

Dipti Kumar Gogoi Vs. Union of India (Uoi) and ors.

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Court : Guwahati

Decided On : Jun-22-2004

Judge : B.K. Sharma, J.

Appeal No. : WP(C) No. 2667 of 2002

Appellant : Dipti Kumar Gogoi

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : G.P. Bhowmik, Adv.

Advocate for Pet/Ap. : A.R. Banerjee and B. Devi, Adv.

Disposition : Petition dismissed

Prior history : B.K. Sharma, J. 1. This writ application is directed against the order of removal passed against the petitioner. The petitioner while was serving as Constable under the respondents was placed under suspension by an order dated 23.11.1999 in contemplation of a disciplinary action. By Memorandum dated 20.12.1999, the following articles of charges were communicated to the petitioner along with the statement of the charges and the lists of documents and witnesses. 'That the said No. 922299052 Con

Judgement :

B.K. Sharma, J.

1. This writ application is directed against the order of removal passed against the petitioner. The petitioner while was serving as Constable under the respondents was placed under suspension by an order dated 23.11.1999 in contemplation of a disciplinary action. By Memorandum dated 20.12.1999, the following articles of charges were communicated to the petitioner along with the statement of the charges and the lists of documents and witnesses.

'That the said No. 922299052 Const. D.K. Gogoi (U/S) of CISF Unit ONGC Jorhat (HQ Sector), assaulted No. 922299405 Cont. S.K. Das of JRT Sector with an iron piece on 23.11.1999 at about 0520 hrs in the barrack No. 8 of CISF lines, Cinnamara. Due to this Const. S.K. Das sustained injury on his head. The above act on the part of Const. D.K. Gogoi amounts to gross misconduct, indiscipline, aggression and an act unbecoming of a member of Armed Force i.e., CISF. Hence the charge.'

ARTICLE-II

'That the said NO. 922299052 Const. D.K. Gogoi (U/S) of CISF Unit ONGC Jorhat (HQ Sector) who was detailed for 'A' shift duty at DTV stand from 0500 hrs to 0900 hrs on 23.11.1999, failed to turn up for duty and remained absent without permission from competent authority. The above act on the part of Const. D.K. Gogoi amounts to gross misconduct, negligence and dereliction on duty. Hence the charge.'

2. The petitioner submitted his written statement of defence denying the charges. According to the stand in the written statement there was some altercation with said Shri S.K. Das and he gave several fist and blows on the face of the petitioner. Exercising the right of private defence, the petitioner protected him and he fell down on a steel box kept near his bed and later on the petitioner could come to know that Shri S.K. Das sustained simple injury. Thus the defence pleaded in the written statement was the defence of right of private defence as a consequence of altercation with said Shri S.K. Das who in turn allegedly attacked the petitioner.

3. A regular Departmental Enquiry was conducted against the petitioner and the Enquiry Officer found the petitioner guilty of the charges. Thereafter, the

Disciplinary Authority observing the required formalities passed the final order on 14.4.2000 imposing the penalty of removal from service. The petitioner preferred an appeal against the order of removal. However, same was also rejected by order dated 16.10.2000. It is the legality and validity of the aforesaid two orders i.e. 14.4.2000 and 16.10.2000 which have been questioned in this writ proceeding.

4. The respondents have filed their affidavit justifying the impugned order. According to them the charges brought against the petitioner, which have been established in the departmental enquiry, are grave in nature and unbecoming of a member of the disciplined force. According to the respondents, the penalty of removal from service imposed on the petitioner is not disproportionate having regard to the gravity of the offence committed by the petitioner.

5. Heard Mr. A.R. Banerjee, learned counsel appearing for the petitioner and Mr. G.P. Bhowmick, learned Addl., CGSC appearing for the respondents.

6. Mr. Banerjee submitted that the Doctor who had examined the injury of Shri S.K. Das having not been examined in the enquiry, the injury in respect of Shri Das could not be established. He further submitted that the Enquiry Officer as well the Disciplinary Authority acted with a pre-determined mind in not accepting the defence of the petitioner. On the other hand Mr. G.P. Bhowmick, learned Addl., CGSC appearing for the respondents submitted that the charges brought against the petitioner having been established, there is nothing wrong in imposing the penalty of removal from service. He further submitted that the petitioner being a member of the disciplined force ought not to have resorted to the kind of conduct as reflected in the charges. Referring to the observations made by the Appellate Authority as to how the petitioner during his tenure of his service had been awarded with five (5) minor penalties for different offences committed by him, Mr. Bhowmick submitted that the past records of the petitioner also did not justify any leniency in the matter of imposition of penalty.

7. I have considered the rival submissions made by the learned counsel for the parties. I have also considered the materials available on records.

8. Mr. Banerjee, learned counsel appearing for the petitioner placed reliance on a decision of this Court passed in W.P.(C) No. 8756/01. That was also a case of assault on two of the colleagues by the petitioner therein under influence of liquor. As a consequence of such assault, two Constables who were injured had to be hospitalised. The writ petitioner was charged with indiscipline/mis-behaviour in respect of the incident. Pursuant to a regular disciplinary proceeding the charges levelled against the petitioner were found to be established and accordingly the petitioner was dismissed from service. This Court while recognising that the delinquent had indulged in unruly conduct and had assaulted his colleagues injuring them in the process and that at the time of the occurrence, there was some amount of smell of alcohol coming from the petitioner/delinquent remanded back the matter to the Disciplinary Authority for reconsideration of the punishment awarded on the ground that it was not the writ petitioner alone who was responsible for the incident and that other two persons who suffered injury were also responsible.

9. In the instant case although the learned counsel appearing for the petitioner strenuously argued that the Enquiry Officer and the Disciplinary Authority did not take into account the most relevant consideration that the doctor who had examined the injured colleague of the petitioner was not examined in the enquiry and that the defence of the petitioner was totally ignored, I do not find any infirmity and or irregularity in conducting the departmental proceeding. The plea of the petitioner that the concerned doctor was not examined by the Enquiry Officer was duly taken note of by the Disciplinary Authority. It also took into consideration the plea of the petitioner that his defence was totally ignored by the Enquiry Officer. In this connection findings recorded by the Disciplinary Authority are quoted below :-

'The pleas put forth in his defence, by the charged official that Enquiry Officer ignored the defence story is incorrect because the Enquiry Officer in his report has discussed the defence version in detail. Further, the statements of prosecution witnesses do corroborates with each other and clearly establish the imputations of misconduct against the charged official. The prosecution exhibits PW-VIII/P-Ex-I and II produced by PW-VIII during enquiry are the documentary evidences against him. The Enquiry Officer has examined Const. S.K. Das (PW-VIII) who produced

the medical documents and charged official has cross examined him. Hence the examination of the Medical Officer was not required. In case the charged official wanted to examine the doctor, he was free to do so. He himself neither requested for the same nor availed that opportunity.'

10. The Disciplinary Authority imposed the penalty of removal from service on the petitioner on the ground that the proved charges were extremely grave in nature and such conduct cannot be tolerated in any public service, especially in an armed force. The Appellate Authority also in its order dated 16.10.2000 elaborately dealt with the grounds urged by the petitioner and incidentally referred to the earlier penalties imposed against the petitioner while dealing with the contention of the petitioner that he rendered an unblemished service during his seven (7) years of service. The departmental enquiry was conducted affording all reasonable opportunity to the petitioner and the petitioner participated in the enquiry proceeding without raising any objection to the procedure adopted in the enquiry. The Enquiry Officer upon evaluation of the evidence on record held the petitioner to be guilty of both the charges. Thereafter, the Disciplinary Authority passed the impugned order of removal from service by its order dated 14.4.2000. It took into consideration all relevant aspects of the matter while awarding the penalty of removal from service. Likewise, the Appellate Authority also dealt with the appeal preferred by the petitioner dispassionately and passed the impugned order dated 16.10.2000. It dealt with all the pleas raised by the petitioner in his appeal.

11. The petitioner belong to the disciplined force like Central Industrial Security Force. The charges brought against him were of serious nature. Needless to say that it is for the Disciplinary Authority to determine and decide as to what penalty should be imposed having regard to the nature and gravity of the offence committed by the delinquent. It is also needless to say that the writ Court in exercise of its power of judicial review cannot sit on appeal over the findings recorded by the Enquiry Officer and the Disciplinary Authority. The penalty imposed on the petitioner also cannot be said to be disproportionate to the gravity of the offence committed by him. The petitioner belonged to the disciplined force and the kind of offence he committed cannot be tolerated in such an Organisation. This aspect of the matter has been dealt with by the Disciplinary Authority and the

Appellate Authority in the impugned order. I do not find any infirmity in the same. It is not a case where the penalty imposed against the petitioner can be said to be disproportionate and shocking to the judicial conscience.

12. The decision relied upon by the learned counsel for the petitioner also does not help the case of the petitioner. Unlike the present case, in that case there was prima-facie evidence on record to suggest that the petitioner and his two colleagues all were equally responsible for the incident. In the instant case it is not a case of inciting the petitioner in any manner by his colleague Shri S.K. Das. It is also not on record/ evidence that the petitioner resorted to the attack on Shri S.K. Das as a measure of private defence. Rather, it is on record/evidence that after the first incident the petitioner left the place and then again came back to place and attacked Sri Das with an iron rod. Thus the petitioner resorted to the act with pre-determination involving criminal element in his mind which by no stretch of imagination can be said to be by way of exercising right of private defence.

13. It is not a case of 'no evidence' or of 'perverse' findings. The Enquiry Officer and the Disciplinary Authority recorded their findings on the basis of the evidence on record and adopted the possible view. It is the preponderance of probability with which a disciplinary proceeding is concerned unlike a criminal proceeding in which the charge is required to be established beyond all reasonable doubt. In the instant case the charges against the petitioner have been established on the basis of the evidence on record. The writ court will not sit on appeal over such evidence so as to re-evaluate or re-appreciate the same and the findings recorded on that basis.

14. In view of the above, I do not find any material to interfere with the impugned order and accordingly the writ petition stands dismissed. There shall be no order as to cost.

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