
(2014) 05 DEL CK 0020

Delhi High Court

Case No: W.P.(C) 5374/2003

Suresh Kumar

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision: May 27, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 143 DRJ 563

Hon'ble Judges: Pradeep Nandrajog, J; Jayant Nath, J

Bench: Division Bench

Advocate: H.S. Dahiya, Advocate for the Appellant; Prasouk Jain, Advocate and Ankur Chhibber, Advocate/Amicus Curiae, Advocate for the Respondent

Judgement

Pradeep Nandrajog, J.

The factual backdrop leading to the filing of the present petition is that the petitioner was enrolled as a Constable in CISF.

2. On December 03, 1999, a charge memorandum was issued to the petitioner initiating an enquiry against him under Rule 34 of the CISF Rules, 1969.

3. The article of charge framed against the petitioner (under the charge memorandum dated December 03, 1999) reads as under:-

"That CISF NO.942331976 Const Suresh Kumar of CISF/01st Reserve Battalion, Barwaha entered into scuffle with HC/GD Om Prakash Dhuhan (CHM) alongwith CISF No.824490278 HC/GD S.P.Singh on 05.11.1999 at about 11.30 hours while he was detailed for I.S. Duty in Company No.11 at New Delhi, using filthy languages, assaulting and punching him by hand, which amounts to gross misconduct and indiscipline and violation of instruction and unbecoming a good member of a disciplined force like CISF . "

(Emphasis Supplied)

4. The statement of imputation of misconduct (under charge memorandum dated December 03, 1999) reads as under:-

"That No.942331976 Const Suresh Kumar of CISF/01st RESERVE BATTALION, BARWAHA was detailed in company no.11 for I.S. Duty New Delhi. On 05.11.1999 at about 11.30 hours Const. Suresh Kumar was found creating nuisance by shouting at company commander that he would not shift from Defence Colony Police Station to North Block as per the order of DIG/NZ and he demanded for leave to celebrate Deepavali festival. On hearing the shouting of CISF No.741310316 HC/GD Om Prakash, CHM of company No.11 came and tried to pacify the above Const. and the HC/GD and also requested to them to come and request the company Commander on the next day as it was found nuisance to the Police Station Duty officials of Defence Colony Police Station . The CISF No.942331976 Const Suresh Kumar alongwith CISF No.824490278 HC/GD S.P.Singh immediately manhandled and assaulted the CISF No.741310316 HC/GD Om Prakash, CHM of company No.11 by using filthy language. For which a entry also made in General Diary vide No.1059 Dated 5.11.1999. Hence he committed an act of gross misconduct and negligence of duty and made himself liable for Disciplinary Action. Hence the charge . "

(Emphasis Supplied)

5. It is pertinent to note that as per charge memorandum dated December 03, 1999 the incident in question happened at Defence Colony Police Station at 11.30 hours on November 05, 1999.

6. The petitioner submitted his response to the charge memorandum dated December 03, 1999. He denied the allegation that he abused or manhandled HC Om Prakash at 11.30 hours on November 05, 1999 and took the stand that on the said day at 11.30 A.M. he was on duty at the farmhouse of one Sh.R.L.Bhatia and HC S.P.Singh was on duty at the farmhouse of one Sh.Kedar Nath Sahni.

7. On January 19, 2000 a memorandum was issued to the petitioner whereby the time "11:30 hours" mentioned in article of charge/statement of imputation issued under cover of charge memorandum dated December 03, 1999 was amended to be read as "23:30 hours".

8. It is apparent that an error had taken place unintentionally when the charge memorandum was issued. Time recorded at 11:30 hours of the incident was capable of being read as 11:30 AM. The petitioner took advantage thereof. To set the matter at rest, the charge memorandum was amended for the time to read as 23:30 hours.

9. On February 15, 2000 another memorandum was issued to the petitioner whereby the statement of imputation issued under cover of charge memorandum dated December 03, 1999 was amended. The amended statement of imputation reads as under:-

"That No.942331976 Const Suresh Kumar of CISF/01st RESERVE BATTALION, BARWAHA was detailed in company no.11 for I.S. Duty New Delhi. On 05.11.1999 at about 2330 hrs Const. Suresh Kumar was found creating nuisance by shouting at company commander (North Block) that he would not shift from Defence Colony Police Station to North Block as per the order of DIG/NZ and he demanded for leave to celebrate Deepavali festival. On hearing the shouting of CISF No.741310316 HC/GD Om Prakash, CHM of company No.11 came and tried to pacify the above Const. and the HC/GD and also requested to them to come and request the company Commander on the next day as it was found nuisance to the company personnel of North Block coy . The CISF No.942331976 Const Suresh Kumar alongwith CISF No.824490278 HC/GD S.P.Singh immediately manhandled and assaulted the CISF No.741310316 HC/GD Om Prakash, CHM of company No.11 by using filthy language. For which a entry also made in General Diary vide No.1059 Dated 5.11.1999. Hence he committed an act of gross misconduct and negligence of duty and made himself liable for Disciplinary Action. Hence the charge . "

(Emphasis Supplied)

10. Pertinently, as per the "amended" charge memorandum dated February 15, 2000 the incident in question happened at North Block at 23.30 hours on November 05, 1999.

11. Thus, it is apparent that even the place of the incident was stated to be different than what was stated at the first instance.

12. At the enquiry proceedings the department examined six witnesses viz. HC Om Prakash PW-1, Inspector Yogender Singh PW-2, SI H.L.Yadav PW-3, HC H.H.Bhai PW-4, SI Krishna Rao PW-5 and SI Om Prakash PW-6.

13. In his statement in defence the petitioner denied being involved in the incident in question.

14. Considering the evidence led the inquiry officer submitted a report opining that the charge framed against the petitioner was established. Furnishing the same to the petitioner for his response and considering the same the disciplinary authority levied a penalty of dismissal from service upon the petitioner vide order dated July 04, 2000 against which the appeal filed was accepted by the appellate authority vide order dated December 29, 2000, observing that there was merit in the stand of the petitioner that after the charge memorandum was amended twice, the disciplinary authority by not granting the petitioner an opportunity to file a response had infringed a valuable right of the petitioner. It was also noted that the listed documents were not provided to the petitioner. It was directed that de novo proceedings be held.

15. On January 25, 2001 another charge memorandum was issued and under cover thereof the same article of charge, statement of imputation, list of documents and

list of witnesses which were earlier on served upon the petitioner, but as amended twice, were served.

16. Needless to state, the petitioner again denied the charge. Inquiry Officer was appointed before whom same six witnesses were examined by the department.

17. HC Om Prakash Dohan PW-1, stated that on November 05, 1999 he was deployed as CHM of Company No.11 which had been transferred from Defence Colony Police Station to North Block on said day i.e. November 05, 1999. At around 11.30 P.M. he was making entries in the duty register for deploying force personnel on duty posts when the petitioner came to the hut of Coy Commander and started speaking to Coy Commander in a loud voice. Immediately thereafter HC S.P.Singh also came there and both petitioner and HC S.P.Singh started speaking to the Coy Commander in loud voice. He received a wireless message from the Headquarters that thirty five personnel are required to be deployed at a Diwali Mela. He gave the said message to the Coy Commander. The Coy Commander and he were making arrangements for the deployment next day when at around 11.40 P.M. the petitioner and HC S.P.Singh again came to the hut of the Coy Commander and started talking to the Coy Commander in a loud voice. He told HC S.P.Singh that it was getting quite late and that they should talk in the morning since he and the Coy Commander were busy in making deployment arrangements. After this, he went out of the cabin of the Coy Commander to complete the fall- in of the second shift. HC S.P.Singh also went out of the cabin of the Coy Commander and suddenly started beating and abusing him at the gate of the cabin. He i.e. HC S.P.Singh punched him 3-4 times. Thereafter the petitioner also came out of the cabin and joined HC S.P.Singh in beating him. He started screaming and was rescued by SI H.L.Yadav and SI Om Prakash who were sleeping near the cot of the Coy Commander.

18. Being relevant, we note the following portion of the cross- examination of HC Om Prakash Dohan PW-1:-

"Q.2:- Did S.P.Singh beat you or both?

A.2:- I was first beaten by S.P.Singh. Thereafter the petitioner came there. He was being beaten so mercilessly that I went hopeless and cannot tell who were beating me.

CLARIFYING QUESTIONS ASKED BY THE EO

Q.4:- When you were being beaten who all were present near the hut?

A.4:- At that time Coy Commander himself, SI H.L.Yadav, SI Om Prakash, SI Roy and company of 9th Res. Battalion including SI/E Arun Kumar were present in the hut of Coy Commander. Q.5:-

Who had separated you?

A.5:- When I screamed SI/E H.L. Yadav and SI/E Om Prakash came out and rescued me as far as I remember. Q.6:- Did you immediately go to the hospital after getting injured?

A.6:- I was given water and made to lie on a cot lying in the hut.

Q.7:- When did you go to the hospital?

A.7:- First I had consumed a pain killer possessed by me. Two days thereafter when there was swelling on his chest he went to Ram Manohar Lohia hospital on 7th or 8th where I got myself treated after showing his x-ray.

Q.8:-Where were you on 6/11/99 and were you doing normal work on said day?

A.8:- I was present in my office and doing normal work. However, I was sometimes feeling pain in my chest. Q.9:- Did you hurt yourself while working on 6/11/99?

A.9:- I was working in office and did not get hurt during said period. "

19. Inspector Yogendra Singh PW-2, stated that on November 05, 1999 he was deployed as the Coy Commander of Company No.11 which had been transferred from Defence Colony Police Station to North Block on the said day itself. At about 11.30 P.M. he returned to his hut after assigning duties to the force personnel when the petitioner came and started shouting that his reputation was unnecessarily being spoiled. Immediately thereafter HC S.P.Singh also came there and both started saying nonsensical things. He counseled the petitioner and HC S.P.Singh to go from there and that they could talk in the morning at which the two left. At about 11.40 P.M. HC Om Prakash informed him about a wireless message received from the Headquarters that thirty five personnel are required to be deployed at a Diwali Mela. He and HC Om Prakash were making arrangements about aforesaid deployment when the petitioner and HC S.P.Singh again came to his hut and started accusing him of not giving out pass and leave to them. HC Om Prakash told the petitioner and HC S.P.Singh to go from there and return in the morning. HC Om Prakash, the petitioner and HC S.P.Singh went out of his cabin. The petitioner and HC S.P.Singh caught hold of HC Om Prakash and started beating him. When the petitioner and HC S.P.Singh were punching HC Om Prakash, SI H.L.Yadav and SI Om Prakash rescued HC Om Prakash. He had also intervened. HC Om Prakash had done no wrong.

20. Being relevant, we note the following portion of the cross- examination of Inspector Yogendra Singh:-

"Q.6:- Did you immediately get CHM medically examined after he was beaten up?

A.6:- Not immediately. After two days.

Q.7:- During said two days where was he (CHM) and what was he doing?

A.7:- He worked normally in company during said two days.

Q.9:- Besides you, who all were present at the place of incident at the time of happening of incident?

A.9:- SI H.L.Yadav, SI K.Roy, SI Om Prakash and I were present at the hut.

Q.10:- When you had separated us outside, who all were present there?

A.10:- HC/GD H.H.Bhai was present there on duty. Rest he does not know who all were present outside. "

21. SI H.L.Yadav PW-3, stated that on November 05, 1999 he was attached with Company No.11 which had been transferred from Defence Colony Police Station to North Block on said day. At about 11.30 P.M. he was lying on a cot in the hut of Coy Commander when the petitioner came and started shouting loudly. At that time Coy Commander Inspector Yogendra Singh and CHM HC Om Prakash were talking about the deployment of the company. The Coy Commander asked the petitioner to leave from there whereupon HC S.P.Singh took the petitioner from there. After about ten minutes Inspector Yogendra Singh and HC Om Prakash were discussing about deployment arrangements when the petitioner and HC S.P.Singh again came and started shouting loudly. At this, HC Om Prakash told the petitioner and HC S.P.Singh to go from there and that they should come back in the morning. Thereafter HC Om Prakash, the petitioner and HC S.P.Singh went out of the cabin of Coy Commander. The moment HC Om Prakash stepped out of the cabin the petitioner and HC S.P.Singh started beating him. On this, he and SI Om Prakash who was sleeping on an adjacent cot got up from their respective cots and separated HC Om Prakash, petitioner and HC S.P.Singh.

22. HC H.H. Bhai PW-4, stated that on November 05, 1999 he was deployed at Gate No.6 of North Block for the period from 09.00 P.M. to 12.00 midnight. Between 10.30-10.45 P.M. he had delivered a wireless message sent by the headquarters to HC Om Prakash. He does not know anything about the happening of any incident in question.

23. Be it noted here that the department had conducted a preliminary enquiry into the alleged incident in question. During preliminary enquiry, HC H.H.Bhai stated to have witnessed the petitioner and HC S.P.Singh misbehaving with the Coy Commander Inspector Yogendra Singh and manhandling HC Om Prakash on November 05, 1999 at about 11.30 P.M. On being questioned about the statement given by him at the preliminary enquiry, HC H.H.Bhai stated that "SI H.L.Yadav had pressurized him to give said statement".

24. SI Om Prakash PW-5, stated that on November 05, 1999 at about 11.30 P.M. the petitioner came to the hut of the Coy Commander and started saying nonsensical things. After sometime, HC S.P.Singh came there and took the petitioner from there. Ten-fifteen minutes thereafter HC Om Prakash came to the hut of the Coy Commander to deliver a message sent by the headquarters to the Coy Commander.

Immediately thereafter the petitioner again came to the hut and started saying nonsensical things. HC Om Prakash asked the petitioner to leave from there. HC S.P.Singh again came there and took the petitioner from there. The moment HC Om Prakash went out of the hut after delivering the message to the Coy Commander he heard loud voices coming from outside. HC Om Prakash was shouting that he has been beaten. Immediately thereafter he came out of cabin but did not see anyone beating HC Om Prakash.

25. Being relevant, we note following portion of the cross-examination of SI Om Prakash PW-5:-

"Q.3:- Did you see me beating HC Om Prakash?

A.3:- When I came out of hut no quarrel/beating was happening at that time.

Questions asked by the Enquiry Officer:-

Q.1:- What noises did you hear before coming out of hut?

A.1:- He came out on hearing the voice of HC Om Prakash that he is being beaten.

Q.2:- Did you immediately come out after hearing the noises?

A.2:-I came out of the hut after two-four minutes.

Q.3:- Whom did you see outside at that time?

A.3:- Company Commander, SI H.L. Yadav, some five-seven persons, petitioner and HC Om Prakash were present there.

Q.4: What was the condition of HC Om Prakash at that time?

A.4:- His condition was normal.

Q.5:- Did he talk about any injury/pain at that time?

A.5:- He did not. "

26. SI Krishna Roy PW-6, stated that on November 05, 1999 at about 11.00 P.M. he was sleeping in the hut of the Coy Commander when the petitioner was talking to Coy Commander in connection with leave. HC S.P.Singh came there and took the petitioner from there. Thereafter he again slept. At about 11.45 P.M. he woke up on hearing some loud noises. He went out of the hut of the Coy Commander and saw the Company Commander, SI H.L.Yadav, the petitioner and HC S.P.Singh talking to each other. The Company Commander was saying that they should talk in the morning. Thereafter he returned to the hut and slept on his cot.

27. Being relevant, we note the following portion of cross-examination of SI Krishna Roy PW-6:-

"Q.1:- Did you witness any incident of beating/quarreling on November 05, 1999 at about 11.30 P.M.?

A.1:- I did not see any incident of beating/quarreling.

Questions asked by the Enquiry Officer:-

Q.11:- Why is there so much difference in the statements given by you in the preliminary enquiry and the present enquiry proceedings?

A.11:- Company Commander and SI H.L. Yadav had written the statement. They asked him to sign whereupon he signed the statement.

Q.12:- Did you sign the statement in the preliminary enquiry after reading the same?

A.12:- I read the same but I was pressurized by Company Commander and SI H.L. Yadav to sign the same "

28. In his statement in defence the petitioner denied being present at 23:30 hours at the hut of the Coy Commander. He denied being involved in any incident.

29. Petitioner sought to examine four witnesses in defence, three of whom submitted written applications to the Enquiry Officer stating therein that they had no knowledge about the incident in question. The fourth person did not turn up before the Enquiry Officer. The petitioner did not insist for the said person to be examined.

30. The Enquiry Officer submitted a report holding that the charge framed against the petitioner stands proved, which report was supplied to the petitioner. Considering the response submitted by the petitioner to the report of the Enquiry Officer the disciplinary authority levied penalty of dismissal from service vide order dated August 01, 2001 against which appeal and revision filed were rejected on September 03, 2001 and September 05, 2002 respectively.

31. Aggrieved by the aforesaid, the petitioner has filed the above captioned petition under Article 226 of Constitution of India.

32. Having noted the conspectus of facts, we now proceed to examine the present case.

33. On December 03, 1999, a charge memorandum was issued to the petitioner for initiation of an enquiry against him under Rule 34 of CISF Rules, 1969. As per said memorandum, the incident forming subject matter of enquiry happened at "Defence Colony Police Station at 11:30 hours on November 05, 1999".

34. On January 19, 2000 another memorandum was issued to the petitioner whereby the time of happening of incident in question was changed from "11:30 hours" to "23:30 hours".

35. Then came the memorandum dated February 15, 2000 under which the place of the incident got changed from "Defence Colony Police Station" to "North Block".

36. This is perplexing.

37. We now proceed to analyze the evidence adduced by the department at the enquiry proceedings.

38. HC Om Prakash Dohan PW-1, Inspector Yogendra Singh PW-2 and SI H.L.Yadav PW-3, had stated that on November 05, 1999 at about 11:30 P.M. the petitioner and HC S.P.Singh had misbehaved with the Company Commander Inspector Yogendra Singh (PW-2) and assaulted CHM HC Om Prakash (PW-1). They have further deposed that SI Om Prakash (PW-5) and SI Krishna Roy (PW-6) had rescued HC Om Prakash (PW-1) from the clutches of the petitioner and HC S.P.Singh.

39. SI Om Prakash and SI Krishna Roy were examined as PW-5 and PW-6 respectively. In their statements, SI Om Prakash and SI Krishna Roy have not stated that they had rescued HC Om Prakash (PW-1) from the clutches of the petitioner and HC S.P.Singh. On the contrary, the aforesaid witnesses have denied witnessing the incident of the petitioner and HC S.P.Singh assaulting HC Om Prakash.

40. Most significantly, SI Krishna Roy PW-5, stated that he had given the statement in the preliminary enquiry that he had witnessed the petitioner and HC S.P.Singh assaulting HC Om Prakash under the pressure of Company Commander Inspector Yogendra Singh and SI H.L.Yadav. Likewise, HC H.L.Yadav PW-3, stated that he had given the statement in the preliminary enquiry that he had witnessed the petitioner and HC S.P.Singh assaulting HC Om Prakash under the pressure of SI H.L.Yadav.

41. The aforesaid chinks appearing in the statements of HC Om Prakash Dohan PW-1, Inspector Yogendra Singh PW-2 and SI H.L.Yadav PW-3, raise a serious doubt on the veracity of said witnesses. The doubt on the veracity of said witnesses becomes greater when we find that HC Om Prakash (PW-1) who was allegedly beaten by the petitioner and HC S.P.Singh was taken for medical examination not immediately but two days after the (alleged) incident in question.

42. Why the delay of two days in getting HC Om Prakash medically examined?

43. In these circumstances, the possibility that witnesses: HC Om Prakash Dohan PW-1, Inspector Yogendra Singh PW-2 and SI H.L.Yadav PW-3 did not depose truthfully during the enquiry proceedings and tried to frame the petitioner and HC S.P.Singh cannot be ruled out. The aforesaid possibility becomes greater when we find that to begin with the place of the incident was stated to be "Defence Colony Police Station" which subsequently got changed to "North Block".

44. It is settled law that even at a domestic inquiry the principles of fair play require, and thus cast an obligation on the Inquiry Officer to discuss not only the pros but even the cons emerging from the evidence. The probability emerging has to be

taken note of and reasons given as to why a particular probability is accepted. If the inquiry officer does so, in judicial review proceedings it would be impermissible to re-evaluate the evidence and conclude that the other probability emerging was the better one. But, as in the instant case where the inquiry officer does not even discuss the serious discrepancies and doubts emerging with respect to the evidence led by the department, it would be the duty of the court exercising power of judicial review to do so.

45. In view of above discussion, the orders dated August 01, 2001, September 03, 2001 and September 05, 2002 passed by the Disciplinary, Appellate and Revisional Authorities respectively are set aside. The petitioner would be reinstated in service and entitled to all consequential benefits, except full back wages, which we restrict to 50%.

46. Before parting, it needs to be noted by us that the department had conducted separate enquiries against the petitioner and HC S.P.Singh. Like the petitioner, HC S.P.Singh was also awarded the penalty of dismissal from service for having assaulted HC Om Prakash, which penalty was assailed by HC S.P.Singh by filing W.P. (C) No.6735/2002 before this Court. Vide judgment dated March 03, 2014 we had dismissed the writ filed by HC S.P.Singh. The counsel appearing for HC S.P.Singh had not brought afore-noted discrepancies appearing in the case of prosecution to our notice and essentially argued that the de-novo enquiry order passed by the Appellate Authority was vitiated in law.

47. Once it had been concluded by us that the department had failed to establish the happening of incident in question i.e. the assault of HC Om Prakash by petitioner and HC S.P.Singh it would be unjust if penalty of dismissal from service awarded to HC S.P.Singh is allowed to stand, particularly when the department had sought to prove the charge against HC S.P.Singh through the same witnesses (HC Om Prakash Dohan PW- 1, Inspector Yogendra Singh PW-2 and SI H.L.Yadav PW-3) relied upon by it in the enquiry of the petitioner.

48. We would thus advise the competent authority to reconsider the penalty levied upon HC S.P.Singh keeping in view the observations made by us in the present decision.

49. No costs.