

(2011) 06 DEL CK 0089

Delhi High Court

Case No: Writ Petition (C) 2748 of 2011

Dharam Pal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: June 1, 2011

Hon'ble Judges: Suresh Kait, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Rajat Sharma, for the Appellant; Bharkha Babbar and Asit Tiwari, for the Respondent

Judgement

Pradeep Nandrajog, J.

On 28th April, 2011, we had required the record of the enquiry conducted against the Petitioner to be produced in response to the writ petition, in which the Petitioner prays that the order dated 07.04.2010 passed by the Inspector General CRPF be quashed.

2. We note that the order impugned bears the date of dispatch: "08.04.2010" but has been signed by the Inspector General on 07.04.2010. The order rejects the revision petition filed by the Petitioner and confirms the penalty awarded by the disciplinary authority as upheld by the Appellate authority.

3. The order levying the penalty of dismissal from service is dated 27.05.2009 and the order rejecting the appeal is dated 30.09.2009.

4. The Petitioner joined CRPF in the year 1994 and we note that in the past, two penalties, one of stoppage of one increment and the other of censure were imposed upon the Petitioner. The first penalty was for quarrelling with fellow jawans under the influence of liquor and the second was for simply quarrelling with a fellow jawan.

5. With respect to the penalty order under challenge, we note that the charge against the Petitioner was that while posted on the internal security duty at the I.B. building at 5, Akbar Road, on 05.08.2008; at around 18:00 hours, with permission of

the Post Commander SI Azad Singh, he left to have a cup of tea but returned around 21:20 hours and upon entering the barrack, started abusing the senior officers and tried to load a magazine in the Self Loaded Rifle by taking out a magazine from his bag. It was alleged that while doing so, the Petitioner continued to use abusive and unparliamentary language against his Superior officers.

6. We may note that under Charge No. 2, it was indicated to the Petitioner that twice earlier, he has been inflicted minor punishments.

7. At the enquiry, 8 witnesses have been examined, a fact which we gather from the record of the enquiry.

8. SI Azad Singh has appeared as PW-1. Insp. B.P. Sharma has appeared as PW-2. Constable Sukhdev Singh has appeared as PW-3. Constable Sher Singh has appeared as PW-4. Constable Sukhdev Singh has appeared as PW-5. Ct. Bhajan Singh has appeared as PW-6. HCK. J.S. Nair has appeared as PW-7 and HC Kusum Tuli has appeared as PW-8.

9. Whereas PW-8 deposed with reference to the service record of the Petitioner which proves that in the past, two penalties (as per the charge) were levied upon the Petitioner. PW-1 to PW-7 deposed as per Charge No. 1.

10. Having perused the testimonies of PW-1 to PW-7 all of whom have corroborated each other, suffice it would be to state that it stands established that the Petitioner took permission from SI Azad Singh who was the Platoon Commander to make a short visit out and return after having a cup of tea, which would have required Petitioner's absence from the duty post for a few minutes, but the Petitioner remained absent for 3 hours and 20 minutes.

11. It is obvious that the Petitioner went jay walking. The moment he returned he started shouting and threatened to kill the superior officers. He pick up the SLR which was issued to him and opening a bag. He took out a magazine obviously to load the magazine on to the rifle and at that point of time, he was disarmed by SI Azad Singh who was helped by other jawans who were present on the spot, whom we note are the witnesses of the prosecution except PW-7 who reached the spot after the incident and took charge of the ammunition issued to the Petitioner.

12. We note that PW-2, PW-3, PW-4 have admitted that the Petitioner was saying that he was angry on account of his son being sick and in spite thereof he was not being granted any leave.

13. We note that the Petitioner did not prove having submitted any application for leave.

14. Conceding that there is enough material to sustain the charge, learned Counsel for the Petitioner states that by denying leave to the Petitioner, the superior officers were responsible for causing mental stress to the Petitioner. Learned Counsel states

that the Petitioner acted under mental stress and this lowers the culpability of the acts committed by the Petitioner.

15. Ignoring that the Petitioner led no evidence of his having applied for leave and accepting the argument that the Petitioner was stressed on account of his son being unwell and yet he was not being granted any leave, we cannot ignore the fact that this proves that the Petitioner is not able to handle stress.

16. The evidence proves that under stress, the Petitioner is capable of going to the extent of threatening his fellow colleagues and superior officers around.

17. Fratricide by members of the armed forces and Central Paramilitary forces is in the news every 2 to 3 months. We do concede that the jawans are under stress, but we cannot loose sight of the fact that whatever may be the level of stress, a human being is blessed with consciousness by the Supreme Lord, which consciousness acts as a mirror to one's action, requiring every human being to keep his temper in cool and in any case not let the volcano spout vengeance to the extent of picking up arms and threatening to shoot people around.

18. That the Petitioner was immediately disarmed by SI Azad Singh and fellow jawans is a fact proved by them. Had they acted late by few seconds, hell could have broken loose.

19. We concur with the argument of learned Counsel for the Respondent that Petitioner's conduct was in the extreme even if he had a grievance of leave not being sanctioned to him to visit his son who was ailing. It shows that the Petitioner cannot handle stress. His continuance as a member of the Para Military Force, which requires him to be armed is not desirable. But noting the fact that the Petitioner joined the service in the year 1994 and had served for nearly 15 years when the offending act was committed; notwithstanding there being two penalties inflicted upon the Petitioner, which we note are minor penalties, we are of the opinion that ends of justice would require the penalty to be altered from one of dismissal from service to compulsory retirement with admissible pensionary benefits.

20. We dispose of the writ petition modifying the penalty imposed upon the Petitioner by substituting the penalty of dismissal from service to that of compulsory retirement with admissible pensionary benefits.

21. In view of our order passed today, the Respondent would calculate the admissible pensionary benefits payable to the Petitioner and would disburse the arrears within a period of 12 weeks from today.

22. No costs.