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Calcutta High Court

Case No: C.R. No. 9950 (W) of 1982

S.N. Tiwari — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision: Nov. 17, 2003

Acts Referred:

- Central Industrial Security Force Act, 1968 - Section 2, 4
- Central Industrial Security Force Rules, 1969 - Rule 29A, 34(4), 3A
- Constitution of India, 1950 - Article 14, 19, 226

Citation: (2004) 1 CALLT 565 : (2004) 102 FLR 33

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Bikash Ranjan Bhattacharjya and Santi Das, for the Appellant;Rabindra Nath Bag, for the Respondent

Final Decision: Allowed

Judgement

A. Lala, J.

The petitioner filed this writ petition challenging the order of suspension, charge-sheet and dismissal from his respective post of HSG driver at Central Industrial Security Force i.e. over all disciplinary proceedings.

2. According to the petitioner on 23rd January, 1982 he lodged a complaint with the authority concerned against one ASI Sri H.B. Singh stating that when he was not in his quarters, said Sri Singh entered in his quarters and dragged her wife and abused her in various ways and molested her. Subsequently, she had also lodged a complaint with the authority against Sri Singh. According further to him, said Sri Singh and one Sri Guruswamy asked him to withdraw the complaint failing which threatened him to implicate falsely as a counter blast etc. The present departmental proceeding is outcome of the same.

3. According to the respondents, the petitioner physically assaulted said Sri Singh with an iron rod while he had been detained for ''B'' shift duty on the date. Preliminary enquiry was held by the department.

4. Admittedly, on 24th January, 1982 an order of suspension was issued to the petitioner. On 11th February, 1982 a charge-sheet was also issued to the petitioner. On 18th February, 1982 a written statement was filed by the petitioner taking defence to the charge levelled against him. The petitioner participated in the enquiry proceeding. Five prosecution witnesses and four defence witnesses were examined by the Enquiry Officer. The Court witness was also examined by the Enquiry Officer. On 3rd July, 1982 an order of dismissal was issued. On 6th July, 1982 an order for vacating the quarters was issued. A statutory appeal was preferred by the petitioner challenging in the order of dismissal. The petitioner also filed this writ petition. The respondents filed their respective affidavit-in-opposition. The appellate order was passed dismissing the appeal. At the interim stage when the writ petition was being heard by a Bench of this Court by an order dated 26th April, 1999 directed the Appellate Authority to hear out the appeal afresh with a liberty to petitioner to challenge the appellate order. Fresh appellate order was passed on 4th August, 1999 by refusing to interfere with the proceeding. The petitioner stopped paying monthly rent. On 14th August, 2001 a supplementary affidavit had been filed but no ground of challenge was mentioned therein in respect of the subsequent order. However, on a subsequent leave granted by the Court as on 20th September, 2001, the petitioner filed further supplementary affidavit taking such points to which rejoinder was filed by the respondents in October, 2001.

5. The petitioner has taken the plea that the language of the charge-sheet itself proves that the authority has been proceeded with closed and biased mind. Issuance of charge-sheet after coming to a definite conclusion regarding the guilt is bad and in violation of principles of natural justice. The Disciplinary Authority appointed Enquiry Officer even before considering the written statement (reply) of the delinquent with a biased mind. The finding of the Enquiry Officer is based on no evidence. The Enquiry Officer did not submit any finding with regard to article of charge No. 1 and the basis of his justification that how the charge can be declared as proved against the petitioner is best known to him. He disbelieved deposition of one of the witnesses and even the Court witness. Therefore, the finding of such Enquiry Officer is perverse. Neither the Disciplinary Authority nor the Appellate Authority considered the finding of the Enquiry Officer justifiably which are either based on no evidence or without assignment of reason and upon ignoring the depositions of Court witness. However, termination of service in comparison to case faced by the delinquent is grossly unjust and disproportionate.

6. He relied on a judgment reported in 1980(2) SLR 232 (Bimalakanta Mukherjee v. State of West Bengal and Ors.) whereunder a Division Bench of this High Court held bias charge-sheet issued with a closed mind is void and bad in law. He further relied

upon Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, Higher Secondary School and Ors.) and AIR 2001 SC 343 (State of Punjab v. V.K. Khanna and Ors.) to establish that rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. The test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collected and necessary conclusion drawn thereon. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise. It is well settled in Service Jurisprudence that the authority has to apply its mind upon receipt of reply to the charge-sheet or show cause as the case may be, as to whether an enquiry will be called for. Where before filing the reply to the charge-sheet an Enquiry Officer is appointed then that attitude of the authorities towards the delinquent cannot be said to be free and fair.

7. According to the learned counsel appearing for the petitioner as per Rule 34 of the CISF Rules 1969 Enquiry Officer is bound to submit the finding on the basis of the materials on record and to that she contended that findings of the Enquiry Officer is based on no evidence and, therefore, it is perverse. In support of such contentions she firstly cited 1999(1) SLR 283 (Kuldeep Singh v. The Commissioner of Police and Ors.) whereunder the Supreme Court held that where the Enquiry Officer merely carried out the command of the superior in the process of the domestic enquiry, it will violate the rules of natural justice. Therefore, the action of the Enquiry Officer will have to be treated as an action with a biased mind. She also cited a further judgment reported in 2001(1) SLR 659 (The Chief Security Officer, S.E. Railway and Ors. v. Rampati Singh) being a Division Bench judgment of this Court where it was held that the Appellate Authority shall consider at the hearing of the appeal whether procedure prescribed in the Rules has been complied with and if not, whether such non-compliance has resulted in any violation of provisions of the Constitution or any failure of justice and whether the findings are justified and whether the penalty imposed is excessive, adequate or inadequate. The Appellate Authority while considering the appeal of a delinquent is required to consider the entire materials on record including the evidence for the purpose of finding out whether the finding has been correctly arrived at by following the procedures, whether the findings are justified on the evidence on record or whether the penalty is excessive or not.

8. By citing a judgment reported in AIR 1992 SC 417 (Ex. Naik Sardar Singh v. Union of India and Ors.) she contended that doctrine of proportionality is to be followed on

the basis of the facts and circumstances of the case. A judicial review has developed to a stage to the first ground which would call ''illegality'', the second ground which would call ''irrationality'' and the third ground which would call ''procedural impropriety''. There is a further development which would call ''proportionality''.

9. According to the learned counsel appearing for the respondents the Inspector conducted the enquiry proceeding is competent as per Rule 34(4) of CISF Rules 1969. As per this specification made in Schedule II in terms of Rule 29A of the CISF Rules, the Commandant is the Disciplinary Authority of the petitioner and is competent to pass final order in disciplinary proceedings. As per Section 2(i) of the CISF Act the Commandant is the Supervisory Officer. Section 4 of the Act is also speaking for the same. Rule 3A(iii) of the CISF Rules 1969 says about composition of force i.e. the rank of Supervisory Officers and Members of the Court which includes Commandant. Therefore, the order of dismissal passed by the Commandant was in accordance with law. The disciplinary proceeding was conducted by the appropriate authority. The delinquent member admitted that the statements of all the prosecution witnesses and Court witnesses were recorded in his presence. He received the copy of each statement recorded. The delinquent admitted that he was given full opportunity by the Enquiry Officer to cross-examine all the witnesses. He submitted a written statement of his own where he denied assault to Sri H.B. Singh and leaving of duty without handing over charge to his reliever. He examined four defence witnesses but they stated nothing which are relevant to the departmental enquiry and the charges framed against the delinquent. The statements of the defence witnesses were recorded in presence of the delinquent. The defence witnesses stated that they do not know anything of the incident took place in the office of the Commandant. The Oriya interpreter was engaged on the consent of the parties as one of the defence witnesses told that he does not know any language than Oriya. Article of charges I and II were proved in the disciplinary proceedings on consideration of the materials on record, evidence adduced by the witnesses produced from the prosecution side, defence side as well as Court witness. On request by the delinquent, the proceeding was recorded in Hindi and it was given full opportunity to defend. The order of dismissal was passed on the basis of the lawful disciplinary proceeding. In compliance with the order passed by the Court, the Appellate Authority afforded opportunity of hearing to the petitioner and passed appellate order dismissing the appeal showing reasons that there is no ground of interference.

10. Firstly, he cited Food Corporation of India Vs. B.J. Jambulkar, wherein the punishment of removal was challenged but failed. No interference with punishment was made by the Supreme Court when enquiry was found proper. By citing a further judgment reported in U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, the Supreme Court held that High Court should not interfere with the quantum of punishment so imposed at the time of exercising judicial review. He further cited Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, to establish the

High Court does riot exercise the powers of Appellate Authority and Authority with the finding of Disciplinary Authority at the time of judicial review. The three Judges Bench of the Supreme Court held that the jurisdiction of the High Court in such cases is very limited. He also cited State Bank of Patiala and others Vs. S.K. Sharma, to establish that applicability of the principles of natural justice cannot be made following any straight jacket formula. Court should balance that interest with the requirements of natural justice. The judicial review is not akin to adjudication of cases on merits as an Appellate Authority under Article 226 of the Constitution of India. The High Court does not act as an Appellate Authority but exercise within the limits of judicial review to correct errors of law or procedure leading to manifest justice. To support such contentions he cited Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, . A further judgment reported in Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, is also speaking for the same principle. On the other point he contended that the burden of proof depends upon the nature of charge and nature of explanation by the delinquent. In support of such contention he also relied upon a judgment reported in Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, . In a case before the Administrative Tribunal the Supreme Court held in Government of Tamil Nadu and another Vs. A. Rajapandian, that Tribunal has no jurisdiction to sit as an Appellate Authority over the finding of the Enquiry Authority. He further cited B.C. Chaturvedi Vs. Union of India and others, to establish that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. In concurring with the majority view Justice Hansaria was of the view that the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ Court interference is permissible only when the punishment/ penalty is shockingly disproportionate.

11. According to me, without prejudice to the applicability of such principle in general I want to confine myself to the appellate order passed by the Deputy Inspector General who was directed to file a report at an interim stage by a Bench of this High Court. Not only the parties have accepted such position but it has been brought to the notice of the Court by way of supplementary affidavit and rejoinder. Therefore, the case is precisely based on such report but broadly upon the entire disciplinary proceedings. That apart, there is a gulf difference between the Labour or Industrial disputes which are routed through the respective Labour Court or Industrial Tribunal, being independent fact finding forum and the service disputes where writ jurisdiction firstly invoked directly from the departmental proceeding of the management. In the second category Court of equity of the superior judiciary is overburdened with the appreciation of facts in the way of judicial review. Therefore,

any straight jacket formula cannot be the guiding principle for the same.

12. Coming back to the facts I say that from the two charges as levelled against the petitioner it appears that first charge is physical assault by an iron rod and misbehavior with one Sri H.B. Singh (petitioner''s Superior Officer) in the office on 23rd January, 1982 at about 19.50 hours and the second charge is gross negligence of duty by leaving the place of work unauthorisedly in ''B'' shift (from 14 hours to 22 hours) leaving behind key and log book of vehicle No. WMK-2370. From the very beginning the petitioner contended before this Court that he has not physically assaulted any one. On the other hand, alleged victim officer deposed before the Enquiry Officer that he was struck by the petitioner with the help of iron rod on the right shoulder with full pressure. But in cross-examination he contended that since he sustained minor injury he did not avail medical treatment. Can it be said to be prima facie acceptable statement to come to a definite charge in this regard? My answer is ''no''. Therefore, how the Appellate Authority, as directed by the Court, arrived at such conclusion of guilt under the charge is unknown to this Court. The Appellate Authority should remember that he was entrusted to reappraise the fact under an order of the Court. Therefore, when such authority made glaring wrong appreciation of fact following his sub-ordinates and Enquiry Officer, the question of law definitely arises for judicial review and become amenable under writ jurisdiction. Purported ''attempt to assault'' cannot corroborate with the charge No. 1 as levelled against him. The charge No. 1 is as follows:
Shri S.N. Tiwari C.I.S.F. No. 7725104 while functioning as a HSG/Dvr. in CISF Unit HFCI Haldia Division (W.B.) physically assaulted and misbehaved with ASI/Exe. H.B. Singh with an iron rod in the unit office on 23.1.82 at about 19.50 hrs. Shri S.N. Tiwari, No. 7725104 HSG/Dvr. was on duty at that time.

13. Moreover, the charge levelled against him by Sri H.B. Singh the alleged victim, Superior Officer. He allegedly made a G.D. entry. G.D. entry cannot be the conclusive proof of evidence of assault by an iron rod. G.D. entry is nothing but a statement of such victim. Superior Officer, to the police or so from which no finality has been reached as yet. Therefore, report of the Deputy Inspector General to the Court in drawing inference on that score only based on such G.D. entry cannot be the final or conclusive proof of the charge No. 1. It is to be remembered that Co-existence of management and employees is essential part of an industry. Duty and right are co-related. But neither in the name of right one will be allowed to use unfettered right nor in the name of duty or discipline one should be physically or mentally tortured. Moreover, there cannot be two types of discipline--one for the employees and another for the management. The authority, as per order of the Court, stated that plea of misbehaviour with his wife is not related to the case. I am afraid that this is not the correct appreciation of facts. One sub-ordinate will learn the lesson of life from his superiors. In our society where respect to the superiors is still available one cannot behave in the purported manner unless and until he is drunk, insane or

provoked. A faint case of drinking liquor was tried to make out by the witness of the management but failed to prove in the enquiry itself. No case of insanity had been made out herein. Therefore, element of provocation might exist. There is a reason for such observation. PW 1, the alleged complainant, Sri H.B. Singh is also a charge-sheeted person under Rule 34 of the CISF Rules 1969 for allegedly misbehaving with the wife of the petitioner herein. Therefore, for the fitness of the fact it both the matters are analogously heard, then the real guilt will come out. But by separating the two proceedings the authorities committed error and entirely vitiated the decision making process irrespective of the factum that whether the charge-sheet was made with biased mind and Enquiry Officer was appointed before getting reply/written statement or not. However, such position is admitted. Behaviour of the petitioner with the PW 1 cannot be adjudged in air. The charge of misbehaviour is attached to assault but not separate. When the assault is not proved beyond doubt misbehaviour cannot be proved. In Ram Kishan Vs. Union of India and others, the Supreme Court held that when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. In that case nature of the abusive language as used was not stated. Present case is made for purported misbehaviour attached to assault when the purported misbehaviour and suspension of the Superior Officer kept outside the domain of the disciplinary proceeding. Therefore, how the environment will be adjudged? Co-relation in between the two incidents will be the guiding factor to determine the guilt and proportion. Otherwise definitely there will be flaw. No flawless decision could be arrived in absence of the materials regarding conduct of the Superior Officer far less to say about any imposition of punishment? Frankly speaking co-relation between two alleged incidents existed but when repeated requests were made to take cognizance of the prior fact, the same was refused. It is further significant to note that the conduct of said Sri Singh is not beyond doubt and no finality of the charge has been levelled as against him and at least the same is not reflected from the report. Therefore, how far the allegations of such charge-sheeted person will be trusted even without any strength of medical report is a big question before the Court. Therefore, it cannot be said that the charge is conclusively proved beyond doubt and the process adopted by the Superior Officers by separating two proceedings is correct. Last but not the least in a dispute between an employer/management and employee equally plays a very big role in favour of an employee because he is not standing on equal bargaining position with the management.

14. Hence, the inference about assaulting senior and misbehaving with him cannot be said to be established.

So far the second charge is concerned, the same is as follows:

Shri S.N. Tiwari C.I.S.F. No. 7725104 while functioning as HSG/ Dvr. in CISF Unit HFCL Haldia Division (W.B.) was committed an act of gross negligence of duties on 23.1.82 in that he left his duty unauthorisedly in ''B'' shift (i.e. from 14.00 hrs. to 22.00 hrs.) leaving behind key and log book of vehicle No. W.M.K.-2370.

15. In respect of the same the report of the Deputy Inspector General is very much vague. Whether one is relieved from the service formally or not that should be corroborated from the evidence of the reliever. The reliever specifically stated in his evidence that he relieved the petitioner. He further stated that the key was lying in the key board and log book was lying in the truck. He further stated that he released the delinquent little early duty to his child''s ill health. He also stated that after making full entries log book was handed over to him. When the reliever took the formalities little early due to ill health of the petitioner''s child, neither the petitioner could be blamed for leaving the duty unauthorisedly nor the case under charge-2 can be said to be proved beyond doubt.

16. It is remembered that number of witnesses is not the criterion for the purpose of drawing any factual inference but gravity of the evidence of the appropriate witness having special knowledge is the necessary outcome. Therefore, when the reliever relieved the delinquent, in effect he relieved him from such charge. In other words, no charge shall lie thereafter.

17. According to me, the action is totally hit by all the grounds of judicial review i.e. illegality, irrationality, procedural impropriety and consequently disproportionately. It is a fit case to say that the principles of natural justice has been violated in its entirety. In spite of such fact a Bench of this High Court while hearing the matter at the interim stage was pleased to give an opportunity to the highest decision making authority of the respondent to consider the matter in its proper prospective possibly to evaluate the position but all are in vain. I find such consideration is nothing but an idle formality of suffice the age of the Superior Officer at the cost of the delinquent. Thus, I do not find any reason to proportion the punishment, if any. The entire disciplinary proceedings including all orders passed in connection thereto stand quashed. The petitioner is entitled to get reinstatement in service and continue till the date of appropriate retirement. The petitioner will be entitled for the arrear salaries which would have been entitled as he continued in service from the date of removal till the reinstatement with an interest @ 9% per annum subject to any amount paid to the petitioner in the meantime within a period of three months from the date of communication of this order and also subject to undertaking that he had not gainfully employed elsewhere in the meantime. However, no order is passed as to costs.
Prayer for stay is made, considered and refused.

Let an urgent xerox certified copy of this judgment, applied for, be given to the learned advocates for the parties within two weeks from the date of putting the

requisites.