

(2011) 04 DEL CK 0336

Delhi High Court

Case No: Writ Petition (C) No. 731 of 2007

Surinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: April 26, 2011

Acts Referred:

- Constitution of India, 1950 - Article 311
- CRPF Act, 1949 - Section 11(1), 27
- CRPF Rules, 1955 - Rule 2, 27, 28

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

Bench: Division Bench

Advocate: C.S. Rathour, for the Appellant; Preeti Dalal and Tanu Goswami, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

At the outset we may note that notwithstanding various issues raised in the Statutory Appeal filed against the order dated 31.10.2005, in the writ petition the said order as also the Appellate Order dated 24.7.2006 have been questioned on the following grounds, being 8 in number:

- (i) Because the departmental proceedings against the Petitioner are contrary to the due procedure of the CRPF Act and Rules;
- (ii) Because there was previous enmity between the Petitioner and the alleged department's witness SI/Fateh Mohd./Respondent No. 5 senior officer of the Petitioner at the camp and also senior officer at Srinagar earlier who had previously threatened the Petitioner to teach a lesson as and when he would get a chance. The departmental inquiry proceedings were unfair and ex-parte and against the due procedure of the CRPF Act and Rules;

(iii) Because the impugned order dated 31.10.2005 was passed by the Respondent No. 4 without having any power and authority under Rule 27 of the CRPF Rules, 1955 because punishment of removal from service against a "constable" of the force can only be passed either by the "Commandant" of the Force i.e. CRPF as defined under Rule 2 (b) of the CRPF Rules, 1955, or the DIGP of the force i.e. superior officer as prescribed under the said rule. Whereas in the case of the Petitioner, the impugned order or removal from service was passed by Respondent No. 4, who was neither the "Commandant" of the force under Rule 2(b), nor DIGP of the Force under Rule 2(c) i.e. the superior officer prescribed under the said rule;

(iv) Because also the impugned order dated 24.7.2006 was passed by the Respondent No. 4 who was also not the competent authority as prescribed under Rule 28 of the CRPF Rules, 1955. The Respondent No. 4 was neither the Inspector General, nor the Dy. Inspector General of the CRPF;

(v) Because also even if for the sake of arguments only but not being admitted as alleged, the impugned departmental enquiry proceedings, impugned order of dismissal from service and the order of the appellate authority are deemed to be valid under the law and procedure, even then the imposition of a major penalty of "removal from service" of the Force of the Petitioner for the commission of the alleged petty and minor offence/wrongs of having found intoxicated outside the camp office and alleged misbehaviour with his senior officer and staff at the camp office while on duty at the relevant date and time is not only excessive but also unwarranted, unfair and illegal against the due provisions of the CRPF Act and Rules.

(vi) Because the imposition of the impugned major penalty of "removal from service" of the Force is against the principles of natural justice.

(vii) Because also the proceedings and order of the Respondents are biased and unfair under the given facts and circumstances of the case in hand. Because the same was initiated at the behest of the Respondent No. 5 who had personal enmity with the Petitioner earlier.

(viii) Because also the Respondents has imposed the major penalty upon the Petitioner without considering the past clean service record of about 15 years with the department without any adverse entry or remarks.

2. The second thing which we must note at the outset is that the Petitioner has not filed any rejoinder to the counter affidavit filed, which we note was filed way back on 7.8.2007. The Petitioner availed opportunities on 9.8.2007, 8.10.2007 and 9.1.2008 to file a rejoinder affidavit and since none was filed the learned Registrar closed the right to file the rejoinder and directed that the writ petition would be listed in due course as per its priority position. Even thereafter no rejoinder affidavit was filed till the matter came up for arguments for final hearing and was heard on 18.4.2011.

3. The Petitioner Ct. Surinder Singh attached with the 131st Bn. CRPF was deployed at Group Centre, Greater Noida. On 3.6.2005, he went out of the camp without informing anyone or taking prior permission. On being searched he was found at a liquor shop in the nearby village in a drunken condition. He was brought back to camp by HC Kunan where he allegedly engaged in a fight with HC Kunan Singh and Platoon Post Commander SI Fateh Mohammad and abused them.

4. A written complaint was made to Assistant Commandant by HC Kunan Singh and Platoon Post Commander SI Fateh Mohammad on 3.6.2005 and on receiving the said information, the Petitioner was brought to the Group Center Office where he was medically examined and was found to be in a moderately intoxicated condition. Hari Ram Singh, Additional DIGP, Group Centre, Greater Noida ordered a Preliminary Inquiry to be conducted and detailed Asstt. Cmdt. Ritesh Thakur to conduct the same.

5. Statements of 4 persons were recorded and 5 documents were considered during the Preliminary Inquiry and a report furnished.

6. Considering the Preliminary Inquiry report the Additional DIGP directed departmental Inquiry to be conducted against the Petitioner, Ct. Surinder Singh and on 18.6.2005 framed the charges as under:

Details of charges leveled against No. 901190766 Constable/GD Surinder Singh, CRPF

CHARGE No. 1

Service No. 901190766 Constable/GD Surinder Singh who is posted as Constable/GD in Group Centre in Greater Noida has violated the CRPF Act 1949 read with Section 11(1) along with CRPF Rules 1955 read with Section 27 and despite being a member of the disciplined force, has done unwarranted acts and on 03.06.2005 at about 0830 hours, was found in a drunk state while on duty and hence was further violated the service rules and is liable to be punished under CRPF Rules 1949 read with Section 11(1).

Charge No. 2

Service No. 901190766 Constable/GD Surinder Singh who is posted as Constable/GD in Group Centre in Greater Noida has violated the CRPF Act 1949 read with Section 11(1) along with CRPF Rules 1955 read with Section 27 and despite being a member of disciplined force, has done unwarranted acts and on 03.06.2005 at about 0830 hours, was found in a drunk state while on duty from an unknown source and picked up fight with Service No. 690401323 Asst. Officer/G.D. Fateh Mohd. And Service No. 831190235 Havaladar Kunan Singh and abused them and hence is liable to be punished under the C.R.P.F. Rules 1949 read with Section 11(1) and other relevant rules for the abovesaid indiscipline act.

7. As per the counter affidavit filed, the charge-sheet was served upon the Petitioner and since we find the Petitioner not having rebutted the averments made in the counter affidavit by filing a rejoinder affidavit the same have to be treated as correct. That apart, the record produced shows that the charge-sheet was sent to the Petitioner.

8. On 2.7.2005 an order was passed appointing Hans Raj 2 IC of the Unit as the Inquiry Officer and the record shows copy thereof being sent to the Petitioner. As pleaded in the counter affidavit and as per the record by a letter the Petitioner was informed that departmental proceedings would commence on 8.7.2005 and relevant would it be to note that this was the day when the Petitioner went missing from the Unit lines and in respect whereof an FIR was lodged at PS Pushp Vihar. The FIR had to be lodged for the reason a constable of a para-military force had absconded.

9. On 11.8.2005, as per the counter affidavit, duly supported with the record, a letter dated 6.8.2005 was sent vide registration No. 1457 by Regd. Post to the Petitioner at his permanent address available with the department informing him to appear before the Inquiry Officer. The record shows the letter not having been received back unserved and thus not only a presumption arises of the Petitioner being served, but for the additional reason the Petitioner has not filed a rejoinder affidavit, the plea to said effect in the counter affidavit has to be treated as admitted.

10. The Petitioner did not report to the Inquiry Officer and thus another letter dated 23.8.2005 was sent to him on 24.8.2005 by Regd. Post which was received back with the report by the postal authorities that the addressee was not available.

11. Since the Petitioner had no business to abscond from the Unit and he was informed of the Inquiry being commenced on 8.7.2005 and since it was an apparent case of the Petitioner deliberately hiding himself, the Inquiry Officer examined 5 witnesses who needless to state included SI Fateh Mohammed PW-1, HC Kunan Singh PW-2, Ct. Kunwar Pal Singh PW-3, HC Dhirender Singh PW-4 and Asstt. Cmdt. Indraj Singh PW-5 and suffice would it be to state that the testimony of the 5 witnesses establish the 2 charges levied against the Petitioner.

12. The inquiry report dated 21.9.2005 was thereafter sent to the Petitioner and no response being received, vide order dated 31.10.2005 the Petitioner was removed from service.

13. Relevant would it be to note that since the Petitioner had absconded, on 12.9.2005 a judicial inquiry was conducted and a report submitted on 20.9.2005 recommending that the Petitioner be declared a Proclaimed Offender and considering the same, on 1.10.2005 the Petitioner was declared a Proclaimed Offender.

14. A belated appeal was filed by the Petitioner against the order dated 31.10.2005 which was rejected vide order dated 24.7.2006.

15. With respect to the grounds of challenge, being 8 in number, suffice would it be to state that it is a case of a self denial of an opportunity to be heard and thus the Petitioner cannot question the ex-parte inquiry conducted against him. On 7.7.2005 the Petitioner was in the Unit and was served with the letter dated 7.7.2005 requiring him to appear before the Inquiry Officer on 8.7.2005 and on said day the Petitioner absconded from the Unit. There was no necessity for the department to try and serve him again, but we note that the Inquiry Officer did so. The first letter dated 6.8.2005 has to be presumed to have been received by the Petitioner and the second letter dated 23.8.2005 has been deliberately not received by the Petitioner. Thus, the first, fifth and sixth ground urged are wholly without any basis. As regards ground No. (ii) and (vii), suffice would it be to state that the bias alleged against Respondent No. 5 i.e. SI Fateh Mohammed is a mere pleading without any particulars. That apart, we find that SI Fateh Mohammed is not the only witness to depose against the Petitioner. There are four other witnesses who have deposed against the Petitioner. Thus, ground No. (ii) and (vii) are without any basis. As regards the other grounds suffice would it be to state that Rule 27 of the CRPF Rules 1955 provides for the punishments and lists the authorities which can inflict the punishments upon various members of the Force. Suffice would it be to further state that qua constables, power to dismiss or remove is that of the Commandant but we note that the Addl. DIGP being the next above authority would be also competent to inflict the punishment for the reason this would not affect the statutory right of Appeal which would be available before the DIGP. In the decision reported as JT 2006 (4) 74 A. Sudhakar v. Post Master General, Hyderabad and Anr. the Supreme Court observed as under:

18. It is now trite that an authority higher than the appointing authority would also be the designated authority for the purpose of Article 311 of the Constitution of India. Even the appellate authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right. However, if such right of appeal is not embellished, an authority higher than the appointing authority may also act as a disciplinary authority.

16. Also in the decision reported as [Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others](#), the Supreme Court held as under:

It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffer from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to

him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savor of legality.

17. As regards the ground that the past service record of the Petitioner was clean we find that the plea in the counter affidavit that there were 5 instances of past indiscipline having not been controverted inasmuch as no rejoinder affidavit has been filed, requires said plea to be negated.

18. Thus, we dismiss the writ petition but refrain from imposing any costs.