

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

% *Judgment Reserved on : February 12, 2014*
Judgment Delivered on : March 03, 2014

+ **W.P.(C) 6735/2002**

S.P.SINGH Petitioner

Represented by: Mr.U.Srivastava, Advocate

versus

UNION OF INDIA & ORS. Respondents

Represented by: Ms.Vanessa Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Without praying that the order dated July 25, 2001 passed by the disciplinary authority dismissing petitioner from service and without praying that the order dated October 23, 2001 rejecting the appeal filed by the petitioner against the order dated July 25, 2001 and additionally without praying that the order dated February 28, 2002 rejecting the revision petition filed by the petitioner be set aside, mandamus is prayed for that the petitioner should be reinstated in service with full back wages.
2. Notwithstanding the aberration in the prayer made we treat the three orders to be challenged in the writ petition.
3. On December 03, 1999, a charge memorandum was served upon the petitioner annexing therewith four annexures; being: (i) Annexure-I - Statement of article of charge; ii) Annexure-II - Statement of imputation of

misconduct in support of the charge; iii) Annexure-III - List of documents by which the article of charge was intended to be proved; and iv) Annexure-IV - A list of witnesses proposed to be examined at the inquiry.

4. The article of charge reads as under:-

“Article of Charge

That CISF No. 824490278 HC/GD S.P.Singh of CISF/ 01st Reserve Batallion, Barwaha entered into scuffle with HC/GD Om Prakash Dhuhan (CHM) along with CISF No. 942331976 Constable Suresh Kumar on 5.11.1999 at about 11.30 hours while he was detailed for I.S.Duty in Company No. 11 at New Delhi, Using filthy languages, assaulting and punching him by hand, which amounts to gross misconduct and indiscipline and violation of instruction and unbecoming a good member of a disciplined force like CISF.”

5. The statement of imputation of misconduct reads as under:-

“That No. 824490278 HC/GD S.P.Singh of CISF/01st Reserve Batallion, Barwaha was detailed in company No.11 for I.S.Duty New Delhi. On 5.11.1999 at about 11.30 hours HC/GD S.P.Singh was found creating nuisance by shouting at company commander that he would not shift from Defence Colony Police Station to North Block as per the order of DIG/NZ and he demanded for leave to celebrate Deepavali Festival. On hearing the shouting CISF No. 7413100316 HC/GD Om Prakash, CHM of company No.11 came and tried to pacify the above HC/GD and the constable and also requested to them to come and request the Company Commander on the next day as it was found nuisance to the Police Station Duty officials of Defence Colony Police Station. The CISF No. 824490278 HC/GD S.P.Singh alongwith CISF No.

942331976 Constable Suresh Kumar immediately manhandled and assaulted the CISF No. 741310316 HC/GD Om Prakash CHM of Company No.11 by using filthy languages. For which a entry also made in General Diary vide No. 1059 dated 5.11.1999. Hence he committed an act of gross misconduct and negligence of duty and made himself liable for Disciplinary Action. Hence the charge.”

6. The petitioner submitted his response to the charge memorandum. He denied the allegation that he abused or manhandled HC Om Prakash at 11:30 hours on November 05, 1999 and took the stand that on said day at 11:30 AM he was on duty at the farmhouse of one Sh.Kedar Nath Sahni and co-delinquent Ct.Suresh Kumar was on duty at the farmhouse of one Sh.R.L.Bhatia.

7. On January 19, 2000 a memorandum was issued and served upon the petitioner amending Annexure-I and Annexure-II to the memorandum dated December 03, 1999 correcting the time ‘11:30 hours’ to be read as ‘23:30 hours’.

8. It is apparent that intending to convey the time as 11:30 PM in Annexure-I and Annexure-II to the charge memorandum dated December 03, 1999, it got typed ‘11:30 hours’ and this was realized when in the reply filed the petitioner took advantage of the same to highlight that in the forenoon i.e. at 11:30 AM he was on duty at the farmhouse of one Sh.Kedar Nath Sahni.

9. Realizing thereafter that lest an issue be raised subsequently as to which Company Commander the petitioner shouted at, on February 15, 2000 another memorandum was issued amending Annexure-II to the charge memorandum dated December 03, 1999 by adding : ‘North Block after the

words 'by shouting at Company Commander' in Annexure-II to the charge memorandum dated December 03, 1999 so as to read 'On 5.11.1999 at about 23:30 hours HC/GD S.P.Singh was found creating nuisance by shouting at Company Commander (North Block) that he would not shift from Defence Colony Police Station to North Block as per the order of DIG/NZ and he demanded for leave to celebrate Deepawali Festival'.

10. Since the petitioner had denied the charge before the Inquiry Officer the department examined six witnesses.

11. HC Om Prakash PW-1, the person who was alleged to have been assaulted by the petitioner and co-delinquent Suresh Kumar, deposed that on November 05, 1999 at about 23:30 hours, accompanied by Ct.Suresh Kumar the petitioner walked into his hut and started speaking in a loud tone. He told the two to speak to him the next day morning because it was late night. They left but returned shortly and started beating him and abusing him. He cried for help. SI H.L.Yadav (PW-3) and SI Om Prakash (PW-5), intervened and saved him. On being cross examined by the petitioner as to what injuries he had suffered, HC Om Prakash stated that he was injured on the chest, ear and mouth and took treatment at Ram Manohar Lohia Hospital. He denied the Suggestion that he had an enmity with the petitioner.

12. Insp.Yogender Singh PW-2 deposed that on the day of the incident at 23:20 hours he was present in the hut of the Coy Commander and HC Om Prakash was also present. Accompanied by Ct.Suresh Kumar, petitioner walked into the hut and spoke aggressively. On being told that it was late night and that they should speak to the Coy Commander the next day, the two left but returned at 23:40 hours and started shouting at HC Om Prakash

as also assaulted him. HC Om Prakash cried for help. SI H.L.Yadav and SI Om Prakash rushed and intervened to save HC Om Prakash.

13. SI H.L.Yadav PW-3 and SI Om Prakash PW-5 corroborated PW-1 and PW-2 by deposing that on the day of the incident at around 23:30 hours they responded to the cry of the rescue of HC Om Prakash and rescued him when he was being assaulted by co-delinquent Ct.Suresh Kumar and the petitioner who were also hurling abuses.

14. HC H.H.Bhai PW-4 deposed that he saw the petitioner at the place of the incident between 23:30 hours and 23:45 hours.

15. SI Krishan Rai PW-6 deposed that on the day of the incident he was sleeping in the hut of the Coy Commander and heard Ct.Suresh Kumar, the petitioner and HC Om Prakash speak something. He fell asleep. His slumber was disturbed when he heard noise at around 23:45 hours. He went outside and saw the jawans talk about an incident. On being cross-examined he said that from the talk which Ct.Suresh Kumar and the petitioner had with HC Om Prakash he could gather that the three were talking about weekly leaves; he clarified that from the tone and tenor of the voice of the three he could infer that Ct.Suresh Kumar and the petitioner were angry at something.

16. In his statement in defence the petitioner denied being present at 23:30 hours at the hut of the Coy Commander. He denied being involved in any incident.

17. Considering the evidence led the inquiry officer submitted a report opining that the charge was established. Submitting the same to the petitioner for his response and considering the same the disciplinary authority levied a penalty of being dismissed from service vide order dated

July 04, 2000 against which appeal filed was accepted by the appellate authority vide order dated December 29, 2000 observing that there was merit in the stand of the petitioner that after the charge memorandum was amended twice, the disciplinary authority by not granting him an opportunity to file a response had infringed a valuable right. It was also noted that the listed documents were not provided to the petitioner. It was directed that de novo proceedings be held.

18. On January 25, 2001 another memorandum was issued and under cover thereof the same article of charge, same statement of imputation, same list of documents and same list of witnesses which was earlier on served upon the petitioner, but as amended twice, was served. Needless to state the petitioner denied the charge. Inquiry Officer was appointed before whom same six witnesses were examined by the department and we note they deposed same facts as they had deposed earlier, which testimony we have captured hereinabove and are not reproducing once again.

19. Petitioner sought to examine four witnesses in defence, three of whom submitted written applications to the inquiry officer writing therein that they had no knowledge about the incident. The fourth person was on long leave and hence not available. The petitioner did not insist for said person to be examined.

20. The inquiry officer submitted a report holding that the charge was proved. Supplying the same and considering the reply the disciplinary authority levied penalty of dismissal from service vide order dated July 25, 2001 against which appeal and revision filed were rejected on October 23, 2001 and February 28, 2002 respectively.

21. Laying a challenge to the penalty levied learned counsel for the petitioner urged that the de novo inquiry order was vitiated in law because the department filled up lacuna in its case. Second point argued was that the case was false, evidenced by the fact that the article of charge and the statement of imputation in support thereof as per charge memorandum dated December 03, 1999 listed the time of the incident as 11:30 hours, which meant as 11:30 AM i.e. just prior to the forenoon. Since petitioner and co-delinquent Ct.Suresh Kumar had irrefutable evidence that the two were on duty at the farmhouse of Sh.Kedar Nath Sahni and Sh.R.L.Bhatia, with mala-fide intent the time was shifted to 23:30 hours i.e. just prior to the midnight. It was argued that it is a case of no evidence.

22. Pertaining to the first contention urged that de novo trial could not be ordered, from the facts noted hereinabove it is apparent that when charge memorandum dated December 03, 1999 was served, the relied upon documents listed therein were not supplied to the petitioner and this was held by the appellate authority as vitiating the inquiry i.e. the procedure prescribed by law was not followed. The second reason was that as per the appellate authority the department kept on amending the charge.

23. It is trite that if an inquiry is found to be vitiated due to a procedural lapse, requiring the same to be cured the inquiry is required to be re-held from that stage onwards.

24. In the instant case, this has happened. Since the inquiry was vitiated and the stage when relied upon documents were to be supplied, the corrective action had to be to set aside the report of the inquiry and direct the documents to be supplied to the delinquent and from said stage to proceed ahead.

25. Since the disciplinary authority found that the act of amending the charge being not followed by affording an opportunity to the petitioner to file a written response to the amended charge vitiated the charge itself, in the view taken by the disciplinary authority, the decision to direct a fresh charge sheet to be served would not amount to a de novo inquiry as conventionally understood.

26. We need to speak a word about the decision taken by the appellate authority that by repeatedly amending the charge the proceedings got vitiated. The decision is technical in nature and overlooks the substance. The substance being that a reference to the time 11:30 PM when the incident took place found itself reflective in the charge and the statement of imputation as 11:30 hours and this was picked up by the petitioner to predicate a defence of alibi. The department realized that there was a typographic error in that '*PM*' got typed as '*hours*'. To obviate any dispute the amendment was made by correcting the time to read 23:30 hours i.e. 11:30 PM. The so called second amendment was not to the charge but a clarification to the statement of imputation in that in the original it was not stated as to, to which Company Commander was the abuse hurled and thus it was clarified that the same was directed towards the Company Commander North Block. There was no need for any such clarification because a perusal of the statement of imputation originally served would reveal that it was HC/GD Om Prakash who was referred to as the CHM of the company and thus a reference to the nuisance by shouting at the Company Commander was obviously with reference to HC/GD Om Prakash the CHM (Company Havaldar Major).

27. Pertaining to the second point that the evidence was false because of the reason the charge was amended with reference to the time for the reason the petitioner was not at the place of the incident at 11:30 hours and thus the department changed the time to 23:30 hours i.e. from 11:30 AM changed the time of the incident to 11:30 PM, it is apparent that a typographic mistake was corrected by the department. As per the statement of imputation a general diary entry No.1059 dated November 05, 1999 was made pertaining to the incident. The same is a listed document at serial No.2 of the list of documents. The time of the G.D. Entry notes that the incident took place at 23:30 hours.

28. The last plea that it is a case of no evidence is belied from the testimony of the six witnesses of the prosecution who were examined. It may be true that the department was negligent in not proving the medical treatment record pertaining to HC Om Prakash pertaining to the injuries suffered by him but in the teeth of the testimony of HC Om Prakash duly corroborated by Insp.Yogender Singh PW-2, SI H.L.Yadav PW-3 and SI Om Prakash PW-5 it cannot be said that the charge of the petitioner abusing and assaulting a superior officer has not been established.

29. We find no merit in the writ petition which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 03, 2014/*mamta*