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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18.11.2015

W.P. (C) 10611/2015
CM APPL.27092/2015

MADHU SUDAN SINGH

..... Petitioner

Through: Mr. Ajay Kalra with
Mr. Apar Chopra and Ms. Varuna,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Kailash Golani and Mr. Ankur
Chhibber, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S. RAVINDRA BHAT, J

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1. The petitioner, a Constable working in the Central Industrial Security Force was dismissed from service on 31.07.1995. He was charged with the misconduct of reporting to the duties assigned to him during the third shift (9:00 PM to 05:00 AM) on 23.03.1995 in a state of intoxication and secondly for using intemperate language in a representation furnished by him on 30.03.1995.
 2. The petitioner had earlier approached this Court in W.P.(C)4213/1997. That writ petition was disposed of on 12.05.1999. While disposing of the writ proceedings, this Court had found that the

second charge of using intemperate language was not established. The Court had then directed as follows: -

“In so far as the findings of the 1st charge are concerned, the petitioner will prefer a representation within 10 days from the receipt of the certified copy of this judgment to the Disciplinary Authority i.e. respondent no.5, the Commandant, and the said representation may be disposed of on merits by the respondent No.2 within a period of 4 weeks from the date of receipt of the representation being uninfluenced by the findings recorded earlier.

However, it is not appropriate in the present circumstances to direct the reinstatement of the petitioner consequent to the setting aside of the order of dismissal. Accordingly it is directed that the petitioner be deemed to be placed under suspension with effect from 31st July 1995 and be paid the allowances as admissible under the rules till the final order by the disciplinary authority on the representation filed by the petitioner is passed. The petitioner if aggrieved by the order of the disciplinary authority, will be entitled to ventilate his grievance in accordance with law.”

3. The petitioner's representation against the report of the Enquiry Officer was considered by the Director General, CISF, the revisional authority and rejected on 22.11.1999. The petitioner challenged this order contending that his valuable right to appeal had been deprived by its consideration by the higher authority, i.e., the revisional authority. This contention - articulated in a second writ proceedings - i.e., W.P.(C) 7755/2001, was accepted and the order of the revisional authority was quashed by judgment of this Court dated 23.01.2014.

4. In these circumstances, the petitioner represented to the disciplinary authority urging various grounds. It was principally contended that taken in sum, the evidence on record in the form of deposition of witnesses did not establish that he was drunk when he did report for duty and that the conduct of enquiry was vitiated because “the Enquiry Officer examined the

petitioner as witness without obtaining his consent and cross examined him at length”.

5. The records of the enquiry including the depositions of various witnesses as well as the statement of the petitioner are on the record. So also is the case with the report of the Enquiry Officer. It is emphasized by counsel for the petitioner that the witnesses who were made to depose against him were not unanimous about his inebriation or drunk condition. In support, learned counsel had relied upon the testimony of PW-3 and highlighted that this witness merely stated that upon his reporting, the concerned SI T.K. Mukherjee asked him to be redeployed elsewhere. It was next submitted that the SI T.K. Mukherjee’s testimony in these circumstances could not be determinative of the petitioner’s guilt. Learned counsel submitted that the petitioner was not subjected to any medical examination and the mere *ipsi dixit* of SI T.K. Mukherjee could not have been the basis to impel the Enquiry Officer to conclude that the charge had been established. He urged secondly that the nature and line of questions adopted by the Enquiry Officer was enunciation in the sense that he was cross examined at length which was utterly unwarranted.

6. This Court has considered the submissions. So far as the petitioner’s complaint with respect to the lack of uniformity in the witnesses’ version goes, it has to be remembered that in disciplinary proceedings, a fact does not have to be established beyond reasonable doubt. In other words, the standard of proof required in criminal proceedings is not applicable in disciplinary proceedings, it may be seen from the fact that even hearsay evidence can be given due credence too. Seeing from this light the fact that PW-3 was silent in our opinion is not a conclusive factor. All that the said witness stated was the facts noticed by him, i.e., that the petitioner reported for duty and was asked by SI T.K. Mukherjee to go elsewhere which he

did. Apparently, PW-3 was at a distance from the conversation and naturally could not be expected to be privy to it. PW-1 who was near to the event and narrates as it were states inter alia as follows: -

“After seeing him at that time, it looked as if he was drunk because his way of talking, walking and movements were not normal, showing that he was drunk. The smell of liquor was also coming from the mouth of Constable Madhu Sudan Singh and he came inside the Control Room and laid down, when he was made to stand up he was not able to stand and was out of his control. At that time, head constable, Madhu Sudan Singh was there and Head Constable Krishanappa and Lance Naik S.C. Seha were trying all their efforts to control him but he was out of control therefore I sent him to his barrack Janta Paradise Hotel by Gypsy. I sent information regarding this to the Company Commander.”

SI T.K. Mukherjee further stated during the cross examination in reply to the petitioner's query as follows: -

Q-2. When I came on duty at 21.00 hours then you checked me only or you checked other force member also?

Ans. Because at 21.10 hours he came along on duty at place, therefore I checked him only at that place and at that point of time his movements were such that a person could guess by having a look at him that he was consumed lot of quantity of liquor.”

7. Having regard to the above categorical statement of SI T.K. Mukherjee who unequivocally stated that the petitioner was drunk and was under the influence of alcohol and furthermore that he was even unable to move leading to his being asked to go to the barracks, there can be no manner of doubt that the Enquiry Officer correctly found that the first charge was established.

8. As far as the second contention with respect to the cross examination of the witnesses is concerned, this Court again is unpersuaded by the submissions made in that regard. The Enquiry Officer is under an

obligation under Rule 14 (18) of the CCS (CCA) Rules, 1965 to generally question the charged employee as to the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. The Court has considered the line of questioning adopted by the Enquiry Officer which is at page nos.75-77 of the paper book. The Court discerns no reason to agree with the petitioner since the questions posed were of general nature - it can also be seen that the petitioner himself made submissions in support of his defence. Consequently, we reject this submission too.

9. For the above reasons, we find that there is no merit in the writ petition; the same is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 18, 2015
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