

D.K. Yadav Vs. Group Commandant, Central Industrial Security Force and ors.

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Court : Andhra Pradesh

Decided On : Nov-01-1997

Reported in : 1998(1)ALT206

Judge : T.N.C. Rangarajan, J.

Acts : Service Law

Appeal No. : Writ Petition No. 15681 of 1995

Appellant : D.K. Yadav

Respondent : Group Commandant, Central Industrial Security Force and ors.

Advocate for Def. : D. Krishna Murthy, Addl. C.G.S.C.

Advocate for Pet/Ap. : S. Tripura Sundari, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

T.N.C. Rangarajan, J.

1. This writ petition is directed against the termination of the services of the petitioner.

2. The petitioner has been enlisted in the Central Industrial Security Force as a Police Constable on 28-9-1989. While he was working in Hyderabad he received a telegram on 3-9-1993 that his wife who had gone to Haryana for delivery was seriously ill and his child had also died. He accordingly made an application for leave to the Company Commandant. After his duty hours which were from 5 a.m. to 1 p.m. were over, he went in the evening at 5-45 p.m. to the Deputy Commandant office in civil dress to enquire about his leave application. The Sub-Inspector gave him a file with instructions to place it before the Deputy Commandant for sanction. He, therefore, went to the room of the P. A. to the Deputy Commandant. At that time another Sub-Inspector who was in civil dress entered the room and questioned the presence of the petitioner in civil dress as there was a rule that no one in civil dress could enter that area. Since that person was also in civil dress the petitioner questioned his identity and since he happened to be a superior officer he could not tolerate this. A quarrel ensued and there was exchange of hot words. The result of this was that an enquiry was initiated. The following four charges were framed:

(1) Gross indiscipline and misconduct in that No. 892298411 Constable D.K. Yadav of CISF Unit FCI, Ramagundam on 3-9-93 at about 18-15 hrs. under the influence of alcohol entered into the office of Deputy Commandant and misbehaved with SI/Steno V.A. Rajan.

(2) Insubordination and indiscipline in that No. 892298411 Constable D.K. Yadav of CISF Unit FCI, Ramagundam on 3-9-93 at about 18-15 hrs. entered into the office of the Deputy Commandant without permission and disturbed the work and peaceful atmosphere in the technical building, by using unparliamentary language in loud voice against SI/Steno V.A. Rajan in front of other G.D. Staff.

(3) Grave misconduct, moral turpitude and indiscipline in that No. 892298411 Constable D.K. Yadav of CISF Unit, FCI, Ramagundam on 3-9-93 at 19.00 hrs. under influence of alcohol misbehaved with SI/Min. A.R. Routh and threatened him with dire consequences in presence of office staff.

(4) Insubordination and misconduct in that No. 892298411 Constable D.K. Yadav of CISF Unit, FCI Ramagundam on 3-9-93 at about 19.30 hrs. manhandled and caused physical injury to SI/Min. A.R. Routh while SI/Min. A.R. Routh was returning to his residence on bicycle.

3. The Enquiry Officer found that the first three charges are proved, but in respect of the 4th charge there was no eye-witnesses and he accordingly held that the 4th charge was not proved. A copy of this Enquiry report was given to the petitioner and he submitted a representation. The Disciplinary Authority, however, came to the conclusion that even the 4th charge was taken to be proved because he had the motive to attack the S.I. after office hours and he held that the petitioner was guilty of all the charges and awarded the punishment of dismissal from service. In the appeal, the punishment was reduced to one of removal from service.

4. In this writ petition the learned Counsel for the petitioner submitted that there are one or two legal infirmities in the proceedings taken against the petitioner. He pointed out that the Disciplinary Authority had differed from the Enquiry Officer's report for not giving an opportunity to the petitioner to contest the same. He relied on the decision of the Supreme Court reported in *Ramchander v. Union of India*, : (1986) ILLJ334SC , and submitted that apart from giving him such an opportunity even in respect of the appeal itself a personal hearing is required because only then the petitioner could convince the appellate authority that the proceedings taken against him were not justified. He also pointed out that with regard to the allegation that the petitioner was drunk there was no medical evidence because he was not medically examined on the ground that though he was taken to a Doctor, there was power failure at that time. He submitted that the emotional state of the petitioner who had lost his child and whose wife was seriously ill has not been given due weight for the findings in respect of the first three charges. He, therefore, submitted that the impugned order was illegal and should be set aside.

5. The learned Counsel for the respondents submitted that there were witnesses to show that the petitioner was drunk and had quarrelled with the superiors and such an attitude cannot be countenanced in disciplinary force. He also submitted that though he might have been denied an opportunity at the time when the

Disciplinary Authority giving his findings, his appeal and his revision have been considered giving him an opportunity which he had utilised by giving written explanation and the findings of fact cannot be disturbed in a Writ Petition. The learned Counsel also relied on an unreported decision of the Madras High Court in W.P.No.8069/95 to submit that medical examination is not essential to prove any intoxication.

6. No doubt, the findings of fact cannot easily be touched in a writ petition. But, when such findings are without any basis or erroneous in law, definitely the entire proceedings will get vitiated. In the present case, the authorities have not taken into account the very relevant fact viz., the emotional state of the petitioner who had just lost his child and whose wife was seriously ill and was enquiring whether he will be granted leave to proceed to Haryana. In such a charged atmosphere when some one who is himself in a civil dress has challenged him for being present in office in civil dress it is quite understandable that the petitioner should be provoked to challenge that person's identity. It was because that person was a superior officer that the entire episode was blown out of proportion. The further charge that he was drunk appears to have been added to make it appear that the petitioner was entirely at fault. Medical examination for proving that he was drunk may not be essential in all cases. But, in a case where such a charge was made and all the witnesses are subordinates to the person who is making that charge the only way in which the petitioner could absolve himself was by medical examination. Such an opportunity was not given because on the pretext that there was power failure no medical examination had taken place. In this background an adverse inference is called for to the effect that if such a medical examination had taken place, it would have proved that he was not drunk and that was perhaps the reason why no medical examination was held. Coupled with the fact the petitioner was in an acute emotional state, I am of the opinion that all the authorities concerned have misdirected themselves in assuming that the petitioner was entirely at fault in exchange of hot words and therefore he should be severely punished. If the matter is considered at its proper perspective it would be apparent that the punishment meted out was certainly disproportionate to the incident. I, therefore, deem it fit to set aside the orders of termination and remit the matter to the appellate authority to consider the appropriate punishment that may be

awarded to the petitioner. He should also regularise the absence from the date of termination till the date of reinstatement. I hope and trust that he will take proper view of the matter taking into account the emotional state in which the petitioner was placed when the incident took place.

7. The writ petition is, accordingly allowed. No costs.

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