

(2010) 09 DEL CK 0196

In the Delhi High Court

Case No : Writ Petition (C) No. 8811 of 2008

Virender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27, 30

Citation : (2011) 1 AD 344

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : H.S. Kathuria, for the Appellant; S.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By way of the present writ petition the petitioner has challenged the order dated 8th June, 2007 passed by the Inspector General of Police, New Delhi exercising suo motto revisional jurisdiction u/s 29(d) of the CRPF Rules and enhancing the punishment which was imposed on the petitioner to removal from service as against the lesser punishment awarded by disciplinary authority.

2. There is no dispute to the material facts giving rise to the present petition. The petitioner was enrolled as a Constable with the CRPF on 2nd March, 2003. Pursuant to a memo dated 5th December, 2005, disciplinary proceedings were conducted against the petitioner with regard to an incident which occurred on 5th November, 2005, on the following charges:

Charge No. 1

That Force No. 031200348 Constable/G.D. has been found guilty being a force member i.e. misconduct, misdeed, disobedient and misbehave u/s 11(1) of Central Reserve Police Force, Act, 1949 while he was performing duty in Battalion. Wherein he absented Baikhora Camp at the time of Stand Two on 5/11/2005 at 0230 hrs and came in the camp at 0300 hours, thereafter he

quarreled with his colleague Sharad Boro constable No. 941172018 and threatened him to kill with his personal arms, after snatching rifle from him, just after some time he again tried to attack with lathi on force No. 941172018 Constable/G.D. Sharad Boro, which shows his disobedience and misconduct being a force member and the same is punishable offence under the rules of CRPF.

3. on taking a considered view of the evidence placed in the inquiry which was conducted and a consideration of the prevalent circumstances in the battalion, the commandant of the 120 battalion CRPF passed an order dated 29th November, 2006 finding the petitioner guilty of the charges which were leveled. So far as the punishment which was imposed by the disciplinary authority is concerned, a view was taken based on the fact that the charge against the petitioner was his first mistake as well as ends of justice. The family condition of the petitioner was also considered. The commandant exercised power vested in him u/s 11(1) of the CRPF Act read with Rule 27(k) of the Police Force Rules, 1955 and awarded the punishment of stoppage of two annual increments for two years which would not affect his future annual increments. The punishment was directed to apply upon the petitioner from the next salary increment. The consequential order with regard to regularisation of the petitioner's period of suspension from 9th November, 2005 till the passing of the order to be treated as duty for all purposes was made and it was held that the petitioner would be entitled to payment of salary in respect thereof.

4. It appears that an inspection was conducted of the battalion by the Additional Inspector General of Police who had raised an objection with regard to the punishment which had been imposed by the Commandant on the petitioner. Consequently, the matter was forwarded on 7th February, 2007 to the office of the Inspector General of police at Delhi. On an examination of the record of the disciplinary proceedings, the Inspector General of Police issued a notice to show cause dated 23rd March, 2007 to the petitioner calling upon him to show cause as to why the punishment which was imposed on him could not be enhanced. The petitioner had filed a reply dated 14th March, 2007 thereby seeking a lenient view in the matter and placed the totality of circumstances in which the alleged incident had occurred.

5. We had called upon the respondents to place the original record relating to the issuance of the notice to show cause in the proceedings which were conducted by the Inspector General of Police, New Delhi before passing the impugned order. The record has been placed before us. Perusal thereof would show that the Inspector General of Police had not only issued notice to the petitioner but had also issued a notice dated 23rd March, 2007 to the commandant of the 120 battalion, CRPF calling upon to show cause as to why displeasure should not be recorded on his service record for the manner in which punishment had been imposed upon the petitioner.

6. We find that the reply dated 19th of April, 2007 submitted by Sh. Naresh

Kumar Yadav (who was the Commandant of the 120 battalion, CRPF, Delhi and had passed the order dated 29th April, 2006 against the petitioner) sheds valuable light on the reasons for imposition of the punishment which had been imposed. We find that the following distressing facts have been noticed in the translation of this response dated 19th April, 2007 submitted by the commandant to the Inspector General of Police:

On promotion, I have taken over the work charge of 120 Battalion as a Commandant on 20.05.2005. In the same years, the Battalion had been posted in Tripura State under the annual internal transfers. Where besides under the pressure of anti terrorist mission, ailments in the area like Malaria and jaundice, the morale of the officials was being directly affected and after some time of taking over the work charge, I found that such a misconception had taken place inside the employees, that the ill effects of the ailments in Tripura area can be made ineffective by consuming liquor. Accordingly, I found that some employees are consuming much liquor, and it is my primary duty to control over it. Therefore taking strict and effective steps towards it, I have stopped the purchase of liquor in the Battalion and noted 04 employees, sent to Base Hospital-3 Gwahati for de-addiction. During the repeated visits of the companies, at the time of formal and informal discussions, the employees have been told in details about the ill-effects of consuming of liquor and such people were kept under vigilance, because of that not finding the atmosphere suitable, 02 officials taken the voluntary retirement from service.

Here it will not be irrelevant to mention that during my tenure, 04 cases of misconduct came in light, they all had the habit of consuming of excessive liquor therefore in view of taking strict action, I ordered the departmental inquiry otherwise they could be called by my order in the room and could be settled by giving them minor warning. Out of them No. 013200348 Sepoy Virender Kumar and No. 25110056 Rahul Bhardwaj admitted their mistake and by making improvement in their bad acts, has shown good working and behavior during this period. And also these people have participated courageously in the missing during the duties/postings. Whereas the cases of No. 015110508 Sep Ravi Kumar and No. 851261512 Sepoy Rajinder Singh were such that neither any possibility of improvement seen in them and nor they admitted their mistakes, therefore both have been dismissed from service.

Here is worth mentioning that the decisions taken after the departmental inquiry against Sepoy Virender Kumar and Sepoy Rahul Bhardwaj, are absolutely as per the departmental directives. Before any strict decision, having the factual knowledge of the actual position, evaluation capacity, taking humane view of the future possibilities, it is not a irrelevant thing. It is true that we are the members of disciplined armed force in which discipline is top most but we cannot forget this that the force is also a human organization where sensitivity, emotion and the possibility with human view in decisions, plays a important role in the transparent decision and my this recognition is not against the tradition of the

force that the use of punishment is made with a view of improvement and not on the basis of mathematics under the prejudice and intention of revenge.

Post script, in the impugned reference, I will also like to submit this side that after the departmental inquiry, the punishment given by me, does not come in the category of lenient punishments from any manner. The same punishments have been given which falls in the category of strict punishment after the departmental inquiry. Therefore despite the possibility of improvement, I felt proper to give less rigorous punishment like dismissal from service, unblemished proof is the unflinching service tenure of the last 11 months of these officials. As such in the light of the facts, punishment like dismissal from service, would have been certainly injustice towards the officials and such kinds of unjust decision not only affect the morale of the Battalion but also by taking immoral decision gives force of retaliation thinking in one or the other manner towards the society. I have always taken proper decisions from very view of point and such type of decision, are always objective and not subjective and in the subjective decisions error/some apprehension is natural.

Besides this, for your consideration I would also like to place this fact that in the first 6 monthly of the year 2006, total 11 cases of minor and rigorous punishments have been registered in the Battalion, in the second six monthly of the year 2006 and in 2006 till date total 05 and 01 matters respectively have been registered which itself is the reply of improvement in the discipline, which is for maintaining the discipline as per rules and for good results, which I and with the continuous efforts by the subordinate officers is a sufficient direction in guidance. During this period such occasion also arisen, that without the II Commanding Officer and Deputy Commandant I have to operate the battalion with the help of only one Assistant Commandant in the Battalion Headquarter.

7. The above would show that the Commandant who was best placed to take a decision in the matter being directly concerned with the conduct of the serving personnel in the battalion, had taken a considered view in the matter and explained the reasons as to why he had imposed only the punishment of stoppage of two increments in the order dated 29th April, 2006.

These circumstances have not been considered by the Inspector General of Police who on consideration of the petitioner's reply alone has been influenced by the fact that the petitioner was a member of the disciplined force and by the order dated 8th June, 2007 had proceeded to impose the severe penalty of removal from service upon the petitioner.

8. We find that the order dated 8th of June, 2007 fails to consider the reasons which were given by the disciplinary authority for passing the order dated 29th April, 2006. It certainly does not take into its ambit and scope of consideration, the detailed explanation which was rendered by the Commandant for the prevailing conditions and circumstances in the battalion which had led to the incident on 5th December, 2006.

9. We may notice that the grievance of the petitioner which had led to the incident with which he was charged, was really a dispute over the available food in the battalion. The petitioner has expressed mental harassment and provocation leading to the incident. Further, material support for these submissions and the grievance of the petitioner is to be found in the explanation given by the commandant even as late as on 19th April, 2007. The commandant has also explained the reasons for taking such view in the matter which he stated was essential for maintenance of the extreme discipline which is required to be maintained in the armed force. We find that the order dated 8th June, 2007 does not take into consideration these circumstances and factors. The punishment which has been imposed therein is premised only on the fact that finding of the respondent No. 3 that the petitioner was guilty of the charge.

10. It is well settled that after a scrutiny of the evidence and record placed before the authority, an opinion has to be recorded with regard to the findings of culpability of the person charged. After recording such findings, the authority has to take a considered view so far as imposition of punishment commensurate with the gravity of charges of which person is charged is concerned. Such a view has to be premised not only on considerations of the gravity of the charges with which the delinquent is charged but it is also necessary to see whether there are any mitigating circumstances which could justify imposition of a lesser punishment.

11. In the instant case, the disciplinary authority recorded detailed reasons in support of the punishment which was imposed. The order dated 8th June, 2007 has failed to record any reasons for overturning the reasons and circumstances recorded by the commandant in the order dated 29th April, 2006. We also find that the commandant has given a detailed explanation with regard to the circumstances which were prevalent in the battalion at the relevant time in his answer dated 19th April, 2007 to the show cause notice. In view of the above, we find that the punishment which has been imposed by the respondent No. 3 is grossly disproportionate to the severity of the charges which were levelled against the petitioner.

12. We find that the petitioner's appeal against the said order dated 8th June, 2007 was rejected by the appellate authority by an order passed on 8th December, 2007 and the petitioner's revision and mercy petition against the same under Rule 30 of the CRPF rules was rejected by an order dated 17th April, 2008. The appellate authority in the order dated 8th December, 2007 and the revisional authority in its order dated 17th April, 2008 have also failed to consider the aforementioned material circumstances and their orders do not reflect any consideration of the same. The same are also not sustainable for the same reason.

13. Mr. H.S. Kathuria, learned Counsel for the petitioner has placed reliance on an order dated 18th March, 2008 passed by the Central Administrative Security Force in respect of one HC/GD Jaipal who was charged with similar charges as

the petitioner. It has been contended that in this order, the CISF has taken a reasonable view as had been taken by the Commandant so far as the petitioner was concerned.

It is submitted by Mr. Kathuria that the statutory provisions which govern CISF are similar to those governing in the CRPF.

14. In view of the above, we find that the enhancement of the punishment by the orders dated 8th June, 2007 and upheld by the orders dated 8th December, 2007 and 17th April, 2008 was not warranted and that such punishment was grossly disproportionate to the gravity and nature of charges against the petitioner. The punishment imposed thereby is, accordingly, set aside and quashed and the order dated 29th April, 2006 passed by the disciplinary authority restored so far as the sentence imposed against the petitioner is concerned.

We also direct that as a result the petitioner shall stand reinstated in service with all consequential benefits, subject to the punishment which was imposed by the order dated 29th April, 2006.

On taking a considered view in the matter and having regard to the petitioner's totality of circumstances with regard to the culpability in respect of the charges, we direct that the petitioner shall not be entitled to any back wages.

15. The necessary order in terms of the above directions shall be passed by the respondents within two months from today.

This writ petition is allowed in the above terms.