

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

Judgment Reserved on September 05, 2013

Judgment Delivered on September 17, 2013

+ W.P.(C) 7276/2000

EX.CONST. JAGAT SINGH

..... Petitioner

Represented by: Mr.S.S.Tiwari, Advocates

versus

UOI & ORS.

..... Respondents

Represented by: Dr.Ashwani Bhardwaj, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in the writ petition is to the orders dated March 13, 1999 and November 09, 1999 of the Disciplinary Authority and Appellate Authority whereby a penalty of removal from service was imposed on the petitioner, which order was upheld in the appeal.
2. The relevant facts are that the petitioner joined Central Industrial Security Force as a constable on April 03, 1989.
3. While he was posted at Seetalpur (West Bengal) he was issued a memorandum dated August 11-12, 1998 under Rule 34 of CISF Rules 1969 wherein three articles of charges were framed against the petitioner for certain misconduct/misbehaviour. The articles of charges framed against the petitioner are as under:-

ARTICLES OF CHARGE NO.-I

“No.892333112 Constable Jagat Singh of SBP Camp, CISF Unit ECL Seetalpur has committed an act of Gross indiscipline, misconduct and dereliction of duty in that on 26/27.6.98 he was detailed in ‘C’ shift duty from 2100 hours to 0500 hours at 6.6 KV duty post of SBP. He was supposed to report for his duty post at about 2100 hours but he failed to do so and reported at about 2200 hours on 26.06.98. Hence the charge.”

ARTICLE OF CHARGE NO-II

“No.892333112 Constable Jagat Singh of SBP Camp, CISF Unit ECL Seetalpur has committed an act of Gross indiscipline, misconduct and dereliction of duty in that on 26/27.6.98 he was detailed in ‘C’ shift duty from 2100 hours to 0500 hours at 6.6 KV duty post of SBP while going alongwith other shift duty personnel in a vehicle enroute, he got down at Haripur railway crossing at about 2040 hours from shift bus with his Arms and Ammunition and reported at his duty post at about 2200 hours in excessive drunken condition having injury on his body. He was relieved from duty and admitted in ECL Chora Hospital. Hence the charge.”

ARTICLE OF CHARGE NO-III

“No.892333112 Constable Jagat Singh of SBP Camp, CISF Unit ECL Seetalpur is having incorrigible habit of gross misconduct, absenting from duty and consumption of liquor in duty hours thereby he has been awarded 01 Major and 02 minor punishments during his service period and also given sufficient opportunity to improve himself but he has so far not improved, which is highly unbecoming conduct being a member of an Armed Force of the Union. Hence the charge.”

4. The petitioner submitted his reply to the memorandum dated

August 11-12/1998 vide his letter dated September 14, 1998 wherein he had submitted that he does not plead guilty to the charges levelled against him.

5. The inquiry proceedings were held by the Inquiry Officer wherein the respondents produced 5 prosecution witnesses and 11 documents in support of the charges. The finding of the Inquiry Officer with respect to the three charges are as under:-

“FINDINGS :-

ARTICLES OF CHARGE – I :-

On going carefully to the evidence adduced in the course of enquiry, it is found that the charged official was detailed for “C Shift duty from 2100 hours to 0500 hours at 6.6 KV duty post of SBP (PW-I/EX-P4) corroborated by statement of PW-II, PW-III and PW-IV. He was issued with 303 Ritle Butt No.121 alongwith 20 rounds (PW-I/EX-P5) corroborated by statement of PWS II, III and IV. Enroute the charged official got down at Haripur Railway Crossing at about 2040 hours alongwith his service ritle and ammunition on plea to attend natural call as is clear from statements of PW-II, III and IV. The charged post at about 2200 hours. He was standing nearby one Taxi and there was sign of injury on his face and fresh bleeding as is evident from statements of PW-II, III and IV. He was later relieved and admitted into Chora Hospital and was found to be under the influence of alcohol, as smell of alcohol coming out from the mouth as is evident from experts opinion [PW-I/EX-P6] corroborated by the statements of PW II, III and IV and PW-II/EX-P2, PW-I/EX-P3. Hence the article of charge I is fully established.

ARTICLE OF CHARGE-II :-

I have carefully gone through the entire

*statements and exhibits produced in the enquiry and it is fully established that the charged official while deployed for "C" Shift duty on 26/27-6-98 alongwith 303 Ritle Butt No.121 and 20 rounds Ammunitions, boarded the shift bus from "C" Coy SBP Line (Statement of PW-I, II and III) and PW-I/EX P4 and PW-I/EX-P5. When the Bus reached Haripur Railway Crossing, the Charged Official got down from the Bus on plea of natural call along with Arms and ammunition and did not come back. He was searched at all nearby places but was not located. This is corroborated by the statements of PW-II, III and IV and PW-I/EX-P1. All the duty personnel came back and informed the matter to the Coy.Commander, Inspector/Exe N.K.Roy who alongwith duty personnel again went to Haripur Railway Crossing and searched the charged official (statements of PW-III and IV and PW-I/EX-P1). Not finding the charged official, the party proceeded to 6.6 KV Duty Post and found the Charged Official at about 2200 hours. This is clear from statements of PW-II, III and IV and it has stated that the charged official was injured. All the PWs has stated that the charged official was in drunken condition and this has been further corroborated by the experts opinion PW-I/EX-P6. The Charged Official was relieved and was admitted into Chora Hospital. Const. J.C.das was relieved and was asked by the Coy.Commander to perform duty in place of the charged official. This is clear from the statements of PW-II, III, IV and PW-I/EX-P/ and PW-I/EX-P6. Therefore, the charge levelled under article of **Charge-II** is fully established.*

ARTICLE OF CHARGE – III:-

The article of charge-III framed against the charged official levelled him with incorrigible habit of gross misconduct, absenting from duty and consumption of liquor in duty hours. It was

because of this that the charged official was awarded one Major and two Minor Punishments during his service Period. The Charged Official was given sufficient opportunity to improve but he has not improved. From the statement of PW-V and PW-V/EX-P8, PW-V/EX-P9, PW-V/EX-P10, it is amply clear that the charged official was awarded one Major Punishment for deserting from Unit Line and two Minor Punishment for sleeping on duty hours and having been found in drunken condition while deployed for duty respectively. This proves that he was punished for absenting from duties and consumption of liquor, which is undoubtedly a gross misconduct. It is very clear that the charged official continued with his habit of taking alcohol and behaving in an unbecoming manner and the Commandant CISF Unit ECL Seetalpur had to advise him to correct himself (PW-V/EX-P11). But, the charged official did not correct himself despite several punishments and warning as is evident from proving of the article of charges – I and II. This proves that the habit of charged official is incorrigible and beyond rectification. The article of charge-III is also proved.”

6. On receipt of the Inquiry Officer's report the petitioner was given an opportunity of making a representation against the report vide the letter dated January 07, 1999. The petitioner accordingly submitted his representation vide his letter dated February 19, 1999. The Disciplinary Authority passed an order dated March 13, 1999 wherein he concluded that the petitioner is not a fit person to be retained in force and imposed a penalty of removal from service on him with immediate effect.

7. The petitioner submitted an appeal dated April 10, 1999 against the penalty order of removal from service awarded by the

Disciplinary Authority. The Appellate authority who was Deputy Inspector General did not find any merit in the appeal and rejected the same.

8. The petitioner has filed the writ petition on November 16, 2000. The respondent contested the writ petition by filing a counter affidavit.

9. Mr.S.S.Tiwari, learned counsel for the petitioner has advanced three submissions in support of the relief claimed for in the writ petition, (i) the medical certificate dated July 01, 1998 produced by the department in the inquiry proceedings is a fabricated one. He submits that the petitioner was examined by a different doctor earlier wherein the doctor had concluded that the petitioner had not consumed alcohol. Unfortunately the certificate of said doctor was not produced during the inquiry. In support of his submission, he has taken us through the representation filed by the petitioner on February 19, 1999 in response to the report of the Inquiry Officer given to him wherein the petitioner had stated that “two medical certificates cannot be issued simultaneously for the same case.” The medical certificate dated July 01, 1998 had been obtained fraudulently by Mr.N.K.Roy behind his back. Neither the doctor nor Mr.N.K.Roy were produced by the department in the inquiry proceedings; (ii) the medical certificate cannot be read in evidence as the author of the document (medical certificate) i.e. doctor was not produced as witness during the inquiry; (iii) the order of the Appellate Authority is a non speaking order as it does not deal with the grounds raised by the petitioner in his appeal. He relies upon the judgments of the Supreme Court reported as (1999)

8 SCC 582 Hardwari Lal vs. State of U.P & Ors. and (2009) 2 SCC 570 Roop Singh Negi vs. Punjab National Bank & Ors.

10. Dr.Ashwani Bhardwaj, learned counsel for the respondents would submit that the inquiry proceedings have been held in consonance of the principles of natural justice by giving proper opportunity to the petitioner including the opportunity to cross examine the witnesses. If the petitioner had not availed the said opportunity then the same was at his own peril. He would further submits that the order of penalty is based on the clear findings arrived at by the Inquiry Officer wherein he has held all the charges as proved. According to him the Disciplinary Authority has passed a detailed order justifying the penalty upon the petitioner. He states that even the Appellate Authority's order is a reasoned one after considering all the grounds raised by the petitioner in his appeal.

11. We have considered the submissions of the learned counsel for the parties. We have also gone through the record of the inquiry proceedings produced during the course of the submissions.

12. In so far as the first contention of Mr.S.S.Tiwari is concerned, we see from the record of inquiry proceedings, the medical certificate dated July 01, 1998 of Dr.Ujjawal Mishra was produced by PW1-Inspector Radhey Shyam. The petitioner was given an opportunity to cross examine Mr.Radhey Shyam. The petitioner did not avail of that opportunity. The petitioner having not cross examined Mr.Radhey Shyam cannot at a later point of time in his representation/appeal take a plea that the medical certificate dated July 01, 1998 was a fabricated one. He was at liberty to put questions to Mr.Radhey Shyam in that regard.

13. We agree with the submission of Mr.S.S.Tiwari that the medical certificate and its contents could not be said to have been proved as Dr.Ujjawal Mishra, who had given the medical certificate was not produced as a witness in the inquiry. Still the same would not come to the rescue of the petitioner as we see from the record of the inquiry proceedings that the other witnesses i.e. PW2 to PW4 have in their testimony corroborated the fact that the petitioner was found to be in drunken condition. The relevant deposition of the said witnesses with regard to the drunken condition of the petitioner as recorded by the Inquiry Officer is reproduced as under:

“PW2: Then, they went to 6.6.KV Duty Post and found Const. Jagat Singh standing near one black Taxi. There was a cut bruise mark on his right cheek and Const. Jagat Singh also appeared under the influence of alcohol. Then, the Coy Commander relieved Const. Jagat Singh and took him to Hospital.

PW3: It has further stated that Const. Jagat Singh Yadav appeared in drunken condition and some blood was oozing out from near left ear which appeared out of some injury. They Coy Commander then took rifle (wrongly recorded as ritle) and ammunition from Const. Jagat Singh and handed it to Const. J.C.Das and took away Const. Jagat Singh with him.

PW4: He further stated that he noticed an injury mark on the face of Const. Jagat Singh and fresh blood was coming out. He further stated that Const. Jagat Singh appeared to be under the influence of liquor as was evident from the smell from his mouth and that he was not in a position to stand properly. Then as per order of the Coy Commander he took Arm and Ammunitions from Const. Jagat Singh and performed duty at 6.6 KV along with HC/CD M.D.Tigga.”

14. It is trite that the burden of proof on prosecution in disciplinary proceedings is not that of a criminal trial. Whereas, in a criminal trial the prosecution has to establish the case beyond reasonable doubt, considerations in the disciplinary proceedings involve evaluation of evidence based on preponderance of possibilities. Strict rules of the Evidence Act do not apply. However, in the present case, even if the objection on behalf of the petitioner was accepted and the medical certificate ignored, the petitioner has not been able to challenge the testimony of the prosecution witnesses at all in the cross examination. The above testimony of three other prosecution witnesses supports the finding of culpability of the petitioner.

15. In view of the above, we do not find any merit in the submission of Mr.S.S.Tiwari.

16. In so far as the third submission of Mr.S.S.Tiwari is concerned, we find that the order of the Disciplinary Authority and the Appellate Authority are detailed and reasoned one. They have considered all the pleas put forth by the petitioner and dealt with the same while imposing the penalty and rejecting the appeal.

17. The Supreme Court in this regard held in its opinion reported as 2011 (8) SCC 695 *Oriental Bank of Commerce v. R.K.Uppal* as under:

“The High Court has faulted the order of the appellate authority also on the ground of it being non-speaking order. Is it so? We have carefully perused the order of the appellate authority and we find that the order dated 04.06.2004 cannot be labelled as a non-speaking order. The order does not suffer from the vice of non-application of mind. The appellate authority has addressed the points raised in the appeal and critical to the decision, albeit briefly. It is true that the

appellate authority must record reasons in support of its order to indicate that it has applied its mind to the grounds raised but it is not the requirement of law that an order of affirmance by the appellate authority must be elaborate and extensive. Brief reasons which indicate due application of mind in the decision-making process may suffice.

18. The judgment of the Supreme Court in Hardwari Lal's case (*supra*) is not applicable in the facts of this case. The factual narration shows that the complainant and the witness who was supposed to have witnessed the incident were not examined in inquiry. The Supreme Court in those facts held that there is violation of principles of natural justice. In this case, all the witnesses who were named in the charge-sheet, were produced in the inquiry proceedings and opportunity was given to the petitioner to cross examine them.

19. In so far as Roop Singh Negi's case (*supra*) is concerned, the reliance placed by Mr.Tiwari was to a very limited extent that the documents have to be proved by producing witness. It is a settled law that a document and its contents can be proved by producing its author. In this case Dr.Ujjawal Mishra was not produced. The same would be of no consequence, when other witnesses i.e. PW2 to PW4 corroborated the fact that the petitioner was in drunken condition. We have already reproduced the testimony of the said witnesses. So, the charge to the extent that the petitioner was in a drunken condition stands proved.

20. The scope of judicial review is very limited. The Court cannot go into the correctness of the truth of the charges. It cannot take over the functions of the Disciplinary Authority and assume the

role of the Appellate Authority. There are no allegations of mala fides nor the counsel for the petitioner urged perversity. The law is well settled and reliance in this regard can be placed on the judgments reported as (2006) 5 SCC 673 State of U.P & Ors. vs. Raj Kishore Yadav & Anr., (2005) 7 SCC 338 V.Ramana vs. A.P.SRTC & Ors. and (1994) 3 SCC 357 Union of India & Ors. vs. Upendra Singh.

21. The petitioner was a member of a disciplined uniformed force. In view of the aforesaid discussion we hold that there was sufficient evidence for the Inquiry Officer to prove the charges, which are of grave nature, we do not find any merit in the writ petition.

22. The writ petition is accordingly dismissed.

23. No costs.

(V.KAMESWAR RAO)
JUDGE

(GITA MITTAL)
JUDGE

SEPTEMBER 17, 2013
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