

**IN THE HIGH COURT OF DELHI**

**Writ Petition (Civil) No. 3317/2002**

**Date of decision: 20<sup>th</sup> September, 2010**

MUKESH SINGH ..... Petitioner  
Through Mr. Vishwendra Verma, Adv.

versus

INSPECTOR GENERAL CISF & ORS .... Respondent  
Through Ms. Raman Oberoi, Adv.

CORAM:

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE J.R. MIDHA**

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

**GITA MITTAL, J(Oral)**

1. This writ petition has been filed by the petitioner assailing the order dated 29<sup>th</sup> March, 2000 of the disciplinary authority; 26<sup>th</sup> December, 2000 by the appellate authority and the order dated 29<sup>th</sup> June, 2001 passed by the revisional authority dismissing the petitioner's revision assailing the previous orders.

2. With regard to an alleged incident which occurred on 13<sup>th</sup> December, 1999 in the lines to which the petitioner was assigned, disciplinary proceedings were conducted against the petitioner pursuant to a charge sheet dated 4<sup>th</sup> January, 2000 on the following charges :-

“ CHARGE-I

The Force No. 864480374 Const. Mukesh Singh on 13.12.99 at about 19.30 hours indulged in abusing under intoxication of liquor in the line. To indulge in such act as a member of the Force shown gross indiscipline, misconduct and disobedience of orders of higher officers. Hence this charge.

CHARGE-II

On 13.12.99 Force No. 864480374 Const. Mukesh Singh under intoxication of Liquor attacked on HC/GD B.R. Singh and Constable S.S. Sharma, because of which they received injuries. An attack on other force members under intoxication of liquor by a member of an armed force shows gross indiscipline and misconduct and tarnishes the image of the Force. Hence the charge.

CHARGE-III

Force No. 864480374 Const. Mukesh Singh inspite of being member of an armed Force has been punished with 10 punishments (Major and small) for different acts of indiscipline, disobedience of orders, misconduct and misbehavior, which shows that he is habitual of committing acts of indiscipline, disobedience of orders, misconduct and misbehavior.”

3. The petitioner submitted a reply dated 19<sup>th</sup> January, 2000 inter alia admitting the fact that he had consumed alcohol, though disputing its effect. Also an incident of abuse was admitted explaining that he was generally abusing his relatives and not members of the force. The petitioner also attempted

to portray a different picture of the incident of dispute and scuffle on the same date. The copy of the reply which has been placed before us would show that the petitioner admits that there was a scuffle in which other personnel including Constable S.S. Sharma and Head Constable D.R. Singh were involved and had also got injured. A grievance was made therein by the petitioner that on account of unwarranted force being used in this incident against him, he suffered injuries which were recorded by the doctor who had medically examined him on the same date.

4. The respondents found the reply of the petitioner dated 19<sup>th</sup> January, 2000 unsatisfactory and proceeded to conduct a detailed inquiry. During the course of this inquiry, evidence of six witnesses was recorded which included the testimony of Constable S.S. Sharma as PW-IV and HC D.R. Singh as PW-VI.

5. The inquiry officer has also recorded statements of Inspector Nawab singh as PW-I and HC Rajbir Singh as PW-III who had reached the spot witnessed the injuries suffered by the persons involved in the incident and had intervened in the matter and also taken further action at the same time.

PW-I Inspector Nawab Singh also accompanied these persons to the doctor for medical examination and has stated that the petitioner misbehaved with him and threatened him

even while being escorted to the hospital.

6. This incident allegedly took place around 7.30 in the evening of 13<sup>th</sup> December, 2000 while the medical examination took place at about 9.05 p.m. on the same date. Even at that time, the doctor has recorded that the petitioner's pupils were in a semi dilated condition at the time of the examination; his speech was slurred, his gait was wide and there was smell of alcohol coming from of his breath. In the doctor's opinion the petitioner had consumed alcohol and even at the time of the examination was mildly intoxicated. The doctor had also examined the three injuries on the petitioner's face which included a small contused swelling on the left side and lower eyelid of his face, red contusions on the back of his chin and a small cut on his lower lip and opined that injuries were fresh and of simple nature caused by a hard blunt object.

7. PW-I had also requested for a medical of HC D.R. Singh and Constable S.S. Sharma at the same time which have also been placed before the inquiry officer. HC D.R. Singh was found to have also suffered simple injuries which included a lacerated wound on the scalp deep in the left side forehead and above the left eyebrow which was bleeding and a contused swelling on his right index finger.

8. So far as Constable S.S. Sharma is concerned he was

found with suffered swelling on the bridge of his nose with clotted blood on his nostril.

9. It is to be noted that the petitioner was given opportunity to cross examine the witnesses. We also find from the original record which has been produced before us that the petitioner duly received copies of the statements of all witnesses.

10. On completion of the evidence of the prosecution, on 10<sup>th</sup> February, 2000, the petitioner was called by the inquiry officer as to whether he want to lead any defence but he refused to do so. In answer to the questions of the inquiry officer, the petitioner had admitted consumption of alcohol; that no relatives were present when he was so abusing and the presence of two other persons who were injured in this incident. The petitioner also admitted that PW V Constable Ashok Kumar Singh had intervened and separated the petitioner and HC D.R. Singh.

11. The inquiry officer had considered the evidence and had submitted an inquiry report dated 20<sup>th</sup> February, 2000 to the disciplinary authority.

12. The petitioner admits that a copy of the inquiry report was forwarded to him under cover of a communication dated 23<sup>rd</sup> February, 2000 to which he submitted a representation dated 9<sup>th</sup> of March, 2000.

13. A separate show cause notice of punishment dated 22<sup>nd</sup> March, 2000 was also issued to which the petitioner submitted representation dated 28<sup>th</sup> March, 2000.

14. Though the petitioner has failed to place a copy of the order dated 29<sup>th</sup> March, 2000 of the disciplinary authority after consideration of the petitioner's reply to the notice to show cause, we have carefully perused the same from the original record.

15. We find that the disciplinary authority arrived at a finding of guilt of the petitioner in respect of the two charges after a careful consideration of the entire evidence. The disciplinary authority has found that it was in evidence that the petitioner was levelling filthy abuses after consumption of liquor and that he had beaten PW-IV and VI when they had intervened. It was also found that there was no evidence at all with regard to any disputes in the petitioner's family nor any evidence of justification for abuse of relatives who were absent.

16. The order of the disciplinary authority also records that orders have been periodically issued which prohibited consumption of alcohol even in the lines and consequently there was no warrant for the petitioner to be consuming alcohol for any reason in the lines. The disciplinary authority had concluded that the conduct of the petitioner in consuming alcohol and

levelling abuse in the lines was an act of misconduct and gross indiscipline.

17. In this background, the disciplinary authority found that having regard to the nature of allegations in the incident in which the petitioner was involved as well as his past conduct, invited serious penalty and imposed the penalty of removal from service upon him.

18. We find that the appellate authority in its orders dated 26<sup>th</sup> December, 2000 and the revisional authority in the order dated 29<sup>th</sup> June, 2001 have reiterated the findings of the disciplinary authority on detailed considerations.

19. Before us, the petitioner has laid a challenge to these orders of the disciplinary authority as well as the appellate and revisional authority primarily on matters relating to factual aspects and details of the incident. It is well settled that the jurisdiction of this court while considering a challenge to disciplinary proceedings is restricted. It is equally well settled that so far as evaluation of evidence in respect of charges on which disciplinary proceedings have been conducted, the disciplinary authority is required to evaluate the material which is brought on record during an inquiry on principles of preponderance of probability. The matter is not to be tested on the touchstone of proof beyond reasonable doubt as applies to

criminal proceedings.

20. In the instant case, on the admitted facts, it is evident that the petitioner had consumed alcohol and was leveling abuses. The petitioner disputes the evidence which has come on record against him with regard to the persons to which he was abusing. There is categorical evidence of more than one witness who were admittedly injured in the incident and that they were beaten up by the petitioner. The entire case of the petitioner rests on the fact that he suffered certain simple injuries in the incident. In the given circumstances, and on a consideration of the entirety of the evidence which was placed before the disciplinary authority, it certainly cannot be held that when tested on the touchstone of preponderance of probability, the incident as was narrated by the prosecution witnesses did not occur. In any case, we are not persuaded to hold that even if the petitioner was leveling filthy abuses against his relatives in the lines, the same was proper or permissible. The petitioner also does not dispute the orders of the disciplinary authority whereby the personnel of the CISF have been prohibited from consumption of alcohol in the unit lines.

21. It has also been urged by learned counsel for the petitioner that there is no record of the exact abuses which were uttered by the petitioner. The perusal of the statements of the witnesses clearly reflects that there is ample indication with

regard to the nature of the abuse which was leveled by the petitioner. In any case, in the face of the petitioner's admission of the fact that he was uttering abuses under influence of alcohol, there is no substance in this contention.

22. So far as the challenge to the legality and propriety of the proceedings conducted against him on procedural grounds is concerned, the only ground for challenge which has been urged before us is premised on the contention that the petitioner was not furnished the relevant documents and it is urged that consequently, his evidence has been prejudiced and the inquiry proceedings ought to be held to be vitiated on grounds of violation of principles of natural justice.

23. The record would show that the respondents were not placing reliance on the record of the preliminary inquiry which has been conducted into the incident by the respondents. The respondents also placed no reliance on the statement of the witnesses which were recorded in such preliminary inquiry nor on the report of the preliminary inquiry. Despite this position, on a request made by the petitioner, copy of the statements of the witnesses recorded even in the preliminary inquiry has been furnished to him. In view of the fact that the respondents have not relied on the proceedings of such preliminary inquiry, we see no justification in vitiating the inquiry proceedings on grounds of

non-supply of any record relating to such preliminary inquiry.

24. Even otherwise, assuming that such an objection was to be sustained, it is well settled that the petitioner would be required to establish that he was prejudiced in his defence by non-supply of any documents during the inquiry proceedings. No such plea has been raised. There is also no material on record which could support such a plea.

No other ground of challenge is urged.

25. At this stage, learned counsel for the petitioner has urged that upon a comprehensive view of the matter, the punishment which has been imposed upon the petitioner is grossly disproportionate to the charges which have been leveled against him.

26. It has been noted in all the impugned orders and the available record would also show that the petitioner has been punished on ten occasions prior to the disciplinary proceedings which were conducted against him in the year 2000. Each time, the petitioner was furnished the details of misdemeanor and the acts which he was found to have conducted. This factor has weighed with the respondents while imposing the petitioner of removal from service.

27. Given the incident which took place on 13<sup>th</sup> December, 1999 and the admitted culpability of the petitioner therein, on a

consideration of the totality of the circumstances we are unable to hold that the lenient view deserves to be taken or that the punishment which was imposed upon the petitioner was disproportionate to the nature of allegations against him.

The challenge to the appellate order dated 26<sup>th</sup> December, 2000 and revisional order dated 29<sup>th</sup> June, 2001 on the same grounds is also unsustainable in view of the above discussion.

28. For all these reasons, we find no merit in this writ petition which is hereby dismissed.

**GITA MITTAL,J**

**J.R. MIDHA, J**

SEPTEMBER 20, 2010

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