

(2014) 12 CAL CK 0051

Calcutta High Court

Case No: Writ Petition No. 18847 (W) of 2007

P.K. Manickam

APPELLANT

Vs

The Director General, Central
Industrial Security Force

RESPONDENT

Date of Decision: Dec. 19, 2014

Citation: (2015) LabIC 1013 : (2015) 4 WBLR 212

Hon'ble Judges: Arindam Sinha, J

Bench: Single Bench

Advocate: Debjani Sengupta, Advocate for the Appellant; Srijan Nayak, Shovan Banerjee and Arindam Mitra, Advocate for the Respondent

Judgement

Arindam Sinha, J.

Two counts of charge have been held to be proved against the petitioner. Mrs. Sengupta, learned advocate appeared on behalf of the petitioner and submitted article of charge no. I was held to have been proved against her client in breach of principles of natural justice in as much as a vital document being the preliminary enquiry report was not made available to him as would appear from the enquiry report itself. She further submitted without prejudice to her first contention, the finding on the second charge as held to have been proved in the enquiry report is perverse and not supported by the materials that were considered in the enquiry. She still further submitted the disciplinary authority, appellate authority and thereafter the revisional authority had merely reproduced the enquiry officer's findings and confirmed the same.

2. Mr. Nayak, learned advocate appeared on behalf of the respondents and submitted the disciplinary proceeding was held in compliance with all provisions of law and on observing the principles of natural justice. The incident took place at around 8.45 p.m. on 7th May, 2004 but the petitioner being the company commander who was entirely responsible and solely in charge of the company manning the gate, failed to supervise the movement of the truck and trailer. The

incident remained undetected by him and it was reported or came to the knowledge of the authorities otherwise on 18th May, 2004. He submitted minor punishment was awarded after investigation and giving the petitioner full opportunity to defend his case. The petitioner had exhausted the statutory remedies available and all orders passed in the matter were with reasons, on appreciation of the facts and circumstances brought out in the enquiry.

3. Article of charge no. I against the petitioner was that he failed to control his subordinate who violated the unit standing order as for change of duty of CISF personnel and did not supervise the duty roster/deployment of men which tantamounts to gross negligence, dereliction of duty being an Inspector detailed as company commander of a company in a disciplined force. Article of charge no. II against the petitioner was that he showed lack of command and control of smooth functioning of GRJ gate no. 3 in supervising movement of the truck and trailer through it on 7th May, 2004 at about 2040 hrs. which tantamounts to gross negligence and dereliction of duty by him being an Inspector detailed as company commander of "C" company, an armed force of the Union.

4. It appears from the enquiry report dated 6th December, 2004 the listed prosecution documents did not include the preliminary enquiry report. On request having been made by the petitioner, inter alia, relevant portion (analysis and conclusion) of the preliminary enquiry report was provided to him. The enquiry officer found from the evidence which had come on record, it was explicitly clear the shift-in-charge of "B" shift on 7th May, 2004 had changed duty posts of a constable. The said person had admitted he did not obtain approval of the company commander, i.e. the petitioner, for effecting such change nor made any GD entry in that regard. The enquiry officer relied on exhibit P-11 being office order dated 13th July, 2003 containing necessary guidelines in the matter of change of duty posts. The enquiry officer found it was established a valid office order restricting change of duty posts was existing and the change made by the shift-in-charge was clear violation of such standing order. The enquiry officer found the said office order was distributed to all company commanders from which he understood the onus of implementation thereof lay with the concerned company commanders. Relying on the deposition of PW 1 and 2 he found it was possible for the company commander to find out any changes made by the shift-in-charge even if his permission was not obtained. It was also his duty to monitor and check whether his orders were scrupulously followed by his subordinates. In examining defence exhibit D-3 on the contention raised that lot of changes in duty shifts had been made but no action taken against the concerned company commanders, the enquiry officer found the petitioner could not produce corroborative evidence indicating the same. He thus rejected the defence pleas of the petitioner, of him having been ignorant of the duty shift changed by his subordinate without his knowledge or that such duty shifts were routinely changed and that this particular change in shift of duty, therefore, could not be said to be unusual. It was on this basis the enquiry officer held article

of charge no. I as proved against the petitioner. This court has not been able to find any violation of the principles of natural justice caused to the petitioner by not being supplied with the entire copy of the preliminary enquiry report as his contention arising therefrom being he was not informed of the change of duty shift made by his subordinate, was a fact admitted.

5. Article of charge no. II was with regard to gross negligence and dereliction of duty of the petitioner in failing to supervise the movement of the truck and trailer at the gate by which material contained therein was stolen. It appears from the enquiry report the incident of theft remained undetected by the petitioner. Several days after the incident on 18th May, 2004, as per the evidence of PW2, the said witness had got information about arrest of some people and recovery of raw silk bales stolen in connivance with CISF personnel who allowed the truck and trailer containing the material loaded therein to pass through GRJ gate no. 3 between 2000 and 2040 hours on 7th May, 2004. The enquiry officer relied on the circumstantial evidence to negative the plea taken by the petitioner that the theft could not be proved, as evidence in support thereof was only hearsay. The enquiry officer held though it was clear from the evidence the petitioner was not directly involved in the conspiracy, but had he timely checked the change in physical deployment of personnel, rectified the intentional and unauthorized change of duty posts by his subordinate and reported the matter, the subsequent plan to take out the container could have been successfully foiled. The enquiry officer found in the petitioner, lack of command and control over men under him and lack of supervision over smooth movement of the vehicles through the said gate to hold article of charge no. II also proved against him.

6. This court has also perused the Central Industrial Security Force Organization Manual 2004 which provides, inter alia, duties of Inspector (company commander). Of the several duties cast upon such an Inspector, the duties mentioned under item b), c), n), s), v), y), cc) and ff) thereof are reproduced below:-

b) He will be responsible for the command, control, discipline and administration of the Company personnel under his charge.

c) He will detail personnel for duties in accordance with duty roster, properly brief them and ensure that they carryout their duties efficiently and properly.

n) He will immediately bring to the notice of his superiors any incident which adversely affects the functioning, discipline and decorum of the unit/Coy.

s) He will ensure that material/stores of the undertakings are not taken out without valid material passes.

v) He will carry out checking of all duty posts twice by day and twice by night in a week and submit reports to the Commandant/Asstt Commandant.

y) He will bring all the matters pertaining to the security and administration of Coy/Plant to the notice of the Commandant/Asstt Comdt.

cc) He will immediately bring to the notice of his superiors all instances where his subordinates are found slack, negligent, absent from duty etc.

ff) He will also collect information through agencies other than the intelligence staff such as agents, informers and other sources and keep a watch over the activities of the personnel who are likely to indulge in sabotage, pilferage, theft etc. He will pass on such information to the appropriate authorities for taking timely action.

7. Having done so and going through the enquiry report, the final order, the order in appeal and in revision thereafter, this court, not being a court of appeal, does not find there has been any error in the procedure adopted or perversity to interfere. Hence there is no merit in the writ petition and the same is accordingly dismissed.

8. Urgent certified copy of this judgment, if applied for, be given to the parties on usual undertakings.