of 1999

Vinesh Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

CRPF Act, 1949 — Section 11(1)

Citation : (2011) 10 DEL CK 0252

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.S. Pandey and Mr. Santosh Kumar, for the Appellant; Vijaya Kumar Rout, Pairvi Officer, CRPF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner, a constable with Central Reserve Police Force, received a telegram on 7.6.1997 informing him about the death of his wife, upon which the Coy CHM of his unit granted the Petitioner casual leave for 15 days commencing from 9.6.97 to 29.6.97 and forwarded the matter to the Force Headquarter for formal approval. Needless to state, leave was granted on exceptional urgent basis inasmuch as it was premised on the requirement of the Petitioner to immediately report to his home town as his wife had died.

2. Petitioner was to report to duty on 29.6.1997 but he did not return. The department received telegram on 12.7.1997 stating that Petitioner's wife was in a critical condition. But, before receipt of said telegram, the department had written a letter on the same date i.e. 12.7.1997 ordering the Petitioner to report back to duty immediately. Another telegram was received by the department on 18.7.1997 in which Petitioner informed once again that his wife was critically ill.

3. The department wrote a letter to the Petitioner on 22.7.1997 informing him that it could not be that his wife died, as was conveyed in the telegram received on 7.6.1997 and that on a later date his wife was unwell, a fact conveyed in the

telegrams received by the department on 11.7.1997 and 18.7.1997. Petitioner was directed to report back immediately and bring along with him such documents upon which he relied with reference to the illness of his wife.

4. The department received a letter on 31.7.1997 but bearing a date 21.6.1997 in which it was requested that due to petitioner's wife being critically ill and there being nobody to take care of her, leave should be extended till 25.7.1997. The department responded vide letter dated 7.8.1997 informing that since request for leave to be extended was till 25.7.1997, a date in the past, Petitioner should report for duty immediately.

5. The Petitioner did not report back till 9.9.1997 when a reminder was sent directing Petitioner to report forthwith for duty.

6. The Petitioner reported for duty on 11.10.1997 and on 18.10.1997 a charge sheet was issued to him listing 3 articles of charge, which read as under:

ARTICLE-1

No. 913152267 Ct. Vinesh Singh of E/14 Bn. CRPF committed an act of misconduct in his capacity as a member of the force in that he took 15 days casual leave from 9/6/97 to 29/6/97 by advancing a false reason of death of his wife thereby misleading the office which is punishable u/s 11(1) of CRPF Act 1949.

ARTICLE-2

That the aforesaid No. 913152267 Ct. Vinesh Singh of E/14 Bn. CRPF committed an act of gross misconduct in his capacity as a member of the force in that he overstayed 15 days casual leave granted to him from 9/6/97 to 29/6/97 by 104 days up to 11/10/97 without sufficient reasons which is punishable u/s 11(1) of the CRPF Act, 1949.

ARTICLE-3

That the aforesaid No. 913152267 Ct. Vinesh Singh of E/14 Bn. CRPF committed an act of gross misconduct in his capacity as a member of the force in that he is a habitual offender of overstaying leave granted to him or absenting himself from duty which is punishable u/s 11(1) of the CRPF Act 1949.

7. A word needs to be spoken pertaining to the 3 Articles of Charge. A perusal thereof would show that the actual charges are only 2 and the 3rd is informing the Petitioner that his past conduct of habitually overstaying leave would be taken into account if the 2 charges were proved. We have repeatedly highlighted in various judgments that past conduct for which punishment has been levied should not be listed as an Article of Charge as it unnecessarily gives birth to an argument that having been penalized in the past for a wrong, the rule against double jeopardy would be violated if for the same wrong another penalty is

imposed. Where the department wants to bring to the notice of the delinquent that on the issue of penalty, his past conduct would be looked into, the relevant stage is when the inquiry report is submitted and it indicts the delinquent. At that stage while forwarding the inquiry report, the Disciplinary Authority may bring to the notice of the delinquent that his past conduct would be considered.

8. Thus, for purposes of our present decision we would take into account that Articles of Charge were only 2 and not 3.

9. Before the inquiry officer, Asstt. Comdt. Madan Singh, Petitioner pleaded guilty to all three charges but in the interest of justice, the Inquiry Officer proceeded to record the prosecution evidence.

10. 3 witnesses were examined by the department who deposed regarding receipt of the telegram Ex.PW-1/A, informing about the death of Petitioner's wife, application Ex.PW-1/B by the Petitioner seeking grant of casual leave and grant of 15 days leave thereof and about the overstay of said leave. We eschew from giving further details about the depositions made by the witnesses for the reason the Petitioner has neither challenged the veracity of their depositions nor cross-examined any of the witnesses during the inquiry.

11. At the close of prosecution evidence, the Petitioner was examined on 13.11.1997 wherein he was once again asked whether he pleaded guilty to the charges levied upon him. The Petitioner pleaded not guilty to the first and the second charge and guilty to the third.

12. We would highlight that the Petitioner never denied being on extended leave without sanction for 104 days but pleaded justification by way of his wife's medical infirmity.

13. In defence the Petitioner produced 4 documents which are in the nature of certificates issued by doctors concerning the Petitioner's wife. The 4 documents are issued by private doctors at private nursing homes and we would highlight certain important features thereof.

14. The first medical certificate dated 09.07.97 is issued by Dr. Ramvir Singh Tyagi of Tyagi Nursing Home wherein it is recorded that Dinesh Devi w/o Vinesh Singh aged about 24 years has been undergoing treatment for Jaundice due to Viral Hepatitis since 20.06.97 to 09.07.97. We note that there is over writing on the date i.e. 09.07.97, where number "19" seems to have been made into "09". There are also some over writing done by hand over the address of the Nursing Home typed on the certificate.

15. The Second certificate dated 26.07.97 is issued by Dr. Tahir Khan of Dr. Tahir Surgical Clinic which records that Dinesh Devi aged 34 years has been suffering from Jaundice and has been undergoing treatment since 10.07.1997 to 26.07.1997 and that she has been advised bed rest for 16 days, but we note that there is over writing thereon and it appears that number 14 has been changed into number

16. The last 2 certificates have been issued by Dr. Chitanya Dev of Smt. Rajwanti Foundation Hospital and Research Centre wherein it stands recorded that Dinesh Devi w/o Vinesh Singh has been undergoing treatment for Jaundice caused by chronic active Hepatitis, since 27.7.1997 to 29.9.1997 and that she will be fit to do her work from 30.9.1997. Both certificates are dated 29.9.1997 and while the former is on the letter head of the hospital the latter is in the form of a typed Medical Certificate recording the same information. We note that as per the certificate Dr. Chaitanya Dev is a Cardiologist and Chest Physician and it comes as a surprise that he treated a patient suffering from chronic Jaundice. Moreover, the date 29.9.97 in both certificates appears to have been altered inasmuch as the "9" for the month of September in the date appears to have been made on a number 7 since in both certificates the number 9 has a dark line on the upper curve of the number and a conscious round (O) while all other numeral 9 have a free flowing round. At the first glance there appears to be something different about the 9 in the month column in the date 29.9.1997 in both the certificates.

17. The Petitioner further submitted a written statement in his defence wherein he stated that he was asked to go on leave by the CHM of his company who did not disclose the true reason of his leave and instead told him that a quarrel had taken place at his home town due to which he was given leave. That he had not made any application to the department for grant of leave but he was made to sign on a blank paper before leaving which was perhaps later converted into an application on his behalf. Petitioner further stated that he did not know how a wrong message was recorded in the telegram informing about the death of his wife when she was only critically ill and in regard to the 104 days overstay he stated that he kept his commandant and coy commander updated about the condition of his wife but received no response from them.

18. The Inquiry Officer in his report dated 13.12.1997 discussed at length the veracity of the medical certificates produced by the Petitioner and came to the conclusion that on account of the various over writings done and the fact that these certificates were issued by private doctors and not a Government Hospital, they did not inspire confidence.

19. Agreeing with the report of the Inquiry Officer vide order dated 27.12.1997 the Disciplinary Authority imposed the penalty of dismissal from service and took into account the fact that in the past the Petitioner had been punished 4 times during a service career spanning 41/2 years service. We highlight that the Petitioner joined service in the year 1991. Appeal and revision filed were rejected vide orders dated 18.3.1998 and 5.8.1998 respectively.

20. The instant petition lays a challenge to the order dated 27.12.1997, 18.3.1998 and 5.8.1998.

21. Learned Counsel for the Petitioner conceded that the Petitioner overstayed leave by 104 days but pleaded justification on the fact that Petitioner's wife was unwell and for which Learned Counsel relied upon the 4 medical certificates

produced by the Petitioner.

22. We have hereinabove noted the over writings in the medical certificates and relevant would it be to highlight that petitioner's unauthorized absence commenced when he did not return after leave on 29.6.1997 and the absence continued for 104 days. We have noted herein above the over-writings on the 4 medical certificates produced by the Petitioner and would highlight that the certificates are issued by private doctors. It is apparent that dates have been so fudged to cover up the entire period of unauthorized absence. Indeed, there is sufficient material to cast a doubt on the authenticity of the certificates and it being a question of fact, we have no reason to differ from the conclusion drawn by the Inquiry Officer and agreed to by the Disciplinary Authority.

23. On the issue of the telegram which formed the subject matter of Article-1 of the Charge memo, the defence of the Petitioner that he did not know the contents of the telegram and the justification argued that since it recorded a fact of Petitioner's wife having died, somebody in the department withheld the information recorded in the telegram and sent him home on the ground that a quarrel had taken place in the house, is plausible at the first blush, but if we look at the matter a little closer we would find that the argument ignores the realities at the ground. The Petitioner knew very well that it is the Commandant of the Unit who could sanction leave and in the instant case the leave was granted by the Coy CHM. The eyebrows of the Petitioner ought to have been raised upon the Coy CHM sanctioning leave if he was not made aware that as per the telegram his wife had died. Now, whatever may be the requirements of the employer, if the wife of an employee dies the need for leave of the employee would be on a higher pedestal because at times of death the need of the hour is for the husband to be with the wife. The manner i.e. the quickness with which leave was sanctioned throws light on the fact that the Petitioner knew the reason for leave being sanctioned with utmost lightning speed. Besides, the telegram was addressed to the Petitioner and not to the Unit. The presumption is that the Petitioner received the telegram when the envelope was closed and the presumption would be that it was he who opened the telegram.

24. Now, why would the Petitioner do so?

25. It is difficult for Judges to probe the mind of a delinquent and ascertain the real reason for a deviant behaviour. But, in the instant case, a probable reason could be the knowledge of the Petitioner that leave is normally not sanctioned the same day unless there are compelling reasons. He may have contrived with somebody in the village to send a telegram recording a false fact. He would be the beneficiary thereof, inasmuch as immediate leave would be sanctioned.

26. A question was posed to us by Learned Counsel for the Petitioner: Why would the Petitioner then sent telegrams seeking leave to be extended followed by a letter giving reason of wife being sick.

27. It is difficult for us to answer the question. We need not answer the question

for the reason at the heart of the misdemeanour is the fact that Petitioner availed 104 days unauthorized leave and for which the medical certificates produced in respect of the alleged sickness of the wife do not inspire confidence. We highlight that no medical prescriptions pertaining to the medicine taken by the wife of the Petitioner or bills evidencing medicine being purchased have been filed. 3 different doctors at 3 different hospitals are the authors of the certificates and it appears to be a case where each doctor was not ready to stick his neck beyond a period of time and this explains that for 3 different periods spanning 104 days, from 3 different doctors 3 certificates have been obtained and that too with a manipulation by way of over-writing on the certificates.

28. It was next urged on behalf of the Petitioner that the penalty of dismissal imposed upon the Petitioner was illegal inasmuch as Section 11(1) of the CRPF Act, under which Petitioner was charged, only provides for minor punishments and that the authorities do not have the power to pass a penalty of dismissal there under.

29. The title of Section 11(1) of the CRPF Act is "Minor punishments" which is the source of the argument advanced by the Petitioner. The section reads as under:

Section 11 - Minor Punishment:

1) 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 to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say:

- a) reduced in rank;
- b) fine of any amount not exceeding one month's pay and allowances;
- c) confinement to quarter, lines or camp for a term not exceeding one month;
- d) confinement in the quarter-guard for not more than twenty eight days, with or without punishment drill or extra guard, fatigue or other duty; and
- e) removal from any office of distinction or special emolument in the Force.

(Underlined emphasised)

2) ...

3) ...

30. The legislature, by stating that the authority may pass any of the punishments given therein in lieu of or in addition to penalty of dismissal or removal clearly indicates that the authority has power to impose penalty of dismissal or removal. The section merely elaborates on alternative or additional

punishments that may be imposed in place of or along with the order of dismissal or removal. Supreme Court in the decision reported as Union of India (UOI) and Others Vs. Ghulam Mohd. Bhat, interpreted Section 11(1) and held that departmental authority has power to impose penalty of dismissal or removal under said section. Relevant portion of the decision read as under:

5. The use of words "in lieu of, or in addition to, suspension or dismissal", appearing in Sub-section (1) of Section 11 before Clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in Clause (a) to (e) may also be awarded.

31. Lastly it was urged that the penalty of dismissal is disproportionate to the charge levied upon the Petitioner.

32. This contention of the Petitioner stands no ground for the reason the Petitioner has a blemished service record inasmuch as he has been punished on earlier occasions for shunning his duties. In the year 1993 he was punished for having disappeared from his duty post without permission; in the year 1995 Petitioner was punished for having overstayed leave granted to him by a period of 30 days without sufficient reason; in the year 1996 he was punished for having overstayed leave by a period of 5 days without sufficient cause and in the month of January in the year 1997 he was punished for having deserted his party at New Delhi Railway Station.

33. Thus Petitioner appears to be a habitual offender and in that a habitual absentee. In armed forces where leave granted to one officer affects the prospects of leave of another officer such a nature of constant absenteeism cannot be tolerated.

34. Thus in light of the discussion above, we dismiss the writ petition and refrain from imposing costs.