

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: April 28, 2011
Judgment Delivered on: May 23, 2011

+ W.P.(C) 16550/2004

BIJOY GHOSH Petitioner
Through: Ms.Jyoti Singh, Sr.Advocate with
Mr.Satya Saharawat, Advocate

versus

UOI AND ORS Respondents
Through: Mr.Ravinder Agarwal, Advocate
with Mr.Nitish Gupta, 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. The petitioner, a Deputy Commandant with the Central Reserve Police Force was issued a Memorandum of charge dated 26.11.1999, listing one article of charge as under:-

“ARTICLE-I

Shri Bijoy Ghosh, DC while posted in 8 Bn. CRPF and functioning at Dett Hqr. Jagiroad (Assam) during 1998 was detailed to collect No.913183072 CT Raj Pal and CT Yogendra Singh of 8 Bn, CRPF on 22/08/98 from BH-III, CRPF, Guwahati committed an act of misconduct in that he failed to react effectively and promptly as such both the above CTs deserted on

22/08/98 from BH-III. Thus, said Shri Bijoy Ghosh, DC failed to maintain absolute devotion to duty and thereby violated the provisions contained in Rule 3(1)(II) of CCS (Conduct) Rules 1964.”

2. The backdrop facts of the case are that on 4.8.1998, 4 constables of CRPF which included Ct.Raj Pal and Ct.Yogender Singh assaulted the Coy Commander and ransacked the police station Morigaon, Assam. Taking cognizance of the incident the 4 constables were suspended. Pertaining to the acts of arson at the police station, inasmuch public property was destroyed, an FIR was registered at PS Morigaon and the local police was on the lookout for the 4 constables to interrogate them. Deserting the camp, on 10.8.2009 Ct.Raj Pal and Ct.Yoginder Singh got themselves admitted at the Base Hospital III information whereof was sent by the hospital authorities to the detachment headquarters. On 21.8.1998, PS Morigaon sent a communication to the detachment headquarter requiring the 4 constables, which included Ct.Raj Pal and Ct.Yoginder Singh, to be produced or handed over to the local police.

3. Evidenced from the charge, it is the case of the respondents that the petitioner, working as a Deputy Commandant, was detailed to take custody of Ct.Raj Pal and Ct.Yoginder Singh from the authorities at Base Hospital III so that the two could be handed over to the local police and that after petitioner was handed over custody of the two constables at the hospital, which he had visited on 22.8.1998 along with

an escort party, the two constables managed to flee and the petitioner failed to react effectively and promptly.

4. Petitioner responded to the Memorandum of Charge by submitting a statement of defence and needless to state he denied the charge.

5. This necessitated an Inquiry Officer to be appointed for recording evidence and submit a report and thus Comdt.Dhanna Ram was appointed as an Inquiry Officer vide order dated 10.1.2000. 5 prosecution witnesses and 1 defence witness were examined during inquiry and we note that the petitioner made a statement in defence before the Inquiry Officer. 6 documents were exhibited at the inquiry by the prosecution.

6. HC Aberdeen PW-1 deposed that he was a part of the escort party detailed for duty with the petitioner. On 22.8.1998 the escort party, accompanied by a protection party, headed by HC Basan Roy, in a 1 Ton vehicle, moved with the petitioner to Guwahati and the purpose of such movement was not known to him. That they arrived at the Base Hospital-III and he accompanied the petitioner to the main gate and there he was told by the petitioner that the purpose of the visit was to bring 2 constables who had deserted the Unit lines and had got themselves admitted at the hospital as they were going to be discharged. After a while the Chief Havaldar Major of the hospital came to enquire about 2 constables as they were not to be found which information he gave to the petitioner who was sitting in the Chamber of the Chief Medical Officer. Saying nothing the petitioner returned to the vehicle and gave orders

to check the bus-stand, civil buses and railway station for 2 constables but they could not be found.

7. On being questioned by the Inquiry Officer he stated that they had received instructions to move to Guwahati and that immediately on reaching the hospital the petitioner told him that the 2 constables have been discharged. That after 1-1½ hours he came to know that the 2 constables had absconded and he informed the same to the petitioner who gave no instructions to him at that time.

8. On being cross-examined by the petitioner he stated that no instructions were given to them before moving to the hospital and that the petitioner had informed him about the discharge of the 2 constables after 10-15 minutes of the party reaching the hospital and that they were not informed about the purpose of the movement to Guwahati.

9. HC Birender Singh PW-2 deposed that on 22.8.1998 he was on duty as the Chief Havaldar Major (CHM) at BH-III when at about 16:00 hours he was called by the CMO in her chamber where the petitioner and Dr.Sanjiv Chawdhry were also present and was told that the 2 constables, namely, Ct.Yogender Singh and Ct. Raj Pal were to be discharged and sent with the petitioner. He found the 2 constables standing in the veranda of the hospital, whom he took inside the chamber of CMO and left for preparing movement orders. He even informed the escort party waiting outside the gate about the discharge of the said constables. That after 5-10 minutes he went to enquire from the escort party whether the constables had arrived and was informed that the said constables had

gone to collect their personal belongings. He took a constable from the escort party and went in search of the 2 constables. When the 2 constables could not be found, he informed about the same to the CMO and the petitioner who was sitting in Dr.Chaudhry's chamber.

10. On being questioned by the Inquiry Officer he stated that he was directed by the CMO to keep a watch on the 2 constables till they were discharged.

11. On being cross-examined by the petitioner he stated that he was not aware that the 2 constables were fugitives. That he let the 2 constables out of his sight as he was busy preparing movement orders and also because he felt assured since he had informed the escort party about their discharge.

12. Dr.Sanjeev Chaudhry PW-3 deposed that he was the medical officer who treated the 2 constables at BH-III. That on 22.8.1998 the petitioner came to the hospital and enquired from him about the status of discharge of the 2 constables upon which he informed him that the constables would be discharged right away as discharge slips had already been issued to them. That upon the petitioner telling him that the 2 constables had to be handed over to the civil police he took back the discharge slips and accompanied by the petitioner went to the office of the CMO for further directions. The petitioner produced before the CMO a signal Ex.P-4 stating that the 2 constables were required to be handed over to the civil police upon which the CMO handed over fresh discharge slips to the constables in the presence of the petitioner and thereupon he i.e. Dr.Sanjeev Chaudhry left for his chamber. Soon thereafter the petitioner arrived at his chamber followed

by the Chief Havaladar Major and informed him that the 2 constables could not be found in the hospital campus. That Exhibits P-2, P-4 and P-5 which threw light on what he deposed and were in his knowledge were being produced by him.

13. On being questioned by the Inquiry Officer he stated that after perusing the signal shown by the petitioner the CMO issued discharge slips to the 2 constables and told the petitioner to take charge of the 2 constables and said that they are now in his custody. After returning from the CMO's chamber, he and the petitioner were having general conversation in his chamber when the CHM came to inform that the 2 constables were missing.

14. On being cross-examined by the petitioner he stated that personnel with weapons were not permitted inside the hospital premises and that after issue of discharge slips the petitioner was given complete responsibility of the 2 constables by the CMO. Relevant would it be to note that contents of Ex.P-6 i.e. the signal dated 23.8.1998 were put to PW-3 who stated that the said signal was made by the Administrative Authority of the hospital and thus he had no knowledge about the same.

15. HC Baban Rai PW-4 deposed that on 22.8.1998 at about 08:00 hours the petitioner told him to keep a protection party ready for going to Guwahati. At the BH-III, the petitioner informed him that 2 constables will be joining them who need to be accommodated in the 1 Ton vehicle. That after a while the petitioner returned and enquired about the 2 constables and on being informed that the said constables had not come out of the hospital the petitioner instructed them to conduct a

search to find them. Bus stands, civil buses and railway stations were searched but the constables could not be found.

16. On being questioned by the Inquiry Officer he stated that no movement order was given to them for going to Guwahati and said that they were verbally told about the same since as per practice no movement orders were issued for protection duty. That they had not received any information about the 2 constables being fugitives.

17. On being cross-examined by the petitioner he stated that he did not know about the purpose of their visit to Guwahati but only that the petitioner had told him to prepare to go to GC Guwahati.

18. Ex.Ct.Raj Pal PW-5 deposed that the petitioner used to come frequently to check on him and Ct.Yogender Singh at the hospital where they were admitted so as to take them back to the unit. On 22.8.1998 they were discharged by the hospital authorities and were handed over their medical documents. That on their way out they saw the petitioner along with CRPF personnel and civil police surrounding the hospital. In the meantime Dr.Chaudhry came and took back their medical documents on the pretext of correcting some mistakes. When all the officers had gone inside CMO's chamber, he enquired about the matter from Ct. Jeet Bahadur, a member of the protection party, who told him that an FIR had been lodged against them in which regard the party had come to take them. They were called in the CMO's chamber where all the officers including the petitioner were sitting and were told that they had to go with their officers who had come to take them. Their medical documents were returned and they were sent

out of the CMO's chamber and that fearing severe beating and arrest at the hand of the local police they escaped from the hospital and took a train home.

19. On being questioned by the Inquiry Officer he stated that he was handed over the discharge slip in the presence of the petitioner and that they had escaped from the side gate of the DIGP office.

20. On being cross-examined by the petitioner he stated that no instructions were given to them by the CHM of BH-III after their discharge and that they had escaped from the side gate as at the front gate CRPF personnel were stationed.

21. We may note here that inadvertently while recording testimony the questions put by the Inquiry Officer have been captioned as the questions put by the Presenting Officer to the witnesses, which obviously is incorrect for the reason the examination-in-chief of the witnesses was at the questions put by the Inquiry Officer.

22. We have noted herein above that 6 exhibits, Ex.P-1 to Ex.P-6 were proved during inquiry and we find only 2 of them being Ex.P-4 and Ex.P-6 being relevant and thus we note the same. Ex.P-4, which is a signal dated 22.8.1998 in the hand of the petitioner and given to BH-III i.e. the hospital authorities reads as under:-

“To: B.H.3 (B.H)

Fm: DCH 8

No.1 X-1/98

22/8 u/c

Ref ur Sig.No.M.III-8/98-EC-4 dtd. 17/8/98 vide which you have informed regarding admission of Ct.Raj Pal Singh and Ct.Yoginder Singh of this Unit at your B.H. on medical grounds. Now criminal case has been lodged by OC P.S.Morigaon and the above CTs have

been named in the FIR. As per directions of S.P.Morigaon the above individuals are required to be produced before OC P.S.Morigaon immediately and they may cause arrest of the individuals. It is requested that they may be discharged from B.H.3 for further handing over to civil police authorities. Necessary action may be taken to hand over the above persons to the collection party proceeding to your LOC today for above purpose.”

23. Ex.P-6 being the signal dated 23.8.1998 sent by CMO BH-III to the Dett.HQ records Ct.Raj Pal and Ct.Yogender Singh being discharged and handed over to the petitioner reads as under:-

“From medpol -3
No.m-III-8/98-EC.4
No. 1-x-98/dett.

U/c Patient Ct.Raj Pal Singh and Ct.Yogendra Singh of your unit admitted in this B.H.3 were discharged on 22/8/98. The discharge slip were handed over to both the CTs by the treating Dr.S.Chaudhary Medical Officer after they were produced in CMO chamber before the lamb Ghosh of your unit who had come to collect both the CTs with collection party and accordingly Pt.Ct. Raj Pal Singh and Ct.Yogendra Singh were handed over to Mr.Ghosh lamb of your unit.”

24. At the close of the prosecution evidence, the petitioner was given an opportunity to produce defence evidence and to make a statement in defence if he desired. Petitioner exercised his right to produce a witness in defence and make a statement in defence.

25. DC Rakesh Rao DW-1 deposed that on 21.8.1998 the 2-IC K.S.Cheema told him that an FIR had been lodged by the OC Police Station Morigaon against the 4 constables who had

assaulted the coy commander and for interrogation thereof Ct.Raj Pal and Ct.Yogender Singh who were admitted in the BH-III were to be produced before the civil police. The 2-IC asked him to be ready with a protection party to take the constables from the hospital and hand them over to the civil police but asked him to wait till he received information about the discharge of these 2 constables from the hospital. That no information was received about the discharge of these 2 constables and no orders were issued by the 2-IC for movement to Guwahati.

26. On being questioned by the Inquiry Officer he stated that no information was received regarding discharge of the 2 constables and that as per his knowledge no party was detailed to keep a watch on the 2 constables.

27. Relevant would it be to note that efforts were made to contact the 2-IC, Sh.K.S.Cheema to examine him as additional witness but he having retired did not respond and thus with the approval of the petitioner, the inquiry officer dropped him as a defence witness.

28. The petitioner made a statement in defence wherein he stated that he went to the base hospital of his own volition to enquire about the likely date of discharge of the 2 constables of his unit and actually Asstt.Comdt.Rakesh Rao had been detailed to bring the 2 constables. No prior information was given by the hospital to the detachment of the discharge of the 2 constables and that the 2 constables escaped due to the negligence of the hospital authorities.

29. Holding the charge proved against the petitioner, the inquiry officer submitted a report dated 14.8.2004. A copy of

the inquiry report was sent to the petitioner under cover of letter dated 9.10.2003 to submit a representation within 15 days. On receipt of petitioner's representation dated 28.11.2003 the Disciplinary Authority referred the matter to UPSC for its advice which was received under cover of letter dated 1.7.2004.

30. Taking into account the inquiry report, the representation by the petitioner and the advice by UPSC, the Disciplinary Authority, vide order dated 18.8.2004, returned a verdict of guilt qua the charge and imposed a penalty of reduction in pay by one stage from ₹12,275/- to ₹11,950/- in the time scale of pay to ₹10,000-15,200/- for a period of 3 years with effect from 1.9.2004 and with further bar on increments of pay during the period of such reduction.

31. Aggrieved by the said order and challenging the same the petitioner filed the present writ petition.

32. Notwithstanding the fact that the petitioner has a departmental remedy of appeal before the Appellate Authority and without exhausting the same the instant writ petition has been filed, but finding that the respondents have not predicated any stand with respect to the availability of an alternative remedy to the petitioner, arguments were advanced on the pleadings as laid.

33. Apart from various grounds urged in the writ petition, a contention was urged vide ground 'E' that as per CRPF Operational Handbook 1993, whenever somebody is deputed on an escort duty, a movement order has to be issued and in the reply filed a hazy stand was taken that since the petitioner was deputed to take custody of 2 constables who were

deserters and without saying anything more, probably leaving it for somebody to make sense of the nonsensical response, vide order dated 3.12.2009 the respondents were directed to file an additional affidavit clarifying their stand and in response an additional affidavit was filed stating therein that movement orders are issued to subordinate officers and when the Commandant or the Deputy Commandant is himself on an escort duty within the operational jurisdiction, no movement order is issued. An alternative submission was made that since the petitioner was the Commander of the Detachment HQ it was for him to have issued a movement order to himself and that the petitioner could take no advantage of the fact that no movement order was issued. In response the petitioner has filed a reply affidavit re-asserting that a movement order was required to be issued and denying that he was the Commander as pleaded that since there was a 2-IC i.e. K.S.Cheema above him, he had to issue the movement order and from the fact that none was issued, petitioner reasserted that it was apparent that he was never deputed to escort back the two deserters i.e. Ct.Raj Pal and Ct.Yogender Singh.

34. During arguments learned counsel for the petitioner and the respondent were not at variance that evidence establishes that Ct.Yogender Singh and Ct.Raj Pal were admitted at Base Hospital-III i.e. BH-III Guwahati and the two were wanted by the local police at PS Morigaon with respect to an incident of ransacking the police station on 4.8.1998 and that the two constables absconded from the hospital on 22.8.1998. That the petitioner had gone to BH-III on said date has been

admitted by the petitioner. The fact on which the parties are at variance is whether the petitioner took custody of the two force personnel on being deputed to do so and escort them back to the Unit so that the two could be handed over to the local police and for which the petitioner was deputed with an escort party and a protection party and was given a 1 Ton vehicle to do the needful or whether the 2 constables happened to abscond at a point of time when the petitioner happened to be at the Base Hospital to enquire about the likely date of the 2 being discharged.

35. We cut through the technicalities of debating on useless points which were argued by learned counsel for the petitioner with respect to whether a movement order was required to be issued to the petitioner as per the CRPF manual or whether as the Commander of the Unit the petitioner could move to do the needful without a movement order or the controversy whether K.S.Cheema 2-IC was present on the date in question and had to issue a movement order and whether non-existence of a movement order would mean that the petitioner was never deputed to take custody of the 2 constables and bring them to the Unit lines from BH-III for the reason men may lie but documents can never lie. The 2 exhibits, Ex.P-4 and Ex.P-6, contents whereof have been noted by us herein above have a story to tell, not to the winds, but to the trier of facts.

36. Ex.P-4 is a signal in the hand of the petitioner and contents thereof have been noted by us in para 22 above. The petitioner has written therein to BH-III in response to a signal dated 17.8.1998 received by the Unit from the hospital regarding admission of Ct.Raj Pal and Ct.Yogender in BH-III and

has required the hospital authorities to discharge the 2 constables and hand them over to the collecting party proceeding to the hospital on the date of the signal i.e. 22.8.1998. The petitioner has not explained a word about the signal which is in the hand of the petitioner. As noted herein above Dr.Sanjeev Chaudhry PW-3 has categorically deposed that the petitioner had handed over the signal Ex.P-4 to the Chief Medical Officer. Interestingly, in the writ petition, in para 11 of the writ petition has pleaded that on the asking of the hospital authorities he gave a hand-written signal but pleads that before he had reached the hospital the two had already been discharged and he issued the signal so that they could be re-admitted in the hospital and handed over to the collection party.

37. We need not debate on the version given by the petitioner of the circumstance under which he handed over Ex.P-4 to the hospital authorities for the reason the controversy raised was whether the petitioner was deputed to the hospital and was accompanied by a collection party to bring the 2 constables to the Unit. The exhibit proves that the petitioner was visiting the hospital in connection with the discharge of the 2 constables from the base hospital and to bring them back to the Unit and thus it hardly matters whether formal orders to this effect were issued or not. It may be that a superior officer committed a procedural irregularity in directing the petitioner verbally to move to Base Hospital-III and escort back the 2 deserting police constables after securing their discharge from the hospital. But the fact of the matter would remain that the petitioner did visit the hospital

along with an escort party and a protection party with the purpose of the visit being to seek the discharge and taking over custody of the 2 deserters and bring them to the Unit lines for being handed over to the local police.

38. Second contention urged was that from the testimony of HC Birender Singh and that of Dr.Sanjeev Chaudhry it is apparent that the 2 constables had been discharged before he reached the hospital and that the custody of the 2 was never entrusted to the petitioner and that the petitioner completed a codal formality when he handed over Ex.P-4 to the Chief Medical Officer.

39. A close perusal of the testimony of HC Birender Singh and that of Dr.Sanjeev Chaudhry would reveal that the 2 constables had been discharged before the petitioner reached the hospital but had not left the hospital compound and when petitioner told Dr.Sanjeev Chaudhry the purpose of their visit, Dr.Sanjeev Chaudhry took back the discharge slips from the 2 constables and went to the office of the CMO for further directions/orders and that the Chief Medical Officer prepared fresh discharge slips and handed over the same to the 2 constables in the presence of the petitioner and at that point of time Dr.Sanjeev Chaudhry left the chamber of the Chief Medical Officer. The evidence shows that both constables were in the presence of the petitioner in the room of the Chief Medical Officer when, after taking back the discharge slips issued to the 2 constables, fresh discharge slips were issued after the signal Ex.P-4 was received by the Chief Medical Officer. It is apparent that the 2 constables were placed in the custody of the petitioner. HC Birender Singh has also said that

when he left to prepare the movement orders, he had left the 2 constables in the chamber of the Chief Medical Officer. He took the precaution of informing the escort party waiting outside the gate that the 2 constables will be discharged.

40. From the testimony of Dr.Sanjeev Chaudhry, with reference to his cross-examination it has surfaced that personnel with weapons were not permitted inside the hospital premises and since the escort party was armed, it was apparent that the escort party could not enter inside the hospital premises. Thus, keeping in view the fact that Ct.Raj Pal and Ct.Yogender Singh were not only deserters but were also wanted by the local police for interrogation and the 2 deserted and got themselves admitted at the hospital to obviously avoid being arrested there was an apprehension, if not a real danger, of the 2 slipping away and thus it was expected that the petitioner would be vigilant in ensuring that the security personnel formally deputed at the Base Hospital-III should have been told to be vigilant and for which it was his duty to have taken precaution that CHM Birender Singh on duty at BH-III should have either secured the 2 constables on their being discharged till the escort party took their formal custody outside the gate of BH-III or the petitioner himself did so. Alternatively, the best thing which the petitioner could have done was to have taken 2 constables who were a part of the escort party and the protection party to accompany him leaving their arms with their fellow force personnel, for the reason the rules of the hospital prohibited anyone to carry arms inside and not that force personnel who were unarmed could not enter the hospital.

41. A technical plea was urged that the mandate of sub-rule 18 of Rule 14 of the CCS (CCA) Rules 1965 was breached by the Inquiry Officer inasmuch as the inquiry was conducted under the said rules and the Inquiry Officer was obliged to examine the petitioner on the incriminating circumstances found against him.

42. The Rule requires that if the government servant has not examined himself, the Inquiring Authority shall generally question him on the circumstances appearing against him in the evidence for the purposes of enabling the Government servant to explain any circumstances appearing in the evidence against him.

43. We have noted herein above that after prosecution led evidence the petitioner not only examined 1 defence witness but even made a statement in defence and thus it is apparent that the petitioner had examined himself and in any case by availing the opportunity to make a defence statement was given an opportunity to explain the incriminating circumstances which emerged against him. The question of sub-rule 18 of Rule 14 being violated does not arise. That apart, as opined in the decision reported as AIR 1980 SC 1170 Sunil Kumar Banerjee vs. State of West Bengal & Ors. wherein Rule 8(19) of All India Services (Discipline & Appeal) Rules 1969, pari materia with Rule 14(18) of the CCS (CCA) Rules 1965 was considered, it was opined that unless prejudice caused was shown by not putting the incriminating circumstances appearing at the evidence against a Charged Officer, the Charged Officer could get no benefit if he was not examined with respect to the incriminating circumstances

appearing against him. That apart, as per the decision reported as (1996) 3 SCC 364 State Bank of Patiala & Ors. vs. S.K.Sharma, the theory of substantial compliance was read to mean that if there was substantial compliance with the procedures of the law at a departmental inquiry and no prejudice was manifestly shown to have been caused by a departure being made from a rule or procedure, the inquiry report would not be vitiated.

44. It is apparent that the petitioner was remiss in his duty. The charge fully stands established and being a case of negligence on the part of the petitioner we find that the penalty levied is reduction in the time-scale of pay by 1 stage for a period of 3 years but such reduction shall not have the effect of postponing the future increments. It cannot be said that the penalty levied is disproportionate to the gravity of the offence and thus we dismiss the writ petition but refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 23, 2011
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