

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

% *Judgment Reserved on: January 16, 2014*
Judgment Delivered on: February 25, 2014

+ **WP(C) 666/2001**

KAUSHAL KISHOR RAI & ANR. Petitioners

Represented by: Mr.Shree Prakash Sinha,
Mr.Nawalendra Kumar and
Mr.Rakesh Mishra, Advocates

versus

UNION OF INDIA & ORS. Respondents

Represented by: Dr.Ashwani Bhardwaj, Advocate
with Mr.Vijaya Kumar Raut, Pairvi
Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE R.V.EASWAR

PRADEEP NANDRAJOG, J.

1. Petitioners Kaushal Kishore Rai and Birender Singh along with a third co-delinquent Bijender Singh faced a joint inquiry pursuant to a charge memo dated April 16, 1999 which reads as under:-

“ARTICLE OF CHARGE-I

That No 910710223 Const/Driver Bijendra Singh (under suspension) of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force u/s.11 (1) of CRPF Act 1949 in that he drove vehicle Regd.No.DL-1G-0839 (Tata Truck) unauthorisedly from Karnal By Pass Delhi to 81 Bn.CRPF Campus New Delhi on 19.7.1997 at about 18.30 hrs and consumed illicit liquor in the campus

with the Const/Driver K.K.Rai and Birender Singh and did not turn up on 19.7.1997 for evening roll/call at about 19.30 hours.

ARTICLE OF CHARGE-II

That No.910710223 Const./Driver Bijendra Singh (under suspension) of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force u/s.11 (1) of CRPF Act 1949 in that on 19.7.1997 at about 2000 hrs for the purpose to arrange some more liquor with an ulterior motive Const/Driver Bijendra Singh alongwith Const/Driver K.K.Rai and Const/Driver Birender Singh (all three of NSR/pool) took out NSR/Pool CRPF vehicle Regd.No.DL-1G-0839 (Tata Truck and left 81 B.H.Q.Pappan Kalan, New Delhi, under influence of liquor without permission for leaving the campus from the competent authority and drove the said vehicle at high speed while No.880089199 Const/Driver K.K.Rai and No.913129579 Const/Driver Birender Singh were sitting in drivers cabin of the Vehicle and collided the vehicle Regn.No.DL-1G-0839 with a Civil Matador Regd.No.DBL-5140 near Shahabad Mahammadpur, caused major damages to both the vehicles, killed 8 innocent civilians and serious injuries to others.

ARTICLE OF CHARGE-III

That No.910710223 Const/Driver Bijendra Singh (under suspension) of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force u/s.11(1) of CRPF Act 1949 in that on 19.7.1997 at about 2030 hrs. he abandoned Govt.vehicle Regd. No.DL-1G-0839 at accident spot un-attended and on his own rushed to Pappan Kalan 81 Bn. campus to prove his innocence and non-involvement in the accident without caring for the basis necessity of rescuing the ill-fated civilians involved in the fatal accident.

ARTICLE OF CHARGE-IV

That No.910710223 Const/Driver Bijendra Singh (under suspension) of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force u/s.11(1) of CRPF Act 1949 in that on 19.7.1997 at about 21.30 hrs. he drove vehicle Reg.No.DNG-1207 unauthorisedly without any indent/permission of the competent authority from 81 Bn. campus Pappan Kalan, New Delhi to accident scene at Shahabad Mohammadpur for the purpose to toe the accident vehicle Regd.No.DL-1G-0839 to 81 B.Campus and to hide the matter.

ARTICLE OF CHARGE-V

That No.880891909d Const/Driver Kaushal Kishore Rai of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force u/s. 11(1) of CRPF Act 1949 in that on 19.7.1997, he failed to exercise proper Control and rather connived with the defaulters and allowed Const./Driver Kashmira Singh of NS R/Pool New Delhi to proceed on un-authorised leave to his home town without detaining proper permission/sanction from the competent authority.

ARTICLE OF CHARGE-VI

That No.880891909d Const/Driver Kaushal Kishore Rai of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force U/s.11(1) of CRPF Act 1949 in that on 19.7.1997 afternoon, he did not attend evening roll/call and consumed illicit liquor in the lines along with other fellow drivers.

ARTICLE OF CHARGE-VII

That No.880891909d Const/Driver Kaushal Kishore Rai of N/S Reserve Pool CRPF New Delhi has committed an act of

misconduct in his capacity as a member of the force U/s.11(1) of CRPF Act 1949 in that on 19.7.1997 (AN). he absented himself from the lines without obtaining proper permission from competent authority, accompanied the accidental vehicle Regn.No.DL-1G-0839 alongwith Const/Driver Bijender Singh by sitting in driver's cabin under the influence of liquor, allowed Const/Driver Bijender Singh to indulge in rash and negligent driving as a result of which the Govt.vehicle Regn.No.DL-1G-0839 met with a total accident with Civil Matador Regn.No.DBL-5140 causing death of 8 civilians and serious injuries to other plus major damage to both the vehicles.

ARTICLE OF CHARGE-VIII

That No.913129579 Const/Driver Birender Singh of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force U/s.11(1) of CRPF Act 1949 in that while he was attached with 81 Bn.CRPF consumed illicit liquor in the lines on 19.7.1997 evening and did not attend evening roll-call that day.

ARTICLE OF CHARGE-IX

That No.913129579 Const/Driver Birender Singh of N/S Reserve Pool CRPF New Delhi has committed an act of misconduct in his capacity as a member of the force U/s.11(1) of CRPF Act 1949 in that while he was attached with 81 Bn.CRPF, he absented himself from lines on 19.7.1997 from 200 hrs. to 21.30 hrs without obtaining prior permission from the competent authority and accompanied Const./Driver Bijender Singh in CRPF Vehicle Regn.No.DL-1G-0839 with ulterior motives.”

2. A perusal of the charge memo would reveal that whereas Articles No.I to IV of the charge memo pertained to the alleged acts of commission and omission committed by Bijender Singh, Articles No.V to VII of the charge

memo pertained to Kaushal Kishore Rai (petitioner No.1) and Articles VIII and IX pertained to Birender Singh (petitioner No.2).

3. In a nut shell, the allegations against co-delinquent Bijender Singh would be that on July 19, 1997 he consumed alcohol in the evening and did not report for the evening roll call and took out vehicle No.DL-1G-0839 without permission when he was under influence of liquor. The petitioners were sitting in the cabin of the vehicle when he drove it out illegally. He had an accident with a Matador No.DBL-5140 in which eight civilians were killed. He abandoned the vehicle and rushed back to the campus without caring for the ill-fated civilians and that thereafter he took out without permission vehicle No.DLG-1207 and proceeded to the accident scene to toe the accident vehicle back to the campus to hide the matter. Against petitioner Kaushal Kishore Rai the allegations would be that he failed to exercise proper control as a result whereof Bijender Singh could take out two vehicles without permission from the camp and having consumed illicit liquor in the Lines with fellow drivers he did not attend the evening roll call. That he was sitting in vehicle No.DL-IG-0839 in the drivers cabin when the accident was caused that he failed to exercise proper control and rather connived by allowing Ct./Driver Kashmira Singh to proceed on unauthorized leave to his home town without proper permission. Qua petitioner Birender Singh the charge was of consuming liquor in the Lines and not attending the evening roll call and accompanying Bijender Singh and vehicle DL-IG-0839 when Bijender Singh illegally took out the vehicle.
4. The Inquiry Officer has held the charges to be proved.
5. From the aforementioned charges it is apparent that whereas co-delinquent

Bijender Singh was charged for illegally driving out from the campus truck No.DL-IG-0839 after he had consumed alcohol, against the petitioners it was alleged that they were sitting in the cabin of the truck.

6. The report of the Inquiry Officer has held that the petitioners were guilty of charge No.II and III, a finding which has been used by learned counsel for the petitioner to argue that the same evidences a complete non-application of mind by the Inquiry Officer and a prejudice because of the fact that eight civilians died and a few were seriously injured in the accident involving truck No.DL-IG-0839 and the Matador in question.

7. We get over the said argument before we proceed to analyse the evidence.

8. As noted above, Article II of the charge-sheet against driver Bijender Singh was that he drove the truck out without permission when he was under influence of liquor and in the Article of Charge No.II it was written that at that time the petitioners were sitting in the cabin of the truck. Article VII of the Charge pertaining to petitioner Kaushal Kishore Rai was, inter-alia, sitting in the driver's cabin of the truck in question. Article IX against petitioner Birender Singh was, inter-alia, sitting in the driver's cabin of the truck in question.

9. Since the Inquiry Officer has held that evidence proved that when Bijender Singh drove the truck outside the precincts of the campus, the petitioners were sitting in the cabin, he has opined that Article II of the charge was proved against the petitioners.

10. The Inquiry Officer was not a Judge. He was not a professional opinion writer. While discussing the facts which were common to the charges against the three co-delinquents, as against a professional writer who

would have after discussing the evidence held that Charge No.II was proved against Ct./Driver Bijender Singh, would have written that Charge No.VII was proved against petitioner Kaushal Kishore Rai and Charge No.IX was proved against petitioner Birender Singh, the Inquiry Officer has clubbed the finding together, and it is not a case of any biased writing.

11. At the inquiry Hav.Laxman Upadhyay PW-1 deposed that on July 19, 1997 he was working as Battalion Havaladar Major of the 81st Battalion. At 5.30 P.M. Adjutant Assistant Commandant Inder Dev Singh and Sub Inspector Bishambar Singh proceeded with him towards the Mess where they saw Kashmira Singh (PW-6) tying a turban. The Adjutant asked him whether all drivers of the reserv pool were reported at the roll call to which he replied that they do not, claiming that they were of N/S (Reserved) Pool. Reports pertaining to the roll call was submitted to the senior officers. At about 20:30 hrs. Kaushal Kishore Rai senior Ct./Driver came and informed that vehicle No.DL-IG-0839 had met with an accident. They immediately went to Bishamber Singh to inform him of the accident. The information was thereafter transmitted to the superior authorities. All drivers of the reserved pool were summoned. Thereafter they proceeded to the place where the accident had taken place i.e. near Shahabad Mohdmadpur village. He saw the vehicle lying in a ditch on the side of the road. Officers of Delhi Police were present. The vehicle was pulled out from the ditch. It was learnt that Ct./Driver Bijender who was driving the vehicle who was taken to the police station. They returned to the camp at 11.30 p.m. The next day P.V.Sharma MD(D) summoned all reserve pool drivers and made inquiries from them.

12. Questioned by the Inquiry Officer whether when they were

proceedings to the Mess they did not see K.K.Rai, Bijender Singh and Birender Singh in the tent he said that he only saw Kashmira Singh. He further informed that no orders were issued that reserve pool drivers are not to attend the roll call. But stated that drivers of the reserve pool never attended the roll call. The roll call used to take place between 7 P.M. and 7.30 p.m. each day. That K.K.Rai, Bijender and Birender Singh were not present in the roll call. When the vehicles of the reserve pool went outside, the same was not reported to anyone. No register was being maintained or entry was made when the vehicles went out. Whenever reserved pool drivers would be absent at the roll call information thereof was provided to the superior officers. After the accident all reserve pool drivers started marking their presence at the roll call at the morning and at the evening. Hav.Mathew Joseph was the In-charge of the Control Room in the evening on the date of accident. He stated that K.K.Rai was not intoxicated when he informed him about the accident. On being cross-examined he stated that he had gone to attend the call of nature when the vehicle in question had left the camp. He was subsequently informed by Birender Singh that the vehicle has gone to drop Kashmira Singh at Sahabad Railway Station.

13. Constable/Fitter Ram Kumar PW-2 deposed that on the day of incident i.e. July 19, 1997 he was on duty from 20:00 to 22:00 hrs at the guard/telephone operator in M.T. Park. At about 20:10 – 20:15 hrs Ct/Driver Bijendra Singh came in M.T. Park for bath and met him after that. At about 20:30 hrs. Hawaldar Hareram Yadav came in M.T. Park and told him that Vehicle of Reserve pool has met with an accident. On being questioned by the Inquiry Officer, he stated that there was no order to control the vehicles of reserve pool, the reserve pool vehicles were not standing in M.T.Park,

they were standing towards Gas (ORS).

14. Ct./Dvr. Basrajappa PW-3 deposed that on July 19, 1997 he was on the duty as the guard/telephone operator from 18:00 to 20:00 hours. The reserve vehicles were parked towards the O.R. Mess gate. He was not concerned with the guards of 81st Battalion and therefore did not know their names. On being questioned by the Inquiry Officer, he stated that no entry was made in the register pertaining to the reserve pool vehicles.

15. Since the testimony of HMV/Dr. Hareram Yadav PW- 4 is not relevant we do not note the same.

16. Ct. Jeewan Ram PW-5 deposed that on July 19, 1997 he was on a guard's duty at O.R. Mess. Around 20:05 hours a TATA truck which was a reserved vehicle went towards O.R.Gas, he could not see who were inside the vehicle. Sometime after 20:30 hours, Deputy Inspector (GD) Vishambhar Singh Madoriya told him that one CRPF Reserved vehicle has met with an accident and asked him if had seen any vehicle leaving the camp. He replied that at around 20:00 hours, after his duty hours, one reserve vehicle had left. On being questioned by the Inquiry Officer he stated that he had not seen any of the three drivers sitting in the vehicle.

17. On being cross-examined he stated since the area was covered with trees, he could not see who was driving the vehicle. He also stated that while he was on duty another small truck proceeded towards the accident spot.

18. Kashmira Singh PW-6 deposed that he had been sanctioned leave for seven days and on the day of incident and he obtained an oral permission from senior Ct./Driver K.K.Rai to take the vehicle No. DL-1G-0839 with Bijendra Singh to be dropped at Pappankala. At around 15:30 hours, they left for Pappankala and at around 17:15 he boarded a bus to his home town.

Before boarding the bus, he handed over the vehicle to Bijendra Singh. On the next day i.e. July 20, 1997 at around 15:00 hours he was informed via telephone that the vehicle has met with an accident and he should report to the camp at the earliest. On July 22, 1997 at around 19:30 hours he reached the 81st Battalion Camp. The petitioners met him and asked him to make a statement that vehicle in question belonged to him and on the day of the incident he was dropped at Shahbad Mohammadpur Railway Crossing by Bijender Singh, and while returning the said vehicle met with an accident with a Matador DBL 5140. The petitioners said that if he does not state the same, the statement which the petitioners made would be proved to be wrong. Therefore, being influenced by the petitioners he reported just as the petitioners had asked him to. He was thereafter suspended from his post. On being questioned by the Inquiry Officer he stated that K.K.Rai was in-charge and he was the one who had permitted him to take Bijendra Singh to drop him at the Karnal By-Pass.

19. Havaladar Mathew Josheph PW-7 deposed that whenever DIG New Delhi and IGP used to give signals to send their reserve pool vehicles on the duty to Battalion or railway station then he used to announce it on the loudspeaker because camp was very big and he couldn't leave the telephone. Moreover he himself used to make the indent of the vehicles and obtained the signatures from MTO of the 81st Battalion and used to send to I/C R/Pool Snr. K.K.Rai. In case of any emergency he used to send the vehicles without making an indent but he used to inform his superiors. On July 19, 1997 around 20:30 hours senior driver K.K.Rai came and told him that the reserve vehicle bearing registration No. DL-1G-0839 has met with an accident. He wanted to speak to MTO, he told him to go and speak to the

MTO because he will not be able to speak over the telephone since voice was not clear.

20. On being asked by the Investigating Officer he stated that without the permission of the DIG control room/office no vehicle was allowed to go out of the camp and some cars were in MT or near kaal, he could not affirm whether some vehicles used to go out without his permission. He was not aware of the fact that when the reserve pool vehicle went out of the premises, who drove the vehicle and who all were sitting in the vehicle.

21. Deputy Inspector (GD) Vishambhar Singh PW-8 deposed that on July 19, 1997 he was performing the duty of Sub-Inspector Administration on temporary basis in Naya Headquarter. On July 19, 1997 at 7:30 p.m. he took the roll call and submitted to the Adjutant and JC Sahab. At about of time Ct./driver K.K. Rai told him that vehicle of Reserve pool bearing registration No. DL-1G-0839 has met with an accident. On reaching the accident spot he saw Assistant Commandant Pauli P.B. standing there and the vehicle was lying on the right side of the road. Delhi police people were making inquiry. Ct./Driver Bijender reached with TATA vehicle DLG-1027. On being asked by the Investigating officer he stated that he was not aware of the fact that the petitioners were intoxicated after coming in the camp. On being cross-examined he stated that neither he has seen Birendra Singh consuming liquor nor any medical examination of his was conducted in front of him.

22. Hav.Suresh Kumar PW-9 deposed that on July 19, 1997 he was on the duty of the Quarter Guard, around 15:30 he went on the main road to drop his son in a private car, when he saw a CRPF vehicle going out. He stopped the vehicle and asked the driver where was he going. The driver

Bijendra Singh replied that they are going towards Karnal Bypass to drop Kashmira Singh. He told the drivers to drop his son on the way. Around 19:45 hours when he was returning from the toilet he saw the vehicle was started. Bijendra Singh was not sitting in the vehicle. He saw driver K.K.Rai running out of the tent. He enquired about his son and was told that he had been dropped as per his wish. After a while he got information about the accident. On being questioned by the Inquiry Officer he said that around 19.45 hrs. he met Bijender Singh in the tent. He said that he could not sense that K.K.Rai and Bijender Singh were drunk.

23. Ct.Daljeet Singh PW-10 deposed that on July 19, 1997 he was not in Papankala. On July 20, 1997 when PW-10 was at his home a person came to him and told that Kashmira Singh's vehicle has met with an accident and he has been called to the camp immediately. On reaching the camp he met K.K.Rai, Birendra Singh and Rajendra Singh.

24. From the testimony of the witnesses qua petitioner K.K.Rai it emerges that he had not attended the evening roll call. From the evidence it also emerges that Kashmira Singh was the driver of the reserve pool vehicle which met with an accident and that (referred testimony of Kashmira Singh, K.K.Rai was the senior driver who gave oral permission to Bijender Singh to drop Kashmira Singh.

25. There is no evidence that K.K.Rai was sitting in the vehicle and we highlight that Havl.Suresh Kumar PW-9 who was on duty at the Quarter Guard has stated that when the vehicle was stopped by him and he quarried where they were going, Bijender Singh told him that they were going to drop Kashmira Singh. Ct.Jeevan Ram PW-5 who was on Guard's duty at ORS Mess deposed that he saw a TATA truck of the reserved vehicle

proceeding towards OR Gas but could not see who were inside the vehicle.

26. Thus, there is no evidence that either Kaushal Kishroe Rai or Birender Singh were in the vehicle in question.

27. Qua Birender Singh the only evidence is that he did not attend the roll call in the evening.

28. Though there is no clear evidence that being the senior most driver K.K.Rai was responsible for all vehicles of the reserved pool, we have traces of evidence from the testimony of Kashmira Singh when he said that he took oral permission from K.K.Rai to take out vehicle No.DL-IG-0839 with Bijender Singh so that he could be dropped at Pappankala. But, in our view this evidence is too tenuous to establish that K.K.Rai failed to exercise proper control because we find no evidence that K.K.Rai was to exercise any control over the vehicle.

29. Evidence establishes that eight people died because of the accident caused by Bijender Singh. It appears that said fact has loomed large in the mind of the Inquiry officer, the disciplinary authority as also the appellate authority. The additional fact which appears to have loomed large in the minds of the Inquiry Officer, the disciplinary authority as also the appellate authority is that in his defence statement Bijender Singh tried to shift the blame on the other co-delinquents, and suffice it to state that statement made by Bijender Singh in defence cannot be used against co-delinquents who were not given opportunity to cross-examine him.

30. The findings returned that charges No.V, VI and VII were proved fully against K.K.Rai and that charges VIII and IX were fully proved against Birender Singh are not supported by any evidence. What is proved against the two is only that they did not attend the evening roll call.

31. The evidence establishes that everything was being performed very casually at the camp. Entries were not made when official vehicles would leave the camp and returned. The testimony of PW-1 that he had been reporting to the superior officers that drivers of the reserved pool were not attending the roll call and yet the superior officers taking no action till when the unfortunate accident took place shows lack of supervision by the superior officers. In his testimony PW-1 has said that after the accident the reserved pool drivers started attending the morning and the evening roll call.

32. The contention of the petitioners that there is no evidence that they were required to be present at the morning and the evening roll call is negated from the testimony of PW-1.

33. Thus, the only penalty which could be levied upon the petitioners were for not attending the roll call.

34. It is apparent that the penalty of dismissal from the service has been influenced by the fact that the authorities have treated it being proved that petitioners were drunk and were co-passengers, sitting in the cabin of the driver, when the offending truck unauthorizedly was taken outside the camp and that they were drunk. There is no evidence of any medical examination conducted.

35. We dispose of the writ petition quashing the order dated March 30, 2000 passed by the disciplinary authority and the order dated October 27, 2000 passed by the appellate authority are quashed.

36. The petitioners shall be reinstated in service and shall be paid 50% back wages. Period interregnum dismissal from service till re-instatement shall be treated as spent on duty for pensionary benefits.

37. We are not permitting the competent authority to levy any penalty

upon the petitioners for the wrong of not attending the daily roll calls for the reason writ petitions filed in the year 2001 is being decided by us in the year 2014 and we have denied 50% back wages.

38. Parties to bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(R.V.EASWAR)
JUDGE

FEBRUARY 25, 2014
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