

BenjamIn Franklin. Vs. BenjamIn Franklin.

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Court : Chennai

Decided On : Aug-20-2010

Judge : T.S.Sivagnanam, J.

Appeal No. : W.P.No.5303 of 2003

Appellant : BenjamIn Franklin.

Respondent : The Commandant, and anr.

Advocate for Def. : Mr.M.Gopinathan, Adv.

Advocate for Pet/Ap. : Mr. M.Md.Ibrahim, Adv.

Judgement :

1. The prayer in the Writ Petition is for issuance of a Writ of Certiorarified mandamus to quash the order passed by the first respondent dated 14.5.2002, as confirmed in appeal by the second respondent, by an order dated 23.1.2003, by which the petitioner who was working as a Constable in the Central Reserve Police Force (CRPF) was dismissed from service with effect from 19.5.2002.

2. The facts leading to the filing of the Writ Petition are that a charge memo dated 13.10.2001, was issued to the petitioner alleging gross misconduct and disobedience of Government Order and remissness of duties in his capacity as a member of the Central Reserve Police Force under section 11(1) of the CRPF Act 1940. The petitioner submitted his explanation denying the charge and thereafter an enquiry was conducted and the copy of the enquiry report was given to the

petitioner and the petitioner also submitted his further explanation on 27.4.2002. The disciplinary authority, first respondent herein after going through the records, enquiry proceedings as well as the objections, passed the impugned order dismissing the petitioner from service. Aggrieved by such order of punishment, the petitioner filed Writ Petition before this Court in W.P.No.22966 of 2002 and the Writ Petition came to be disposed of by an order dated 3.7.2002 with a direction to the petitioner to file an appeal. Accordingly, the petitioner preferred an appeal to the second respondent on 24.7.2002. The second respondent by an order dated 23.1.2003, rejected the appeal provision and confirmed the order of punishment. Aggrieved by this order, petitioner is before this Court.

3. Before proceeding to consider the contentions raised by the petitioner, it would be useful to extract the charge framed against the petitioner, which is to the following effect:

"Article: That he committed an act of gross misconduct, disobedience of Govt. Orders and remissness of duties in his capacity as a member of the Force u/s 11(1) of CRPF, Act 1949 in that while on leave from 10.6.2000 to 8.8.2000 went to GC, CRPF, Avadi during the recruitment of Ct (GD) in CRPF in the month of June 2000, contacted CT P.Raju and informed him that he got him recruited in CRPF by his recommendation. He took away the transfer certificate and the marke sheet of Ct.P.Raju and asked him to collect it from his house. When contacted him at his hometown, Ct.T.Benjamin Franklin demanded Rs.50,000/- for return of his Transfer Certificate and Mark Sheet. After handing over Rs.40,000/- by Ct.P.Raju in the presence of Shri Ishwara Pilai, maternal uncle of Ct.P.Raju, No.913093609 Ct.T.Benjamin Franklin handed over the certificates to him. As such, he committed an act of gross misconduct, remissness of duties and misused his official position as Ct (GD) in CR66PF for extortion o money and cheating."

4. A perusal of the above charge indicates that the allegation against the petitioner is that he had taken away the Transfer Certificate and Mark Sheet of Constable P.Raju and demanded Rs.50,000/- for return of the Certificates and after payment of Rs.40,000/- by Constable P.Raju, the petitioner returned the Certificates in the presence of one Ishwara Pillai, maternal uncle of Constable P.Raju and therefore,

the petitioner had committed gross misconduct and remissness of duties and misused his official position for extorting money and cheating the Constable P.Raju.

5. The learned counsel appearing for the petitioner would submit that the entire disciplinary proceedings are vitiated on the sole ground that the charge has been framed based upon the oral complaint said to have been given by Constable P.Raju much after the alleged incident. It is submitted that if the allegations against the petitioner is a case of extortion of money, nothing prevented the said Constable P.Raju from lodging a Police complaint, more particularly when his maternal uncle Ishwara Pillai, who is said to have been present at the time of handing over of Rs.40,000/- to give a Police Complaint, since the said Ishwara Pillai was a Head Constable in the Tamil Nadu State Police. Therefore, it is clear that the entire allegation is motivated and is without any basis.

6. Further it is contended that in the absence of any criminal complaint by either the petitioner or his maternal uncle, the statement of the said Ishwara Pillai could not have been taken and cannot be relied upon. The learned counsel would further submit that the enquiry officer did not render any specific finding regarding the handing over of the money and therefore, the ultimate report of the enquiry officer is perverse. Further, the delay in the oral complaint given by the Constable P.Raju, is fatal to the case of the Department. Further, the disciplinary authority as well as the appellate authority failed to consider the reply submitted by the petitioner to the charge wherein he had stated that from 10.6.2000 to 8.8.2000, he was on leave and stayed at his native village in Kanyakumari District and left the village on 9.9.2000 to join at Jammu and that he never met Constable P.Raju in his native place and he does not know Constable P.Raju and it is beyond comprehension as to how the Constable P.Raju could know the name of the petitioner when there are thousands of men serving in CRPF hailing from Kanyakumari District.

7. Further, the learned counsel would submit that reasonable opportunity was not given to the petitioner to produce defence witnesses before the enquiry officer; that the enquiry officer recorded the statement of prosecution witnesses without properly analysing the case and rendered an erroneous finding that the charge

against the petitioner is proved beyond any doubt. Therefore, the learned counsel would submit that based on the perverse finding of the enquiry officer, the disciplinary authority came to a conclusion that the charge against the petitioner has been proved and passed the impugned order imposing the punishment of dismissal from service, which is untenable; that the appellate authority also did not consider the grounds raised by the petitioner in his appeal petition and mechanically confirmed the order passed by the disciplinary authority.

8. Per contra, the learned Senior Standing Counsel for the respondents would submit that the allegations against the petitioner as contained in the charge is very serious. The article of charge was framed against petitioner only after conducting thorough investigation and the petitioner was afforded full and effective opportunity to defend himself and the domestic enquiry was conducted in a fair and proper manner and the petitioner did not raise any objection and based on the finding of fact recorded by the enquiry officer, the disciplinary authority independently considered the matter and imposed the penalty. The appellate authority also considered the entire matter with due application of mind and passed an order rejecting the appeal and assigned cogent reasons for his conclusion. Therefore, the learned Standing Counsel would submit that the impugned orders do not call for any interference, more particularly since the petitioner belongs to an Uniformed Service, this Court will not interfere with the punishment imposed on the petitioner.

9. I have carefully considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

10. The sheet anchor of the argument of the learned counsel for the petitioner is that the entire disciplinary proceedings have been initiated pursuant to an oral complaint said to have been given by Constable P.Raju and that in the absence of any criminal complaint given by the said Constable P.Raju or his maternal uncle Ishwara Pillai who was a Police Officer in the Tamil Nadu State Police, no cognisance could have been taken based on such oral complaint.

11. At the first blush, the contention raised by the learned counsel for the petitioner appears to be convincing. However, on a closer examination of the facts of the case proves otherwise. It is stated that Constable P.Raju who is also a native of

Kanyakumar district from which district the petitioner also hails, while undergoing basic training in the 138 Battalion of CRPF is said to have given an oral statement by mentioning the name of the petitioner alleging that the petitioner had received Rs.40,000/- for arranging for his recruitment in the CRPF. Based on such statement, an investigation appears to have been conducted and in the investigation the authorities were able to place that the person who has been named by Constable P.Raju is none other than the Writ Petitioner and at that time, he was serving in 78 Battalion CRPF on his identity being established, the Group Captain of CRPF Pallipuram deputed a Sub Inspector to go to Nagercoil and investigate the matter with the help of the local State Police.

12. Accordingly, the assistance of the Inspector Police, Thakkalai was taken and thereafter the statement was recorded from Constable P.Raju on 28.6.2000, wherein the said Constable stated that after he had written the qualifying test, he and one S.Ravichandran went to the Railway Station at Egmore to return to their native village and the petitioner came to Egmore Railway Station and directed the Constable P.Raju and S.Ravichandran to handover the certificates to him so that he will make necessary arrangements for getting them recruited in CRPF and at that point of time, the petitioner gave his home address and details. Accordingly, Constable P.Raju handed over the certificates to the petitioner, but, S.Ravichandran did not hand over the same and P.Raju was directed to go to the house of the petitioner either on 29th June 2000 or on 30th June 2000 to collect the certificates and accordingly, the said Raju appears to have gone to the petitioner's native village Charode on 2/7/2000 to collect his certificates, as by then Raju had received the order of appointment. At that time, the petitioner and his brother refused to recognise Raju and therefore Raju had to return empty handed and on 3.7.2000, Raju once again went to the house of the petitioner along with his maternal uncle Ishwara Pillai who was a Head Constable in the Tamil Nadu State Police. During the course of discussion, the petitioner demanded Rs.50,000/- for return of the certificates and on 5.7.2000 a sum of Rs.40,000/- was handed over to the brother of the petitioner one Shriman and the certificates were returned to P.Raju. Based on such report, the authorities came to a prima facie conclusion that the petitioner has extorted money from various persons with the help of his brother Shriman and further it was established that the petitioner was

on earned leave for sixty days between 10.6.2000 and 8.8.2000 i.e. during the period of recruitment at CRPF, Avadi. Based on these facts, charge memko dated 13.10.2000 was issued and since the explanation was not convincing, an enquiry officer was appointed by proceedings dated 17.11.2001 to conduct an enquiry. It is further stated that during the course of enquiry, the petitioner submitted that he does not have any proof or witness or document in support of his stand and he does not have any defence witnesses. According to the respondents, domestic enquiry was conducted as per the procedure and petitioner was given full opportunity to defend himself. The enquiry officer by report dated 13.10.2001, held that the charges are proved. It is further submitted that though the petitioner had named one Dharmaraj, Paul Stanly, Satish Sudershan and Titus, in his statement dated 15.2.2002, he did not produce the witnesses for being examined in the domestic enquiry. It is seen that the petitioner was furnished with the copies of the enquiry report and the statement and thereafter the disciplinary authority has passed the order.

13. Thus, it appears that the petitioner did not produce any defence witness nor did he file any documents. Therefore at this stage of the matter, the petitioner cannot allege violation of principles of natural justice or lack of opportunity in the domestic enquiry. The domestic enquiry has been conducted for 81 days from 27.11.2001 till 15.2.2002 and inspite of the same, the petitioner appears to have not produced any witness to prove his stand. Ultimately, the disciplinary authority found that the petitioner was guilty of the charge and imposed the punishment of dismissal from service.

14. From a perusal of the order passed by the appellate authority, it is seen that the appellate authority has considered the grounds raised by the petitioner in his appeal petitioner and after independently applying his mind, has passed a speaking order. In fact, the appellate authority has considered the entire oral evidence available on record and came to a conclusion that the finding of guilt has been established. In paragraph No.14 of the order passed by the appellate authority, the scope and ambit of the domestic enquiry has been discussed and it has been rightly observed by the appellate authority that the degree of proof in a criminal case and that any domestic enquiry are different and therefore based on

the preponderance of probabilities and based on the evidence available on record, the appellate authority came to a conclusion that the appeal petition is devoid of merits.

15. As already seen, there is no violation of principles of natural justice as submitted by the learned counsel for the petitioner. In fact, it has been specifically pointed out in the counter affidavit that the petitioner was required to give in writing the list of defence witness or documents which he would like to produce so that the summons could be issued by the enquiry officer. In the preliminary enquiry held on 27.11.2001, the petitioner had in reply to question No.8, has clearly stated that he has no documents to produce in defence. Therefore, I am unable to accept the contentions raised by the learned counsel for the petitioner that the domestic enquiry was vitiated on account of procedural infirmities.

16. As regards the contention raised by the learned counsel for the petitioner stating that nothing prevented the maternal uncle of Constable P.Raju to give a Police complaint, more so when he himself was a Head Constable in the Tamil Nadu State Police.

17. Admittedly, the impugned proceedings is not a criminal prosecution, but a departmental proceedings. Nothing prevented the petitioner from producing oral or documentary evidence to establish his case. Likewise if it was the case of the petitioner that he did not know the said Constable P.Raju or his maternal uncle, nothing prevented him from examining witnesses in support of such contention. It is seen that the petitioner has named certain persons in the statement who are persons hailing from his native village, but there is no explanation as to why the petitioner failed to produce these persons for being examined before the enquiry officer.

18. Thus, by considering the totality of the evidence available on record, the enquiry officer came to the conclusion that the charges against the petitioner are proved. The findings of the enquiry officer was also accepted by the disciplinary authority and he has assigned cogent reasons in support of his conclusion. It is settled proposition of law that the degree of proof necessary in a departmental proceedings is not to the extent as required in a criminal proceedings. It has to be

borne in mind that the petitioner is a member of an Uniformed Service, which requires maintenance of high degree of integrity and discipline. Hence, I find there are no justifiable grounds to interfere with the order of punishment imposed against the petitioner.

19. For the foregoing reasons, the Writ Petition fails and the same is dismissed. However, there will be no order as to costs.

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