

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 25th May, 2011
Judgment delivered on : 30th May, 2011

+ W.P.(C) 1275/2011

G.SEENIVASAGAM Petitioner
Through: Mr.G.Sivabalamurgugan, Advocate
with Mr.Anis Moha, Advocate
versus

INSPECTOR GENERAL AND ORS Respondents
Through: Mr.Parikshit Singh Shekhawat
Advocate for Mr.B.V.Niren.

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. Petitioner, G.Seenivasagam was enrolled as constable with CRPF on 17.12.1992. On 29.05.2001 a charge memo was issued to him listing 3 articles of charge against him as under:-

"ARTICLE-I

"That the said No.920420548 Ct/GD G.Seenivasagam of E/61 Bn. CRPF while functioning as Ct/GD committed an act of misconduct in his capacity as member of the Force U/S 11 (1) of CRPF Act, 1949 in that he had beaten and abused No.680450474 SI Daya Chand of his Coy on 17.10.2000 which is prejudicial to the good order and discipline of the Force."

ARTICLE-II

"That the said No.920420548 Ct/GD G.Seenivasagam of E/61 Bn. CRPF while functioning as Ct/GD committed an act of misconduct in his capacity as a member of the Force U/S 11 (1) of the CRPF Act, 1949 in that he remained OSL w.e.f. 21.03.2001 to 04.04.2001 without permission of the competent authority which is prejudicial to the good order and discipline of the Force."

ARTICLE-III

"That the said No.920420548 Ct/GD G.Seenivasagam of E/61 Bn. CRPF while functioning as Ct/GD committed an act of misconduct in his capacity as a member of the Force U/S 11 (1) of the CRPF Act, 1949 in that he remained OSL during the year 1994 for 65 days from 06.04.94 to 9.6.94, during 1995 for 02 days from 28.01.1995 to 29.01.1995, during 1996 for 31 days from 14.04.1996 to 14.05.1996, during 1999 for 02 days from 16.04.1999 to 17.04.1999 and during 2001 for 15 days from 21.03.2001 to 04.04.2001. Thus he is habitual of OSL which is prejudicial to the good order and discipline of the Force."

2. Needless to state it was Article-I and II of the charge-sheet which were to be the subject matter of an enquiry inasmuch as the subject matter of Article-III of the

charge was the past conduct of the petitioner and was notified to the petitioner for the reason the Disciplinary Authority wanted to convey to the petitioner that his past conduct would also be considered, if he is found guilty of Article-I and Article-II of the charge-sheet.

3. Enquiry Officer was appointed. Six witnesses were examined. Enquiry Officer submitted a report holding that all Articles of charge were proved. Supplying the same to the petitioner for his response, the Disciplinary Authority concurred with the view taken by the Enquiry Officer and vide order dated 12.03.2002 levied the penalty of dismissal from service. Petitioner preferred an appeal which was dismissed vide order dated 23.08.2002.

4. Petitioner filed a writ petition before the Madras High Court challenging the order dated 12.03.2002 and the order dated 23.08.2002 which were disposed of on 28.06.2010 on the ground that the petitioner has not availed the statutory remedy of revision.

5. Petitioner thereafter filed a revision petition which was dismissed vide order dated 16.11.2010.

6. Instant writ petition has been filed challenging the order levying the penalty, the order dismissing the appeal and the order rejecting the revision petition.

7. Before the Inquiry Officer, 6 witnesses were examined by the prosecution and in spite of opportunity granted the petitioner did not examine any witness in defence. Of the 6 prosecution witnesses testimony of all is relevant for purposes of Article 1 of the Charge and pertaining to Article 2

and 3 of the Charge testimony of only PW-1 is relevant.

8. As noted herein above Article 1 of the Charge pertained to petitioner assaulting SI Daya Chand. OC Hira Ram PW-1, whose testimony we note is also relevant for Article II and III of the Charge-sheet, deposed that on 17.10.2000 he learnt that the petitioner slapped SI Daya Chand and that the petitioner was an indisciplined person against whom he had made complaints. Petitioner had the propensity of remaining absent without leave. In the year 1994 petitioner took leave from 17.4.1994 till 31.5.1994 but did not join back on time and taking excess leave by 20 days joined on 9.6.1994. Again in the year 1994 availing 60 days' leave from 28.11.1994 to 27.1.1995 the petitioner joined late by 2 days. In the year 1996 availing leave of 30 days from 15.3.1996 to 13.4.1996 the petitioner joined on 14.5.1996 i.e. after 31 days of the leave period being over. In the year 1996, availing 60 days leave from 5.2.1999 to 15.4.1999 the petitioner joined late on 18.4.1999 and in the year 2001 availing 60 days' leave from 20.1.2001 till 20.3.2001 the petitioner joined late by 15 days on 4.4.2001.

9. SI Daya Chand appeared as PW-2 and for unexpected reasons stated that he never had any issue with the petitioner and has to say nothing on the issue. Surprisingly, notwithstanding PW-2 uttering not a word against the petitioner, the petitioner chose to cross-examine him and put him to questions, which we note together with the answers thereto:-

“Q: You are my Platoon Commander. Since when do you know me?

A: Since I joined E Company of the 13th Bn. This man is capable of insulting anyone and does not know to respect anybody.

Q: Have I ever disobeyed lawful orders while on duty?

A: You never performed your duties fully and are always careless.”

10. The witness was thereafter examined by the Inquiry Officer and 2 questions were put to him. The first was that was he aware of the petitioner being charged for having assaulted him to which he replied that when petitioner behaved insultingly with him no contemporaneous action was taken against him and since so much time has lapsed he has nothing to say on the issue. To the second question: Whether he wanted to say anything on the subject, he said that a junior should respect his senior and should not be contemptuous towards him and if a junior commander reports to a senior commander then the senior commander should investigate the same.

11. CHM Ram Janam Ram PW-3 deposed that while on duty on 17.10.2000 he was filling up the register when petitioner came to him with an application complaining that the Platoon Commander was not forwarding his application and requested that he should forward his application to which he responded by telling the petitioner to go back to his post

and get forwarded his application through the Platoon Commander. Petitioner left and at 11:30 when he went to the Company Office he saw the petitioner quarrel with OC Sahab. OC Sahab said that the petitioner had kept the application on the table and was yelling. OC Sahab told him to produce the petitioner before him officially because he had assaulted SI Daya Chand and he had to conduct a preliminary inquiry.

12. Ct.Kalyan Bhai PW-4 disclaimed having seen petitioner fight with SI Daya Chand.

13. Ct.Surender Singh PW-5 deposed that on 17.10.2000 after taking meals when he was washing his plate and some jawans were chopping wood, SI Daya Chand was present. After chopping wood, the jawans left and petitioner and SI Daya Chand remained. Petitioner handed over a leave application to SI Daya Chand which was thrown by SI Daya Chand and picking up the same, petitioner handed over the same to SI Daya Chand stating that his earlier application being in English was rejected requiring him to re-submit one in Hindi and he was so doing. SI Daya Chand refused to take the same and abused petitioner by swearing in the name of his sister and said that he would accept the application later on and slapped him. Petitioner looked around and then gave one slap to SI Daya Chand and as a result SI Daya Chand fell down and picked up a wooden stick but petitioner ran away.

14. Ct.Tapan Kumar PW-6 deposed that he did not remember anything.

15. Report dated 19.1.2002, in 7 pages, reproduces the narratives of the dates when which the Inquiry Officer

conducted the proceedings and after noting the charges, the Inquiry Officer has summarized the testimony of the witnesses. A cryptic finding in the 7th page simply records that having considered the evidence the Inquiry Officer opines that the charges were proved.

16. Suffice would it be to state that OC Hira Ram PW-1 did not see any quarrel and simply deposed that he heard of a quarrel involving the petitioner and SI Daya Chand. SI Daya Chand the person statedly assaulted by the petitioner has deposed akin to a truant child. Ct.Kalyan Bhai and Ct.Tapan Kumar, PW-4 and PW-6 respectively disclaimed having seen anything. The testimony of CHM Ram Janam Ram PW-3 is relevant inasmuch as it establishes that petitioner's application for leave was not being forwarded by his immediate superior officer i.e. SI Daya Chand (Platoon Commander) and when petitioner wanted to directly hand over the application to PW-3, he told him to get the same forwarded through his superior officer. The testimony of Ct.Surender Singh shows that the petitioner handed over his application for leave to SI Daya Chand and requested him to forward the same and SI Daya Chand threw the same and abused the petitioner by swearing in the name of his sister and slapped the petitioner. The petitioner looked around, obviously to see whether there was somebody around, and seeing none retaliated by slapping SI Daya Chand who fell down and picked up a stick, obviously to hit the petitioner, but by the time the petitioner ran away.

17. Unfortunately, the Inquiry Officer has not discussed

the evidence as afore-noted and has simply returned a verdict of guilt. The 3 impugned orders do not discuss the evidence as above.

18. The only witness who has deposed with clarity and the only witness whose evidence is relevant is that of Ct.Surender Singh PW-5. Only he claims to have seen the incident and his testimony establishes that SI Daya Chand not only refused to discharge his obligation as a superior officer to receive the leave application from the petitioner and forward the same but slapped the petitioner and swore in the name of his sister and in retaliation the petitioner slapped him. Testimony of CHM Ram Janam Ram PW-3 somewhat corroborates the testimony of PW-5 inasmuch as PW-3 has deposed that petitioner was facing a problem of having his leave application sent through proper channel inasmuch as SI Daya Chand was not forwarding the same and the petitioner directly approached CHM Ram Janam Ram.

19. What are perverse findings? Findings which no reasonable person would arrive at in view of the evidence led would be perverse findings. What are findings of fact tainted by law? Findings of fact which ignore relevant evidence are tainted by law.

20. No doubt the testimony of PW-5 proves that the petitioner hit SI Daya Chand but it also proves that SI Daya Chand not only instigated the petitioner by swearing in the name of the petitioner's sister but even assaulted the petitioner and that the petitioner retaliated when he was assaulted by SI Daya Chand. PW-5 has clearly stated that

after SI Daya Chand slapped the petitioner and swore at him, the petitioner looked around before retaliating, by slapping SI Daya Chand, and this shows that the petitioner did not act in self defence but paid back SI Daya Chand in the same coins which were used to transact the business by SI Daya Chand.

21. The Inquiry Officer has not highlighted this aspect and nor has the Disciplinary Authority done so. The Appellate Order also so does not deal. We note that the Disciplinary Authority and the Appellate Authority have given reasoned orders. The order dismissing the Revision is a cryptic order.

22. It is settled law that where a person is provoked to retaliate, the nature of the provocation becomes relevant, to be considered on the issue of penalty to be levied and since an extreme penalty of dismissal from service has been inflicted upon the petitioner and as the Authorities below have not taken into account that pertaining to Article 1 of the Charge, which stood technically proved, there was a provocation in the extreme for the petitioner to slap SI Daya Chand, the matter needs a remand for the Authorities to reconsider the penalty to be levied inasmuch as we find a taint in the process of the levy of the penalty, in that, the provocation element pertaining to Article 1 of the Charge has been ignored.

23. Article 2 of the Charge stands established through the testimony of PW-1, a fact conceded to by learned counsel for the petitioner.

24. Thus, the impugned penalty order and the order rejecting the Appeal and the Revision are tainted inasmuch as they are predicated upon Article 1 of the Charge being proved

and penalty imposed taking into account said Article as also Article 2 being proved and with reference to the past conduct of the petitioner, but ignoring that pertaining to Article 1 of the Charge, there is evidence that the petitioner was provoked by SI Daya Chand and that the petitioner slapped SI Daya Chand only in retaliation inasmuch as SI Daya Chand was the one who first slapped the petitioner and abused him.

25. The appropriate order to dispose of the writ petition would be to set aside the Revisional Order dated 16.11.2010 requiring the Revisional Authority to re-decide the revision and pass a fresh order pertaining to the penalty which has to be imposed upon the petitioner and should the penalty be altered having effect of petitioner being required to be re-inducted in service in said eventuality a consequential order should be passed by the Revisional Authority directing how should the period interregnum petitioner being dismissed from service till reinstatement has to be treated and in respect thereof the Revisional Authority would be entitled to take note of the fact that the petitioner is responsible for a delayed Revision Petition being filed, inasmuch as he rushed to the Madras High Court without availing the alternative remedy of Revision and it is only when the Madras High Court dismissed his writ petition requiring petitioner to avail the revisional remedy, the petitioner did so.

26. The writ petition stands disposed setting aside the Revisional Order dated 16.11.2010. The Revision is restored for fresh decision in light of our observations made in para 25 above. Necessary order would be passed within 6 weeks of

date of receipt of the present decision by the Revisional Authority and though law does not require a Revisional Authority to give reasons for its decision, but in the peculiar facts of this case we would expect the Revisional Authority to give reasons in support of the penalty.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 30, 2011
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