

(2015) 10 DEL CK 0348

Delhi High Court

Case No: W.P. (C) 7869/2003

Bharat Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision: Oct. 28, 2015**Acts Referred:**

- Central Reserve Police Force Act, 1949 - Section 10, 12, 16
- Criminal Procedure Code, 1973 (CrPC) - Section 200, 201, 202, 203, 204

Hon'ble Judges: S. Ravindra Bhat and Deepa Sharma, JJ.**Bench:** Division Bench**Advocate:** Adarsh Ganesh, Advocate, for the Appellant; Kirtiman Singh, CGSC, Waize Ali Noor, Advocate B.K. Rout, Pairavi Officer, for the Respondent**Final Decision:** Dismissed

Judgement

S. Ravindra Bhat, J.

The petitioner is aggrieved by the order dated 17.08.1994, dismissing him from the service of Central Reserve Police Force (CRPF). The dismissal order was based upon an order sentencing him to undergo imprisonment till rising of the Court, for alleged misbehaviour.

2. The brief facts are that the petitioner joined the CRPF as a Constable in the year 1990. At the relevant time, he was posted in Jalandhar. He claims that he received a message from his hometown that his wife was seriously ill and that he was requested to return at the earliest. He claims that his efforts to seek interview with the Commandant were of no avail and that the consequent refusal of leave led to the loss of his mental balance.

3. The CRPF states that on 22.09.1993, while posted at Jalandhar, he was awarded 15 days" confinement to the lines for quarrelling with NK/RO Shilpa Cherry, and abusing and misbehaving with HC Raj Bahadur Mishra. He refused to accept the punishment and was produced before the Commandant, who directed him to obey the orders. The CRPF

alleged that he deserted from the camp on 02.10.1993 and subsequently he was placed under suspension on 31.12.1993. Disciplinary proceedings were initiated on 25.04.1994 and an Enquiry Officer was subsequently appointed. It was alleged that when the enquiry proceedings were pending, on 15.08.1994, the petitioner, in a drunken state, misbehaved with HC Narsu Bhai, Guard Commander of Quarter Guard, SI(A) Indersen Singh and another CRPF personnel. The misconduct alleged was that he threatened to shoot the SI(A) and the Commandant, and further stated that he would engineer a terrorist attack in the camp area. The CRPF got the petitioner examined by a medical officer who repeatedly stated that he had consumed liquor and had a violent tendency. This incident led to lodging of a complaint with the competent officer who also served as a Magistrate, i.e. Commandant of the 85th Battalion, CRPF. Ultimately, this led to the petitioner being held guilty and saddled with the punishment of imprisonment till rising of the Court and consequent dismissal order under Section 12 of the CRPF Act, 1949.

4. The petitioner urges that the alleged proceedings held against him on 17.08.1994 were sham and that he was denied any semblance of fair opportunity. Learned counsel pointed out that the proceedings of the alleged trial were not confirmed anywhere by the petitioner and that he did not sign the same. Learned counsel also stated that even though the Commandant had recorded that the petitioner had admitted his guilt, there was nothing on the record that in fact he did so. Consequently, it was urged that the petitioner could not have been held guilty of the charge of drunkenness, considering that the medical record was suspect. Highlighting that no less than nine witnesses were allegedly examined, learned counsel points out that he was not allowed to cross-examine any of them. Further, the prosecution did not examine as witness the doctor who had allegedly conducted the medical exam. Lastly, it was urged by the petitioner that no material or list of witnesses was ever given to the accused in order to enable him to admit or deny the guilt at the relevant stage. It was also stated that the statement of witnesses recorded prior to the framing of charges were also not furnished. Learned counsel submitted that in these circumstances, the trial and its outcome, i.e. the finding of guilt were a nullity and could not have been the basis for petitioner's dismissal.

5. The respondents have produced the records. It was submitted that even though the doctor was not examined, the medical record was produced by one of the witnesses cited. Sh. Kirtiman Singh, learned counsel for the respondents submitted that the petitioner refused to cross-examine any witness and when called upon to make a statement, clearly expressed that he would not produce any witness. Learned counsel also highlighted the fact that the petitioner's signatures appear on the record. It was submitted that even if the medical records were to be ignored, the fact discloses overwhelming first person testimony of the witnesses, who deposed as to the petitioner's drunkenness and misbehaviour. Learned counsel also points out that when the charge was read out, the petitioner admitted to the charge of drunkenness but not to the alleged misbehaviour. In this context, it is urged that if the authorities were to in fact fabricate the records, there was no reason for them to only do it in a piecemeal manner.

6. Section 16 of the CRPF Act, 1949 reads as follows:

"Powers and duties conferrable and imposable on member of the force.

16. (1) The Central Government may, by general or special order, confer or impose upon any member of the force any of the powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force.

(2) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (1973) the Central Government may invest the Commandant or an Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the force and punishable under this Act or any offence committed by a member of the force against the person or property of another member;

Provided that-

(i) when the offender is on leave or absent from duty, or

(ii) when the offence is not connected with the offender's duties as member of the force, or

(iii) when it is a petty offence, even if connected with the offender's duties as member of the force.

the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed, so directs, be inquired into or tried by an ordinary Criminal Court having jurisdiction in the matter."

7. The procedure to be followed in such cases - given that the petitioner was charged with what are classified as "less heinous" offences, under Section 10 of the CRPF Act, 1949, would be that applicable to "Summons Cases". Section 251 of the Cr.PC does not mandate the formal framing of a charge, a procedure applicable to warrant cases. What the Cr.PC does mandate is that the complainant should depose in the proceeding leading to the issuance of process (Sections 200 to 204). Thereafter, the procedure to be adopted is to be in conformity with Section 262/263 of the Cr.PC.

8. In the present case, a complaint appears to have been made to the Commandant who is also conferred with the power of a Magistrate on 15.08.1994 itself. The record would show that the next morning, formal summons was issued to the petitioner - who was apparently in custody. The original records further show that the petitioner was asked what his plea was to which he replied in the affirmative. The plea of the accused/petitioner as recorded by the Commandant is that he had committed the offence of drunkenness but at the same time he maintained that he did not misbehave. Significantly, the records reveal that the petitioner refused to sign the proceedings. The records further reveal that 9 witnesses deposed about the petitioner's conduct. After the

evidence was so recorded, it appears that the petitioner refused to cross-examine any witness and also lead any further evidence. These documents were signed by him on 16.08.1994 in the course of the proceedings.

9. The petitioner does not appear to have taken any steps for redressal of his grievance till he approached the competent authority with an appeal on 27.02.2001 claiming for the first time that he was suffering from some unknown mental condition and that the cause for his dismissal was not known to him. Even in this appeal, the petitioner did not highlight or make a grievance about lack of procedural infirmity in the course of the trial conducted or that he was denied any opportunity as is alleged in this petition.

10. There is no doubt that the provisions of the CRPF Act and the Cr.PC mandate that the procedure adopted has to be fair before a CRPF personnel is penalised and dealt with in a disciplinary proceeding. Yet, when complaints of unfair procedure are made, as in the present instance, the Court would have to see not only the pleas urged but also the surrounding circumstances.

11. The facts of this case reveal that the petitioner had been earlier charged with misconduct. The record - (pages 115-116 of the Court record and internal pages 2 and 3 of the rejoinder filed in the present petition) disclose the petitioner's confession that he was declared a deserter and directed to undergo penalty which he initially refused. When so, he appears to have indulged in drunken behaviour and to cap it, abused certain personnel.

12. Taking into consideration these facts and the further circumstance that the petitioner did not agitate about his grievance at all - at least within reasonable time and approached the appropriate authority seven years later and thereafter approached this Court in 2003, we are of the opinion that the complaint against the CRPF that it adopted an unfair procedure and imposed penalty of dismissal for unjustifiable reasons, cannot be accepted.

13. In view of the above discussion, no interference is called for with the impugned order. The writ petition is accordingly dismissed.