

Mehtab Singh Vs. Uoi and ors

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Court : Delhi

Decided On : May-09-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 3716/2001

Appellant : Mehtab Singh

Respondent : Uoi and ors

Advocate for Def. : Ms.Anjana Gosain, Adv.

Advocate for Pet/Ap. : Mr.D.K.Sharma, Adv.

Judgement :

1. The petitioner was appointed as a constable with the Central Industrial Security Force (CISF) in the year 1990 and after various postings he was posted at the CISF Unit, HFCL Barauni. On 13.1.1997 along with Ct K.R.S.Mai and Naik Jagdish Baitha he was detailed at the HFCL Main Gate for duty and undisputably one of the function assigned to the three was to frisk all those who would leave the precincts of HFCL Barauni to ensure that nothing was illegally taken out. At about 19.00 hrs, when petitioner and Naik Jagdish Baitha were admittedly on duty at the main gate and Ct.K.R.S.Mai had been sent away from the main gate by HC R.B.Mehto, one Kameshwar Sharma an employee of HFCL Barauni was statedly intercepted by SI R.K.Prasad and HC S.N.Rai as he emerged out of the main gate and was found carrying, in a plastic gunny bag, concealed within the folds of a

blanket draped around his torso, 4 iron plates i.e. the goods allegedly belonging to HFCL Barauni. The said two i.e. SI R.K.Prasad and HC S.N.Rai, brought Kameshwar Sharma to the main gate and he statedly named the petitioner as the force personnel who had connived with him, for illegal gain, to take out the 4 iron plates upon a promise by Kameshwar Sharma to give one out of the 4 plates to the petitioner. Naik Jagdish Baitha told at the spot that it was the petitioner who had frisked Kameshwar Sharma and permitted him to leave. Petitioner statedly admitted at the spot having frisked Kameshwar Sharma but denied that Kameshwar Sharma was carrying any bag much less containing 4 iron plates. Ostensibly Kameshwar Sharma made a confessional statement, which was reduced into writing, admitting not only his guilt but even the complicity of the petitioner.

2. It appears that a preliminary informal inquiry was held at which HC R.B.Mehto the person in charge of the security at the relevant point of time told that Ct. K.R.S.Mai was sent by him at another duty post which fact was corroborated by Naik Jagdish Baitha.

3. Group Commandant of the Unit took cognizance of the incident and issued a Memorandum of Charge dated 23.05.1997 listing 2 articles of charge against the petitioner, which read as under:-

"Details of Charges against No.894480690

Const.Mehtab Singh of CISF Unit HFCL Barauni

ARTICLE - I

"That No.894480690 Const.Mehtab Singh of CISF Unit HFCL Barauni while performing duty in "B" Shift from 1300 hrs to 2100 hrs at HFCL Barauni Main Gate on 13.1.97 connived with Shri Kameshwar Sharma an employee of HFCL Barauni at about 1800 hrs for removal of 04 Nos. of MS Plate from inside of plant. This act of connivance on the part of said constable not only resulted

in actual removal of the said material by Shri Kameshwar Sharma through this Gate at about 1910-15 hrs. but also demeaned the moral of Force in the eyes of the Public at large and amounts to gross misconduct.

ARTICLE - II

That No.894480690 Const.Mehtab Singh of CISF Unit HFCL Barauni while performing sentry duty in "B" shift from 1300 hrs to 2100 hrs at HFCL Barauni Main Gate, on 13.1.1997 did not check Shri Kameshwar Sharma an employee of HFCL Barauni who had in his person carried 04 Nos. MS Plate value `100/- (Rupees one hundred only) from the plant at about 1910-15 hrs the time the later eggressed from this gate. This action on the part of the said Constable as member of the armed force amounts to willful negligence and dereliction of duty. Hence the charge."

4. The petitioner submitted a reply to the Memorandum of Charge under cover of letter dated 22.7.1997 wherein he denied the charge and pleaded exoneration thereof. Finding the reply unsatisfactory the Group Commandant ordered for an inquiry to be conducted and report submitted and for which Dy.Comdt.Tedhi Singh was detailed as the Inquiry Officer vide order dated 8.8.1997, but upon receipt of application dated 26.08.1997 from the petitioner requesting a change of the Inquiry Officer, the Group Commandant detailed Asst.Comdt.R.S.Yadav as the Inquiry Officer.

5. At the inquiry, 6 prosecution witnesses were examined and 2 additional witnesses were examined upon request of the petitioner made to the inquiry officer on 24.11.1997. Further, 5 documents were exhibited which were marked Ex.P-1 General Diary, Ex.P-2 Identification Parade Report, Ex.P-3 property seizure list, Ex.P-4 Duty Slip in the name of the petitioner and Ex.P-5 the confessional statement of Kameshwar Sharma which not only implicated Kameshwar Sharma but even the petitioner.

6. SI R.K.Prasad PW-1 deposed that on 13.1.1997 at about 18:45 hours along with HC S.N.Rai he was returning to the CISF Unit HFCL at Baruni when they saw a HFCL employee, whose name he disclosed as Kameshwar Sharma, going out in a suspicious manner of the plant through the HFCL Main Gate. They intercepted the said employee and on frisking him found a plastic bag (bori) containing 4 iron pieces in the shape of a tava hidden under the blanket draped around his torso. While they were interrogating him SI V.K.Swyne arrived and upon being told about the incident was requested to accompany them to the control room, which he did and Insp.S.C.Das arrived at the control room for further proceedings. They went to the control room where Kameshwar Sharma, in writing, admitted his guilt and named the petitioner who connived with him.

7. On being cross-examined by the petitioner, he stated that Kameshwar Sharma had not disclosed anybody's name when he was intercepted outside the gate as the same was not asked from him and that Kameshwar Sharma had himself disclosed in his statement (Ex.P-5) that he had brought the items from inside the plant, thus whether or not the items recovered were freely available outside the plant was immaterial. On being questioned by the Inquiry Officer he stated that during interrogation in the control room Kameshwar Sharma was not pressurized by anyone and that he had disclosed that the iron pieces were got from the workshop inside the plant and taken out of the plant through HFCL main gate and in that regard he named Ct.Mahtab Singh (petitioner). He further stated that he had lodged a report vide GD No.133 reporting the incident.

8. HC S.N.Rai PW-2 deposed in sync with SI R.K.Prasad PW-1. Nothing of significance emerges from his examination by the Inquiry Officer as also his cross-examination by the petitioner.

9. Insp.S.C.Das PW-3 deposed that on 13.01.1997 at about 20:00 hours SI V.K.Swyne came to his quarter and informed him that SI R.K.Prasad had caught an HFCL employee with some items outside HFCL gate and requested him to reach at the earliest. He conveyed the said information to the Deputy Commandant over the telephone and upon his instruction took SI A.K. Singh with him to the control room for the purpose of conducting preliminary Inquiry. On

reaching the control room of HFCL main gate, at around 20:15 hours, he met SI R.M. Prasad and HC S.N.Rai who had in their custody an HFCL employee along with some items. After initial interrogation he began with the Preliminary Inquiry and the report of which he had duly submitted to the authorities.

10. On being questioned by the Inquiry Officer he stated that the charges against the petitioner were framed on the basis of the statement made by Kameshwar Sharma, his replies to the questions asked, identification parade proceedings and statement of HC S.N.Rai and SI R.K.Prasad and that Kameshwar Sharma had on his own in front of other HFCL officers, confessed the involvement of Ct. Mehtab Singh in the theft and gave the details of the said collaboration in his statement.

11. SI A.K.Singh PW-4 deposed that on 13.01.1997 at about 20:00 hours he was telephonically informed that an HFCL employee was apprehended at the Main gate control room and on reaching the control room along with Insp. S.C.Das (PW-3) he found the employee named Kameshwar Sharma in the custody of other CISF officers. He was informed that the said employee had taken 4 iron plates belonging to the plant outside the plant through the HFCL main gate when he was intercepted and caught. In the meantime Shailender Kumar and N.K.Jaiswal came to the control room at about 21:15 hours and in their presence he seized the iron plates from the employee and prepared the seizure list. At about 22:45 hours an identification parade was conducted in that out of 11 persons the employee had identified Ct. Mehtab Singh i.e. the petitioner as the constable who had permitted him to go out of the gate. After completing formalities he returned to his quarter.

12. On being cross-examined he stated that Insp. S.C.Das had telephonically informed him about the incident and that he had not seen Kameshwar Sharma carry iron plates but was merely informed about the same. On being questioned by the Inquiry Officer he stated that Kameshwar Sharma in his statement had stated that the petitioner had permitted him to go out of the gate with the iron plates and that for this reason the identification parade was conducted wherein Kameshwar Sharma correctly identified the petitioner.

13. Shailender Kumar (APE HFCL employee) PW-5 deposed that on 13.1.1997 he received information at his residence from the chief mechanical engineer that

Kameshwar Sharma was apprehended at CISF main gate for having stolen some items. He reached the main gate along with Jaiswal where he saw Kameshwar Sharma sitting with Insp. S.C.Das, SI A.K. Singh and other CISF officers. That when statement of Kameshwar Sharma was being recorded he was sitting in the adjacent room and after recording of the same he was called for the enquiry. That he had asked Kameshwar Sharma if he had been pressurized by anybody to which Kameshwar Sharma told him that there was no pressure upon him and that he had given the statement voluntarily. That upon his request, statement of Kameshwar Sharma was read over and only after reading the statement and satisfactorily perusing it Kameshwar Sharma put his signatures on the same in his presence. Seizure list and identification parade were conducted in his presence wherein the petitioner was identified by Kameshwar Sharma and which documents bear his signature. That he was a witness to and had signed various documents prepared of the proceedings at the spot and that Kameshwar Sharma was let off by the CISF Officers only after he gave written assurance that proper departmental proceedings will be initiated against him.

14. On being cross-examined he stated that the articles were not recovered from Kamweshwar Sharma in his presence and that the items recovered could be property of a place other than the plant as they were available outside the plant also. On being questioned by the Inquiry officer he stated that Kameshwar Sharma never told him or any other person that he was under threat or fear while giving the statement.

15. Jaiswal (APE HFCL employee) PW-6 deposed in sync with Shailender Kumar PW-5.

16. Naik Jagdish Baitha Additional Witness-1 deposed that on 13.1.1997 he was detailed on „B shift duty at Main gate where HC R.B.Mehto was detailed as the shift incharge and Ct.Mehtab Singh and Ct.K.R.S.Mai were detailed on main gate. HC R.B.Mehto sent Ct. K.R.S. Mai away and after handing over the charge of shift to him, HC R.B.Mehto left for checking. He and the petitioner were checking the personnel coming in and going out of the Gate when Kameshwar Sharma came to the gate and after being thoroughly frisked by the petitioner, was allowed to go out

of the main gate. That Kameshwar Sharma was not carrying anything at that time.

17. On being examined by the Inquiry Officer he stated that he too was charged in regards to the same incident and was awarded a punishment of stoppage of increment for one year but claimed that he was penalized for telling the truth to the authorities.

18. Kameshwar Sharma Additional Witness-2 deposed that on 13.1.1997 after taking due permission he was on his way to the HFCL gate for the purpose of purchasing some biri when 2 CISF officers namely R.K.Prasad and S.N.Rai stopped him and asked him to carry some item, which was in their possession, to the HFCL gate. That on reaching the gate, the 2 officers prevented him from leaving and threatened him to do as they said or else he would be severely beaten by them and handed over to the police. They had asked him to name the petitioner for permitting him to take those items out of the gate. After a while the Branch Incharge was called and in his presence they forcefully obtained his signatures on documents without disclosing its contents. That he had not named the petitioner at any point of time and that after obtaining the signatures he was asked to leave with a warning that if he disclosed the truth to anyone he would be killed.

19. On being cross-examined he stated that after reaching Patna he informed the higher officials i.e. the IG about the incident and about the threat extended to him by the CISF officers and gave a copy of the said letter to the Inquiry Officer. That at the identification parade 9-10 Jawans were called and the Inspector indicated to him that the bearded personnel was Mehtab Singh upon which he had identified and named him. On being questioned by the Inquiry Officer he stated that he was threatened by Insp.Das and SI Prasad about which he had not complained to the management or anyone else because he was afraid and that only after reaching Patna he had written to the Inspector General informing him about the same. He further stated that he had not lodged any Police complaint or report regarding the life threats extended to him and that he had no evidence to prove the same.

20. After recording testimonies of both prosecution and additional witnesses, the petitioner was given an opportunity to produce defence witnesses which he declined but made a defence statement wherein he stated that on 13.1.1997 he

was detailed on „B shift duty at the main gate of HFCL plant along with Shift In-charge HC R.B.Mehto, Naik Jagdish Bitha and Ct. K.R.S.Mai. That the incident was pre-planned by HC R.B.Mehto to falsely implicate the petitioner evidenced from the fact that Ct.K.R.S.Mai was sent away from the main gate by HC R.B.Mehto who also left for checking other gates of the plant. Thus he and Naik Jagdish Baitha were the only ones left at the main gate where he alone had to check both the big and the small gate. That the HFCL employee Kameshwar Sharma came to the main gate where he was thoroughly checked by him in front of Naik Jagdish Baitha and only after ensuring that the employee was not carrying anything that did not belong to him was he permitted to go out of the gate. On being questioned by the Inquiry Officer he stated that he had neither inimical nor friendly relation with HC R.B.Mehto and that Insp. S.C.Das and SI R.K.Prasad had hatched the conspiracy against him.

21. Holding that there was sufficient evidence to establish the charge, the Inquiry Officer held the charge proved against the petitioner and submitted his report dated 17.1.1998 to the Disciplinary Authority.

22. A copy of the report was sent to the petitioner vide order dated 28.1.1998 wherein he was given 15 days time to submit his representation against the report. The petitioner applied for a translated copy of the report which was sent to him under cover of letter dated 26.6.1998.

23. There is a dispute regarding what happened after the translated copy was given to the petitioner; whereas on the one hand petitioner claims that against the findings of the Inquiry Officer he had submitted a representation dated 1.7.1998 to the Disciplinary Authority, the respondents urge that no representation was submitted by the petitioner, a plea which we find to be incorrect for the reason the appellate order dated 27.11.1998 notes that the reply was received on 5.8.1998 but after the disciplinary authority had passed the penalty order dated 31.7.1998 imposing the penalty of dismissal from service.

24. Relevant would it be to note that the disciplinary authority concurred with the reasoning of the inquiry officer while imposing the penalty vide order dated 31.7.1998.

25. Aggrieved by the afore-noted order, petitioner filed an appeal dated 12.9.1998 which was rejected vide order dated 27.11.1998. Against the appellate order, petitioner preferred a Revision Petition dated 26.12.1998 to the Inspector General which was returned as under the CISF Act and Rules there is no provision for a Revision Petition. Thus, the petitioner submitted the Revision Petition to the Secretary, MHA New Delhi which was rejected vide order dated 12.8.1999.

26. Thus needless to state the present writ petition lies in our lap challenging the orders dated 31.7.1998, 26.12.1998 and 12.8.1999.

27. During arguments learned counsel for the petitioner urged that the petitioner was not permitted to represent himself at the preliminary inquiry conducted on 13.1.1997 and was thus severely prejudiced. That it was a case of no evidence as nothing incriminatory was emerging from the evidence brought on record at the departmental inquiry. That said incident was a conspiracy against the petitioner hatched by Insp.S.C.Das and SI R.K.Prasad as is evident from the deposition of Kameshwar Sharma where he stated that his statement recorded on 13.1.1997 was under threat and coercion and that the said officers had forced him to name and identify the petitioner as the officer who had permitted him to carry the items out of the gate. It was further urged that there was no evidence that the 4 iron plates were the property of HFCL Baruni and with respect to the property certificate produced by the respondents during arguments of the writ petition is not trustworthy as the same was not brought on record at the departmental inquiry and thus there is no evidence to prove that the items seized were stolen from the plant. And lastly it was urged that the penalty of dismissal from service was extremely harsh and disproportionate to the gravity of the offence inasmuch as Article-2 of the charge listed the value of the MS plates at `100.

28. The first contention of the petitioner has to be noted and rejected for the reason it is a settled principle of law that a preliminary inquiry is only a fact finding inquiry wherein the focus of the inquiry is to ascertain whether an untoward incident took place and if it is established that an incident had taken place, to prima facie opine as to who all should be charged for the same and collage the evidence for the department.

29. The next contention of the petitioner requires us to revisit the evidence brought on record at the departmental inquiry and thus we shall note a gist of the same but conscious of the fact that we cannot sit as a Court of Appeal and our task is to only see whether there exists no evidence as alleged and additionally to see whether jurisdictional infirmities, in the form of admissibility and proof, have not vitiated the receipt of evidence. SI R.K.Prasad examined as PW-1 deposed that he along with HC S.N.Rai PW-2 had intercepted Kameshwar Sharma right after he got out of the HFCL main gate and on searching him had found in his possession 4 round shaped iron pieces hidden in a plastic gunny bag under a blanket wrapped around his torso. That Kameshwar Sharma was interrogated where he disclosed that he had stolen the iron pieces from a workshop inside the HFCL plant and that the petitioner had permitted him to take the items outside the main gate. He further stated in his cross-examination that Kameshwar Sharma had given a statement at the preliminary inquiry in his own volition and without any pressure or threat. HC S.N.Rai who was examined as PW-2 deposed in sync with SI R.K.Prasad and fully corroborated him. Insp.S.C.Das PW-3 stated that the first information given to him about the incident was that a HFCL employee was caught with some items by CISF Officers and for further proceedings he had to report to the control room. That during the interrogation and the Preliminary Inquiry it was revealed by Kameshwar Sharma that the petitioner had assisted him by permitting him to take the items outside the main gate and that upon the said statement charges against the petitioner were framed. SI A.K.Singh PW-4 conducted the preliminary inquiry and prepared the seizure list of the iron plates seized from delinquent Kameshwar Sharma. He stated that since Kameshwar Sharma had disclosed during the inquiry that he was permitted by Ct.Mehtab Singh i.e. the petitioner to take the seized items out of the main gate and since Kameshwar Sharma did not belong to the CISF, thus to ensure that Kameshwar Sharma had named the right officer, an identification parade was conducted in which he correctly identified the petitioner amidst 11 persons. Shailender Kumar who is also an HFCL employee was examined as PW-5 and stated that Kameshwar Sharma had been apprehended by the CISF officers on charges of theft for which an inquiry was conducted and Kameshwar Sharma had made a confessionary statement at which time he and PW-6 were sitting in an adjacent room. Once the statement was recorded he had

asked Kameshwar Sharma if he was threatened by anyone to which he had replied that there was no pressure or threat upon him and that he had made the statement out of his own free will. That a copy of the statement was given to Kameshwar Sharma who after reading it signed in his presence. In his cross-examination he stated that the items recovered could be available outside the plant as the items were scrap. He further stated that Kameshwar Shram was let off by the CISF officers upon written assurance by him that proper departmental action will be taken against the delinquent. Jaiswal PW-6 deposed in sync with him. Naik Jagdish Baitha who was examined as additional witness-1 deposed that he was on duty with the petitioner at HFCL main gate on 13.1.1997 and that Kameshwar Sharma had been thoroughly checked by the petitioner and then permitted to go out of the gate. That Kameshwar Sharma was not carrying any item at the time he was frisked by the petitioner.

30. It is apparent that there is sufficient evidence to sustain the verdict of guilt and the argument projected on the testimony of Kameshwar Sharma which implicated SI R.K.Prasad and HC S.N.Rai has rightly been rejected for the reason Kameshwar Sharma was himself an accused and would obviously turn turtle. Why would SI R.K.Prasad and HC S.N.Rai do so as deposed to by Kameshwar Sharma? There is no answer and indeed there can be none and the inference is obvious that Kameshwar Sharma cannot be believed as per his testimony before the Inquiry Officer. Why should his colleagues Shailender Kumar and Jaiswal who appeared as PW- 5 and PW-6 depose against Kameshwar Sharma? No motive qua them to do so has even been attempted to be brought out. The petitioner alleges a conspiracy against him by HC R.B.Mehto, but what was the conspiracy has not even been attempted to be unfolded. It is apparent that the petitioner is taking pot shots in the dark. The documentary evidence Ex.P- 1 to Ex.P-5 are all contemporaneous documents and lend credit to the ocular evidence. Be that as it may within the confines of a domestic inquiry we find sufficient and credible evidence and thus we refrain from indulging in net picking on the nuances of the evidence.

31. The argument that there was no evidence that the 4 iron plates were the property of the HFCL Baruni has no basis for the reason evidence establishes that

Kameshwar Sharma was surreptitiously removing the 4 iron plates and the manner in which they were hidden, as deposed to by SI R.K.Prasad: wrapped in plastic bag and with a blanket draped around his torso i.e. hidden from the eyes, was the manner to take out the 4 iron pieces. Commonsense guides us that Kameshwar Sharma was surreptitiously removing the same and the very manner in which they were being carried is proof enough of the guilty mind of Kameshwar Sharma for the reason obvious: the property was stolen. Thus, it hardly matters whether the property certificate pertaining to the 4 plates issued by the Competent Authority of HFCL Baruni, shown to the Court during arguments was or was not genuine.

32. The submission that the penalty imposed was disproportionate inasmuch as a complicity in a petty theft of property valued at `100/- could never invite the retribution of dismissal from service ignores the fact that in the short span of 8 years service rendered by the petitioner he was awarded 9 punishments, 3 of which were censures, 2 withholding increments and 4 deductions from pay. On 3 occasions the misdemeanour was of sleeping on the duty post, 1 misdemeanour was for carrying arms and ammunition in a civil dress while under influence of alcohol and for using filthy and abusive language against the Coy Commander, 1 misdemeanour was of photocopying official documents without permission, 1 misdemeanour was attempting to outrage the modesty of a young girl and 1 for refusing to clean arms and ammunition.

33. That petitioner was caught for the first time while facilitating theft of a property belonging to an organization where petitioner was on guard duty does not mean that for the first time the petitioner indulged in such rogue behaviour. Surreptitious activities are carried out in the darkness of secrecy and with cunning.

34. Keeping in view the fact that Central Industrial Security Force is to guard, provide security and prevent theft of Public Sector Institutions it indeed would be a serious misconduct howsoever petty would be the value of the theft committed or permitted and keeping in view the most low-profile previous service record of the petitioner and law being that it is permissible to take into account the past service record, we conclude by dropping the curtains requiring the romance of the

petitioner with his employer to be brought to an end and thus accord our approval to the penalty levied as we do not find our conscience shocked with the quantum thereof, keeping in view the past service profile of the petitioner.

35. But we refrain from imposing costs inasmuch as the petitioner is without a job.

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