

(2008) 09 DEL CK 0208

Delhi High Court

Case No: Writ Petition (C) 4874 of 1997

Arvind Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 11, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: K. Priyadarshi and R.K. Singh, for the Appellant; Saroj Bidawat, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

The petitioner was recruited as a constable in CISF in the year 1994 and was charged in August, 1996 with the following charges

ARTICLE OF CHARGE No. 1

No. 941710024 Constable Arvind Kumar of CISF unit PPT Paradip is charged for gross misconduct and disobedience of order is that the said No. 941710024 const. Arvind Kumar was detailed for "C" duty at Athar banki Gate from 2100 hrs on 13.05.1996 to 0500 hrs on 14.5.96 at about 0515 hrs on 14.5.96 Shri D. S. Yadav Asstt. Commandant/F checked No. 941710024 Const. Arvind Kumar at the gate just after he was relieved from duty and found Rs. 25/- in his possession is contravention of office order No. CISF/PPT/INT/53/96/33 dated 05.01.96 which stipulates that No CISF personnel will keep more than Rs. 10/- with him while on duty. The above act on the part of No. 941710024 Const. Arvind Kumar amounts to gross misconduct and disobedience of order.

ARTICLE OF CHARGE No. 2

No. 941710024 Constable Arvind Kumar of CISF Unit PPT Paradip is charged for gross misconduct is that the said No. 941710024 Const. Arvind Kumar was detailed for duty at Atharbanki Gate in "C" shift from 2100 hrs on 13.05.96 to 0500 hrs on 14.5.96 while on duty the said No. 941710024 Const. Arvind Kumar collected money from a mini truck driver illegally. The above act on the part of No. 941710024 Const. Arvind Kumar amounts to gross misconduct.

2. The petitioner did not submit any response to the article of charge and thus, an inquiry officer was appointed by the Commandant vide letter dated 21.8.1996. The inquiry report was submitted on 04.11.1996 whereby the petitioner was held guilty on both the accounts. It may be noticed that four witnesses appeared against the petitioner while the petitioner did not produce any witness in support of his defence. The petitioner submitted a reply to the inquiry report on 05.12.1996 and the disciplinary authority passed the final order on 9-10/01/1997 holding the petitioner guilty of the charges in imposing the penalty of removal from service. The petitioner thereafter filed the present writ petition challenging the same.

3. It may be noticed that the petitioner had preferred an appeal against the order of the disciplinary authority. According to him till the date of filing of the writ petition he had not received any order in appeal. The order in appeal was passed on 24-25/8/1997 and the same was brought on record only subsequently by the petitioner seeking to amend the writ petition by CM 967/2005 after lapse of almost 8 years. In terms of the amendment application certain other documents were also sought to be placed on record which forms part of the discussion hereafter. We may, however, note that the record shows that the amended petition has not been brought on record though the application for amendment was allowed on 12.08.2005 and the counter affidavit to the amended petition (copy of which would have been handed over to learned Counsel for the respondents) is also on record.

4. At this stage we may note the manner in which this petition has been prosecuted and the reason why we are not inclined to give any further indulgence to the petitioner to bring the amended petition on record though we have taken note of the amendments incorporated in the application which has been allowed. The writ petition was dismissed for non-prosecution on 21.07.1999 whereafter an application for restoration was filed which was also dismissed on 04.05.2000. Thereafter another application for restoration was filed and the writ petition was finally restored to its original number on 23.09.2002. The writ petition was again dismissed for non-prosecution on 26.02.2003 and was restored on 21.05.2003. Thereafter, the amendment was allowed but once again the writ petition was dismissed for non-prosecution on 07.02.2008 and was thereafter restored on 08.04.2008.

5. It is trite to say that this Court does not sit as a court of appeal to substitute its opinion with that either of the disciplinary authority or the appellate authority. This is more so in case of the Defence and Para-Military service but in case the procedural irregularities are pointed out, this Court would not be without

jurisdiction to remedy the same. Learned Counsel for the petitioner has not pointed out to us any infraction of rule or procedure but the plea of the learned Counsel for the petitioner is that the petitioner has been found guilty only on his own admission and that admission was under the circumstances because of misrepresentation made to the petitioner. The second plea is that the sentence imposed upon him is disproportionate.

6. The impugned order of the disciplinary authority shows that the petitioner admitted to being in possession of Rs. 25/- in violation of instructions and the explanation for the same was that a mini truck driver while going inside the port gave him Rs. 25/- forcibly although the mini truck and its driver had a valid permit to enter the port. The statement of the petitioner about recovery of amount has been corroborated on the basis of the witnesses examined by the department. The reasoning of the amount being forcibly given to the petitioner has not been found tenable. The money was recovered from his possession while he was waiting for shift vehicle after completion of his duty.

7. In the appeal filed by the petitioner a plea has been raised that the inquiry officer advised the petitioner that since all the prosecution witnesses had deposed against him, it would be proper to give a confessional statement. Not only that, the petitioner claims that initially he was compelled by the Commandant (Fire) to write the confessional statement. In nutshell, the petitioner claims that he was brain-washed into admitting his case. This is also the ground of the reminders sent by the appellant on 17.4.1997 and 6.11.1997

8. The aforesaid aspects have been dealt with in the order of the appellate authority dated 24-25/8/1997. The relevant portion of the order is as under:

The appellant in his appeal has raised a number of issues for consideration by the undersigned. The defence of the appellant stands only on the following important points: a) There is no other evidence to frame charge in Article. II except the appellant's confessional statement.

b) He was pressurized and compelled to make the confessional statement of accepting Rs. 20/- from the truck driver.

c) In a similar case, naik L. B. Singh, who was also found in possession of Rs. 16.10 was dealt with under Rule 35 and awarded minor punishment whereas he was removed from service.

d) That he was not aware of the Unit standing order dated 05.01.96.

In the light of above, I have carefully gone through the entire case files. All the pleas of the appellant can be rejected in toto, firstly, on account of his confessional statement which is adequate and no material evidence is required in a departmental enquiry. The recovery of Rs. 25/- from his person has been well proved on the basis of the evidences of 3 prosecution witnesses which corroborated with each other as

also the seizure list. Further, the confessional statement of the appellant, before a GO of the Force, on recovery of the amount, goes to prove that illegally gratification was accepted by the appellant. The appellant having studied upto Matric, should have been aware that confessional statement would go against him during the regular enquiry. Secondly, the appellant has stated about the compulsion of giving such confessional statement at the time of recovery of the amount. This plea seems to be totally an after thought. The appellant did not raise this plea either in his reply to the charge memorandum during the course of the departmental enquiry or in his reply to the findings submitted to the Disciplinary authority. However, during the court of enquiry he did not raise the point and now has come up with a story that the Enquiry Officer, had prompted him to make confessional statement also advised him not to make any representation against the enquiry and gave him an assurance that he would apprise the higher authority to exonerate him. The appellant, being a new entrant in the service, accepted the advice of the Enquiry Officer blindly and signed the statement. This version is purely an after thought on his part. If such an assurance would have been given by the Enquiry Officer at the time of enquiry, then what prevented him to represent in his reply of the findings submitted to the disciplinary authority? The findings having proved the charges were supplied to him by the disciplinary authority with the direction to make his submissions if any against it. But, the appellant did not state anything to this effect as also the assurance given to him. He has simply stated in his representation that he has nothing to say except what he had already deposed during the enquiry.

Thirdly, the appellant's and Naik L. B. Singh's case are not same . Although, a sum of Rs. 16/- an odd was recovered from Naik L. B. Singh which was more the prescribed Rs. 10/- therefore he was charged only for violating the unit's standing order of keeping Rs. 10/- more during the duty hours and not for accepting any illegal gratification. He also did not confess having accepted gratification from the truck driver. Hence he was dealt with under minor charge for violating the standing orders. Whereas in the case of appellant's the second charge is more severe than the first due to which he was dealt with under Major Rules and awarded exemplary punishment. Fourthly, the appellant's ignorance of Unit Standing orders is not an excuse and it will not in anyway reduce the gravity of the offence committed by him. The charges were well proved that led to recovery of money from him as also his confessional statement. The enquiry officer has conducted the enquiry by giving full opportunities to the appellant to defend himself. There is no infirmity either in lay or his fact. The Disciplinary authority has applied his mind in awarding the punishment which is quite proportionate to the gravity of the offence. I do not find any merit in the appeal to interfere with the order of the punishment. Therefore, I hereby reject the appeal submitted by Ex-constable Arvind Kumar, being devoid of merit.

9. A reading of the aforesaid shows that each and every plea of the petitioner has been dealt with cogently by the appellate authority with reasons. The appellate authority has rightly come to the conclusion that the claim of the petitioner of being

pressurized or compelled to make the confessional statement was an after-thought. Even for the sake of argument, if it be assumed that before the Commandant the petitioner was under some pressure, nothing prevented the petitioner from bringing this fact before the inquiry officer or the disciplinary authority. The plea of discrimination has also been rejected pointing out that in the other cases of detection of amount more than the permissible amount in the pocket of that personnel the circumstances were different resulting in a different punishment. Learned Counsel for the petitioner has tried to emphasize that along with the application for amendment the petitioner has filed a letter dated 06.09.1996 of the petitioner. In the said letter a new story was set up that the amount in the pocket of the petitioner was for purchasing medicines. Interestingly, the petitioner does not claim that he was under treatment from any hospital of the CISF but that he was under treatment of a private doctor for which he had to purchase medicines. This letter is stated to have been addressed to the Commandant.

10. The very existence of this letter is under doubt as in the counter affidavit filed by the respondents post the amendment it has been stated as under:

Regarding para-7, it is stated that the petitioner no doubt had stated in his written reply dated 06.9.96 against charge memo that the Inspector/Exe N. C. Chaudhary told him to admit his mistake but nowhere the petitioner has been able to establish that he was forced to give confessional statement. It is respectfully submitted that the petitioner did not file a copy of his representation dated 06.9.96 which has now been placed by the petitioner at annexure 8 of the amended writ petitioner. It is submitted that it is a well-thought out plea taken by the petitioner to cover up his guilt which has no merit. If the petitioner was not really guilty, he would not have admitted his guilt. Further, the petitioner could have established before the Enquiry Officer while the regular departmental enquiry was going on that it was only because of forceful compelling of Inspector/Exe N.C. Chaudhary that he had admitted his misconduct but the petitioner did not raise this point on that issue during the course of departmental enquiry nor he has stated anything regarding this in representation against the findings of the enquiry officer. Hence, the plea taken by the petitioner has no merit.

11. Another important factor to be taken into consideration is that the factum of the petitioner having addressed this letter does not form part of the defence of the petitioner in this petition nor does it form a part of the appeal or any of the reminders to the appeal. This letter found the light of the day 8 years after the episode was over and thus, no reliance can be placed on this letter. There is no explanation given as to why, if this letter existed, it could not be filed with the petition.

12. In our considered view the petitioner is only trying to improve his case periodically. The petitioner had been taking contradictory plea. His plea that the money found in the pocket of the petitioner was forcibly given by the truck driver is

unbelievable. Why would a person forcibly give money to the petitioner has not been explained and runs contrary to all canons of common sense. The second plea sought to be raised is that the same was under misrepresentation or influence inasmuch as the Commandant told the petitioner to admit his guilt. Not only that, before the inquiry officer also the petitioner claims that an impression was given to him that since other witnesses had deposed against him he should admit the guilt. This fact shows that the plea of guilty of the petitioner alone does not form the basis of the petitioner having been held guilty but there was deposition of other witnesses to substantiate the said conclusion. Now, at the fag end of the matter after 8 years a new letter is sought to be introduced. The story set up in the letter also is unbelievable as there was no reason for the petitioner for not going to CISF Medical Centre if at all the petitioner was unwell. The petitioner had never claimed earlier that he was unwell much less the pleading about the letter being in existence.

13. On the face of the record, the finding of the guilt of the petitioner cannot be disturbed. Insofar as the plea of disproportionately of sentence is concerned the petitioner has been found taking bribe to permit entry of a truck into the port. This has occurred within two years of the service of the petitioner. The offence is serious, it cannot be said that the punishment is so disproportionate or unreasonable as to call for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

14. Dismissed. No Costs.