

Ramesh Kumar Vs. Union of India

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Court : Delhi

Decided On : Jan-31-2014

Judge : Pradeep Nandrajog

Appellant : Ramesh Kumar

Respondent : Union of India

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: January 22, 2014 Judgment Pronounced on: January 31, 2014 + W.P.(C) 7133/2001 RAMESH KUMAR Represented by:Petitioner Mr.R.Kaushik, Advocate for Mr.H.S.Dahiya, Advocate versus UNION OF INDIA Represented by: Respondent Mr.Sachin Datta, Advocate with Ms.Niti Arora, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

1. The writ petitioner challenges the order dated May 24, 2000 passed by the Disciplinary Authority, Commandant, CISF dismissing the petitioner from service holding that the charge of showing indiscipline and disrespect towards senior officer, unauthorized absence and habitual misconduct was established. The appeal and the revision petition preferred by the petitioner against the order dismissing him from service were rejected by the appellate and the revisional authority vide order dated January 02, 2001 and May 30, 2001 respectively.

2. On February 15, 2000 a charge memo was served upon the petitioner listing three charges against him as under:- Charge-1 Force No.892333422 Const.Ramesh Kumar is working in CISF unit, BTPS, Badarpur. On 5-2-2000 at about 1220 hrs the fore member was marched in the office of Asst.Commdt.Shri Bhupal Singh for taking leave. The force member was told that due to election work, as per the orders of the superior officers, normal leave cannot be granted and if going on leave was necessary then he can see Dy.Commdt. After hearing so, Const Ramesh Kumar, by getting agitated removed his belt and cap and threw the same on the table of Asst.Commdt. Bhupal Singh by saying that he does not want to serve. After doing so the force member, without permission, went out of the office of Asst.Commdt. This act of the force member shows serious indiscipline, gross misconduct and disrespect to the superior officers. Hence the charge. Charge-II Force No.892333422 Const.Ramesh Kumar remained a deserter from the unit line without permission/leave from 5-2-2000 to 8-2-2000 and presented himself in the line on 9-2-2000. This act of the force member, as per CISF rules, shows serious indiscipline, gross misconduct and negligence towards work. Hence the charge. Charge-III Force No.892333422 Const.Ramesh Kumar is habitual of misconduct, quarrelling and indiscipline. For this the force member was awarded minor punishments 03 times before.

3. It is apparent that the third charge was an intimation to the petitioner that his past service record, showing he being awarded 3 minor punishments for quarrelling and indiscipline, would be considered by the Disciplinary Authority if he was held guilty for charge No.1 and charge No.2.

4. The petitioner having denied the charges, an Inquiry Officer was appointed before whom the department examined six witnesses.

5. Asst.Comdt.Bhupal Singh PW-1, the officer as per Charge No.1 to whom petitioner had allegedly shown disrespect and qua whom the act of indiscipline alleged was directed, deposed that on February 05, 2000, at around 12:15 hours, SI Shyam Lal (PW-2) came to him to obtain his signatures on the dak of A coy. SI Shyam Lal handed over to him a leave application submitted by the petitioner seeking leave for five days, giving reason that petitioner had to obtain registration

of some land. After some time SI Shyam Lal presented the petitioner before him. He heard the petitioner and told him that due to officers required for election duty leave could not be sanctioned. The petitioner told him that he had already paid `50,000/- (Rupees Fifty Thousand only) and if the registry would not be effected he would lose the amount and for which leave being sanctioned to him was necessary. He told the petitioner that if it was so urgent the petitioner could take a days out pass after completing the shift and return by the following evening. At that the petitioner got agitated and uttering that he did not wish to serve any further, leaving the room he placed his cap and belt on the table.

6. SI Shyam Lal, Coy Commander A Coy PW-2, deposed that on the day of the incident, the petitioner was deployed at Ansungi Bhavan (Auxiliary Building) from 05:00 hours to 13:00 hours. At around 12:20 hours after he had got the dak signed he saw the petitioner outside the room of Asst.Comdt.Bhupal Singh and petitioner requested that he be presented before Asst.Comdt.Bhupal Singh. After seeking the permission from Asst.Comdt.Bhupal Singh, he presented the petitioner before Asst.Comdt.Bhupal Singh. Petitioner wanted leave to be sanctioned and Asst.Comdt.Bhupal Singh expressed inability to do so but suggested an alternative that petitioner could take a one day out pass at which petitioner got angry and uttering that he did not wish to serve any further left the room placing his cap and belt on the table. He deposited the cap and the belt with the store keeper SI Ram Bharose (PW-6). He looked for the petitioner in barrack No.5A of A Coy and Unit Line Dispensary but could not find him and thus recorded the absence in the daily diary.

7. Relevant would it be to note that on being cross-examined by the petitioner, PW-2 stated that the petitioner was angry after the incident had thrown his cap and belt on the table in from of Asst.Comdt.Bhupal Singh and not simply placed it on the table.

8. HC Dalpat Singh PW-3, deposed that on the day of the incident SI Shyam Lal (PW-2) asked him about the whereabouts of the petitioner and was looking for him in the line and on finding the petitioner absent made a GD entry.

9. Ct.A.K.Barik PW-4, deposed that he was deployed as a runner in the office of Asst.Comdt.Bhupal Singh and on the day of the incident he saw petitioner who was wearing his cap and belt, accompanied by SI Shyam Lal enter the office of Asst.Comdt.Bhupal Singh and after sometime saw petitioner leave without a cap on his head and a belt on his waist. He saw the cap and belt on the table inside the office. On being cross examined he stated that the petitioner looked angry when he left the room of Asst.Comdt.Bhupal Singh.

10. SI R.K.Joshi PW-5, deposed that he was working in the documents section of the CISF unit and on February 08, 2000, SI Shyam Lal (PW-2) forwarded a report regarding petitioner being absent without leave from February 05, 2000. A call letter was sent to petitioners permanent address which was returned undelivered. On February 09, 2000 SI Shyam Lal forwarded an application submitted by the petitioner requesting the Dy.Commandant to permit petitioner to join duty.

11. SI Ram Bharosey PW-6, deposed that he was deployed as a quarter master in the HQ Coy of the CISF unit and that on February 07, SI Shyam Lal (PW-2) deposited a belt and a cap in the quarter master store. On being cross-examined he stated that he was unaware as to whom the cap and the belt belonged to. He clarified that the paper submitted to him when the cap and the belt were deposited recorded that they belonged to the petitioner and that on the belt and the cap initials RKH were written in blue ink.

12. Record of the inquiry would reveal that without calling upon the petitioner to state his defence, orally or in writing, he was asked whether he wanted to produce witnesses in defence. The petitioner examined 4 witnesses in defence.

13. HC Avtar Singh DW-1 deposed that on the day of the incident he had relieved the petitioner from his shift duty at Anshungi Bhavan at 12:50 hours and at that time the petitioner was in full uniform, including the cap and the belt. The petitioner was normal and not angry.

14. Ct.Ramphal Ct.K.Upender Singh DW-2, Ct.Inderpal Singh DW-3 and DW-4 deposed that on the day of the incident they completed their shift at 13:00 hours and attended the debriefing where petitioner was present in complete uniform

including the cap and the belt.

15. The record would reveal that thereafter the petitioner's statement in defence was recorded as per which petitioner admitted having applied for 5 days leave and having met Asst.Comdt.Bhupal Singh with a request for leave to be sanctioned. He admitted that Asst.Comdt.Bhupal Singh told him to take a day's out pass after completing duty during the day. After debriefing along with the four defence witnesses he left. As permitted by Asst.Comdt.Bhupal Singh to take a day out he left on February 08, 2000 at 15:00 hours and on completing his personal work returned the next day on February 09, 2000. He denied throwing his belt and cap. On being examined by the Inquiry Officer, the petitioner stated that he did not speak to Asst.Comdt.Bhupal Singh before leaving because he was told by Asst.Comdt.Bhupal Singh that there was no need to meet him and he could leave by making an application for an out pass, and the same would be sanctioned. He moved an application for an out pass on the same day to SI Shyam Lal.

16. The Inquiry Officer submitted a report indicting the petitioner. He believed the testimony of the witnesses of the prosecution. The Inquiry Officer disbelieved the defence witnesses.

17. Taking into account that in the past the petitioner had been levied 3 minor penalties as under: 01 One increment in salary was stopped without cumulative effect on account of attacking a civilian employee. 02 On account of causing injuries by attacking Coy. CHM was awarded the punishment of 7 days pay fine. 03 On account of indulging in beating with Coy. CHM one increment of salary was stopped without cumulative effect. The Disciplinary Authority inflicted the penalty of dismissal from service, against which, as noted above, appeal and revision filed were rejected.

18. The first contention advanced by learned counsel for the petitioner was that the charge against the petitioner of being indisciplined and disrespectful to the superior officer, Asst.Comdt.Bhupal Singh, emanated from the allegation, as per charge No.1, of after removing and throwing the cap and the belt on the table of Asst.Comdt.Bhupal Singh. Learned counsel urged that in a disciplined Para Military Force, a cap and a belt is a symbol of honour and respect and throwing

the same in front of a superior officer would be showing disrespect to the superior officer. Counsel highlighted that the testimony of Asst.Comdt.Bhupal Singh and SI Shyam Lal, the Coy Commander would evidence that the petitioner did not throw his cap and the belt; for the two deposed in sync that on leave being refused, petitioner got angry, and uttering that he did not wish to serve any further left the room placing his cap and belt on the table.

19. Now, the argument overlooks the fact that while deposing, witnesses may not use proper language to convey their thoughts or the acts of somebody else. The argument overlooks that on being cross examined by the petitioner, SI Shyam Lal categorically stated that the petitioner threw his cap and belt on the table of Asst.Comdt.Bhupal Singh and not simply placed it on the table.

20. It was then urged that there was no reason to disbelieve the four defence witnesses as per whom, at the debriefing, the petitioner was seen by them wearing his cap and the belt.

21. Not only have PW-1 and PW-2 deposed that the petitioner removed his cap and the belt and then left the room leaving behind the cap and the belt, Ct.A.K.Barik PW-4 has corroborated by stating that he saw the petitioner with a cap and a belt on when he entered the office of Asst.Comdt.Bhupal Singh and without the belt and the cap when he saw him leave the office. SI Ram Bharosey PW-6 has proved that on February 07 a cap and a belt were deposited in the store and the initials RKH were written in blue ink on the side of the belt and the cap.

22. It assumes importance that petitioners name is Ramesh Kumar and his initials would be RK. The incident took place on February 05, 2000. It was Saturday. The next day was Sunday and this explains the cap and the belt being deposited in the store on the 7th.

23. We have not to act as a court of appeal. It is trite that at a domestic inquiry if there is some evidence, adequacy or inadequacy thereof to sustain a verdict of guilt cannot be gone into by a writ court.

24. There is enough evidence to establish charge No.1, and we highlight that counsel for the petitioner had conceded that in a discipline Para Military Force, a cap and a belt are a symbol of honour and throwing ones cap and belt before a superior officer would be showing disrespect to the superior officer and an act of indiscipline. As regards Charge No.2, the testimony of PW-1, PW-2, PW-3 and PW-5 would establish that the petitioner went missing in the evening of February 05, 2000 and returned only on February 09, 2000.

25. Now, the statement in defence made by the petitioner makes interesting reading. He states that Asst.Comdt.Bhupal Singh had told him to avail a day out pass. He states that for said reason he left on February 08, 2000 and returned the next day. The petitioner has thus tried to state that he was not absent, much less unauthorizedly absent on the 6 th and the 7th. His stand is belied from the testimony of PW-1, PW-2 and PW-5.

26. Thus, even charge No.2 is established.

27. A technical plea was advanced predicated on the procedure to be followed in major penalty proceedings as per Rule 14 of the CCS (CCA) Rules, 1965. Sub-Rule 16 of Rule 14 requires that after the department leads evidence the Government servant charged of shall be required to state his defence, orally or in writing. As per Sub-Rule 17 thereafter witnesses desired to be produced by the delinquent Government servant shall be examined. It was urged that in the instant case the Disciplinary Authority first required petitioner to examine defence witnesses and thereafter to make his statement in defence i.e. inverted the procedure required to be followed at the inquiry.

28. It is trite that a procedural violation unless proved to have caused prejudice is irrelevant and has to be ignored.

29. Learned counsel for the petitioner could not show any prejudice caused. Indeed, it is just not possible that any prejudice could be caused if a delinquent Government servant first makes a statement in defence followed by leading defence evidence or vice-versa.

30. It was lastly but one urged, that it became petitioners compulsion to leave the unit lines because he had paid `50,000/- (Rupees Fifty Thousand only) in advance to a seller and had to complete a sale transaction by getting the sale deed registered after paying further sale consideration. Had petitioner not got the sale transaction completed he would have to undergo the pain of forfeiture of `50,000/- (Rupees Fifty Thousand only).

31. The argument overlooks that Asst.Comdt.Bhupal Singh had worked out a workable via media by permitting petitioner to obtain a day out pass in the evening and returning the next day evening. For this the petitioner had to apply for a day out pass. The petitioner did not do so.

32. It was lastly urged that the penalty is disproportionate to the gravity of the offence. It was urged that, may be due to lack of literacy : after all the petitioner was a constable, the petitioner got over whelmed by the loss of `50,000/- (Rupees Fifty Thousand only) staring him on leave not being sanctioned and thus reacted in the manner, given the low literacy level, the petitioner would not be expected to behave as literate persons would do. It was urged that the petitioner did not abuse or assault Asst.Comdt.Bhupal Singh. In disgust, saying that it would be useless to serve an organization which shows no compassion for its employees, the petitioner removed his cap and the belt : threw it on the table of Asst.Comdt.Bhupal Singh and left. Counsel urged that the act was not of a moral turpitude and could not be said to be so aggravating that the extreme penalty of dismissal from service was warranted.

33. It is with reference to this argument that it assumes importance to note that 3 penalties were levied upon the petitioner in the past, which were minor in nature, but the misdemeanours being : (i) attacking a civilian, (ii) attacking and causing injury to the Coy Hav.Major, and (iii) beating the Coy Hav.Major. The petitioner has shown repeated propensity of indulging in physical violence, and on two occasions directed against superior officers. It is trite that after informing a delinquent that past misconduct would be taken into account, on the quantum of penalty for further misconduct, past disciplinary record can be considered.

34. CISF is a Para Military Force. Its members carry arms. The command structure of Para Military Forces would be seriously dented if repeated acts of violence directed against superior officers is overlooked for the reason a superior officer who is slapped by a junior officer would be somewhat looked down upon by other junior officers if the offender is let off lightly. A penalty serves a two-fold purpose. It punishes the wrong doer. It acts as an example for others not to do the same.

35. Considering the past service record which evidences that for showing disrespect to superior officers the minor penalties were having no effect, we are satisfied that the penalty levied of being dismissed from service is not disproportionate.

36. We dismiss the writ petition but without any orders as to costs. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE JANUARY31 2014 mamta

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