

Solanki Girish vs.uoi and Anr

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Court : Delhi

Decided On : Apr-02-2018

Appellant : Solanki Girish

Respondent : Uoi and Anr

Judgement :

\$~45 * + W.P.(C) 7772/2017 SOLANKI GIRISH IN THE HIGH COURT OF DELHI
AT NEW DELHI

... Petitioner

Through: Mr.Vishal Chaudhary, Advocate. versus UOI AND ANR

... RESPONDENTS

Through: Ms.Bharathi Raju, CGSC for UOI with Mr.Devender Singh, AC/CISF.

CORAM: HONBLE MS. JUSTICE HIMA KOHLI HONBLE MS. JUSTICE
PRATIBHA RANI

ORDER

0204.2018 The petitioner was recruited in the CISF as Constable/GD on % 1.
06.03.2010. On completion of his basic training, he was posted to CISF6h RB
Deoli on 01.09.2010. Thereafter he had reported to the CISF Unit, Red Fort, Delhi
on 01.09.2012, on a regular transfer.

2. On 08.07.2015, at about 0630 hours, central PT was organized in the Unit.
While checking the turnout of the personnel participating in the PT, the Company

Commander found the petitioner to be present in full pants instead of the prescribed uniform. When the petitioner was questioned by the Company Commander as to the reason for reporting for PT in full pants, he entered into an argument with him. W.P.(C) 7772/2017 Page 1 of 9 After a preliminary inquiry was conducted by the Inspector/Exe., on finding a prima facie case of indisciplined behavior/disobedience of the orders of the superior officer, the provisions of Rule 37 of the Central Industrial Security Force, 2001 were invoked and a Memorandum of Charge dated 30.07.2015 was served upon the petitioner, which reads as under:-

"Charge On 08.07.2015 at time about 06.30 hours central PT was organized and was company commandant on doing turn out check of post members who participated in PT it was found that force No.101220158 Constable/GD Girish Solanki was present after wearing full pant. After being asked by the Company Commander why he has come wearing full pant in PT then in reply by the force member it was said to Company Commander that why you have come wearing lower. After that when by Assistant Commandant, the reason was asked for coming wearing full pant then by the force member it was said to the Assistant Commandant that you have also come wearing blue lower. Despite being working on the responsible post by the force member wrong reply has been given to his senior officers and not appearing in PT and violating the orders given by the senior officers this shows his gross negligence and towards his responsibility therefore, charges are there. indiscipline 3. The petitioner filed a reply dated 12.08.2015 in reply to the above memorandum of charge. Vide order dated 19.08.2015, the Disciplinary Authority i.e. Assistant Commandant, CISF Unit, Red Fort Delhi awarded the petitioner the punishment of reduction of pay to the minimum stage for a period of three years. Further, it was ordered that the petitioner will earn increment of pay during the period W.P.(C) 7772/2017 Page 2 of 9 of reduction and on expiry of period of three years, the reduction will not have the effect of postponing his future increment of pay.

4. Aggrieved by the punishment awarded by the Disciplinary Authority, the petitioner preferred an appeal before the Senior Commandant, CISF Unit, Red Fort, which was partly allowed vide order 26.09.2015. Considering the punishment

awarded by the Disciplinary Authority to be on higher side, the Appellate Authority reduced the same to that of reduction of pay by one stage from `7830 + 2000 to `7540 + 2000, for a period of three years with immediate effect. It was also ordered that the petitioner will not earn increment of pay during the period of reduction and that on expiry of the period of three years, the reduction will not have the effect of postponing his future increment of pay.

5. Not satisfied with the decision of the Appellate Authority, the petitioner filed a revision petition before the DIG/NCR, CISF. In exercise of powers conferred under Schedule-I of Rule 32 of CISF Rules, 2001, vide order dated 15.03.2016, the Revisional Authority further reduced the punishment awarded to the petitioner by the Disciplinary Authority and the Appellate Authority, to that of reduction of pay by one stage from `7830 + 2000 to `7540 + 2000, for a period of one year with immediate effect. It was also ordered that the petitioner will earn increment of pay during the period of reduction and that on expiry of period of one year, the reduction will not have the effect of postponing his future increment of pay.

6. In the hope of getting a clean chit by way of exoneration, the petitioner has invoked the writ jurisdiction of this court under Article W.P.(C) 7772/2017 Page 3 of 9 226 of the Constitution of India praying inter alia for setting aside the orders dated 19.08.2015, 26.09.2015 and 15.03.2016 passed by the Disciplinary Authority, Appellate Authority and Revisional Authority respectively.

7. Mr.Vishal Chaudhary, learned counsel for the petitioner has submitted that the petitioner has been targeted by the Company Commander, who himself was not in proper uniform while he was checking the turnout of the members of the Force who had reported for PT on the date of the incident. Learned counsel has further submitted that not only the petitioner, but there were many other force personnel who had reported for PT in full pants. However, only the petitioner has been targeted by initiating disciplinary proceedings against him. The attention of this Court has been drawn to page No.23 of the writ petition which contains a list of the Stock issued to individual i.e. the petitioner herein, to highlight that the petitioner was issued half pants only on 30.12.2015 and therefore he could not have reported for PT in half pants on 08.07.2015. The following entries at serial No.24

and 25 of the list reflect the dates when khaki nikkars were issued to the petitioner :-

"Sl.No.Item Name Issue Date Next Due Date 24 25 8. Short TC Khaki (Khaki Nikkar) Short TC Khaki (Khaki Nikkar) 30-12-2015 30-12-2018 30-12-2015 30-12-2018 Learned counsel for the petitioner submits that as per the above W.P.(C) 7772/2017 Page 4 of 9 entries in the list of Stock issued to individual, the next due date for half pants i.e. khaki nikkar to the petitioner is 30.12.2018. He urges that the punishment awarded by the Revisional Authority to the petitioner for being found in full pants while reporting for PT, is also very harsh, hence even on the question of proportionality, interference is warranted by this Court.

9. During the course of hearing, learned counsel for the petitioner has been requested to show from the records that after joining the force on 06.03.2010, till 30.12.2015 (as per the entry at serial no.24 & 25 extracted above in para No.8), the petitioner was not issued any half pants. Learned counsel for the petitioner states that the request for issuance of half pants was made orally by the petitioner and the same was issued only in December, 2015. We find no averment made either in the petition or in the copy of the revision petition submitted by the petitioner before the DIG/NCR, CISF to the effect that prior to December, 2015 he was never issued half pants, which was the reason for him to have reported for PT in full pants.

10. Annexure-P7 enclosed with the petition is a copy of the revision petition filed by the petitioner (referred to as appeal against the order of the Appellate Authority) which contains an admission on his part in para 4 that he had reported for PT in full pants and the Company Commander, who was checking the turnout of the force personnel, did question him as to why he was not in half pants though he claims that he himself was not in uniform. It has been stated that the Company Commander was in blue coloured lower, full sleeve T-shirt and blue coloured monkey cap, which is a civil dress and not uniform. The W.P.(C) 7772/2017 Page 5 of 9 petitioner has stated in the revision petition that half pants was due from the department and he was not at fault in reporting for PT in full pants.

11. It is nowhere the case of the petitioner that after being enrolled as a Constable/GD in the year 2010, he was never issued any half pants or that the half pants issued to him prior to the incident dated 08.07.2015, was torn or worn out or that he had ever made any written request for issuance of another half pant to him before the due date. The petitioner cannot derive any benefit from referring to the stock register that reflects that half pants was issued to him on 30.12.2015, in the absence of any pleading that prior to that date, he was not issued half pants or that he was participating in PT in full pants for the past five years.

12. Even a perusal of the order dated 12.08.2015, passed by the Assistant Commandant reveals that initially, the petitioner did not file any reply to the Charge Memorandum. In compliance of the principles of natural justice, again, vide office letter No.2548 dated 14.08.2015 one more opportunity was given to him to come forward with his defence, failing which, he was informed that ex-parte proceedings will be conducted against him. It was only thereafter that the petitioner submitted a reply which was received in the office of the respondents on 18.08.2015. However, a copy of the said reply has not been placed on record by the petitioner.

13. Another contention raised on behalf of the petitioner is that on the date of the incident, during the PT, he was not the only one to be present in full pants and there were several other members of the force W.P.(C) 7772/2017 Page 6 of 9 who had come in full pants but no action was taken against them whereas he has been targeted. From the records, we are unable to notice the names/number of other members who it is claimed were present on the date of the incident in full pants for PT but only the petitioner had been targeted, by serving him with a Memorandum of Charge.

14. The legal position is well established. Courts can interfere where the Disciplinary Authority has held the proceedings against the delinquent official in violation of the principles of natural justice or in violation of the statutory rules or the findings recorded by the Disciplinary Authority are found to be perverse or unsustainable.

15. Once the petitioner has admitted to the incident of reporting for central PT on 08.07.2015 at 0630 hours at Red Fort in full pants and to the fact that he had

entered into an argument with the Company Commander who was checking the turnout of the constables, the orders passed by the Disciplinary Authority, Appellate Authority and Revisional Authority holding him guilty for the misconduct referred to in the Memorandum of Charge, cannot be faulted.

16. Learned counsel for the petitioner has also raised the issue of proportionality of the sentence by submitting that the punishment awarded to the petitioner by the Disciplinary Authority i.e. reduction of his pay to the minimum stage for a period of three years, which was subsequently modified by the Appellate Authority to that of reduction of pay by one stage from `7830 + 2000 to `7540 + 2000 for a period of three years with immediate effect and further reduced by the Revisional Authority to that of reduction of pay by one stage W.P.(C) 7772/2017 Page 7 of 9 from `7830 + 2000 to `7540 + 2000 for a period of one year with immediate effect, is very harsh and it could have been reduced to censure.

17. It is trite that a challenge to a sentence on grounds of proportionality can be successfully laid only if the sentence of punishment is so disproportionate to the gravity of the allegations that it shocks the conscience of the Court.

18. The petitioner is a member of the CISF which is a paramilitary force requiring him to maintain discipline. It is also noteworthy that the petitioner has filed another W.P.(C) No.6771/2017 which was listed before us today at Item No.44, wherein he has challenged the order passed by the Disciplinary Authority as during a checking conducted on 11.08.2015 at about 0740 hours, it was found that he had not tied the chain of his rifle with his belt. Instead, the chain was wrapped around the rifle. For the said act of indiscipline, he was awarded the punishment of fine equivalent to his one days salary.

19. The purpose of imposing a penalty is two-fold. Firstly, to punish the wrong doer for the misdemeanor and secondly, to set an example for others to be careful. A mild penalty is likely to encourage others to indulge in the same wrong. At the same time, too harsh a penalty may breed unrest. Thus, while exercising the discretion to award penalty, one has to be careful to maintain a balanced approach.

20. On the subject of the penalty being disproportionate, the law is that awarding of penalty lies within the discretion of the departmental authorities and unless and until it is so shockingly disproportionate that the conscience of the court would revolt, ordinarily, courts should W.P.(C) 7772/2017 Page 8 of 9 not interfere with the penalties imposed.

21. The two acts of misconduct on the part of petitioner in quick succession required the authorities to take stern action against him to curb the tendency of indiscipline amongst the members of the Force.

22. Taking into consideration the undisputed fact that the petitioner had presented himself in full pants instead of half pants for PT and on being asked by the senior officers to furnish the reason for the same, he had entered into an argument with the Company Commander, we are of the opinion that the scaled down punishment awarded to him by the Revisional Authority cannot be termed as disproportionate to the offence.

23. Finding no illegality, irregularity or perversity in the action of the respondents, the writ petition is dismissed as meritless.

24. No costs. APRIL02 2018 st PRATIBHA RANI, J.

HIMA KOHLI, J.

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