

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

% *Judgment Reserved On : April 09, 2015*
Judgment Delivered On : April 27, 2015

+ **W.P.(C) 32/2013**

KIRAN SINGH Petitioner
Represented by: Mr.M.Padhi, Advocate.

versus

CISF Respondent
Represented by: Mr.Manish Mohan, CGSC with
Ms.Manisha Rana Singh, Ms.Siddhi
Arora, Ms.Puja Sarkar and Ms.Hina
Shaheen, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner was appointed as a Head Constable (Driver) in CISF on June 09, 1984. Vide memo dated August 06, 1992, the petitioner was charge-sheeted as under:-

“ARTICLE-I

Gross misconduct and an act of indiscipline in that No.8448011 HC/Dvr Kiran Singh of CISF Unit, NCPP Vidyut Nagar (Fire Wing) Dadri under the influence of liquor on 3.5.91 at around 20:00 hrs. assaulted HC/GD KX Singh, CHM in the unit lines and created nuisance in unit lines. Hence the charge.

ARTICLE-II

Gross misconduct and an act of indiscipline in that No.8448011 HC/Dvr Kiran Singh of CISF Unit, NCPP Vidyut Nagar (Fire Wing) Dadri was detailed for 'C' shift duty on 3/4.5.92 from

21:00 hours to 05:00 hours. He did not attend the same and unauthorizedly withdrew from duty without any information and permission from the competent authority. Hence the charge.

ARTICLE-III

Gross misconduct and an act of indiscipline in that No.8448011 HC/Dvr Kiran Singh of CISF Unit, NCPP Vidyut Nagar (Fire Wing) Dadri deserted from CISF Unit Lines on 4.5.92 and remained absent from duty upto 26.5.92. Hence the charge.

ARTICLE-IV

Gross misconduct and an act of indiscipline in that No.8443011 HC/Dvr Kiran Singh of CISF Unit, NCPP Vidyut Nagar (Fire Wing) Dadri is a habitual of over staying and had earlier been OSL/AWL for two times and despite being given an opportunity to improve upon himself he proved to be incorrigible. Hence the charge.”

2. A perusal of the four articles of charge make it clear that pertaining to the alleged misconduct it was only articles I to III which were the subject matter of the indictment. Article IV of the charge was by way of it being brought to the notice of the petitioner that the past service record would be considered against him. The reason being that unless it is told to the charged officer that even his past service record would be considered so that he may have an opportunity to give his version thereon as to why the past conduct is irrelevant, it may amount to a denial of principles of natural justice to consider the past service record.

3. The original record which was produced before us at the hearing evidence that the charge memorandum dated August 06, 1992 was received personally by the petitioner on August 08, 1992 and in token of acknowledgment he signed the office copy of the memorandum.

4. Along with the memorandum, the articles of charge, the statement of imputation, the list of documents by which the articles of charge were intended to be proved as also the list of witnesses proposed to be examined were supplied to the petitioner.

5. As regards the list of documents, the same were (i) a general diary entry No.75 dated May 03, 1992, which is a contemporaneous written record of what transpired at around 21:00 hours on May 03, 1992; (ii) a medical report concerning the petitioner when he was examined by the Medical Officer of the Primary Health Centre, Dhaulana, Ghaziabad at 23:00 hours on May 03, 1992; (iii) Extracts of 18 entries made in the general duty register between May 04, 1992 and May 13, 1992; and (iv) the service book of the petitioner concerning his past service record.

6. On September 07, 1992 the petitioner submitted his response to the charge memorandum in which he admitted being taken to the Primary Health Centre, Dhaulana, but claimed that this was due to a conspiracy hatched against him by the Company Havaldar Major K.K.Singh. Admitting that he absconded from the unit lines on May 04, 1992 and remained absconding till May 26, 1992, the petitioner pleaded that he was compelled to run away because CHM K.K.Singh along with L/Nk.H.K.Chaturvedi, L/Nk.R.S.Yadav, Ct.Ramender Rai, Ct.R.D.Yadav and Ct.P.N.Singh, who were drunk assaulted him and threatened to kill him.

7. It needs to be highlighted that the petitioner named four out of the six witnesses who were cited by the prosecution for being examined at the inquiry against the petitioner as the ones who had assaulted him and threatened to kill him. They are L/Nk.A.C.Chaturvedi, L/Nk.R.S.Yadav, Ct.Ramender Rai and of course CHM K.K.Singh.

8. Considering the reply filed by the petitioner and opining that case was made out to conduct an inquiry, the Competent Authority appointed Assistant

Commandant B.N.Bhattacharya as the Inquiry Officer against whom petitioner alleged bias and thus the Competent Authority replaced the Inquiry Officer by appointing Insp.S.J.Dassi as the Inquiry Officer.

9. Serving the petitioner with a notice fixing the first date of inquiry as October 23, 1992, Insp.J.S.Dassi conducted the preliminary hearing on October 23, 1992. The said proceedings have been signed by the petitioner. Seven questions were put to the petitioner, and being relevant, the seven questions and their answers are as under:-

“Q.1. Have you received charge memo and have you given reply to the charge memo in writing?”

Ans. Yes. I have received the charge memorandum and I have reply in writing.

Q.2. Have you understood the charges levelled against you?

Ans. Yes. I have understood the charges levelled against me fully vide charge memorandum No.V-15015/CISF/NCTP/Disc/KS/92-1566 dated 06/8/92.

Q.3. Do you accept me as Inquiry Officer?

Ans. Yes I accept you as my Inquiry Officer and I have no objection of you being my Inquiry Officer.

Q.4. Do you accept the charges?

Ans. Yes. I accept the charges framed against me.

Q.5. Do you want to nominate any member of the Force as your Defence Assistance?

Ans. No. I do not want to nominate any member of the Force as my Defence Assistance.

Q.6. Do you want to inspect and take extracts of any official record to prepare your defence?

Ans. No. I do not want to inspect or to take extracts of any official records for my defence.

Q.7. Do you feel guilty or not?

Ans. Yes I feel guilty of the charges framed against me.”

10. Since the petitioner acknowledged having received the charge memorandum, the documents relied upon by the department and accepted having understood the charge followed by having no objection to Insp.J.S.Dassi conducting the inquiry and lastly unequivocally pleading guilty to the four charges, the Inquiry Officer submitted a report to the Disciplinary Authority recording the said fact.

11. The Disciplinary Authority furnished the report to the petitioner for his response. The petitioner filed his response on November 20, 1992 admitting once again to his guilt and pleaded for mercy.

12. The Disciplinary Authority passed an order dismissing petitioner from service on December 16, 1992 against which departmental appeal preferred was rejected by the Appellate Authority on April 24, 1993.

13. In the appeal the appellant took a contrary stand regarding the proceeding held on October 23, 1992 by Insp.J.S.Dassi. He pleaded that he was coerced into answering the questions put to him by Insp.J.S.Dassi as also that the proceedings were a sham and that his signatures were forged thereon.

14. In his appeal the petitioner claimed to have submitted a representation against Insp.J.S.Dassi conducting the inquiry, in respect of which claim of the petitioner the Disciplinary Authority held that it was a mere allegation without there being any proof of the petitioner having submitted any representation as claimed by him.

15. Revision preferred by the petitioner against the penalty of dismissing him from service was rejected by the Revisional Authority on December 14, 1993.

16. The petitioner filed a suit challenging the penalty of dismissal from service imposed upon him. Being registered as Suit No.74/06/96 the suit was decreed on July 15, 2009 holding that principles of natural justice were violated.

17. The respondent challenged the judgment and decree dated July 15, 2009 by filing an appeal which was disposed of on November 20, 2009 holding that no principle of natural justice was violated. It was observed that the penalty to be levied upon the petitioner required to be re-considered because certain non-aggravating factors as also mitigating factors were not considered by the Disciplinary Authority. It was additionally held that for the wrongs mentioned in Article IV of the charge, the petitioner had been penalized on the earlier occasions and thus it was held that penalizing him once again for the same wrong would amount to double jeopardy. The matter was accordingly remanded to the Disciplinary Authority for levying penalty afresh.

18. Reconsidering the matter on May 24, 2011 the Disciplinary Authority levied the penalty of compulsory retirement from service upon the petitioner with service gratuity to be paid. Reason why pension was not sanctioned was that the petitioner had not rendered pensionable service.

19. Though a feeble attempt was made to question the indictment itself, but in view of the fact that the petitioner had challenged the penalty imposed upon him vide order dated December 16, 1992, against which the appeal and further revision filed were rejected and initially succeeded when the suit filed by him was decreed on July 15, 2009, but lost on the indictment when the appeal filed by the respondents was partially allowed on November 20, 2009.

The Appellate Court found no merit in the stand of the petitioner that he was wrongly held guilty. The Appellate Court directed the Disciplinary Authority to reconsider the penalty levied.

20. On the finding of guilt returned against the petitioner, suffice it to state that he pleaded guilty before the Inquiry Officer and reiterated the plea of guilt when the report of the Inquiry Officer, which was based on the petitioner's plea of guilt, was sent to the petitioner for his response and in his reply dated November 20, 1992, the petitioner once again pleaded guilty.

21. It was only in the appeal filed before the Appellate Authority that the petitioner said that the proceedings held by the Inquiry Officer on October 23, 1992 were sham and that his signatures were forged thereon; simultaneously pleading that he was coerced into answering the questions put by the Inquiry Officer.

22. Now, the two cannot simultaneously co-exist. Either the petitioner was coerced into signing the order sheet after being coerced into admitting to his guilt or nothing happened on October 23, 1992 and Insp.J.S.Dassi drew up the proceedings sitting in his room and forged the signatures of the petitioner thereon.

23. That apart, when the petitioner filed his response to the report of the Inquiry Officer on November 20, 1992, he was not in the presence of any superior officer and he sent the reply with a cool mind. In the said response the petitioner admitted to his guilt.

24. That closes the issue against the petitioner.

25. That apart, in response to the charge memorandum, pertaining to what happened at 20:00 hours on May 03, 1991 and thereafter at 21:00 hours, the petitioner denied the facts alleged against him but admitted that he was medically examined. He took the stand that he was taken for medical

examination as a result of a conspiracy hatched by the Company Havaladar Major K.K.Singh.

26. Since before the Inquiry Officer the petitioner admitted to his guilt, the documents relied upon were not proved and no witness was examined, but the fact of the matter remains that the medical report dated May 03, 1992 by the Medical Officer of the Primary Health Centre, Dhaulana, Ghaziabad establishes that at 23:00 hours the petitioner was found to have consumed alcohol.

27. From the charge memorandum it is clear that the petitioner was detailed for 'C' Shift Duty from 21:00 hours on May 03, 1992 till 05:00 hours on May 04, 1992. As a Head Constable (Driver) the petitioner was aware of the nature of his duties and thus he consuming alcohol and being so detected at 20:00 hours, creating a nuisance in the unit lines is a serious act. When questioned by the Company Havaladar Major HC K.K.Singh, the fact that the petitioner assaulted him shows the level of intoxication. With passage of time, as the alcohol in the blood breaks down into sugar, the level of alcohol in the blood reduces and this explains that when petitioner was medically examined, three hours later, at 21:00 hours he was found to have consumed alcohol but not under the influence thereof.

28. Pertaining to Article III of the charge, the act of the petitioner deserting the unit lines on May 04, 1992 and remaining absent till May 26, 1992, the petitioner admitted said fact even in his reply to the charge memorandum, but took a stand that it became his compulsion to do so because CHM K.K.Singh along with L/Nk.H.K.Chaturvedi, L/Nk.R.S.Yadav, Ct.Ramender Rai, Ct.R.D.Yadav and Ct.P.N.Singh, who were drunk assaulted him and threatened to kill him. The petitioner did not even make an attempt to prove said counter charge of his, which was by way of justification for the act of absconsion.

29. It is thus a case where the petitioner not only indulged in repeated wrongs but made false allegations against his colleagues; and the false allegations are of a serious nature.

30. The petitioner continued with his falsehood when in the appeal filed against the order levying penalty of dismissal from service by taking a stand that the Inquiry Officer coerced him into admitting to his guilt and simultaneously pleading a contrary stand that the proceedings were forged and so were his signatures thereon. The falsity of the stand has already been exposed by us and therefore we write no further.

31. It is settled law that when a person indulges in repeated wrongs and refuses to mend his ways; the previous penalties having no sobering effect, after notice to the wrong doer for a fresh wrong committed that if found guilty the past service record would be taken into account, it is permissible for the Disciplinary Authority to factor in the previous conduct while considering the nature of the penalty to be levied. It would not be a case of double jeopardy because the person is not being punished twice for the same wrong. It is altogether different to punish a person twice for the same wrong vis-a-vis to consider the past conduct while levying a penalty for a different wrong. This aspect of the matter was overlooked by the learned Additional District Judge while deciding the appeal filed by the department.

32. A person who does a wrong and expresses no remorse; further compounds it by making false allegations against all and sundry and is found to be a repeat offender, would make himself liable to a suitable penalty being levied taking into account said factors because they are relevant. They aggravate the wrong. Just as repentance and remorse are mitigating factors.

33. As regards the penalty, in the decision reported as (2009) 15 SCC 620; Chairman-cum-Managing Director, Coal India Ltd. v. Mukul Kumar Choudhuri, it was held as under:-

“One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

34. The petitioner being found to be a repeat offender, a person who expresses no remorse, a person who levies false allegations to hide his wrongs, if a member of an Armed Force would make himself liable to be removed from the Force. In the decision reported as AIR 1962 SC 1337 In the matter of ‘A’ an Advocate, the Constitution Bench of the Supreme Court opined that since the Advocate, who had been soliciting briefs, admitted before the Registrar of the Supreme Court having solicited briefs, but denied having solicited the briefs (after having so admitted before the Registrar of the Supreme Court) when the Tribunal constituted by the Hon’ble Chief Justice of India went into the allegations against the advocate, he was unworthy of any compassion on the proportionality of the penalty. It was observed : *‘If anything, by adopting the attitude of denial which has been demonstrate to be false in the course of the proceedings before the Tribunal, he has not deserved well of the Court even in the matter of amount of punishment to be meted to him for his proved misconduct’.*

35. In the decision reported as 171 (2010) DLT 705 Government of NCT of Delhi & Anr. Vs. Robin Singh, a Division Bench of this Court held that the minimum attributes required to be possessed by a member of a police force are : (a) Physical Strength and fitness/Free from medical diseases, (b) Emotional maturity, and ability to remain calm in emotionally charged situations, (c) Ability to exercise initiative in their work, (d) Good moral

character and integrity, (e) The ability to carry a great deal of responsibility in handling difficult situations alone/dependability and (f) Good Judgment.

36. The petitioner has shown lack of emotional maturity and ability to remain calm in charged situations. He not only drinks at an inappropriate time and when told to mend his ways, he runs away from duty and levels false allegations against his colleagues of being threatened to be killed. He admits to his guilt when he finds no escape but in a very cunning manner tries to wriggle out by alleging that he was coerced into pleading guilty or that his signatures on the plea of guilt were forged and that no such proceedings took place.

37. The penalty of a kind where the petitioner no longer remains a member of a disciplined police force is therefore fully justified in the facts and circumstances of the instant case. The penalty of compulsory retirement from service is justified. Since the petitioner did not render qualifying service to earn a pension would not entitle him to any. We note that gratuity has been paid for the service rendered.

38. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 27, 2015
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