V. Vikraman vs.uoi & Ors

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Court : Delhi

Decided On : Feb-27-2017

Appellant : V. Vikraman

Respondent : Uoi & Ors

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: February 27th, 2017 W.P.(C) 2328/2007 V.VIKRAMAN .....

... Petitioner
Through Mr. Rajeev Sharma with Mr. Kanishka Gaur, Advocates versus UOI & ORS .....

... RESPONDENTS
Through Mr. Bhagwan Swarup Shukla, CGSC with Mr.Shambhu Chaturvedi & Mr. B.V.Niren, Advocates for respondents No.1 to 4 CORAM: HON'BLE MS.JUSTICE INDIRA BANERJEE HON'BLE MR.JUSTICE ANIL KUMAR CHAWLA A. K. CHAWLA, J.

1. Case in hand, is of an officer, who was appointed as Company Commander (Group A) with Special Service Bureau on 5.11.1993 and having completed his training at National Industrial Security Academy, Secundrabad, in December 1994, came to join the 'C' Company at Jang, Tawang District in North-East, as Officer In-charge, in January, 1995. He WP(C) 23

Page 1 of 11 came to be charged with the allegations of misconduct on 15th & 16th February, 1996, which related to the short supply of stores, of which he was the Officer In-charge. He came to be served with the Memorandum dated 14.9.2001 for holding of an enquiry under Rule 14 of the CCS (CCA) Rules, when he was posted as Asstt. Commandant, GC, SSB, Debendranagar. Articles of Charges served upon him are as under :

"Statement of article of charge framed against Shri V. Vikraman, Asstt. Commandant. Article-I That the said Shri V. Vikraman, while functioning as Coy Commander, C-Coy, Jang during February 96, has committed neglect of duty and shown lack of integrity by endorsing fictitious certificate on the body of the Bill No.SOG/SSB/Jang/06/95-96 dated 16.2.96 for ration items amounting to Rs.2,15,300/- of M/s S.D. Gupta and also prepared fictitious Line Committee Report and receipt voucher thereby causing financial loss to the Govt. exchequer. That the said Shri V. Vikraman, Asstt. Commandant by this above act, exhibited a conduct most upbecoming of a Govt. Servant and shown lack of integrity and devotion to duty, thereby violated the provisions of Rule-3(1)(i) to (iii) of CCS (Conduct) Rules 1964 and also attracts the provision of Rule 106 of GFR. Article-II That the said Shri V. Vikraman, while functioning in the aforesaid office, during the above period, has committed neglect of duty and shown lack of integrity by endorsing fictitious certificate on the body of the Bill No.KSG/08/C-Coy/Jang/95-96 dated 15.2.96 of Ration items amounting to Rs.1,60,320/- of M/s Kripa Shankar Gupta. That the said Shri V. Vikraman, Asstt. Commandant by this WP(C) 23
Page 2 of 11 above act, exhibited a conduct most unbecoming of a Govt. servant and shown lack of integrity and devotion to duty, thereby violated the provisions of Rule-3(1)(iii) of CCS (Conduct) Rules, 1964 and also attracts the provision of Rule 106 of the GFR."

On a plain reading of the Articles of Charges quoted above, the impression develops that the only person affixing his signatures on the certificate was none else, but, the petitioner V. Vikraman only. It is however, not so. Undisputedly, the certificate as also the Line Committee Report is said to have been signed by three persons namely, Insp. Hari Lal and HC D.R. Sharma besides the petitioner, as a Committee called "Line Committee". It is also a matter of record that but for initiation of the departmental proceedings against the petitioner, no action is shown to have been taken against the other two members of the Line Committee. Interestingly, I observe, the stores, to which the matter relates, was under the charge of none else, but, one of the other Members namely, HC D.R. Sharma. As said earlier, no action is shown to have been taken against HC D.R. Sharma either and the entire exercise of initiation of enquiry proceedings has taken place, when 'C' company moved out and 'E' company took over, on or about 16th December, 1996. To prove the charges, the department has inter alia examined HC D.R. Sharma as the prime witness, who came to be examined by the petitioner as well. Interestingly, appearing as a witness for the department, HC D.R. Sharma deposed for the short stores available on the date of the inspection i.e. 18.12.1996, whereas appearing as a defence witness, he deposed as follows :

"Statement of Ex-HC (GD) D.R. Sharma (DW) SSB, GC Dirang dated WP(C) 23 Page 3 of 11 9th July 2002 at T.C. Salonibari in connection with D.E. against Shri V. Vikraman, Assistant Commandant. Ex-HC (GD) D.R. Sharma after having duly warned to speak the truth and that any implicating statement, if given during the course of inquiry may be used against him later on if found so, states that :-

"I was posted at Jang from 1993 to December 1996. I was CHM and in-charge ration stores of 'C' Coy Jang. During that period supply of ration stores were received and a line committee was constituted for checking the ration items in which I was one of the members. The line committee was held at 'C' Coy HQrs. Jang on 15.2.96. Other 2 members were Shri V. Vikraman, CC as presiding officer and Insp (GD) Hiralal as Member-II. It is a old case I cannot remember what all ration items and the quantity received but I can remember stores were like vegetables, dry fruits, meat on hoof, dal, T.D. Milk, onion, potato, firewood etc. I cannot remember the quantity of any of the items. We checked the supplied items against the demand and found these as correct. There was no shortage of any items as per my knowledge. Having been satisfied with the stores I have signed line committee report with other 2 members of the committee. The above statement has been read over and explained to Ex-HC (GD) D.R. Sharma in language he knows and understands fully well and he has admitted and signed it as correct. Sd/-xxx dt.9.7.02 (M.L. CHAUDHARI) INQUIRY OFFICER Sd/-xxx dt.

9.7.02 (A.R. THAKUR) PRESENTING OFFICER Sd/-xxx dt.9.7.02 (D.R. SHARMA) D.W. CROSS EXAMINATION BY PRESENTING OFFICER P.O.:-

"You have stated that you were in-charge store 'C' copy when 'C' copy handed over the charge to 'E' Copy to whom did you hand over the ration stores?. D.W.:-I handed over the charge of ration stores to HC (GD) Khandu Glow on 12.12.96 and at the time of handing over 646 kgs of onion, 1396 kgs of potato, 8890 kgs of fresh vegetable, 290 kgs of MOH and 156 kgs of dry fruit were due to be received from M/s S.D. Gupta and 200 kgs of T.D. Milk, 30 quintals firewood was due to be received from M/s K.S. Gupta. This has been shown in the handing taking over charge list also. I took HC (GD) Khandu Glow I/c ration stores of 'E' copy along with Insp. (GD) N.K. Tamta I/c 'F' Coy to representative of M/s S.D. Gupta at his canteen at Jang who confirmed in presence of both the officials that above mentioned short receipt store items were due to be supplied to the Jang Coy by the contractor. P.O. :-To whom did you hand over the due slip of balance ration items given by the Contractor?. D.W.:-I handed over the due slip to HC (GD) Khandu Glow in presence of Insp (GD) N.K. Tamta. P.O.:-

"When did the contractor make good the short supply store mentioned in the due slip?. D.W.:-I do not know because I moved with my Coy to Bomdila. P.O.:-

"Can you tell approximate cost ration stores shown on the due slip given by the contractor?. D.W.:-

"No I don't know. Sd/-xxx dt.9.7.02 Sd/-xxx dt. 9.7.02 (M.L. Chaudhary (A.R. Thakur) Inquiry Officer Sd/-xxx dt.9.7.02 Sd/-xxx dt.9.7.02 (V.Vikraman) (D.R. Sharma) Presenting Officer Charged Officer D.W. Received copy Sd/-xxx dt.9.7.02 (V. Vikraman)" Contradictions and improvements in his statements for the supplies in the stores, of which, he was the In-charge, are apparent. Before I proceed further, it is to be noted, these have been the statements against statements. Were these statements, which were not only contradictory, but, of a person, who himself was a signatory to the subject certificate and the report, trustworthy to be believed for bringing home the guilt of the petitioner on all the allegations and the charges, was the foremost question for consideration before the enquiry officer and the competent disciplinary authority to look into. I however, find, both of them failed even advert to this vital aspect of the matter, what to talk of any due application of mind. HC D.R. Sharma has made contradictory statements as regards the supply and the stores and his deposition deserved to be rejected being unreliable and trustworthy and, if, we ignore his statement, the deposition of the other departmental witness looses significance. Suffice to say, the other departmental witness Insp. N.K. Tamta deposed for the short supplies on the premise of what was stated to him by HC (GD) Dhani Raj Sharma, who was the I/C Ration Stores and had taken him to the contractors, who issued the due slips. Another departmental witness SI Khandu Glow has also deposed for the short supply on the premise what was stated to him by HC (GD) D.R. Sharma only. The other department's witness SI (GD) Pasang Dagre has also deposed for the short supply and the contractors having confirmed for the short supply having been made against the bills in question, when he took over the ration store from HC/GD Khandu Glow on 30.12.1996. His deposition is equally of no relevance to the subject in issue inasmuch as, he took charge at a later point of time and that too from HC (GD) Khandu Glow. But for examining such witnesses, the department has not examined or adduced any other evidence to show that the petitioner affixed his signatures on the certificate and the report in question, with any corrupt motive. One does not require to say much on this aspect inasmuch as, the enquiry officer by himself has observed as follows :

"..
However, on examination of the records it is found that all short supplied during the day of line committee dated 15.2.96 were supplied by the contractor at a later dates in phased manner and hence there was no financial loss to the Govt."

2. Having observed so, the cryptic reasons given by the enquiry officer in returning the charges in the affirmative, which charges, to my mind, are vague, are as follows :

"All the prosecution witnesses have affirmed that bill supply of ration items according to the bill No.SDG/SSB/Jang/06/95-96 dated 15/2/96, was not actually made. There was short supply of stores like potato, onion, fresh vegetables, MOF and dry fruits. The contractors, however, issued due slip for those items not supply and to be supplied at a later date. Therefore, it is proved that the certificate given by the Line Committee conducted under the presidentship of Shri V. Vikraman, Asstt. Commandant on 15/2/96 that the stores were received correctly in good condition as per the bill is false and not correct. Accordingly the certificate recorded on the body of the said bill by Sh. V. Vikraman, A/C that the stores were received in good condition is also false and not correct. There are enough documentary circumstantial evidence that the stores were not entered in the stock ledger page No.163 on 15/2/96 as recorded on the body of the bill. However, stock entry was found to have been done at page 189 of another register. On scrutiny the relevant records like stock ledger, consumption register, it is found that the stores earlier short supplied on the date 15.2.96 on which line committee was held were subsequently made good and there was no loss to the state."

The conclusions so arrived at for answering the charges in the affirmative, in my considered view, are without any application of mind. These are sans any discussion muchless, due appreciation of the evidence, which was contradictory. Disciplinary proceedings are quasi-judicial in WP(C) 23
Page 7 of 11 nature and these can't be dealt with in a mechanical manner. It also does not require any elaboration that the report of the Enquiry Officer is only an enabling document, which helps the disciplinary authority in coming to a conclusion about the guilt of a government servant. That being so, the disciplinary authority in the case in hand, utterly failed to apply his own mind to the facts and circumstances of the case and come to its own independent decision on the charges, with any application of mind much less due application of mind, though, concurring that there was no financial loss to the State. One cannot lightly ignore the fact that the other two signatories to the subject certificate and the Line Committee Report and against whom, the department did not choose to initiate any disciplinary action for their misconduct, appeared as witnesses for the petitioner in his defence and deposed that at the time of supply of the stores, there was no shortage of any items. Though, I am not prepared to believe their such oral depositions equally, for the simple reason that stores like potato, onion, fresh vegetables etc. could not have been supplied and stored in one go to be

consumed over a period of few months or over the year, there is equally nothing on record to show that such consumable items were to be purchased and stored on daily or weekly or bi-weekly basis as per any of the instructions, guidelines or norms of the department. This aspect, both the enquiry officer and the disciplinary authority equally failed to advert to. It was more so for the disciplinary authority to look into this aspect, while imposing penalty for the wrongful or mistaken affixation of the signatures on the certificate and the report by the petitioner, which the other two members of the Line Committee had equally affixed and for whom, no action came to be initiated against WP(C) 23

Page 8 of 11 anyone else but for the petitioner, for the reasons best known to the department. It is a matter of procedure and practice that when a supply is received, a note for the purpose comes to be prepared for the supply being complete or not and this begins with an official making a note at the lowest level and then, it starts moving up the hierarchy and when it so happens, as far as the subject in hand is concerned, the petitioner would have been the last person to sign the certificate and the report. Here, I would hasten to add that it is not the case of anyone that the petitioner signed the certificate and the Line Committee Report in the first instance and then, the others followed being the sub-ordinates. In the given scenario, how could the department make differentiation for the action(s) of misconduct of its employees only on the premise of status/grade in which, its officer(s)/officials were placed, one wonders?. As far as I understand, the CCS (CCA) Rules do not provide for distinction on any such premise. Action of pick and choose by the respondents therefore, deserves to be depreciated and I do so. Be that as it may, the evidence adduced on record and the attending circumstances leave no doubt that as on the date of the signing of the certificate and the Line Committee Report(s) by the petitioner, the supplies were actually not received but the certificate and the reports recorded otherwise. To that extent, the petitioner cannot escape, though, as observed earlier, it was without any corrupt motive and did not result into any financial loss to the State. The findings to that effect only therefore, deserve to be maintained. The mistake/error of the petitioner in signing the subject certificate and the report(s), it appears to me was inadvertent, which he committed at the threshold of his service inasmuch as, his first posting was with 'C' WP(C) 23

Page 9 of 11 company at Jang in January, 1995 and the incident of signing the certificate and the report(s) is of February, 1996. In the peculiar facts and circumstances of the case, in my considered view, the imposition of reduction to the lowest stage from Rs.10750/- to Rs.8000/- in the time- scale of Rs.8000-275-13500/- for a period of two years w.e.f. 1.11.2005, with further directions that he will not earn increments of pay during the period of such reduction and that the reduction will have the effect of postponing the future increment of his pay, is too harsh. Suffice to say, Rule 11 of the CCS (CCA) Rules, which describes the minor and the major penalties that may be imposed for the misconduct of a Govt. servant, by itself opens up in the following manner :

"11. Penalties The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

"..."

It would thus be seen that the penalties are to be imposed for good and sufficient reasons and in doing so, the foremost objective is to discipline than being vindictive. The objective of imposing penalty on the employee is to lesson him to not to commit the same mistake in future. In appropriate cases, when counselling does not work, imposition of minor penalty itself shall work. In the instant case, nothing has come to be either pointed out or stated during the course of hearing that the petitioner has indulged in any other misconduct till now. Keeping in view the peculiarity of the facts and circumstances of the case in hand, both the charges being inter-connected, I am of the considered view that the WP(C) 23
Page 10 of 11 imposition of minor penalty of "Censure" on the petitioner shall serve the purpose. To that effect, with due respect to my esteemed sister on the bench, Indira Banerjee, J., I am unable to concur with. Ordered accordingly, with consequential benefits accruing to the petitioner. ANIL KUMAR CHAWLA, J FEBRUARY27 2017 RC WP(C) 23
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