

Ex-Constable/Driver S. Bijender Vs. UOI and Others

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SooperKanoon Citation : sooperkanoon.com/1178326

Court : Delhi

Decided On : Nov-04-2015

Judge : S. Ravindra Bhat & the Honourable Ms. Justice Deepa Sharma

Appeal No. : W.P.(C) No. 7556 of 2003

Appellant : Ex-Constable/Driver S. Bijender

Respondent : UOI and Others

Judgement :

S. Ravindra Bhat, J.

1. The writ petitioner, in these proceedings under Article 226 of the Constitution of India, challenges the penalty of dismissal from service imposed on him by his employer. He was working as driver in the Central Reserve Police Force (CRPF).

2. The case involves a complex factual matrix of 3 drivers who were charged and subsequently dismissed from the CRPF on account of driving, under influence of liquor, a Tata Truck bearing registration no. DL-1G-0839 into a Civil Matador resulting in the deaths of 8 persons, injury to 15 and damage to both civilian and CRPF property on 19.07.1997. The Constables/Drivers in question are Bijender Singh (Force No. 910710223) [the petitioner hereafter], K.K. Rai (Force No. 880891909) [Rai hereafter] and Virender Singh (Force No. 913129579) [Virender hereafter). Rai and Virender preferred W.P. (C) 666 of 2001. Bijender impugns the Order dated 30.03.2000 based on an Enquiry Officer's Report dated 07.01.2000.

The said order was subsequently upheld in Appeal on 27.10.2000. The petitioner's revision application was dismissed on 10.08.2001.

3. The petitioner was charged under eight articles of misconduct, i.e driving a CRPF vehicle (Tata Truck) unauthorizedly from Karnal Bypass road Delhi to 81 Bn. CRPF Campus, CRPF, New Delhi on 19.07.97 at about 18:30 hours and consuming illicit liquor in the campus with K.K.Rai and Virender and not reporting that day at about 19:30 hours for evening Roll Call. He was secondly charged with misconduct for having driven Tata Truck No DL-IG-0839, left 81 Bn. HQR, Pappan Kalan, New Delhi at 20:00 hours-under the influence of liquor without permission for leaving the campus from the competent authority- at a high speed while Rai and Virender were sitting in driver's cabin of the vehicle - and collided the vehicle registration no. DL-IG-0839 with a civil Matador Regn.No.DBL-5140 near Shahabad Mohammadpur, caused major damage to both vehicles, killed 8 innocent civilians and caused serious injuries to others. The third charge was abandoning the vehicle at the accident spot, unattended, rushing to the battalion campus to show his innocence, without caring for the fate of the injured. He was further charged with misconduct in that 21:30 hours, he drove Govt. vehicle Regn. No. DNG-1207 unauthorizedly without any indent or permission of the competent authority from 81 Bn.campus P/Kalan, New Delhi to the accident place in Shahabad Mohammadpur for the purpose of towing the accidental vehicle registration no. DL-IG- 0839 to 81 Bn. Campus and to hide the matter.

4. The Enquiry Officer concluded on the basis of testimony of witnesses and documentary materials on the record, that Articles 1 and 4 were proved and established whereas Articles 2 and 3 not proved against the petitioner.

5. Mr. G.D. Gupta, learned senior counsel argues that the petitioner and the other charged employees were acquitted of criminal charges. The counsel submits that a Division Bench of this Court directed the reinstatement of the other accused. However, since the present petition was not taken up for hearing along with that petition, the same relief could not be given to the petitioner. Nevertheless, on a parity of reasoning, the petitioner is entitled to the same relief. It is urged that the findings of the Enquiry Officer which were not disagreed with were that the

Petitioner was guilty of the first charge, viz. unauthorised removal for use of the vehicle from 81 Bn. CRPF Campus, on 19.07.1997 *"at about 18.30 hours and consumed illicit liquor in the campus with No.880891909 CT/DVR K.K.Rai and No.913129579 CT/DVR Virender Singh of NS R/ Pool"* and not turning *"up on 19/7/97 at about 19.30 hours for evening Roll Call."* He was not found guilty of Charge Nos. 2 and 3, but found guilty of the fourth charge, i.e taking vehicle no.DNG-1207 unauthorizedly *"without any indent/permission of the competent authority from 81 Bn.campus P/Kalan, New Delhi to the accidental place in Shahabad Mohammadpur for the purpose to toe the accidental vehicle Regn. No. DL-IG-0839 to 81 Bn. Campus and to hide the matter."* Charge No. 1 and 4 are proved against him beyond any doubt. Charge No2 and 3 were not proved against the petitioner alone. The counsel states points out that the findings of the Enquiry Officer were that *"Hence, all the three SDs (N.S R-Pool) are equally responsible and guilty."* The appellate and revisional authorities did not depart from these findings. Therefore, the fate of the petitioner could be no different from the other two charged employees, whose penalties were reduced by this Court, in the writ petition filed by Rai.

6. Learned counsel submitted that the present case is one instance where the charges were held proved without any evidence. He submitted that conclusions of guilt against the petitioner were based primarily on the statements of other charged employees, i.e. Rai and Virender. They were interested parties inasmuch as it was in their interest to implicate the present petitioner. More importantly, they were also charged employees and their testimonies were suspect since they would tend to distance themselves from the role they played and place the blame on someone else which in this case was the petitioner.

7. The petitioner states that during the enquiry four prosecution witnesses, i.e Ct. Jiwan Rao, Laxman Upadhyay, and Sub Inspector B.S. Bhadoria showed that none of them saw the petitioner driving the vehicle at 20:00 hrs when it left the camp. Learned counsel highlights the testimony of Ct. Suresh Kumar, another prosecution witness, which according to him, exonerated the petitioner. This witness confirmed that the petitioner and Kashmira Singh had gone out at about 15.30 hrs on the date of the incident and he had requested Kashmira Singh to

leave his son at Piragarhi Chowk to go to Bahadurgarh. He confirmed that at about 20:00 hrs, he found the truck in the parking with lights on and the ignition was on. He thought that Bijender Singh i.e. petitioner had come back at that time. Therefore he went near the truck and found that Ct Virender Singh was sitting at the driver's seat. He also stated that the petitioner was in the tent. On the way out, K.K.Rai came running to get into the truck and both of them took away the truck. The petitioner was going to have bath-having towel around him. The said Suresh Kumar enquired about his son and he (i.e. petitioner) informed him that he was safely left at Piragarhi Chowk. Thereafter Ct. Suresh Kumar left for quarter guard and then Sub Inspector B.S. Bhadoria returned to the spot. The petitioner started talking to Bhadoria. The witness also stated that the news of accident was received at about 20:30 hrs and all the senior officers including Sh. P.B. Sharma, Second Command Officer left for the site. Kashmira Singh in his statement clearly stated that on oral permission of the senior driver K. K. Rai, he had left the camp on leave for seven days and he had taken vehicle No. DL 1G-0839 himself with the oral permission. He had taken the said vehicle with the petitioner at 15:30 hrs. He also stated that the petitioner had taken permission to take along with him so that he could return with the vehicle after dropping him.

8. Counsel for the petitioner highlights that Kashmira Singh stated in the inquiry that Virender Singh and K.K.Rai tried to mislead him and asked him to make a statement that the petitioner (has left him) at about 20:30 hrs near Shahabad Mohamadpur. He also stated he was influenced by Sub Inspector B.S. Bhadoria and was made to make a wrong statement. He confirmed the explanation given by the petitioner in his cross-examination. That from the aforesaid summarization of the statement of the prosecution witness it was clearly established that the petitioner was not connected with the accident. Learned counsel submitted that in these circumstances there was no evidence of culpability, to justify a penalty of dismissal. Counsel relied on the judgments of the Supreme Court reported as *Union of India v H.C. Goel* AIR 1964 SC 404 for the proposition that if during inquiry, no evidence is disclosed in support of the charge of misconduct, the finding of guilt and penalty can be interfered with in judicial review under Article 226 of the Constitution of India. It was further argued that given the nature of the evidence and the fact that the petitioner's involvement was not established in

criminal or civil proceedings (i.e. motor vehicles accident claim proceedings before the Tribunal) his guilt, recorded by the disciplinary authority, and the penalty imposed are factually and legally unsupportable.

9. Highlighting that the petitioner was afforded adequate opportunity to defend himself, which he availed, the respondents argue that his involvement in the misconduct was clearly established. It was submitted that the deposition of Kashmira Singh showed that the petitioner had taken the vehicle in the afternoon on the fateful day; his return to the camp was not spoken to by anyone. Furthermore, that two witnesses who saw the truck leave at around 20:00 hrs could not say categorically who drove it, did not mean that the petitioner was not involved. Counsel submitted that the petitioner was arrayed as first respondent in all the motor vehicles claims proceedings, which led to appeals before this Court. The final order directed payment of Rs.15,69,265/-; the Union of India complied with the decree. However that did not undermine the petitioner's culpability. The Petitioner's misconduct led to loss of eight lives and Central Government's liability in aggregate to the extent of Rs.34,73,866/-. It was further submitted that the penalty imposed on K.K. Rai and Virender were reduced, though the findings against them were confirmed, in the judgment in WP(C) 666/2001 (decided on 25.02.2014, in *K.K. Rai and Anr v Union of India* by a Division Bench of this Court).

Analysis and Findings

10. The decision of this Court in *K.K. Rai (supra)* has exonerated the other two charged employees of the misconduct they were alleged to have committed on the basis of the joint inquiry. To unravel the merit of this petition, - and indeed discern whether his grievance that no evidence pointing to his culpability was established, it would be necessary to examine the material disclosed during the inquiry proceedings.

11. The petitioner claims that he received oral orders from Rai to drop Kashmira Singh till the Karnal Bypass as he (Kashmira) had been sanctioned leave for a week, i.e. 19th -26th July'97, on oral confirmation from Rai. (Ref Statement of Kashmira at pg. 84 of the paper-book). The Court notes that Oral permissions

seem to be a recurring issue (Q2 at pg. 81 and pg. 297). 12. Accordingly Kashmira and Bijender, with the former driving, left the camp at 15:30 hrs and reached the bus stop. Kashmira boarded the bus to his hometown in Punjab at 17:15 hrs. Kashmira stated in his evidence, that he did not leave the keys with Bijender and that the latter either pushed the truck or used his own key to start it (Q11, 12 of E.O. examination at pg. 89). Bijender accordingly came back at 18:30 hrs after picking up alcohol for Rai and Virender. He apparently could not drink because he had injured his hand while driving 3 days earlier (16.07.1997) and was on medication. He reached back at 18:30 hrs and requested Rai to park the truck and went to his tent.

13. As opposed to this, Rai denied granting permission to Kashmira to go on leave. He said that Kashmira informed him about his going to meet his brother who had come from Bombay by bus and then returning to the camp. He states that the vehicle did not leave at 15:30 hrs but actually left at 20:00 hrs. However Rai admitted in E.O. examination (at pg. 75) that he gave permission to Bijender to drop Kashmira without making official indent, contrary to procedure. Similarly Daljeet Singh was absent without official leave (Q7 by E.O.)

14. Rai says he saw Kashmira tying his turban at 18:00-18:30 hrs (statement at pg.72 and Q9 of cross by Bijender). Virender the third charged employee made an identical statement but citing 17:30 hrs as the time in his statement (at pg.45) and 18:00 hrs in the cross by the petitioner (Q7 at pg. 59). Prosecution witness Laxman Upadhyay states that he saw Kashmira Singh at 17:30 hrs. Rai in his statement said he was in the Recreation Room from 14:00 hrs to 18:30 hrs. Virender says in his statement he was washing clothes.

15. As to the more serious charge of taking the vehicle unauthorizedly at about 8:00 PM and causing the accident leading to the loss of eight lives, the petitioner's version is that he left the vehicle on, after returning from the earlier trip, and asked Rai to park it, which was done. He stated that Virender and Rai started drinking while he changed the dressing of his wound and applied medicine as it had started bleeding again. He then went to attend nature's call and returned. By that time the two of them were drunk and were asking for his vehicle keys as they wanted to go

meet a certain Rajbir. Upon refusal, Rai said he would take Kashmira's vehicle. At that point the Petitioner met Suresh Kumar (Statement at pg. 380, Vol.2) who enquired about his son. They both saw Virender in the driver's seat and Rai running out from the tent with the remaining alcohol. After that he met Fitter Ram who chat with him for a while at around 20:00 hrs(statement at pg. 96). When he left Ram and was about to proceed for his bath he forgot his undergarments and returned whereupon he met Virender and Rai who told him they had been in the accident at 20:30 hrs. After some conversation about what to do, Rai said that he would inform senior officers and that the petitioner should go get his truck with a tow-chain.

16. The version of Virender and Rai on the other hand was the opposite. Rai claimed that after he left the Recreation Room and parked some trucks in terms of S.I. Bhadoria's order he went to the tents. There, Bijender was drinking in his tent around 19:00 hrs and had 1.5 pegs (Q16 of Cross by Bijender from pg. 115 onwards). After that Rai went to the toilet and returned at 20:05 hrs. By this time, the petitioner had left with Kashmira a few minutes earlier.

17. After that he and Virender left together for dinner (Virender said nothing to say about the time in between). They returned to the tent and got ready to sleep when Bijender returned crying stating that he had crashed the truck, killed 20-25 people, and needed their help to tow the crashed truck out. Immediately, he went to the Mess to inform S.I. Bishamber, but did not tell him who drove the vehicle (Q6,7 at pg. 132) and stated that a shopkeeper told him about the crash (Q.19 at pg.127). Even Laxman Upadhyay in his statement (at pg. 68) stated he received no information at that moment about the identity of the driver. The same was only revealed at the site of accident and that was when the CRPF and Police officers were talking.

18. It can thus be seen that two employees, Rai and Virender deposed in such a manner that they spoke about each other's innocence and at the same time implicated the petitioner. What is significant is that both suggested that Kashmira left with the petitioner around 20:00 hrs. Now this is at variance with the charge against the petitioner of having left the campus at 18:30 hours, return with alcohol

and consume it with the two other co-accused employees. Aside from the fact that the petitioner's guilt was proved for this charge- which is independently borne out from the deposition of Kashmira Singh, who was also charged with that specific act, the Court is not oblivious to the circumstance that there was every likelihood of the other co-accused virtually ganging up to implicate the petitioner and save themselves. Therefore, the reliance on their evidence, in the present case, is suspect.

19. It would be necessary now to examine the evidence of neutral witnesses about the timing and role of the petitioner in the later incident. At around 20:00 hrs, Sepoy Jiwan Rao stated that he saw a truck departing but could not identify the driver. He informed Bishamber Singh of this at 20:30 hrs and was informed of the accident at that time (Pg. 62). Laxman Upadhyay, a prosecution witness interestingly deposed that he saw Kashmira Singh in a yellow turban in the campus at 19:30 hrs on the day in question. He deposed that none of the drivers used to attend roll call; they also did not do so on the day of the accident. He also deposed that he came from the toilet and saw a vehicle leaving at 20:05 hrs. This is what he deposed during the enquiry:

Const. Virender Singh was sitting in front of the tent on a cot. I enquired from him that who has taken the vehicle. He told that Const./ Dvr Bijender Singh has gone to drop Const. Kashmira Singh up to railway crossing. Const./Dvr Kashmira Singh had to go to meet his brother whose phone had come in the daytime. I did not take it seriously as he mostly used to go to meet his brother. Thereafter, I went to wash my hands and after coming from there I took the meal and was going to sleep. At this time (at about 8.30 -8.45 P.M) Const./Dvr Bijender Singh, in a very confused state of mind, came to me and started weeping and said his vehicle has met with an accident. I enquired from him if any one has died in this accident? He replied that 20-25 persons have died. Before it, immediately after coming there he asked me and Virender to accompany him for taking the said vehicle from there. He demanded the vehicle from me for towing the accidental vehicle. I refused to give him the vehicle (being a senior constable). I asked him to go at the place of accident but avoid going very close to the accidental vehicle, otherwise you would be harmed. ?

PW-2 Fitter Ram Kumar deposed as follows:

On 19/0797, I was on sentry duty in M.T. Park (81 Bn.) from 8 P.M. to 10 P.M. (from 20.00 to 22.00 hrs.) and was having telephone duty. Around 20.10-20.15 hrs SI/Driver Bijender Singh came to M.T. Park and as soon as he came there I also called him and he also remained standing for two three minutes at the gate. We both had talks and then suddenly telephone call came and I went to pick up the receiver i.e. to attend the call and he also said something which I could not hear and then saying that just coming, left and then at about 20.35 hrs. Hav. Hare Ram Yadav came to M.T. Park and he told that Reserve Pool vehicle has met with accident. ?

Bishamber Singh, who deposed next on behalf of the department stated in the negative, in reply to the Enquiry Officer's query as whether he knew *that Bijender Singh was driving the vehicle before accident ?*.

20. Hav. Suresh Kumar (PW-9) deposed that while on 19.07.1997 he was on the duty of the Quarter Guard, around 15:30 hrs he went on the main road to drop his son in a private car, when he saw a CRPF vehicle leaving. He stopped the vehicle and asked the driver where was he going. The driver i.e the petitioner, Bijender Singh replied that they are going towards Karnal Bypass to drop Kashmira Singh. He told the drivers to drop his son on the way. Around 19:45 hours when he was returning from the toilet he saw the vehicle was started. The petitioner was not sitting in the vehicle. He saw driver K.K.Rai running out of the tent. He enquired about his son and was told that he had been dropped as per his wish. After a while he got information about the accident. On being questioned by the Enquiry Officer he said that around 19:45 hrs, he met the petitioner in the tent. He said that he could not sense that K.K.Rai and the petitioner were drunk.

21. The Enquiry Officer's finding on this charge was of joint responsibility of all the charged employees. This was on his perhaps correct understanding that to fix individual responsibility on the petitioner alone, there was insufficient material, on the record. The Inquiry report reaches the following conclusions:

On perusal of statements of 13 witnesses and documents, it appears that three SDs are involved in this who were under the influence of liquor and without proper permission or indent to fulfill the secret purpose moved out of Pappan Kalan Camps at about 20.00 hrs and at about 20.30 hrs. When they were driving the vehicle in a rash and negligent manner, the vehicle hit the open body matador No. DBL-5140 on right side and went down on right side of the road crushing bushes and fell straight in deep khud (Exh.8 and statement of-Mukesh Kumar, driver of civil matador in court enquiry) in which eight civilians died and many other got serious injuries and those three can only be doubted for this and in that only one out of them cannot be held guilty without evidence, hence the charge No.2 not proved by EO against No. 910710223 SD Bijender Singh alone. ?

22. The Inspector General of CRPF, the disciplinary authority, after considering the representations of the charged employees- including the petitioner, concluded as follows:

the undersigned has carefully and thoroughly considered the joint departmental enquiry proceedings, statements of witnesses, evidence and documents and after careful consideration of arguments etc. of both the parties in the case I come to this finding/conclusion that Force No.910710223 Sep/Driver Bijender Singh (under suspension). No. 880891909 Sep/Driver Kaushal Kishore Rai and 913129579 Sep/Driver Virender Singh of N.Sec. Reserve Pool, CRPF, New Delhi in the capacity of members of force have misconducted themselves grossly under section 11(1) of CRPF Act, 1949 to the effect that on 19/07/97 in the evening, they took the vehicle of N.Sec. CRPF Reserve Pool No.DL-IG-0839 in drunk condition unauthorisedly without permission/indent of competent authority. During duty hours, they consumed wine in the line and also failed to be present in the Roll Call in the evening on 19/07/97 from 20.00 to 21.30 hrs without permission of competent authority remained absent from in the line for some secret purpose and involved in the accident occurred with civil matador No.DBL-5140 near Shahabad Mohammadpur in which 8 civilians died and many other got injured seriously and both the vehicles got damaged badly. The offences committed by accused are of grievous nature and maximum opportunity of defence have been given to them. Hence, I consider that they are not fit to be allowed to remain in force. ?

23. It is therefore, evident that at all stages- the framing of articles of charge, joint enquiry, joint report of inquiry, consideration of representations and order of the disciplinary authority, the role of the three employees was seen to be joint and indivisible. It is a matter of record that in the previous judgment of the Court, the role of the two others, i.e. K.K. Rai and Virender Singh, was not separate and viewed together. Furthermore, there is no clear evidence of any single eyewitness stating that the present petitioner left the campus at 8:00 or 8:05 PM with the vehicle, which led to the accident. The testimonies/statements of Laxman Upadhyaya, Suresh Ram and Ram Kumar, Hav.Suresh Kumar (PW-9) in fact throw doubt about the petitioner's involvement in the mishap, especially the charge that he drove the vehicle. Maybe, in this context, the enquiry officers finding was that individually, he could not be held responsible.

24. The enquiry officers finding being such as it is, the acceptance by the disciplinary and appellate authority “ who did not record any separate findings about individual culpability of the petitioner, meant that he too, like the other two respondents, has to be treated alike with them. This Court notices that in the other decision “ *K.K. Rai and Anr v. Union of India*, the Court held that guilt for the misconduct of driving the vehicle was not established. However, their misconduct for absence during the roll call was noted. Additionally, in the present case, the misconduct of the petitioner of taking the vehicle out to drop Kashmira Singh without due permission or authorization stands proved. We notice that in *K.K. Rai's* case (supra) this Court held as follows:

31. The evidence establishes that everything was being performed very casually at the camp. Entries were not made when official vehicles would leave the camp and returned. The testimony of PW-1 that he had been reporting to the superior officers that drivers of the reserved pool were not attending the roll call and yet the superior officers taking no action till when the unfortunate accident took place shows lack of supervision by the superior officers. In his testimony PW-1 has said that after the accident the reserved pool drivers started attending the morning and the evening roll call.

32. The contention of the petitioners that there is no evidence that they were required to be present at the morning and the evening roll call is negated from the testimony of PW-1.

33. Thus, the only penalty which could be levied upon the petitioners were for not attending the roll call.

34. It is apparent that the penalty of dismissal from the service has been influenced by the fact that the authorities have treated it being proved that petitioners were drunk and were co-passengers, sitting in the cabin of the driver, when the offending truck unauthorizedly was taken outside the camp and that they were drunk. There is no evidence of any medical examination conducted.

35. We dispose of the writ petition quashing the order dated March 30, 2000 passed by the disciplinary authority and the order dated October 27, 2000 passed by the appellate authority are quashed.

36. The petitioners shall be reinstated in service and shall be paid 50% back wages. Period interregnum dismissal from service till re-instatement shall be treated as spent on duty for pensionary benefits.

37. We are not permitting the competent authority to levy any penalty upon the petitioners for the wrong of not attending the daily roll calls for the reason writ petitions filed in the year 2001 is being decided by us in the year 2014 and we have denied 50% back wages. ?

25. As noticed earlier, since there is identity “ not mere parity “ in the findings and penalty imposed upon the petitioner- with that imposed on the other charged employees, he too has to benefit from a similar direction. Accordingly, the Court hereby quashes the penalty of dismissal; the petitioner shall be reinstated with continuity of service. However, he shall be entitled to claim only 50% of arrears of salary and allowances and other service benefits. The writ petition is allowed in the above terms. There shall be no order on costs.