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

Decided on : 19.11.2015

+ **W.P.(C) 11616/2006**

U.P. SINGH

.....Petitioner

Through: Sh. Vikram Nandrajog, Advocate.

Versus

UOI AND ORS.

.....Respondents

Through: Sh. Vivek Goyal, CGSC with Sh. Surender Pal,
representative of CISF.

Sh. Dev. P. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner is aggrieved by the penalty of compulsory retirement imposed by the Central Industrial Security Force (CISF) where he was employed as a Constable. The order imposing the said penalty was passed on 27.12.2003 after conclusion of enquiry in which the petitioner participated. His appeal to the appellate authority was rejected on 29.11.2004. His revision application too was rejected on 23.04.2005.

2. The brief facts are that the petitioner joined as a Constable in the CISF on 31.05.1983. The petitioner was initially suspended on 10.07.2003 in respect of an incident which happened on 25.06.2003 at Akash Nagar Camp, Bacheli (Chattisgarh). Later, Articles of Charge with details of imputation dated 17.07.2003 were served upon him. In the enquiry, CISF examined six witnesses and the petitioner relied upon the deposition of three witnesses. After considering the materials on record, the Enquiry Officer (EO) concluded that the petitioner was guilty of the charge and furnished his report to that effect on 11.11.2003.

3. The petitioner's grievance is that the facts which emerged during the course of the enquiry could not have led to a reasonable inference of his guilt. The charge against the petitioner was that at 05:40 PM on the relevant date, (i.e. 25.06.2003), whilst going to Bacheli checkpost in civilian dress (outside the fencing of the Camp), he abused HC/Guard Commander S.N. Prasad who was there at that time. The latter was standing inside the fencing of quarter guard.

4. The charge sheet alleged that the petitioner initially conversed with HC S.N. Prasad standing outside the quarter guard and during the conversation both got angry which led to heated and abusive arguments and quarrel during the course of which both sustained some injuries. The charge sheet later alleged that the petitioner was sent to the Akash Nagar hospital for treatment at 08.00 PM. It further stated importantly that the petitioner was in an intoxicated condition when the scuffling incident took place and that he also used abusive language. It was also alleged that the petitioner had entered the quarter guard and further that the scuffle between the two occurred outside the fencing.

5. Learned counsel for the petitioner firstly urges that there was no evidence before the EO to conclude that he was intoxicated. It was highlighted in this context that deposition of PW-2 was contrary to that of PW-3. PW-2, the complainant, stated that the petitioner smelt of alcohol. However, PWs-3 and 4, on the other hand, did not support this version and upon categorical queries stated that they were either unaware or that he was not drunk. Furthermore, it was submitted that PW-3 who accompanied the petitioner to the Akash Nagar hospital was not cross-examined to elicit whether he smelt of alcohol or was in a drunken state just before 08.00 PM. It was submitted that in these circumstances, the only material was the rival version of PW-2, the complainant who obviously had an axe to grind since he at the first instance alleged misbehaviour by the petitioner. It was next contended that the conduct of PW-2 itself was suspect even otherwise because he clearly stated that after the abusive words were uttered by the petitioner and he entered the quarter guard, both went outside. Learned counsel here stressed that being the guard commander, no explanation was given by PW-2 as to why he stepped out of the quarter guard given that he was on duty. He also agitated the version of PW-2, pointing out that according to his deposition he was not in uniform but in PT dress.

6. Learned counsel submitted that considering the totality of the evidence led in the course of enquiry, the finding of guilt was utterly unwarranted. He submitted that the doctor who deposed, i.e. PW-6, Dr. Jayant Sarkar merely stated that the petitioner smelt of alcohol. Concededly, he did not test the petitioner by drawing blood sample etc. Furthermore, learned counsel submitted that PW-6's deposition cannot be accepted at face value because the only witness who accompanied the petitioner to the

hospital was PW-3. That this was so is evident from the statement of PW-5. Neither of them deposed as to petitioner's misbehaviour during the time he was in the ambulance whilst on way to the hospital.

7. Learned counsel for the petitioner submitted that even if the Court were not to disturb the findings recorded by EO, the penalty of compulsory retirement imposed in the circumstances of the case was disproportionate. Learned counsel stressed that the disciplinary authority and the CISF generally was disproportionately influenced by the previous proven misconducts of the petitioner. Learned counsel pointed out here that all the said instances involve minor infractions and for considerable period, i.e. 10 years between 1990-1999, there was no allegation of misbehaviour or misconduct against the petitioner. Learned counsel relied upon the judgment of the Division Bench of this Court in *Ram Kumar (Ex. Const) v. UOI and Anr.* 213 (2014) DLT 113. It was submitted that under somewhat similar circumstances, where a BSF employee was found to have misconducted himself, the Court stressed upon the administrative agency's duty to consider proportionality while imposing penalty. The Court had, it is submitted, taken note of the fact that para-military personnel quite often are subjected to stresses and strains and this is an important factor to be taken into consideration while imposing the penalty for proven misconduct.

8. Learned counsel for the respondents urges that this Court should not interfere with the disciplinary authority's order based upon the enquiry report as well as the penalty imposed. Relying upon the observations of the Supreme Court in *B.C. Chaturvedi v. UOI and Ors.* 1995 (6) SCC 749, learned counsel submitted that in a departmental enquiry, technical rules of evidence would not apply and the proof of facts or evidence, as understood

in the legal sense, would not apply to disciplinary proceedings. So long as there is some material to draw a reasonable inference, the Court or Tribunal entrusted with judicial review would not reconsider the evidence as an appellate Court. Learned counsel further submitted that taken together, the statements of PWs-2 and 6 clearly pointed to the fact that the petitioner was in an intoxicated state when he went in the vicinity of the quarter guard of the camp and picked a quarrel by hurling abuses at HC S.N. Prasad who was at that time the Guard Commander. Learned counsel disputed that HC S.N. Prasad went out and quarrelled with the petitioner and rather pointed out that as a Guard Commander he deposed that the petitioner's action in entering the quarter guard and scuffling with him led to the apprehension that the rifle would be snatched from the sentry and, therefore, he went out. Learned counsel submitted that so far as the issue of proportionality goes, the penalty of compulsory retirement was appropriate and proportionate in the given circumstances of the case. He relied upon the fact that on ten previous occasions, the petitioner had misconducted himself on various counts – including persistent abusive behaviour and drunkenness.

9. The above discussion would show that the allegations against the petitioner were of drunken behaviour and using abusive language on 25.06.2003 at 05:40 PM at the Akash Nagar Camp, Bacheli. The allegations further were that he had scuffled with the Guard Commander at the quarter guard. – HC S.N. Prasad. During the course of enquiry, the allegations of abusive behaviour, scuffling and the petitioner reeking of alcohol was supported by PW-2. However PWs-3 and 4 did not state anything with respect to the petitioner's smelling of alcohol despite pointed queries by the EO. Though PW-1 was examined by CISF, he apparently was not an eye

witness to the incident itself. The incident he witnessed was the petitioner's misbehaviour after the incident. He stated that the petitioner laid down on the road and insisted that he would not get up till the Deputy Commandant reached there.

10. The materials on the record show that PW-2, the complainant and the PW-6, the doctor stated clearly about the petitioner's intoxicated condition. Even if PW-2's deposition were to be taken with some suspicion, the fact remains that PW-6 was entirely independent and had no reason to depose against the petitioner. He clearly stated that the petitioner reeked of alcohol when examined at 08.00 PM. This clearly corroborates the version of PW-2. The petitioner does not establish that PW-2 had no motive to level false allegations against him. Likewise, there is no malafide alleged against PW-6. In fact, the testimony of PW-3 corroborates the statement of PW-2 to the extent that he witnessed the scuffle and PW-2 had to leave the quarter guard and had to go out with the petitioner after the latter had entered it.

11. Having regard to all these circumstances and given that in departmental proceedings, strict rules of evidence do not apply, the Court is unimpressed with the petitioner's submission that the EO's report was not based on any credible evidence when it held that the petitioner was intoxicated and guilty of having abused PW-2 in the manner the charge sheet alleged.

12. The conclusions of the Court are in line with the decision of the Supreme Court in *B.C. Chaturvedi (supra)* where it was observed as follows:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of

judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

13. So far as the issue of proportionality is concerned, the observations of this Court in *Ram Kumar (supra)* be noticed which were in the context of a proven misconduct which led to the dismissal of an employee. The facts were that like the present petitioner - the employee was accused and found to have indulged in misbehaviour during his state of intoxication. However, other facts, such as scuffle with colleagues or previous misconducts

involving intoxication or abusive behaviour were absent. In these circumstances, we are of the opinion that *Ram Kumar (supra)* is not an apt decision which can assist the present petitioner.

14. The CISF, whilst imposing the penalty of compulsory retirement took note of the petitioner's past ten misconducts which were detailed in the course of enquiry as follows:

“Ext. C-1/CW-1

*PUNISHMENT PARTICULARS IN RESPECT OF
NO.834331150 CONSTABLE U.P. SINGH OF CISF UNIT
NBIOP, DEP-5 AS PER HIS SERVICE RECORDS*

- 1. Quarrel with inmates under influence of Liquor and awarded punishment with Censure vide Commandant, CISF Unit ECL Seetalpur USO Pt.II. No.227/1987 dt. 22.12.1987.*
- 2. Sleeping on duty and awarded the punishment with holding of one increment for one year without cumulative effect vide Gp. HQrs. Commandant, Kolkata USO Pt.II No.142/1989 dated 24.02.1989.*
- 3. Absented from duty for 06 days also misbehaviour with Insp/Exe and also quarrelled with other CISF personnel during the election duty and awarded the punishment withholding of one increment for one year with cumulative effect vide Deputy Commandant, CISF Unit IOC Haldia final order No.(2373) dt. 25.07.1989.*
- 4. Negligence on duty and awarded the punishment with Censure vide Gp. Comdt. CISF Kolkata USO. PT.II No.135/90 dated 08.02.1990.*
- 5. Assault with inmates and absent from unit line and awarded the punishment withholding of one increment for two years without cumulative effect vide Deputy Commandant, CISF*

Unit Kh STPP Kahalgaon USO Pt.II No.09/90 dt. 10.02.1999.

6. *Nuisance created in the family quarter with unwanted words to one of the family members and awarded punishment with Censure vide Deputy Commandant, CISF Unit FCI Gorakhpur USO. Pt. II No.33/2001 dated 07.05.2001.*

7. *Absent from duty post and awarded the punishment with Censure vide DC CISF Unit FCI Gorakhpur USO Pt. II No.58/01 dt. 30.08.01.*

8. *Absent from duty post and awarded the punishment with Censure vide DC CISF Unit FCI Gorakhpur USO PT. II No.58/01 dt. 30.08.01.*

9. *Arguments with Sr. Officers with unwanted words and awarded the punishment of pay fine for one day vide DC FCI(G) USO Pt. II No.35/02 dated July 2002.*

10. *Nuisance created in the Unit main office and arguments with unwanted words under influence of liquor and awarded the punishment with withholding of one increment for one year without cumulative effect vide DC FCI(G) USO Pt.II No.35/02 dt. July 02.”*

15. The above would clearly show that at least on three past occasions, the petitioner was found to have misbehaved in a drunken state. Likewise, in three other instances, he abused other personnel and a third party. In one instance, he even abused a superior officer. No doubt, he was imposed with minor penalty and those penalties attained finality. However, that these were taken into account while imposition of the penalty of compulsory retirement in the given and proven facts of this case, in our opinion, is not a vitiating factor.

16. For the above reasons, this Court is of the opinion that this writ

petition has no merit and is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

NOVEMBER 19, 2015

