

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

% Judgment Reserved on: 1st March, 2011
Judgment Delivered on: 4th March, 2011

+ **W.P.(C) 308/2008**

Shri Joginder Singh Petitioner
Through: Ms.Meenu Maini, Advocate.

Versus

UOI & ORS. Respondents
Through: Mr.J.K.Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Charge-sheet dated 14.8.2000 was served upon the petitioner alleging the following 3 misdemeanours:-

1. On 2.8.2000, when petitioner was undergoing refresher course in Com. No. 30, Moradabad, he was found absent in the parade in the evening without any information or authority.
2. On 2.8.2000, he along with constable Gulvir Tevtiya in the premises under the officer-in-charge of Moradabad, after drinking alcohol, suddenly attacked on the sleeping Asstt. Sub-Inspector Shri Rajender Pandey as a result of which is received injuries on body.
3. When Shri Basant Singh, Post Commander, Co. No. 25, Moradabad with staff went to the incident spot, RPF Line Across Line, Moradabad, then constable Gulvir Tevtiya, wearing 'pyjama' and naked on the upper side of the body and he were found in an intoxicated condition

on the nearby road. When efforts were made to send them to the RPF Post for the purpose of getting them medically examined, both of them did not come and misbehaved and used abusive language with Shri Basant Singh and brought slur on the image of the force at an open place.

2. Shri M.K.Chaturvedi, Company Commander of coy-29 Railway Protection Force (RPF) was detailed as the Inquiry Officer. Vide letter dated 16.08.2000 he informed the petitioner to appear before him on 21.08.2000 at RPF Coy-29, Hardoi. As per normal/usual procedure, the letter was sent to the company office to which the petitioner was attached i.e. RPF Company 25, Moradabad. The Post Commander of Coy-25 informed Inquiry Officer that the letter dated 16.08.2000 was duly received by the petitioner. The departmental inquiry was adjourned to 08.09.2000 as a result of the petitioner's non-appearance on 21.08.2000. A letter dated 01.09.2000 directing the petitioner to appear on 08.09.2000 was sent, to which the Post Commander, vide letter dated 04.09.2000, informed the Inquiry Officer that the petitioner was absent at Coy-25. Upon receipt of this information, efforts were made to search the petitioner in the company barracks and at his RPF quarter, but all in vain. The letters sent to his quarter were returned undelivered as the quarter was locked. Finally, on 06.09.2000, through ASI Raj Kumar a letter/notice was pasted on the door of petitioner's RPF quarter informing him about the next date of the departmental inquiry and requiring him to be present for the same. The petitioner did not appear on 08.09.2000, as a result of which the inquiry was once again adjourned to 14.09.2000 on which date also the petitioner did not appear. Thereupon the inquiry officer decided to proceed ex-parte against the petitioner.

3. 15 prosecution witnesses were examined to prove the charges against the petitioner and co-delinquent Gulbir Tewatia and 1 defence witness was examined by Gulbir Tewatia in his defence. The prosecution evidence was completed on 27.09.2000 with the testimony of PW-15 and the defence evidence was completed on 14.10.2000 with the examination of DW-1. Relevant it would be to mention that on 15.10.2000 the Inquiry Officer re-examined PW-1 Rajender Pandey and concluded the departmental inquiry.

4. On 17.10.2000 the petitioner appeared before the Inquiry Officer and explained his absence. He stated that he was under medical treatment from 02.08.2000 to 15.10.2000 and had informed about the same vide letter dated 30.09.2000. He filed an application requesting for supply of documents and an opportunity to cross-examine the witnesses examined ex-parte. The Inquiry Officer rejected his application and asked him to submit a written defence statement within 7 days from 17.10.2000.

5. On 24.10.2000 the petitioner submitted his written defence statement in reply to the charges and the evidence led at the inquiry. He admitted being absent at the evening parade of 02.08.2000 and gave reasons in justification of the absence. He stated that on 02.08.2000 he had gone to purchase a vest with sleeves which was urgently required for the fall-in at 16:00 hours and that on the way he had suddenly fallen sick. He immediately went to a private doctor for treatment where he was kept under special supervision till 19.08.2000. On 20.08.2000 he returned to RPF Coy-25 where the Post Commander informed him about his suspension. That on the same day at his RPF quarter at Moradabad he met his father who on seeing his deteriorating health condition took

him home where he was under treatment by a private doctor till 15.10.2000. In regards to the 2nd and 3rd charge he requested to provide him an opportunity to cross-examine the prosecution witnesses and produce defence witnesses to support his defence/case.

6. In view of the evidence led at the departmental inquiry and the written defence statement of the petitioner, the Inquiry Officer submitted his report dated 29.10.2000 holding the 1st and the 3rd charge as proved/established against the petitioner and the 2nd charge as not proved. The said report was submitted to the Disciplinary Authority for further action.

7. The petitioner was called upon to submit a reply to the inquiry report, copy whereof was supplied to him. On 22.11.2000 the petitioner submitted his reply to the Disciplinary Authority. After perusing the inquiry report dated 29.10.2000, the correspondence between the petitioner and the inquiry officer dated 17.10.2000, the written defence statement dated 24.10.2000 and the representation dated 22.11.2000, the Disciplinary Authority vide order dated 24.11.2000 imposed a penalty of dismissal from service upon the petitioner.

8. The petitioner filed an appeal against the order of dismissing him from service which was rejected vide order dated 29.05.2001. A Review Petition filed before the Director General was rejected vide order dated 17.10.2002. And needless to state we have before us the instant writ petition where the petitioner challenges the order dated 24.11.2000, the Appellate Order dated 29.05.2001 and the Review Order dated 17.10.2002.

9. Relevant would it be to mention that the complainant SI Rajender Pandey also lodged an FIR against the petitioner

bearing No. 388/2000, upon the facts stated in the 2nd charge hereinabove. Vide Judgment and Order dated 14.10.2005 the petitioner was acquitted of all charges in the criminal trial held in pursuance of the FIR.

10. We note that at the departmental inquiry, vide order dated 24.11.2000, the petitioner has been held guilty of the 1st and 3rd charge, for which the penalty of dismissal from service has been imposed. The 2nd charge, which relates to the allegation of physical assault on SI Rajender Pandey has been held to be not proved. Thus, we shall look into evidence brought on record in regards to the 1st and the 3rd charge alone.

11. The 1st charge relates to the petitioner being absent without intimation, at the time of the evening parade of refresher course staff on 02.08.2000. The said charge was sought to be established through the testimony of Havaldar R.P.Singh PW-6 who deposed that as per the Roznamcha Register of attendance of refresher course staff, the petitioner was marked as absent at the attendance taken on 17:05 hours on 02.08.2000. Moreover, the petitioner in his written defence statement admits being absent at the given time but submits a justification for the absence.

12. In the 3rd charge it was alleged that on 02.08.2000 the petitioner in a drunken condition disobeyed orders and using abusive language misbehaved in a manner disgraceful for the public image of the force. The said charge was sought to be established through the testimony of HC Sharad Prasad PW-2, Ct.Brijesh Kumar PW-3, HC Brij Kumar Tripathi PW-4 and Post Commander, Basant Singh PW-15.

13. Post Commander Basant Singh PW-15 deposed that on 02.08.2000 at about 19:00 hours SI Rajender Pandey

approached him in an injured condition and made a complaint against the petitioner and Ct.Gulvir Tevatiya that the two had physically assaulted him i.e. SI Rajender Pandey. That he along with HC Sharad Prasad, Ct.Brijesh Kumar and HC Brij Kumar Tripathi left in search of the accused and on reaching RPF Lines, Line Par they found the petitioner and co-delinquent Gulvir Tevatiya lying on the road in drunken condition. He then directed the two accused to proceed for a medical examination to which they refused and started misbehaving and abusing the staff members who had accompanied him. That they were abusing in the name of mother and sister. Because of the embarrassing behaviour of the 2 accused they were left at the spot and the party returned to company office.

14. Ct.Brijesh Kumar, PW-3 and HC Brij Kumar Tripathi, PW-4 deposed in sync with PW-15 and only differed on the point that the abuses hurled by the petitioner and co-accused were not aimed at the staff but at the Post Commander (PW-15). PW-4 additionally stated that the petitioner while hurling expletives had held on to the collar of the Post Commander.

15. HC Sharad Prasad PW-2 corroborated PW-15, PW-3 and PW-4 and deposed that the petitioner and the co-accused were found near the eastern edge of the barracks in a drunken condition. That the two accused disobeyed orders of the Post Commander directing them to go to the company office and they abused and misbehaved with the Post Commander. In his cross-examination by co-accused Gulvir Tevatiya, he stated/clarified that the two accused were not using expletives or manhandling anyone but were talking in very loud angry tones which as per the discipline required at a Security Force is a serious misconduct.

16. We note that the petitioner in his written defence statement dated 24.10.2000 has only taken one defence which is that he was under medical treatment from 02.08.2000 till 15.10.2000. He stated that on 02.08.2000 he had gone to the market to purchase a vest (*sando baniyan*) which was required for the evening roll call at 16:00 hours when he fell sick on the way and went to a private doctor, who kept him under medical supervision till 19.08.2000. That there was no railway phone at the doctor's premises because of which he could not give information about his treatment. He further stated that on 20.08.2000 he came to the company office where he was informed about his suspension. That on the same day he met his father at the RPF quarter and seeing his deteriorating health, his father took him home where he was treated by a private doctor till 15.10.2000.

17. Having said that, it is relevant to mention that the petitioner has not brought on record any medical certificate or bills to support his defence taken. Although he claims to have submitted medical certificate along with his defence statement but the learned counsel for the petitioner conceded that no such document has been produced before us.

18. Thus we note that in regards to both the charges, the defence taken by the petitioner is his medical treatment in relation to which he has produced no document. We note that a mere verbal submission in this regard would not suffice. Failure to produce medical documents weakens petitioner's defence and thus the 2 charges i.e. 1st and 3rd charge stands proved against the petitioner.

19. During arguments the learned counsel for the petitioner urged that the departmental inquiry was conducted in a perverse manner and was in contravention to the principles of

natural justice. The crux of the argument was that the petitioner was not given a reasonable opportunity to defend himself. It was urged that the inquiry was conducted ex-parte and 8 extraneous witnesses were examined by the prosecution who were not listed in the charge-sheet and that the petitioner was not given an opportunity to cross-examine either of them; that the letter dated 17.10.2000 and the written defence statement dated 24.10.2000 were not duly considered at the time of preparing the inquiry report.

20. We note that the petitioner voluntarily absented himself from the inquiry proceedings without any intimation. It is not in dispute that the charge-sheet was duly served upon the petitioner. Thus the petitioner was well aware of the charges levied upon him vide charge-sheet dated 14.08.2000 and had a reasonable apprehension of a departmental inquiry to be conducted against him. Despite such knowledge, the petitioner disappeared without any information. The departmental inquiry was adjourned twice on account of non-appearance of petitioner as a result of which commencement of the inquiry got delayed by 20 days. Efforts were made to inform the petitioner regarding the inquiry to the extent that a letter was pasted on the door of the RPF quarter of petitioner and letters dated 11.09.2000 and 16.09.2000 were sent at his home address through registered post. It was only after a reasonable wait and attempts to reach the petitioner that the inquiry was conducted ex-parte.

21. We note that it is a settled principle of law no man shall take advantage of his own wrong. The petitioner committed a wrong by absenting himself from the departmental inquiry and allowing him to cross-examine the prosecution witnesses at his leisure will be giving him an advantage of his own wrong. We

further note that the documents presented in his defence i.e. letters dated 17.10.2000 and defence statement dated 24.10.2000 have been duly reproduced and considered by the inquiry officer in the inquiry report. However, it is pertinent to mention that without medical certificates and proof of being medically unfit, these documents are of no value which is why petitioner's defence was disbelieved by the inquiry officer. We thus reject the submission of the petitioner.

22. We wondered at the submissions made by learned counsel for the petitioner that being acquitted at the criminal trial vide judgment and order dated 14.10.2005, the penalty imposed upon the petitioner is liable to be quashed for the reason for the same misdemeanour, on the same facts and through the same witnesses what was sought to be proved at the criminal trial failed and it would be absurd that for the same misdemeanour, on the same facts and through the same witnesses, conclusions arrived at by the inquiry officer should be accepted. It is apparent that learned counsel for the petitioner has not even bothered to read the report of the inquiry officer and the order dated 24.11.2000 passed by the Disciplinary Authority. Both have held that charge No.2, pertaining to the assault on ASI Rajender Pandey was not established. It was qua this assault that the petitioner was tried for having committed an offence punishable under Section 323 IPC and for which he was acquitted. Being absent from the evening parade and being found intoxicated and refusing to go for medical examination and misbehaviour with the Post Commander was not a subject matter of the criminal trial; these were the subject matter of charge No.1 and charge No.3.

23. We note that there is an inordinate delay in challenging the orders dated 24.11.2000, 29.5.2001 and the order dated 17.10.2002. The writ petition filed in the year 2008 is highly belated to challenge the said 3 orders. We highlight that petitioner has not been indicted at the departmental inquiry for having assaulted ASI Rajender Pandey and that ASI Rajender Pandey had lodged an FIR against the petitioner and he was acquitted therein vide judgment and order dated 14.10.2005 would make no difference for the reason said FIR pertained to the alleged assault on ASI Rajender Pandey. The report of the Inquiry Officer exonerated the petitioner of the second charge. The Disciplinary Authority accepted the said finding. Penalty levied upon the petitioner pertained to charge No.1 and charge No.3. Petitioner was not supposed much less required to await the decision at the criminal trial.
24. The writ petition is dismissed not only on account of delay and laches but even on merits.
25. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 04, 2010
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