

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARHCWP-19714-1996
Date of decision : 16.09.2019

Surinder Singh

..Petitioner

versus

Union of India and others

..Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Baljinder Singh, Advocate,
for the petitioner.Mr. Karan Bhardwaj, Advocate,
for the respondents.

ARUN MONGA, J.

Inter alia, issuance of a writ in the nature of *certiorari* has been sought herein to quash impugned dismissal order dated 06.11.1992 (Annexure P-15) and appellate order dated 23.02.1996 (Annexure P-17) upholding the dismissal of petitioner as Constable from service, passed by Commandant, Central Reserve Police Force (CRPF) and Deputy Inspector General, CRPF, respectively.

2. As per Article of Charge dated 05.05.1992 (Annexure P-1) framed against the petitioner, he was accused of commission an act of misconduct in his capacity as a Member of Force under Section 11 (i) of CRPF Act, 1949. He was charged of picking up a quarrel with another Guard. A scuffle between them led to firing by personal service rifle of petitioner resulting in bullet injury to Constable Ram Awadh Yadav on 11.03.1992 at 20.20 hours.

3. As per the statement of imputations, the petitioner allegedly came to the spot and abused the civilians who were consuming chicken and liquor alongwith Head Constable Kuldeep Singh, Constable Harish Ram and Constable Naval Kishore. It was further alleged that on account of protest shown by

petitioner, the civilians got infuriated. Felt insulted, quarreled and that led to scuffle with petitioner who resorted to fire resulting in bullet injury to Constable Ram Awadh Yadav.

4. The petitioner's case is that the charge against him was very vague and indefinite. Reading of the charge does not show whether he was charged for misconduct on account of stopping the security personnel and/or the civilians from drinking and misbehaviour. He pleaded not guilty and a departmental inquiry was conducted. About 11 witnesses were examined during departmental inquiry. But the relevant persons, namely, Head Constable Kuldeep Singh, Constable Harish Rama and Constable Naval Kishore were not cited as witnesses. The names and particulars of the three civilians involved in the incident were also withheld. The charge against petitioner is vitiated because of non-examination of above mentioned persons. In the corresponding para in the written statement qua these allegations, it is stated that the statements of personnel alleged to be relevant were not considered necessary. Dismissal of the writ petition has been sought on the ground that Disciplinary Authority had correctly awarded the punishment of dismissal from service and the same has been rightly upheld by the Appellate Authority.

5. Having heard the rival contentions of learned counsels for the parties and after going through the pleadings and upon perusal of relevant record appended thereto, I am of the view that no interference is called for by this Court in extraordinary writ jurisdiction vested under Article 226 of Constitution of India. Writ petition being devoid of merit, deserves to be dismissed.

6. The first submission of the petitioner is that material witnesses have been withheld from supporting the case of the department and the petitioner has been denied opportunity to cross-examine them which has caused prejudice to the petitioner. The other argument of learned counsel for the petitioner is that once the petitioner has been acquitted in the criminal case, he ought to be exonerated

automatically in the departmental proceedings.

7. The later argument first. When tested in law, it is not sustainable, though factually it may be correct. Perusal of charges framed in the departmental proceedings viz-a-viz criminal proceedings reflect that the same are not only different in nature but even, otherwise, standard of proof required therein was on different footing. Criminal case was registered under Section 307 of Indian Penal Code whereas the departmental inquiry was conducted under Rule 27 of the CRPF Rule, wherein, totally different evidence was relied upon.

8. Petitioner in the departmental proceedings had admitted that the bullet was fired from his rifle. Being a Member of Disciplinary Forces, he was rightly held guilty of an act of misconduct under Section 11 (1) of the CRPF Act, 1955. Furthermore, in criminal case, charge against the petitioner was whether he committed an offence under Section 307 of IPC by firing a gun shot with an intention to kill? While in the departmental proceedings, the charge was whether petitioner committed an act of misconduct in his capacity as a Member of Armed Forces, as he picked up fight with Guard Personnel and had scuffle which led to a serious bullet injury to the injured.

09. While the petitioner has been admittedly acquitted in criminal case on account of benefit of doubt but a perusal of inquiry report, wherein, he was indicted reflects that not only the petitioner admitted to his guilt but as many as 12 witnesses including injured Constable (Ram Awadh Yadav) and one Jang Bhadur, an activist of political party (Bahujan Samaj Party) deposed while adducing the evidence that petitioner had, indeed, fired a gun shot from his service rifle.

10. Reliance placed by learned counsel for the petitioner on Rule 27 (CCC) also seems to be misplaced in the present case. For ready reference, the same is reproduced here-in-below:-

“When a member of the Force has been tried and acquitted by a criminal Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge

upon the evidence, cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector General.”

11. A perusal of the above leaves no manner of doubt that benefit of acquittal is entitled only when the same charge or on a similar charge and upon evidence cited in the criminal case, an employee has been acquitted. Condition precedent thus is that both in criminal and departmental proceedings, same evidence has been cited i.e. evidence cited in the criminal case forms the basis of evidence adduced in the departmental proceedings. Instant case is not of the kind as envisaged under Rule 27 CCC, *ibid*.

12. As regards, withholding of material witnesses by department, the argument is quite insipid. It is for the department to choose which witness it wishes to depose in support of its evidence to discharge the onus casted on it. The petitioner was at liberty to move an application to seek presence of departmental witnesses in support of his case, which he failed to do.

13. In view of my aforesaid discussion and the reasoning contained therein, writ petition is dismissed.

(ARUN MONGA)
JUDGE

16.09.2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No