

Court No. - 39

Case :- SPECIAL APPEAL No. - 1017 of 2019

Appellant :- Union Of India And 2 Others

Respondent :- Krishna Kumar And 2 Others

Counsel for Appellant :- Arvind Kumar Goswami, Shri Gyan Prakash, Senior Advocate

Counsel for Respondent :- Rakesh Pande (Senior Adv.), Jyoti Kumar Singh, Vishakha Pande

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Sri Arvind Kumar Goswami learned counsel for the respondent-appellant and Ms. Vishakha Pande learned counsel for petitioner-respondent.
2. Present intra-court appeal arises from the order dated 15.5.2019 passed by the learned single judge in Krishna Kumar (since deceased) vs. Union of India and Others (Writ-A No. 67355 of 2005). By that order, the learned single judge has allowed the writ petition and quashed the penalty order dated 30.11.2004 passed by the Commandant, 74 Battalion, CRPF Varanasi awarding punishment of dismissal with forfeiture of all medals/decorations. Also, challenge has been raised to the order dated 12.5.2005 passed by the DIG, CRPF Chandigarh dismissing the petitioner-respondent's departmental appeal.
3. Submission of learned counsel for the appellant is, learned single judge has completely erred in principle, by interfering with the punishment awarded consequent to the domestic enquiry proceeding suffered by the petitioner-respondent. No defect was found in the domestic enquiry proceeding. Though the charge of being found on duty in an inebriated state may not have been proved, at the same time the second article of charge that was more serious- of having fired one shot from an

automatic weapon while on election duty at a polling station, during the conduct of the general election 2004, was a wholly unprovoked act that had caused disruption of the polling for about an hour, itself merits award of major punishment. Since the domestic enquiry was not found vitiated and punishment awarded was not found grossly disproportionate to the offence alleged, there did not exist any principle of law on which the learned single judge may have interfered with the disciplinary proceedings or on which the writ petition may have been allowed with all consequential benefits.

4. On the other hand, learned counsel for the petitioner-respondent would contend, charge of intoxication was not proved. Therefore, the second charge of having fired one shot from an automatic weapon, allegedly in that inebriated state was also not proved. Also, it has been contended, no independent evidence was led to establish any misbehaviour committed by the petitioner-respondent. The entire evidence was motivated and in any case not independent.

5. Having heard learned counsel for parties and having perused the record , the petitioner-respondent was charge sheeted on 13.7.2004 on following two articles of charge:

"ARTICLE-I

That the said No. 810080292 HC/GD Krishan Kumar while functioning as HC/GD on 10/5/2004 committed a misconduct/remissness in the discharge of his duty in his capacity as a member of the Force U/S 11(1) of the CRPF Act-1949 in that he consumed liquor/Alcohol while detailed on Govt. duty and is habitual of Alcoholism, which is prejudicial to good orders and discipline of the Force.

ARTICLE-II

That the said No. 810080292 HC/GD Krishan Kumar while functioning as HC/GD on 10/5/2004 committed a misconduct/ remissness in the discharge of his duties in his capacity as a member of the Force U/S 11(1) of the CRPF Act-1949 in that he created panic in voters by resorting to unwarranted fire by his service carbine in intoxicated condition and

caused temporary disruption in polling process at Booth No. 136 at Hamid Inter College, Rampur Parliamentary constituency, which is prejudicial to good orders and discipline of the Force"

6. We propose to offer no interference with the finding of the learned single judge with respect to the first article of charge involving allegation of the petitioner-respondent being found in an inebriated/drunken state, while of election duty. Once the charge of being on duty under influence of liquor had been levelled, the burden remained on the employer to lead cogent evidence to establish both, consumption of liquor while on duty and/or presence of alcohol in blood level etc. through medical reports to establish that the alcohol level may have been higher, than permitted. No medical evidence having been led to establish that the petitioner-respondent was in an inebriated/drunken state, that element of charge remained unproved. Neither there is any presumption available in law nor that burden stood discharged on the oral testimony of employer witness who may have described the petitioner-respondent to have appeared to be in an inebriated/drunken state. However, it is over-simplistic and wholly unacceptable to therefore find the petitioner-respondent innocent.

7. Insofar as the second article of charge is concerned, we find it useful to extract the finding of the enquiry officer as below:

"When the voting started dt Nijam Ali was placed on booth No. 133, Ct K. Bheopati was placed on booth No. 136 and Ct Inder Lal was placed on booth No. 137 by HC Krishan Kumar sent Ct K. Bheopati to booth No. 133 as there were..... there. The C.O. started giving duty at booth No. 136. The C.O. was under intoxication at that time and complaints to this effect were reaching all the three constables According to the C.O. in his defence Stmt he had fired a round from his carbine pointing the barrel towards ground, because some suspicious looking people tried to violate the peace on the polling stn and when the delinquent tried to stop them, they became violent. To control them and to save his life, the lives of his jawans, their weapons and the polling related things present on the polling stn and to safeguard the peace of the polling stn, he fired that round. In the stmts of the Pws, it is clearly mentioned that there were three booths i.e. 133,136 and 137 were in close vicinity and from booth No. 133 all the happenings of booth No. 131 were visible. It is mentioned by Ct Nijam Ali that before the firing took place there were no disturbance of any kind at booth No. 136 and the polling was proceeding very peacefully.

Other witnesses also say the same thing. If there was any violent action on part of suspicious looking people at booth No. 136 and even use of physical force by the delinquent when he tried to stop them, it must have come to the notice of the three constables who were quite near by.

No violent activity at booth No. 136 is reflected in any stmt. Fire took place at 1330 hrs after which the delinquent was disarmed by the three constables present on duty. The firing created panic in voters and the voting remained disrupted for about half an hour as the voters were demanding action against the delinquent.

On going through all the documentary and oral evidence in support of charges framed against the delinquent in Article II (Annexure-I) and in the support of the delinquent, my assessment is that the delinquent No. 810080292 HC/GD Krishan Kumar created panic in voters by resorting to unwarranted fire by his service carbine in intoxicated condition and caused temporary disruption in polling process at booth No. 136 at Hamid Inter Collage, Rampur parliamentary constituency."

8. Neither before the departmental authorities nor before the learned single judge there arose any material to doubt the fairness and completeness of the disciplinary proceeding. Once the domestic enquiry was fair and not vitiated in law, there survived no jurisdiction with the writ Court to interfere in the quantum of punishment.

9. Also, in the present case, second article of charge was of more serious nature than the first article of charge. The fate of the first article of charge did not determine the outcome of the second article of charge. Being drunken or not being in inebriated/drunken while on election duty may have certain implications. However, causing unprovoked firing while on election duty as had disrupted peaceful polling of votes for about half an hour by setting panic amongst the voters, remains a very serious misconduct by a member of a disciplined force who was posted precisely to ensure that the polling was conducted and completed, peacefully i.e. without any undue hindrance in that process.

10. By causing unprovoked firing, even one shot, the petitioner-respondent, by his own voluntary and unprovoked act disrupted peaceful polling process. This fact was duly proven at the

enquiry, as has been noted above. Unless, the domestic enquiry proceeding had been found to be vitiated, such finding would leave no room for the writ Court to use its extraordinary jurisdiction to interfere in the punishment order.

11. Here, we find that the learned single judge completely missed the core issue. That Court, appears to have been swayed solely by the fact that the employer could not prove that the petitioner-respondent was in an inebriated/drunken state. However, the learned single judge has hurriedly reached the conclusion of innocence by completely overlooking the fact that the second article of charge was quite independent of allegation of drunkenness. It has also missed the attention of the learned single judge that the second article of charge was a heavier charge which had been duly proved at the domestic enquiry proceedings. No discussion has been offered by the learned single judge to overcome the finding of guilt recorded during the domestic enquiry proceeding. Here, suffice to note, unless the finding had been recorded by the learned single judge that the domestic enquiry proceeding was vitiated, there could arise no occasion with the writ Court to interfere with the finding of fact recorded by the disciplinary authority. That, to our mind is a fatal error on principle, committed by the learned single judge.

12. Since the intra court appeal proceeding remains a proceeding by way of appeal on principle, we find ourselves obligated to apply the correct principle.

13. Having perused the record and having heard counsel for parties, we find there is nothing to doubt the fairness and completeness of the domestic enquiry proceeding. The finding of guilt on the second article of charge of firing a shot from his service Carbine, as resulted in disruption of election process, is

based on due evidence and material gathered during the enquiry proceedings. Therefore, the domestic enquiry proceedings cannot be seen to be vitiated, on any count.

14. Consequently, there survives no room to offer any interference in exercise of writ jurisdiction. The appeal succeeds. The order of the learned single judge dated 15.5.2019 is set aside.

15. Since the petitioner-respondent is reported to have died, it is left open to his legal representatives to apply for sympathetic consideration, for the purpose of computation of terminal dues.

16. The appeal is accordingly **disposed of**.

Order Date :- 13.10.2023

Faraz

(Rajendra Kumar-IV, J.) (S. D. Singh, J.)