

(2014) 08 AP CK 0025

Andhra Pradesh High Court**Case No:** Writ Appeal No. 918 of 2014

Union of India

APPELLANT

Vs

Rakesh Kumar

RESPONDENT

Date of Decision: Aug. 28, 2014**Acts Referred:**

- Central Reserve Police Force Act, 1949 - Section 11(1)
- Penal Code, 1860 (IPC) - Section 324

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J**Bench:** Division Bench**Advocate:** B. Narayana Reddy, (Asst. Sol. Gen.), Advocate for the Appellant; A. Chaya Devi, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

The respondent was employed as a driver in the Central Reserve Police Force (CRPF). In the year, 1998, he worked in various centres in Warangal District. He was placed under suspension through order dated 02-09-2003 by the disciplinary authority i.e., the 3rd appellant. A charge sheet was served upon him alleging "that he assaulted the Assistant Commandant of the unit at 6.30 AM on 20-08-2003 and another driver by name R.S. Reddy at 6.45 A.M. A Court of inquiry was conducted and the charges framed against the respondent were held proved. The 3rd appellant passed an order dated 09-03-2004 dismissing the respondent from service. Departmental appeal preferred to the 2nd appellant was rejected on 01-07-2004. Thereupon, the respondent filed Writ Petition No. 12381 of 2005 challenging the order of dismissal.

2. The respondent pleaded that the Assistant Commandant by name Chandra Sekhar has been harassing him even on the smallest protest and since he raised some protest on certain occasions, the case was foisted against him. He stated that on 20-08-2003, he was put in a lockup as a measure of quarter guard, till 9.00 AM and the question of his attacking the Assistant Commandant or the other driver,

does not arise. He submitted that though there was no evidence, the charges were held proved and the severe punishment was imposed.

3. The writ petition was opposed by the appellants. They stated that the respondent severely attacked the Assistant Commandant on duty resulting in serious bleeding injuries. They contend that a senior officer has taken the injured Assistant Commandant to hospital and there was clinching evidence in the enquiry to prove the charges against the respondent. It was also urged that acts of such indiscipline cannot be tolerated in armed forces like CRPF.

4. The learned single Judge allowed the writ petition and has set aside the order of dismissal. Direction was issued for reinstatement of the respondent with continuity of service and attendant benefits. It was however observed that the order in the writ petition does not preclude the appellants herein from proceeding against the respondent for his other misconducts. The said order is challenged in this writ appeal.

5. Heard Sri B. Narayana Reddy, learned counsel for the appellants and Smt. A. Chaya Devi, learned counsel for the respondent.

6. The charges framed against the 1st respondent are very serious in nature. It was alleged that he assaulted the Assistant Commandant on duty and another driver on 20-08-2003. The two charges read as under:

"ARTICLE No. I.

That F.No. 930550097 Ct/Driver Rakesh Kumar of 83 Bn Headquarter C.R.P.F being employed in the force and being member of the force has done misconduct u/s. 11(1) of C.R.P.F Act 1949, in which being imprisoned for 15 days in the line on Dt. 20/08/2003, he attacked on Assistant Commandant Sh. Chandrasekhar and gave him beatings because of that AC Sh. Chandrasekhar sustained injuries on his nose, elbow, and lip. Above act is against the rules and discipline of the force.

ARTICLE No-II

That F.No. 930550097 Ct/Driver Rakesh Kumar of 83 Bn Headquarter C.R.P.F being employed in the force and being member of the force has done misconduct U/s. 11(1) of C.R.P.F Act 1949, in which being imprisoned for 15 days in the line on Dt. 20/8/03, he attacked on F.No. 830761248 HC/Driver R.S. Reddy, which is against the rules and discipline of the force."

7. The details were supplemented in the charge sheet itself. The respondent denied the charges in his explanation. The prescribed procedure was followed and the departmental enquiry was conducted. As many as 13 members of the CRPF who worked in the 83rd battalion at the relevant point of time, were examined as witnesses. Several documents were also filed.

8. It is no doubt true that none of the persons who deposed in the enquiry are eye witnesses to the incident. However their evidence is so proximate to the incident that while some have immediately rushed to the occurrence on hearing the cries of the injured officials, others have spoken to the events that preceded, and followed, the incident. The Enquiry Officer recorded a finding to the effect that the charges are proved. The disciplinary authority agreed with the report and imposed the punishment of dismissal from service.

9. The learned single Judge did not point out any procedural infirmity in the enquiry or at other stages of the proceedings. Even while taking note of the limitations for the Court to interfere with the disciplinary proceedings in a writ of certiorari, the learned single Judge has set aside the order of dismissal by making two observations. The first is that the respondent was in lockup till 9.00 AM on 20-08-2003 and the question of his attacking the Assistant Commandant or driver at 6.30 or 6.45 AM does not arise. The second is that there is no eye witness to the incident.

10. We gave our serious consideration to the entire matter. With great respect to the learned single Judge, we do not hesitate to add that the observations made by him are not even sufficient to set aside the conviction handed out to an accused in a simple offence like the one under Section 324 IPC.

11. The record discloses that the respondent enacted high drama even when an attempt was made to inform that quarter guard has been imposed against him and that he must come in uniform. The tone and tenor of the language employed by the respondent in his representations would indicate his tendency and behaviour. For example, in his representation dated 11-08-2003, the respondent stated as under:

"the applicant came from Rangareddy on yesterday Dt. 10/08/03, in the evening. C.H.M. and J. Sahad said to the applicant that you go to Quarter Guard, you will not live in the line. Applicant said that I have not done any wrong, if there is any wrong then I should be given in written. But no one heard the applicant. After that check roll call was held, in that J. sahab gave order to the applicant that you will come in uniform sahab has called you. When the applicant went in the uniform then he was fully tried to be arrested but the applicant refused for the arrest. Injustice is going to be done with the applicant. The applicant is feared about his safety and the applicant can be implicated by making any false allegation. There can be a danger to the service of the applicant at any time. So, the applicant is extremely feared and is in tension."

12. The respondent admitted that he refused to be arrested. The so-called animosity of the Assistant Commandant by name Chandra Sekhar is said to be on account of the fact that the respondent was parking his vehicle at a particular place. Beyond that, no other incident is mentioned.

13. The documentary evidence would disclose the nature of injuries received by the Assistant Commandant and the driver. Insofar as the Assistant Commandant is concerned, the doctor certified as under:

"Pain in the lips

Bleeding from nose

Bleeding from post aspect of elbow

Clothes stained with blood (two drops) one at the thigh (Pant) and another in the T-shirt

Pain in the thigh region

Pain in the chest

O/E

Epistaxis +ve

Swelling in the upper lip

Abrasion in the posterior aspect of the elbow joint

C the mud around the injury around 2 1/2 dandies

Abrasion in the Rt thigh and Lt knee (small)"

14. Similar observations were made in respect of the driver. The incident occurred right in the campus which is a protected area. The respondent was not able to extract any contradictory statement from the witnesses who were examined in the enquiry. This is a rare case in which so many witnesses were examined. It hardly needs any mention that the discipline in armed forces and paramilitary organisations must be maintained at any cost. The charges held proved against the respondent are such that even in the ordinary civilian departments, they would entail in drastic punishment. The view taken by the learned single Judge cannot be sustained in law.

15. The writ appeal is accordingly allowed and the order passed by the learned single Judge is set aside. As a result, the writ petition is dismissed.

16. The miscellaneous petitions pending in this appeal shall also stand disposed of. There shall be no order as to costs.