

R-102

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 23.11.2010

+ **RSA No.49/2002 & CM No.148/2002 & CM No.149/2002**

UNION OF INDIA & ANR. Appellants
Through: Mr.Girish Pande & Mr.Ravinder
Agarwal, Advocates.

Versus

RAMESH CHAND Respondent
Through: Mr.G.D.Gupta Sr. Advocate with
Mr.H.S.Dahiya, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal is directed against the impugned judgment and decree dated 15.02.2001 which had set aside the judgment and decree of the Trial Judge dated 20.2.1993. Vide judgment and decree dated 20.2.1993 the suit of the plaintiff Ramesh Chand seeking a declaration was dismissed. The impugned judgment had decreed the suit of the respondent/plaintiff.

2. The facts are as under:

i. Plaintiff was appointed as a security guard in the Central Industrial Security Force, Ministry of Home Affairs (hereinafter referred to as the "CISF"). In October, 1980 he was served with a charge sheet which contained the following charge:

"Grave misconduct and gross indiscipline in that

no.7637327 SG Ramesh Chand alongwith many other members of the Force wrongfully confined the Commandant CISF Unit MAMG Durgapur in order to wrongfully force the Commandant to withdraw the suspension orders on three members of the Force belonging to CISF MAMG Durgapur.”

ii. Mr.Charanjit Singh was appointed as an Enquiry Officer.

Four witnesses were examined on behalf of the prosecution which include the Commandant MAMG Uday Veer, the Assistant Commandant P.K.Lehri, Stenographer T.K.Mondal and SI K.K.Niranjan. The testimony of the aforementioned witnesses was examined by the Trial Judge. It was held that the plaintiff along with other members of the unit had illegally confined the Commandant.

iii. Charges levelled and proved in the enquiry proceedings were endorsed. It was held that there has been no violation of the principles of natural justice; charge sheet has been furnished to the delinquent official who had been granted sufficient opportunity to cross-examine the witnesses of the prosecution.

iii. The impugned judgment had set aside these findings. The relevant extract in the impugned judgment reads as follows:

“7. I have gone through the material available on record especially the statement of PWs. First of all, in the statement of Sh.Uday Veer Singh, PW1 who was the complainant in this case, has stated before the enquiry officer that on 26/5/1980 he placed three members of CISF Unit under suspension and when on 27/5/80, he went to his office about 10 a.m. and when he was discussing with Sh.N.G.Dutta and P.K.Lahri; about 10 members of the force came to his chamber and forced to withdraw the suspension order, passed by him, against the three members of the force, on the previous day. He has also stated that he did not recognized most of them and he

ordered Sh.K.K.Niranjan to make a list of the persons who have participated in wrongful confinement. In his cross-examination his witness was asked whether the appellant was present in his room to which he could not reply with certainty and he answered that most probably appellant had come in the room and he did not remember distinctly whether he was present or not. In another question in his cross-examination, this witness has stated that he knew the appellant. To my mind, when a person knows the other person, it is not possible that he was not able to recognize the person who had come in his room. Hence, on the basis of this evidence, it is not proper to say that appellant was present at the time of occurrence.

8. PW-2 Sh.P.K.Lahri has stated that on 27/5/80, he alongwith Sh.N.G.Datta Gupta was sitting in the office of Sh.Uday Veer Singh and were discussing when security guard S.K.Bera, S.N.Bhuyan, R.A.Khan, Ramesh Chand alongwith 25 to 30 personnels; S.Krishnan, A.L.George, C.R.Purohit, S.C.Singh rushed inside the office of Sh.Uday Veer Singh shouting slogans but the statement of this witness cannot be relied upon because of the reason that he was not the witness who have been mentioned in the list of witnesses prepared at the time of framing the charge. Moreover, his statement is not corroborated by Sh.T.K.Mandal, Pw-3 in the enquiry and Sh.K.K.Niranjan PW-4.

9. PW-3 Sh.P.K.Mandal has not mentioned the name of the appellant who had entered into the room of the Commandant at the time of occurrence. He has stated that S.C.Singh, S.D.Pandey, S.Rama Kumar, A.L.George and R.A.Khan and C.R.Purohit had entered in the chamber. In the cross-examination, this witness has specifically denied that he has not seen the appellant personally. When this witness was further asked in cross-examination whether he has seen this witness doing anything as an active participation in the Gherao? Then he again replied in the negative.

10. Coming to the examination of PW4, S.I., K.K.Niranjan; he has also stated that S.C.Singh, Niranjan Singh, Ramakrishnan, A.N.Malik. C.R.Purohit and A.L.George had entered in the Commandant's office. This witness has not even stated in his examination in chief that present appellant was present amongst the persons who

have entered the Commandant's office. In his cross-examination he had said that he had seen the appellant outside the office alongwith other participants of Gherao. He has further stated that appellant was not doing anything and was simply present and was not doing any active part.

11. It has come in the evidence that some list was prepared though it has never been brought on record. PW4 has stated that he has prepared the list of personnels who have participated in the Gherao. He has further stated that he has prepared the list and handed over the same to the Commandant. The said list was never produced in the evidence for the reasons best known to the respondent, the said list could have been the best piece of evidence to show that the appellant was present on the spot and that his name was mentioned in the list. In the absence of producing that list it can be presumed that even the name of the appellant was not mentioned in the said list. In the cross-examination, the witness was asked the question that can you produce any documentary proof regarding general diary, special report, a copy of the list of participants in Gherao; to which his answer was no. However, Ld.Civil Judge has wrongly observed at page 10 of the judgment that "During the course of enquiry, no question was asked by the appellant/plaintiff either from PW1 or PW4 regarding as to why such list was not produced despite the fact that he was given the opportunity to cross-examine the witness". Hence, it cannot be said that no question regarding producing of the list was not asked by the appellant. The PWs could not produce the list despite the fact that they were asked about the same rather PW Niranjana Singh has even mentioned in his examination in chief that he has handed over the said list to the Commandant. It was for the respondent to produce that list to show the presence of the appellant. An adverse inference is drawn against the respondent for non-producing the said list. About the presence of the appellant PW-3 has stated that he did not see these personnels personally, but he came to know from the list submitted to commandant. Considering the statement of this PW, the list becomes all the more important. It is also pertinent to mention here that this witness has not seen the appellant on the spot personally.

12. The enquiry officer has not properly appreciated the evidence, though he has mentioned in his

report that PWs have not seen the appellant in the chamber and PW-1 could not distinctly recognize him as the member of the Gherao, yet enquiry officer has not given any reason of discarding the testimony of the witnesses who have clearly stated that the appellant was not present and has given perverse finding. There is no other circumstantial evidence on record to show the presence of the appellant at the spot. Enquiry officer has wrongly reached to the conclusion that the deposition of PWs and circumstantial evidence on the record proves beyond doubt, that security guard number 7637327, Ramesh Chand took a leading part alongwith other CISF personnels and wrongly confined complainant Uday Veer Singh, I.P.S. Commandant. The enquiry officer, without any evidence on record, had mentioned in its enquiry report that it has been clearly established by the corroborated statement of the PWs that delinquent security guard Ramesh Chand was one of the active participants and took a leading role in the abovesaid Gherao.

13. Now coming to the sub-rule 9 of Rule 34 of Central Industrial Security Force Act, 1968, it says that disciplinary authority shall, if it is not an enquiring authority, referred to above, considered the record of enquiry and record its finding on each charge. In the present case, the disciplinary authority, who was commandant in this case, has passed one line order saying "whereas the charge is proved by the enquiry officer beyond doubt." It is pertinent to mention here that disciplinary authority shall have considered the record and evidence recorded in the inquiry independently and should have recorded its finding whereas from the perusal of the order dated 28/11/81, it is revealed that the said order was passed mechanically without applying its mind and it is a non-speaking order. Even Hon'ble Karnataka High Court in case, namely, B.K. Appaiah Vs. Union of India and others, 1999 LAB. I.C. 2287 has held that Section 34 of the Central Industrial Security Force Act should be strictly complied with. The dismissal of the delinquent officer was quashed in that case.

14. In another recent judgment reported as Joginder Nath Bagdae Vs State of Maharashtra and others, Hon'ble Supreme Court has observed that though the court cannot sit in appeal over the findings recorded by the disciplinary authority or enquiry officer in the departmental enquiry, yet, it does not mean that in no circumstances can the court

interfere with the order. It was further observed that court can interfere with the findings recorded if there was no evidence in support of the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

15. Now looking to the case in hand the enquiry officer has recorded its findings which are totally perverse and there is no evidence in support of the findings. No PW has clearly stated that the appellant was present at the time of occurrence or he was participating in the Gherao. Even complainant PW-1 could not identify him as the member of the personnels who had come and Gherao him inside his chamber. Basing on this evidence, the findings against the appellant would not be justified at all. Therefore, the impugned order dated 28/2/1993 is liable to be set aside. I, therefore, set aside the order dated 28/2/93 dismissing the suit of the appellant passed by commandant and the order of the appellate authority dated 21/7/1982. The appellant be treated in service. He shall also be entitled to all the consequential reliefs with cost throughout."

3. This is the second appellate Court. After the appeal was admitted the following substantial question of law was formulated.

It reads as follows:

"Whether the Civil Court can sit in review over disciplinary proceedings and re-appreciate the material on record to come to an independent conclusion."

The question of limitation was also left open to be decided along with the appeal.

4. CM No.148/2002 (u/S 5 of Limitation Act)

Before adverting to the merits of the case, it is necessary to deal with the application seeking condonation of delay. The delay is of one or two days as has been specified in the para 4 of the application. The reason stated is because the departmental enquiry records were misplaced and untraceable, the movement of the file could not take place in the department; it took considerable time in tracing out the records. This is the reason given for the

delay of one or two days as has been mentioned therein. The application has been supported by the affidavit of Pratap Singh , Assistant Inspector General, CISF.

Reply to the said application has been perused.

The reply is merely on the merits of the controversy between the parties and has not answered the averments and the reasons given for the delay in preferring this appeal belatedly.

Be that at it may, in view of the explanation given by the department and the delay being minimal i.e. one or two days only, in the interest of justice and to advance substantial justice and to rule out technicalities, the delay of two days in filing the appeal is condoned. Application is disposed of.

5. Arguments have been addressed on the merits of the case.

On behalf of the appellant, it has been urged that this Court cannot sit in appeal and cannot re-appreciate evidence which has been led before the enquiry officer. This is not within the domain of Civil Court. Counsel for the appellant has placed reliance upon a judgment reported in AIR 1995 SC 561 Government of Tamil Nadu & Anr. Vs. A. Rajapandian. to support this submission. It is pointed out that the standard of proof required in a disciplinary proceedings which is not criminal proceedings is only of preponderance of probabilities and not proof beyond doubt. For the same proposition reliance has also been placed upon (1998) 2 SCC 394 Commissioner and Secretary to the Govt. & Ors. Vs. C. Shanmugam. It is pointed out that the technical rules of evidence have no application to disciplinary proceedings; judicial review is not an appeal from a decision of the Tribunal; it is only meant to ensure that the delinquent official has received a fair treatment

and not to ensure that the conclusion which the authority has reached is necessarily correct in the view of the Court.

6. Arguments have been countered by the learned counsel for the respondent. It is pointed out that the impugned judgment suffers from no infirmity. Wherever the findings in the enquiry proceedings are perverse the same can be set aside by a Court of competent jurisdiction and this has been held by Supreme Court time and again. Reliance has been placed upon (1999) 2 SCC 10 Kuldeep Singh Vs. Commissioner of Police & Ors. to substantiate this submission. For the same proposition reliance has also been placed upon AIR 1999 SC 3734 Yoginath D. Bagde Vs. State of Maharashtra & Anr. Reliance has also been placed upon (2008) 12 SCC 331 Man Singh Vs. State of Haryana & Ors. It is pointed out that the Supreme Court has time and again reiterated that wherever the State action, whether legislative, quasi-judicial or administrative is arbitrary or unfair, it can become the subject matter of a judicial review as it is opposed to the concept of fairness which in turn is a facet of equality and against the principles enshrined in the Article 14 of the Constitution.

7. Record has been perused.

8. PW-1 is Udey Veer, the complainant. He has deposed about the entire incident; i.e. a gherao as been taken place and he has been wrongly confined by various members of his unit; he has deposed that he was new in the unit at that time; he does not recognize most the miscreants. To a specific question put to him he had stated that he does not remember distinctly whether the delinquent Ramesh Chand was present at the spot or not. PW-2 P.K.Lehri, Assistant Commandant is the person who had also been

confined along with PW-1 in the room. His evidence is incriminating; he has categorically stated that at that time on 27.5.1980 between 1030 hours and 1040 hours when he was sitting in the office with the Commandant Udey Veer SG S.K.Bera, SG SN Bhuyam, SG R.A. Khan and SG Ramesh Chand along with 25 to 30 CISF personnel of whom most were wearing CISF uniform had rushed inside the office of PW-1 shouting slogans; the office was jam packed and they were perspiring; he categorically stated in his cross-examination that Ramesh Chand was present and he had had a good opportunity to see him. PW-3 T.K.Mondal in his cross-examination has stated that he did not see the delinquent person at that time. PW-4 has deposed that various persons were present at the spot but he did not name Ramesh Chand; he has stated that he had prepared the list of persons at the spot on the asking of PW-1; admittedly that list had not been produced. In his cross-examination, he has stated that he had seen the delinquent i.e. Ramesh Chand along with other participants in the gherao; he was in the hall.

9. The vehement contention of the learned counsel for the respondent that this is a case of no evidence and the enquiry officer holding the delinquent guilty is a perverse finding, is misunderstood. The law is well settled. Enquiry proceedings do not have to strictly abide by the strict rules of evidence; enquiry has to be seen to have been held; the question of the adequacy or reliability of the evidence, however, cannot be canvassed. This has been held by Supreme Court in the case of Government of Tamil Nadu & Anr. (supra). In Commissioner and Secretary to the Govt. (supra) the Supreme Court had posed a question to itself:

“Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved?”

The answer was in the negative. The relevant extract of the finding of the Supreme Court in this context reads as follows:

“The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by the Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re appreciate the evidence and would (sic) come to its own conclusions on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on no evidence on record and supports the finding or whether the conclusion is based on evidence.”

10. It is in this background that the evidence adduced before the enquiry officer has to be adjudged. There is no doubt that PW-1 has not strictly identified the delinquent at the spot; he being new, he was not sure about his presence at the spot. PW-3 has not named him; PW4 has stated that Ramesh Chand was present in the gherao in the hall. The argument of the appellant that the gherao had taken place in the room and not in the hall, is a mis-

appreciated argument; PW-3 in the later part of his version clearly stated that he had seen Ramesh Chand at the time of the gherao. PW-4 had made a list of the persons present in the gherao but this list was not produced. This does not mar the otherwise cogent oral versions of the other PWs including PW-2. PW-2 has stuck to his stand; he was also victim along with PW-1.

11. This is not a case of no evidence. Enquiry officer has adjudged the evidence and arrived at a finding which was well reasoned. Impugned judgment has unnecessarily interfered with the said findings; it was arbitrary and unfair. The impugned judgment has travelled much beyond its domain; it was not within the domain of the Appellate Court to re-appreciate and re-examine the testimony of each and every word and sentence spoken by each witness and then come to a conclusion by choosing to pick words and phrases from here and there; testimony of the witnesses has to be read as a whole. Even if PW-2 was not cited in the original list of witnesses, yet it is not disputed before this Court that he i.e. PW-2 was a victim along with PW-1 and was an eyewitness. His testimony was not assailed.

12. There is also no violation of the provisions of Section 34(9) of the Central Industrial Security Force Act, 1968 (hereinafter referred to as "the Act"); it reads as follows.

"(9) The disciplinary authority shall, if it is not the Inquiring Authority referred to above, consider the record of the inquiry and record its finding on each charge."

13. The order of the Disciplinary Authority reads as follows:

"No.7637327 Security Guard Ramesh Chand of CISF Unit MAPP, Kalpakkam was charged under Rule 34 of CISF Rules, 1969 for grave misconduct and gross indiscipline in that he alongwith many other members of the Force wrongfully confined the

Commandant, CISF Unit, MAMC, Asstt. Commandant, MAMC and Asstt. Commandant, BOGL on 27-5-80 in the office chamber of the Commandant, CISF Unit, MAMC, Durgapur in order to wrongfully force the Commandant to withdraw the suspension orders on three members of the Force belonging to CISF Unit, MAMC, Durgapur.

He acknowledged receipt of the charge memo on 31-10-80 and submitted explanation on 28-11-80 in which he denied the charge. Hence Inspector Charanjit Singh of CISF was appointed as Enquiry Officer on 20th Nov'80 to enquire into the charge framed against SG Ramesh Chand. After careful examination of four prosecution witnesses the Enquiry Officer held Ramesh Chand guilty of the charge and submitted the enquiry proceedings to the undersigned on 24th Sept.'81. Therefore, a show cause notice proposing the punishment of dismissal from service was served to SG Ramesh Chand on 3-10-81 alongwith a copy of the minutes of Enquiry Officer. SG Ramesh Chand submitted further representation on 9-10-81 on the proposed punishment. In the further representation he has not brought out any fresh points for consideration. He stated that he did not take part in the above wrongful confinement and he was the Jeep Driver of Asstt. Commandant. CISF, MAMC, Durgapur, whereas the charge is proved by the Enquiry Officer beyond doubt.

In an uniformed force like CISF the action of the delinquent in joining with other members and wrongfully confining superior officers like Commandant and Asstt. Commandants and wrongfully forcing the Commandant to do a wrong thing like withdrawing suspension orders of some ones under duress is a very serious misdemeanor and such a person can have no place in this organization. I, therefore, considered him not fit to be retained in a disciplined Force like CISF. The proposed punishment is hereby confirmed and No.7637327 Security Guard Ramesh Chang is dismissed from service with effect from the date of service of this order."

It is dated 28.11.1981. The Disciplinary Authority had examined the allegations levelled against delinquent official and after going through the record had returned a finding endorsing the order of the Enquiry Officer. There is no perversity and no violation of the aforementioned Rule.

14. This is a fit case where the appeal has to be allowed. The impugned judgment is set aside. Suit of the plaintiff Ramesh Chand is dismissed.

INDERMEET KAUR, J.

NOVEMBER 23, 2010
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