

Sh.Devender Singh Vs. Union of India and ors

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Court : Delhi

Decided On : Feb-18-2011

Judge : Anil Kumar ; Veena Birbal, Jj.

Acts : CENTRAL CIVIL SERVICES(CCS (CCA) Rules, 1965) - Rule 14;
[Constitution of India](#) - Article 320(C)

Appeal No. : W.P. (Civil) No. 5108 of 2010

Appellant : Sh.Devender Singh

Respondent : Union of India and ors

Advocate for Def. : Ms.Sangeeta Bharti; Ms.Nidhi Minocha, Adv.

Advocate for Pet/Ap. : Mr.Randhir Jain; Ms.Ruchika Jain, Adv.

Judgement :

1. Whether reporters of Local papers may be YES allowed to see the judgment?

2. To be referred to the reporter or not? NO

3. Whether the judgment should be reported in NO the Digest?

1. The petitioner has challenged the order dated 10th November, 2009 of the Director General, Central Industrial Security Force imposing the penalty of compulsory retirement on the petitioner.

2. The petitioner was posted and functioning as Deputy Commandant, CISF Unit IISCO, Burnpur when during 2002, a Seesham tree fell in his residential compound. He got the tree cut into small pieces through CISF personnel and got the logs made through the saw mill at Kulti on 13th and 14th October, 2003 and finally transported them to his native place on 18th October, 2003 instead of intimating the authorities about felling of tree.

3. The act of the petitioner was perceived as misconduct and a charge sheet dated 7th April, 2005 was issued to him, after conducting a preliminary inquiry, stipulating that an enquiry is proposed to be held against him under Rule 14 of CCS (CCA) Rules, 1965. The article of charge categorically stipulated that he cut a Seesham tree, that had fallen in his residential compound, cut it into small pieces through CISF personnel and got the logs made thereof through saw mill, Kulti and transported the logs to his native place on 18th October, 2003 and thus he misused the manpower for his private work and dishonestly took the Seesham logs to his native place for personal use and thereby caused loss to the management and thus he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of his status and service in an armed force of the Union like CISF.

4. It was also communicated to the petitioner that he brought the cut logs from the saw mill to his residence on 13th and 14th October, 2003 in Jeep No.WMP-3130 and paid Rs.250/- to the owner of the saw mill through HC/Dvr. V. Durgaprasad as cutting charges. On 17th October, 2003 he got the logs wrapped with jute bags by CISF personnel and on 18th October, 2003 when the petitioner proceeded on leave he took these logs to Asansol Railway Station in truck No.WB-37-0146 driven by HC/Dvr.Bajrangi Singh and got them loaded in the Poorva Express in which he was going to Delhi.

5. In the report dated 13th December, 2004 submitted by Sh.I.R.Uppal, Deputy Inspector General, enquiry officer, the article of charge framed against the petitioner was proposed to be sustained. The report also categorically revealed that petitioner had taken the wooden pieces with the help of Constable Raj-Nath Singh, Vikram Singh, Tilak Raj, Constable Rajesh Kumar and HC/GD D.K.Dutta

(CHM) which personnel were shown in the CISF general shift duty on 18th October, 2003. Constable Rajesh Kumar who was on leave had also accompanied the petitioner for carrying the Seesham wood. The statements of 14 persons were recorded and Sh.I.R.Uppal, DIG, CISF who had conducted the preliminary enquiry considered the statements of all the 14 witnesses who were examined by him. After considering the statements recorded in the preliminary enquiry the findings arrived at were that a Seesham tree had fallen at the residence of the petitioner which had been cut by CISF party as per the orders and instructions by the petitioner and three logs were taken to sawmill, Kulti by Jeep No.WMP- 3130 on 12th October, 2003 and 13th October, 2003. Petitioner had visited saw mill, Kulti on 13th October, 2003 and the cut pieces of woods were brought by jeep No.WMP- 3130 which were unloaded at the residence of the petitioner. The cut log pieces were then transported to Railway station and were loaded into the Poorva Express and constable Rajesh Kumar also proceeded on leave in the same train along with the petitioner.

6. Pursuant to this, the charge sheet memorandum dated 7th April, 2005 along with the copy of the preliminary report dated 13th December, 2004 and the list of witnesses on which the department wanted to rely were served upon the petitioner. In reply, the petitioner had sent communication dated 25th May, 2005 demanding the copy of the original complaint of the owner of the impugned property, as well as any report/checking by any competent authority during transportation of household articles was also demanded. To the demand made by the petitioner, to supply the required documents, a reply was sent on 8th July, 2005 stipulating that the documents demanded by the petitioner had already been supplied to him.

7. Aggrieved by the decision of the respondent to not supply any further documents, a writ petition being W.P(C) No.2755/2006 was filed by the petitioner which was disposed of by order dated 1st November, 2007 whereby direction was given to supply the copies of the documents demanded by the petitioner and dispose of the enquiry within eight weeks. The order dated 1st November, 2007 passed by this Court is as under:-

" We have heard learned counsel for the parties. There are two prayers, one of which is for quashing the Enquiry proceedings altogether. It is contended that before an Enquiry Officer earlier appointed, several witnesses have been examined. Thereafter, it was allegedly realised that, that Enquiry Officer was junior to the Petitioner and hence the Respondents decided to put an end to the Enquiry. Thereafter, a second Enquiry Officer was appointed. The Management, on a perusal of his Report, came to the conclusion that the Enquiry Officer ought to have examined witnesses from the Saw Mill where the fallen tree had allegedly been cut into pieces allegedly at the instance of the Petitioner. Learned counsel for the Respondents states, on ipse dixit, that this was in order to ensure fair play against the Petitioner. We wonder what the finding of that Enquiry was. Possibly, it may have been in favour of the Petitioner. Be that as it may, a third Enquiry Officer has now been appointed.

It is brought to our notice that Shri I.R. Uppal has also been appointed as the third Enquiry Officer to which the Petitioner remonstrated as they were inimical towards each other.

We are of the view that the Petitioner is fully entitled to copies of the documents prayed for by him in Annexure P-7. Jurisprudence has travelled much beyond the earlier position where a person was considered entitled only to documents relied upon by the Management. Learned counsel for the Respondents states that the interim Orders may be recalled and that the documents shall be supplied immediately, and furthermore the Departmental Enquiry shall be expeditiously completed.

In view of the numerous Enquiry Officers appointed previously, we direct the Respondents to complete the pending Enquiry within eight weeks from today. Needless to say, the Petitioner shall co-operate in the said Enquiry. Interim Orders dated 27.2.2006 are recalled in the above terms.

Writ Petition stands disposed of. Pending applications also stand disposed of. Dasti to both the parties."

8. During the enquiry, the petitioner had sought production of Sh.Vinay Singh, Sh.P.Bauri and Const Vikram Singh as defence witnesses by his communication dated 23rd February, 2008, however, later on the petitioner on his own had dropped these witnesses.

9. During the pendency of the departmental proceedings, the petitioner had also filed a contempt petition in W.P(C) No.2756/2006, however, contempt petition was dismissed. A further direction was given to the enquiry officer to conduct the enquiry on a day to day basis and the petitioner was directed to appear before the enquiry officer on 12th February, 2008. On 12th February, 2008 a request was made by the petitioner that since PWs were recorded in his absence he may be allowed to cross examine said witnesses before submitting his statement and he nominated Insp./Exe. R.S.Sanger as defense assistant. All the PWs thereafter appeared before the enquiry officer and they were cross examined by the petitioner. The petitioner also sought summoning of Sh.N.M.Gon, DGM (Power) Kulti, ISP (B) and Sh.S.D.Tonk, Retd.AGM (Town) as Court witness and Sh.Vijay Singh, Sh.P.Bauri and Constable Vikram Singh as defence witnesses.

10. Some witnesses appeared on 3rd March, 2008 and were cross examined by the petitioner through his defence assistant. Though Sh.N.M.Gon, DGM (Power), Kulti, ISP (B) and Sh.S.D.Tank, Retd.AGM (Town), Kulti, ISP (B) were summoned as Court witnesses, they did not appear before the enquiry officer. However, the presenting officer and the petitioner categorically agreed to drop them and not to issue further summons to them.

11. On 3rd March, 2008 the petitioner had also given an application to examine Sh.Vijay Singh, Sh.P.Bauri and Constable Vikram Singh to as defense witnesses before recording his statement in defence. As the said witnesses had not appeared before the enquiry officer, the petitioner categorically and specifically agreed to drop these witnesses and also stipulated that there was no need to issue further notices to these defence witnesses. Consequently, on 26th March, 2008 the statement of the petitioner was recorded.

12. The enquiry officer considered the statements of 10 witnesses recorded before it and also considered the documents exhibited as well as the defence statement

of the petitioner and on the basis of a detailed report after discussing the above noted statements and documents, held that the petitioner did not inform the concerned authority of Kulti about the falling down of Seesham tree at his residence; that the fatigue party of CISF personnel had cut the fallen Seesham tree into pieces and had stacked them at the residence of the DCs bungalow as had been directed by the charged officer; that the petitioner's plea that he had purchased 3-4 numbers of wooden logs from his friend/neighbour Sh.Bipin/Vinay Singh by paying Rs.400/- for the purpose of packing his household article was held to be an attempt by the petitioner to mislead the enquiry proceedings by giving false information and thus he had brought forth an imaginary and cooked story which was an afterthought; that the wooden logs which were examined and assessed by Sh.Ram Chander Yadav (PW-1) by IISCO Burnpur at the residence of DC's Bungalow were of fallen Seesham tree; that the logs which were sent to the saw mill for sawing into usable pieces were of the seesham tree which had fallen at the residence of the petitioner; that the wooden logs were packed by CISF personnel along with household articles of the petitioner and were loaded on trucks for taking to Asansol Railway Station as the petitioner had proceeded on leave along with the logs of the fallen tree. The statement of the petitioner and the declaration made by him that the management had transferred the logs on 24th November, 2003 was found to be false. It was held that the petitioner had misused the CISF manpower for his private purpose that is getting the household goods packed and getting items loaded on trucks and transporting them to Railway station and, therefore, concluded that the charge framed against the petitioner has been fully proved beyond any doubt and consequently awarded the punishment of compulsory retirement in accordance with law by order dated 10th November, 2009 which is challenged by the petitioner on the ground that there is no complaint made by IISCO and consequently no loss has been caused to IISCO. According to the learned counsel, Mr.Jain no action could be taken against the petitioner without the complaint from IISCO who was the owner of the tree.

13. The learned counsel has also emphasized that the material had been taken away by the management on 24th November, 2003 and in the circumstances no lapse on the part of the petitioner can be attributed for misappropriating the logs for personal use. Reliance has also been placed on the observation of the

preliminary enquiry by Sh.Uppal stipulating that there is no evidence of transportation of the Seesham logs to the native place of the petitioner and consequently no inference of misappropriation can be drawn.

14. Regarding the advice of the UPSC it is asserted that it reflects complete non application of mind and an allegation of corruption has been made which is different from misappropriation. According to the petitioner pursuant to the enquiry report, the representation made on behalf of petitioner had not been considered and consequently the punishment could not be awarded to the petitioner.

15. The petitioner has also challenged punishment imposed upon him on the ground that the charge sheet served upon him was defective and untenable not being in conformity with the CCS (CCA) Rules and the enquiry was not committed in a sincere and honest manner and the directions made by this Court on 1st November, 2007 were not complied with. Grievance is also made that no personal hearing was given while imposing the punishment and the acts of CVC and UPSC are a mockery of the system and their advice can only be termed to be perverse. Grievance is also made regarding the statement of the witnesses recorded by the respondent behind his back and hence such a statement could not be relied on.

16. The learned counsel for the petitioner has also contended that the petitioner has served for 34 years, with a meritorious record of service without any blemish on his career and the compulsory retirement has been imposed upon him just 9 months before the date of his superannuation which is disproportionate and the order of punishment is contrary to the letter and spirit of law and violative of the fundamental and legal rights of the petitioner.

17. The respondents have contested the petition contending inter-alia that the petitioner never intimated about the falling of tree in his residential house till 24th November, 2003 though he had already lifted all the cut pieces of Seesham tree on 18th October, 2003. Even on 24th November, 2003 intimation about falling of the tree was given by the petitioner after Mr.Muneshwar Mishra, Assistant Commandant, CISF was deputed on 22nd November, 2003 to conduct a preliminary enquiry. Regarding the complaint being made by the IISCO the respondents have contended that the terrain of Kulti has thick vegetation and it

may not be possible for the management to keep track of all the trees, however, as the trees had fallen in the residential compound of the petitioner, it was his duty to intimate about the fallen trees rather than getting it cut into pieces, misusing the CISF Personnel and then transporting them to his hometown. Since the tree had fallen in 2002, instead of intimating about it, the petitioner had misappropriated the same.

18. The certificate of Assistant Manager (Town) Sh.S.D.Tank dated 29th October, 2004 would not absolve the petitioner of his misconduct as that certificate has not been established. The petitioner himself had given up Sh.S.D.Tank as a witness. The certificate relied on by the petitioner has not been proved and in the circumstances on the basis of said certificate the petitioner cannot absolve himself of the misconduct attributed to him. Even the certificate dated 29th October, 2004 only stipulates that on 24th November, 2003 the petitioner had told Mr. Tank that some pieces of Seesham trees were left in his bungalow. However, he had requested to sign on a receipt with the assurance that he will send the wood after arranging the vehicle and consequently he had signed the letter and had only indicated the location where the woods could be kept. In the said certificate dated 29th October, 2004 even Mr.Tank has stated that he doesn't know whether the wood was sent inside or not. From the said certificate it is not established that the wood was returned to the management of IISCO.

19. Regarding the preliminary report of Mr.Muneshwar Mishra it is contended that even he had submitted the report holding the petitioner guilty of charges. Since Mr.Muneshwar Mishra was junior to the petitioner his report was not taken into consideration. Even this preliminary report would not change the inferences drawn, after a regular enquiry was conducted against the petitioner in accordance with law. After Mr.Muneshwar Mishra, Mr.D.C.Suraj was appointed to conduct a preliminary enquiry, however, he also did not proceed properly and, therefore, Mr.I.R.Uppal, DIG was entrusted to conclude the preliminary enquiry and it was only on the basis of the preliminary enquiry of Mr.I.R.Uppal that a prima facie opinion was made out about the misconduct of the petitioner entailing issuance of memorandum of charge sheet against the petitioner for a major penalty proceeding. The purpose of the enquiry conducted by Mr.I.R.Uppal was to

ascertain prima facie facts whether further proceedings could be initiated and continued or not.

20. The respondents have also asserted that the petitioner was a Group A Gazetted officer and, therefore, he was covered under CCS/CCA Rules and, therefore, the major penalty proceedings were initiated under Rule 14 of CCS (CCA) Rules, 1965. Documents as demanded by the petitioner were supplied and in any case pursuant to the order of this Court dated 1st November, 2007 all the documents were given and the directions were complied with. All the grievances which the petitioner had till filing of W.P(C) No.2755/2006 were agitated and directions given to the respondents, which were duly complied with. The contempt petition filed by the petitioner was also dismissed. The grievances which were raised in the earlier writ petition cannot be re- agitated again now by the petitioner.

21. After hearing the learned counsel for both parties in great detail and perusing the entire record, it is apparent that the petitioner has failed to point out any such illegality or perversity in the order of the disciplinary authority which would entail interference by this Court while exercising its writ jurisdiction. The plea of the petitioner that the enquiry proceedings conducted against him is in violation of the principles of natural justice, as the statements of the witnesses were taken in his absence and his defense witnesses were also not allowed to be taken on record cannot be sustained. From the record it is apparent that the petitioner had been given the opportunity to cross examine the witnesses pursuant to the order of this Court and the cross examination of witnesses was done on behalf of the petitioner. The witnesses which the petitioner wanted to examine in his defense were given up by him. Earlier the Enquiry officer was forced to record the statements of the witnesses ex parte only because the petitioner had refused to participate in the proceedings on the ground that certain documents were not provided to him. Later on pursuant to the direction by the High Court in another writ petition filed by the petitioner, by letter dated 19th December 2007 the statements of all the 10 PWs were provided to the petitioner and he was given opportunity to cross examine them. These facts are reflected from the order sheet dated 3rd March 2008 and these grievances of the petitioner are not sustainable in the facts and circumstances.

22. The petitioner has also contended that certain documents have not been provided to the petitioner, one of such document is the preliminary report dated 24th November 2003 by Mr. Muneshwar Mishra. The petitioner alleged that this was not given to him as the said report was in favor of the petitioner. However on the contrary this initial report too concluded about the guilt of the petitioner, but since the enquiry officer was junior to the respondent the same was not considered. As the said report was not considered by the enquiry officer and the petitioner had not been penalized on the basis of the same but on the basis of regular departmental enquiry conducted against him, the non communication of the first preliminary report does not import much relevance. In any case the preliminary inquiry was concluded by Mr. Uppal and the copy of his report was provided to the petitioner. In the circumstances, the petitioner cannot make the grievance that the copy of the preliminary report was not provided to him.

23. Ample opportunity was afforded to the petitioner to defend his case, as after the preliminary enquiry conducted by Sh. I.R. Uppal, all the evidence collected along with the charge sheet was given to the petitioner, in order to enable him to defend himself effectively. However the petitioner still contended that all the relevant documents were not supplied to him and even moved a contempt petition No. 46/2008 alleging that the respondents had not complied with the direction of the Court in WP (C) 2755/2006 by order dated 1st November, 2007. The Court on hearing both the parties had concluded by order dated 22nd January 2008 that some of the documents sought by the petitioner were not in existence and hence the same could not be given to the petitioner. The inquiry officer too has not considered the said documents in reaching its findings. In these facts and circumstances this Court does not find any irregularity or illegality in the manner the departmental proceedings were conducted against the petitioner and awarding the punishment.

24. The plea that the petitioner had timely informed the concerned department of Kulti management about the Seesham tree which had fallen down at his residence in the month of August /September, 2003 as per the laid down procedure also has not been established in the facts and circumstances. The enquiry officer has concluded that the petitioner had not informed the concerned department of Kulti

management as it has been inferred that the petitioner had only intimated the matter on 24th November, 2003 after Mr. Muneshwar Mishra, Assistant Commandant CISF was deputed on 22nd November 2003 to conduct the preliminary enquiry. While it is an admitted fact that the Seesham tree had fallen in the premises of the petitioner's Bungalow much earlier and prior to the 18th October 2003 when the petitioner had taken leave and proceeded to his native place along with the logs made from the wood of the tree. The findings of enquiry officer that the petitioner had mis-appropriated the Seesham tree and informed the officials only in anticipation of an enquiry being conducted against him cannot be termed to be unsustainable or illegal in any manner.

25. Also with regard to the contention that there had been no complaint lodged by the IISCO who is the owner of the property, allegedly mis-appropriated by the petitioner, will not absolve the petitioner of his misconduct. The terrain of Kulti has thick vegetation and it was not possible for the management of IISCO to account for all the uprooted trees. The petitioner had a duty to inform the management of any fallen tree especially as the tree was in his residential compound. Instead of informing the concerned authorities, the petitioner used the force of CISF illegally in cutting the tree to small pieces and used saw mills to make logs from it and transported them to his native village after taking leave. The enquiry officer has dealt with the plea of the petitioner that the wooden logs were purchased by the petitioner from his neighbour and friend Shri Vinay Singh for the amount of Rs 400/-. This was a false plea which could not be established. Mr. Vinay was not examined by the petitioner in support of his defense. This was also an afterthought as the said plea was not even taken by the petitioner during the preliminary enquiry. Thus this plea also does not absolve the petitioner from his misconduct.

26. The petitioner has also claimed that the Seesham logs were actually taken by the concerned department of Kulti Growth Works from the residence of the petitioner. However there is no evidence on record to support the same. This is also corroborated by the statement of Sh. SD Tank recorded on 29th October, 2004 stating that petitioner on 24th November, 2003 had informed him about some pieces of Seesham Tree lying in his Bungalow. He had also requested him to sign on a letter (receipt) and told him that he would send the wood after arranging for a

vehicle. However pursuant to this, he was unaware if any wood was sent by the petitioner. Also there is no record in the material of the incoming register at Kulti Main Gate about transportation of wood of the fallen Seesham tree from the petitioner's bungalow to Kulti works as per the report of Sh. IR Uppal dated 13th December 2004. This plea of the petitioner is not sustainable in the facts and circumstances.

27. The mere reading of the article of charge makes it clear that it included both misuse of manpower for his private work as well as dishonest, misappropriation of the Seesham tree, imputed against the petitioner. The plea of the petitioner that he has been tried for charges not framed against him cannot be sustained.

28. Even the advice of UPSC is in accordance with Article 320(C) of the [Constitution of India](#) read with Regulation 5(1) of UPSC (Exemption from Consultation) Regulations 1958. The UPSC after duly considering all the material on record including the representations of the petitioner tendered the advice dated 15th October, 2009 recommending the imposition of punishment of compulsory retirement on the petitioner. The UPSC also observed that the evidence of the department is very detailed and well supported whereas the evidence produced by the petitioner was found to be very weak, unreliable and of doubtful evidentiary value. Since the conduct of the petitioner was a very serious act of indiscipline the punishment of compulsory retirement was imposed. This Court too is in consonance with the observations of the UPSC. As stated by the petitioner himself, he having served 35 years in the service, there could have been no excuse for not following the proper procedure for handling contingencies such as a tree fallen during the storm. In any case the major penalty could also be dismissal from service, however, the petitioner has been imposed the punishment of compulsory retirement only and it cannot be held to be disproportionate to the misconduct committed by the petitioner.

29. On perusal of the enquiry report, the statements of the witnesses and the evidence on record this court concurs with the findings of the Enquiry officer, the observations made by the UPSC and the consequent decision of the Directorate General imposing the penalty of compulsory retirement on the petitioner. In any

case the administrative action is subject to control by judicial review in case there is "illegality"; "irrationality" and "procedural impropriety". None of these grounds have been made out by the petitioner. The decision of the respondents cannot be termed to be so outrageous as to be in total defiance of logic or moral standards. It has also not been shown by the petitioner that the petitioner has been punished on the basis of facts which do not exist or on the basis of any manifest error. The petitioner has also failed to make out that any relevant facts had been left out while arriving at the decision about the misconduct of the petitioner.

30. In the circumstances there are no grounds to interfere with the order of the Director General imposing the penalty of compulsory retirement on the petitioner. The petitioner has failed to point out any illegality, irregularity or any perversity in the order dated 10th November 2009 requiring any interference by this Court in exercise of its writ jurisdiction. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs.

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