

Abrar Ali Vs CISF

Court: Delhi High Court

Date of Decision: Aug. 11, 2014

Acts Referred: Constitution of India, 1950 " Article 20(2), 226
Penal Code, 1860 (IPC) " Section 363, 366A

Citation: (2014) 144 DRJ 446

Hon'ble Judges: Najmi Waziri, J; Kailash Gambhir, J

Bench: Division Bench

Advocate: L.S. Chaudhary, Advocate for the Appellant; Geeta Sharma and Ishan Sanghi, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Kailash Gambhir, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution of India feeling aggrieved by the

order dated 28.11.2000 passed by the Disciplinary Authority thereby directing his dismissal from the Forces with immediate effect. The petitioner

has also assailed the order dated 01.02.2001 passed by the Appellate Authority rejecting his appeal against the order of the Disciplinary Authority

and order dated 31.12.2010 passed by the Revisional Authority whereby his revision petition was dismissed.

2. The petitioner was posted as a Constable in CISF, BCCL Unit, Dhanbad. He proceeded on a 2 days" casual leave from 12.08.1999 to

13.08.1999 to attend to his domestic problem, and his 2 days" casual leave was duly sanctioned by the sanctioning authority. The petitioner was to

join back on duty on 16.08.1999 as 14.08.1999 was a holiday because of it being a second Saturday and the next being Independence day, it

was thus a national holiday. As per the petitioner, he could not join back on duty as he fell ill after reaching the place of his service at Dhanbad

where he remained under the treatment of Dr. M. Singh from 15.08.1999 to 19.08.1999 and he was declared fit by the doctor on 20.08.1999,

and he thereafter surrendered before the concerned court on 20.08.1999 because of the registration of a case against him u/s 363/366A IPC vide

FIR No.260/1999 dated 13.08.1999 at Police Station Katras. The petitioner remained in Jail for a considerable period of time and was released

on bail on 31.05.2000. In the meanwhile, respondent No.4 issued a chargesheet against the petitioner on 08.10.1999 and Articles of Charge were

framed against him which are as under:

Article of Charge-I

No. 903190893, Ct. Abrar Ali, Area No.IV, Central Industrial Security Force, BCCL Unit, Dhanbad was granted 2 days" casual leave from

12.08.1999 to 13.08.1999 and 14.08.1999 was a second Saturday. He had to resume his duty on 15.08.1999 (F/N). But, he reported for his

duty at 1730 hrs. Thereafter, Asstt. Commandant of Area No.4 directed the said Abrar Ali to remain inside the Camp as there was apprehension

of danger to his life from the residents of nearby Basti. At about 1900 hours when Abrar Ali was searched by CHM to serve his suspension order,

he was again found absent from the Camp. The said member of the force did not even deposit his Leave Certificate in the Unit Office after coming

back from leave. Therefore, Abrar Ali No. 903190893 being a member of armed forces, is grossly negligent towards his duties and he disobeyed

the orders/directions of the Superior Officers, which amounts to gross misconduct and indiscipline on the part of the said member. Hence, this

charge.

Article of Charge-II

No. 903190893, Ct. Abrar Ali, Area No.IV, Central Industrial Security Force, BCCL Unit, Dhanbad was granted 2 days casual leave from

12.08.1999 to 13.08.1999 and 14.08.1999 was a second Saturday. The said member of the Forces while proceeding on leave took one girl

named Anita Kumar D/o Shri Rajender Rajbar R/o Lalten Basti, Angarpathra (Dhanbad), aged about 15-16 years with him to Delhi on the pretext

of getting her married to a Hindu boy and came back after leaving Anita Kumari at the house of an old man. The brother of the said force member,

Jamaruddin, who also is a member of the Delhi Armed Police took Anita Kumari to Dhanbad. On 20.08.1999, Anita Kumari made a statement

before the Judicial Magistrate, Dhanbad, in FIR No.260/99 dated 13.08.99. Thereafter, the said force member Abrar Ali surrendered in the court

of CJM Dhanbad on 20.08.1999 from where he was sent to Jail for committing the said offence. No. 903190893 Ct. Abrar Ali being a member

of the force has committed an act of indiscipline and has maligned the image of the force, which is a serious misconduct. Hence, this charge.

Article of Charge-III

Ct. Abrar Ali, Area No.IV, Central Industrial Security Force, BCCL Unit, Dhanbad has already been awarded three punishments, 2 major

punishments (deduction in pay) and one minor punishment (deduction of 7 days" salary) for various acts of indiscipline and negligence during the

short span of his service. Despite the aforesaid, he has failed to improve himself and to abide by the rules, which shows that the said member is

habitual of committing indiscipline and disorderliness. Hence this charge.

3. On the basis of material on record, which included the statements of the prosecution witnesses, statement of accused in his defence, written

representation made by the petitioner against the inquiry report and other documents produced on record, the Disciplinary Authority found the

petitioner guilty of charges framed against him under Articles-I, II and III. As regards Article-II, the petitioner was held guilty on the basis of his

involvement in a criminal case. Consequently, he was dismissed from service from his post of Constable due to his proven misconduct during the

course of the said inquiry. Although the Appellate Authority concurred with the Disciplinary Authority apropos the Article of Charges I and III he

disagreed with the Article of Charge II. The Appellate Authority in its order dated 01.02.2001 candidly observed that the Article of Charge II had

not been proved against the petitioner due to lack of sufficient evidence and the Article of Charge I and III were proved against the petitioner

beyond doubt. The Appellate Authority also observed that the appellant was sanctioned 2 days" casual leave from 12.08.1999 to 14.08.1999

with permission to avail Second Saturday and was directed to report to the Unit on expiry of the said leave, i.e., on 15.08.1999 (FN) but he had

reported to Unit Line at 1730 hours on 15.08.1999. The Appellate Authority also observed that the petitioner was specifically asked to stay in the

barracks due to administrative reasons. However, in violation of this order he left the Unit Line unauthorisedly and continued to remain absent

without any permission or information till his surrender in Court on 20.08.1999. The Appellate Authority also referred to his previous misconduct

for which he had already undergone two major punishments and one minor punishment on separate occasions. The Appellate Authority also held

that even after holding that Article of Charge II was not proved against him, the punishment of his removal from service was proportionate to the

gravity of his proven misconduct in terms of Articles of Charge I and III. The Revisional Authority, vide order dated 13.12.2010 dismissed the

petitioner"s revision petition being devoid of merit, and thus upheld the order dated 01.02.2001 passed by the Appellate Authority.

4. The grievance raised by the petitioner is that the Trial Court vide order dated 29.05.2001 had honourably acquitted him from the charges

framed against him, in the absence of any evidence brought by the prosecution, yet a very harsh order of punishment of dismissal was passed

against the petitioner.

5. Dr. L.S. Chaudhary, the counsel for the petitioner, strongly contended that the petitioner could not be punished twice for his previous

misconduct. Therefore, framing of Articles of Charge III was totally illegal and arbitrary, since the petitioner had already suffered three

punishments. To punish again for the same would be subjecting him to double jeopardy, a circumstance not countenanced in law.

6. Another contention raised by the counsel for the petitioner is that the petitioner was to resume his duty on 16.08.1999 which he could not do

because of his medical condition and therefore, it is totally false on the part of the respondents to allege that the petitioner had reported for his duty

at 1730 hours on 15.08.1999 and was found absent despite being told by the Assistant Commandant to remain inside the Camp. Counsel for the

petitioner also submitted that the petitioner was frightened after he was falsely implicated in a criminal case and this fact has been admitted by the

respondents that there was an apprehension of danger to the life of the petitioner from the residents of the nearby Basti.

7. Counsel for the petitioner also submits that the prosecutrix herself deposed before the Inquiry Officer that she did not even know the petitioner

and she had seen him for the first time in the Court. This statement of the prosecutrix totally proved the innocence of the petitioner for which he

was placed under the suspension and then after facing the inquiry was dismissed from his service.

8. Per contra, Ms. Geeta Sharma, counsel appearing for the respondents submits that the conduct of the petitioner was highly prejudicial and

detrimental to the discipline and authority of the Forces as he had defied the order of the Assistant Commandant for not staying inside the Camp

and he also failed to report back on duty in the forenoon instead reported at 17.30 hrs of 15.08.1999. Counsel also submitted that all the

proceedings against the petitioner were conducted as per rules and procedure as laid down in the CISF Act in a most fair and transparent manner

without there being any sort of bias or prejudice against the petitioner. Counsel also submitted that at every stage, the petitioner was given full

opportunity to participate in the proceedings and therefore, there has not been any violation of the principles of natural justice either on the part of

the Inquiry Officer, Disciplinary Authority, Appellate Authority or Revisional Authority. Counsel thus strongly urged for the dismissal of the present

petition, as the punishment awarded to the petitioner in the light of his proven misconduct cannot be considered to be shockingly disproportionate.

9. We have heard learned counsel for the parties. We have also perused the original record produced by the counsel for the respondents.

10. This petitioner had applied for 2 days" casual leave from 12.08.1999 to 13.08.1999 and it is not in dispute between the parties that the said

leave was sanctioned by the Assistant Commandant who was the sanctioning authority. Application to obtain casual leave was in a prescribed

format and the Assistant Commandant in the relevant column (sanctioned/ recommendation of Assistant Commandant) while sanctioning his 2

days" leave w.e.f. 12.08.1999 to 13.08.1999 cautioned the petitioner that any OSL beyond 15.08.1999 will invite severe penalty. This self note

of Assistant Commandant on the leave application manifestly shows that the petitioner was to resume his duty on 16.08.1999 and rightly so as

14.08.1999 was a Second Saturday while 15.08.1999 was an Independence Day. Counsel for the respondents placed reliance on the relevant

column of the leave certificate wherein Column 6 dealing with the date of reporting back to the Unit by the petitioner, the date mentioned is

15.08.1999 (FN).

11. On perusal of this leave certificate, we find re-writing on the date 15.08.1999 as the date, month and year was re-written after scoring of the

same with FN in brackets appearing below the said date. This interpolation in the said date makes one thing clear that something was suspicious

and mistrustful at the end of the concerned Assistant Commandant Area- IV.

12. Be that as it may, without commenting, the respondents themselves have come out with the case of the petitioner that he had resumed his duty

at 1730 hours on 15.08.1999 which clearly reflects that the petitioner did not commit any default in resumption of his duty. It is also an admitted

fact that a criminal case was registered against the petitioner for the serious offences of kidnapping and rape and he was told by the Assistant

Commandant that there was an apprehension of danger to his life from the residents of the locality. Such a situation could put anybody in grave fear

and trauma and the petitioner despite being a member of the Force could have been no exception to such adverse situation. The petitioner was

ultimately proved innocent in the said criminal case and he was honourably acquitted by the order dated 29.05.2001 passed by the Trial Court in

his favour. Not only this, the prosecutrix herself came out to support the innocence of the petitioner when she stated that she had seen the

petitioner for the first time in Court and had never met him before. Undeniably, had the petitioner been held guilty of the said offences then certainly

the petitioner would have no case for his restoration in the disciplined force of CISF but this is not the case here, as ultimately the petitioner was

acquitted of the criminal charges as no evidence was found against him by the Court to sustain the said charge against him.

13. In the aforesaid circumstance, we hardly find any reason to justify the award of such a serious punishment to the petitioner directing his

dismissal from service and in fact we hardly find any reason for the petitioner to undergo even any other form of slighter punishment. The reasons

being that the Articles of Charge III also cannot sustain him as this Article deals with the previous misconduct for which he had suffered the

necessary punishments and to award him any punishment under this Article would amount to a case of double jeopardy which would be in violation

of the right of the petitioner guaranteed to him under Article 20(2) of the Constitution of India.

14. So far as the law on this concept of "Double jeopardy" is concerned, it is no more *res integra* that a person must not be put in peril twice for

the same offence. To further elucidate on this point we find support from the judgment of Hon"ble Apex Court in *Sangeetaben Mahendrabhai Patel*

Vs. State of Gujarat and Another, wherein it was held as follows:

The fundamental right which is guaranteed under Article 20(2) enunciates the principle of "autrefois convict" or "double jeopardy" i.e. a person

must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim *nemo debet bis punire pro uno delicto*, that is to

say, that no one ought to be punished twice for one offence. The plea of *autrefois convict* or *autrefois acquit* avers that the person has been

previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned"".

15. In *S.A. Venkataraman v. Union of India* AIR 1954 SC 375 ,the scope of doctrine of double jeopardy was explained, observing that in order

to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence.

Thus, making it clear that no person should be made to suffer for any offence/ misconduct twice.

16. So far as the Article of Charge I is concerned, we are of the considered view that the petitioner did not commit any misconduct as he had

resumed his duty on the cessation of his leave period and then due to fear and dread created in his mind because of registration of a criminal case

against him for a very serious charge of abduction and rape and on his being told by the Assistant Commandant himself that there was an

apprehension of danger to his life from the residents of the nearby locality not much can be attributed to the petitioner for not resuming his duty as

any prudent person in such like situation can lose his mental balance to take any sensible and rational decision and this is what happened with the

petitioner.

17. In light of the above circumstances, considering the fact that both the Appellate and Revisional authorities were of the view that the charges

levied under the Article of Charge II was not necessitated, still the petitioner was visited with a punishment that was unwarranted. Such punishment

shakes edifice of justice and fair play. One cannot also lose sight of the fact that the Petitioner had reported back on duty on 15.08.1999 itself

which was as per his sanctioned leave, even though he was just a few hours late. Moreover, the petitioner did not willingly absent himself from

duty; instead he was taken ill and was advised bed rest by the doctor. Moreover the Trial Court also acquitted the Petitioner giving him a clean chit

and also held that the prosecution utterly erred in bringing home the charges levelled against him. Thus we are of the view that the Petitioner should

not be made to suffer such a punishment which is shockingly disproportionate compared to his conduct; we don't find any coherent and cogent

reason to hold him guilty.

18. Undeniably there cannot be any compromise so far the question of maintaining discipline, honesty, devotion and professional sanctity is

concerned of all the persons employed in the Indian Armed forces and in the other Para- military forces but at the same time the senior officers

should always take care that the honour and dignity of even the officer of the lowest rank is not hampered. Ultimately one must realise the fact that

all the members of these forces serve the country even when they are posted in far flung and hard areas, far away from their families and other near

and dear ones. Being humans, we must say that in given situations they also deserve the compassion and concerns for their genuine problems. In

this case the petitioner had reported back on his duties on the afternoon of 15th and yet shockingly without losing any time he was served with the

suspension order just within a few hours despite the fact that the officer was conspicuous of the fact that the petitioner has been roped in a criminal

case for which even the villagers of the locality were looking for him. The Assistant Commandant had also forgotten that it was our country's

Independence Day, a most cherished and treasured day for all Indians. A day when the entire nation celebrates its freedom from foreign rule and

remembers its freedom fighters and martyrs. It is a day that signifies liberty. At least the Assistant Commandant should not have snatched away the

liberty of this petitioner and could have waited to ascertain the correct facts before initiating any precipitate action resulting in taking away the

liberty, rights or livelihood of the petitioner. The respondents' action is unjustified and deserves to be quashed. Serendipitously, we are on the eve

of another Independence Day when the nation is heady in the mood of celebration of freedom, we feel that there could be no better occasion to

restore one's glory and honour which was unfairly snatched away about 15 years ago.

19. For the reasons stated above, the appeal is allowed. In the peculiar circumstances of the case, especially having regard to the fact that the

appellant is undergoing this agony since 1999 despite having been acquitted by the criminal court in 2001. The appellant shall be reinstated

forthwith on the post of Constable in CISF unit, BCCL Dhanbad with notional seniority in his rank and shall also be paid entire arrears of salary,

together with all other allowances from the date of suspension till his reinstatement, within two months from the date of this order. The appellant

would also be entitled to costs, which is quantified at Rs.15,000/-.

20. The petition stands disposed off in the above terms.