

Ex.Const. Mukesh Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Aug-05-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Appeal No. : W.P.(C) 8645/2010

Appellant : Ex.Const. Mukesh Kumar

Respondent : Uoi and ors.

Advocate for Def. : Ms.Barkha Babbar, Adv.

Advocate for Pet/Ap. : Ms.Rekha Palli, Adv.

Judgement :

1. A departmental inquiry against the petitioner, a Constable enrolled with CISF, culminated in infliction of penalty of compulsory retirement with pensionary benefits, which is being assailed herein, primarily on the ground of perversity.
2. The twin charges against the petitioner were:(i) of illegally allowing Vivek Konoor, Sales Manager of Hoerbiger India Pvt. Ltd., to take away his laptop after accepting bribe of `100/- on 24.02.2009 at about 17:00 hours while the petitioner was on duty at the main gate of Indian Oil Corporation, Panipat and (ii) of overstaying leave.

3. We may note that though listed as charge No.(ii), the second charge was by way of information to the petitioner that his past conduct of availing leave would be considered by the department. And for which, we find that penalties have been levied upon the petitioner in the past.

4. In a nutshell, the prosecution sought to prove the case that being on duty at the main gate of Indian Oil Corporation Complex at Panipat at 5.00 PM on 24.2.1999 the petitioner was seen talking to a person who was coming out of the complex in a Maruti Car whose name was Vivek Konoor. Ct.Dharambir Singh and Ct.Meena Tiwari saw the petitioner talking with Vivek Konoor and also heard the conversation between the two and after sometime the petitioner allowed Vivek Konoor to drive away the vehicle and Ct.Dharambir and Ct.Meena Tiwari stopped Vivek Konoor who they saw was driving away with a laptop and he told them that he had bribed petitioner `100/-. They followed the petitioner and saw him give money to Rakesh Kumar an Electrician from whom the same was recovered.

5. As petitioner's reply to the Charge Memo of 27.03.2009 was found to be not satisfactory, departmental inquiry commenced with the recording of statement of the following witnesses:-

i) Inspector Ranbir Singh (PW-1) had conducted the preliminary Inquiry and as per his deposition, he had viewed the CCTV footage of this incident. (We note that Vivek Konoor was cited as PW-2 but was never examined)

ii) Shri Rakesh Kumar Electrician (PW-3) did not support the case of the prosecution and stated that neither the petitioner gave any money to him nor any was recovered.

iii) Ct.Dharambir Singh (PW-4) deposed that he was on duty at the place of incident to keep a watch on the activities at the main gate of the Refinery in question and that Ct. Meena Tiwari was with him. He saw vehicle No.HR-06Q 6501 at the gate of the Refinery which was being checked by the petitioner and kept on hold for long and all this while the petitioner was talking to the driver. He heard petitioner tell the driver that he would not allow him to take the laptop. The driver and the petitioner went to the side of the vehicle and as the

vehicle left after sometime he stopped the vehicle and the driver told him that he had bribed petitioner `100/-. Petitioner went out of the gate and handed over some papers to Rakesh Kumar Electrician and when accosted Rakesh Kumar confessed having `100/- from the petitioner and handed over the same to him. Questioned by the Presenting Officer Ct.Dharambir said that the car was kept on hold at the gate by the petitioner for about 20 minutes.

iv) Ct.Meena Tiwari (PW-5) deposed that she was in the company of Ct.Dharambir and saw petitioner flag down car No.HR06Q-6501. She saw the petitioner talked to the driver and heard petitioner tell the driver that he would not allow him to take out the laptop and after sometime she saw the car being permitted to be driven out and she saw petitioner walk up to Rakesh Kumar Electrician. Questioned by the petitioner she said that she and Ct.Dharambir were about 10 meters away when they heard and saw the incident.

v) Ct.Satbir Singh (PW-6) on duty at the general shift at the main gate, deposed that he knew nothing of the incident.

vi) Ct.Ravish Kumar (PW-7) deposed that he had seen the petitioner handing over some papers to Rakesh Kumar but had stated that he had not witnessed the incident.

vii) Inspector Naresh Chauhan (PW-8) deposed that he had conducted the personal search of the petitioner but found nothing incriminating and that the search was witnessed by SI/Work Om Prakash (PW-9).

viii) AO/GD (SI/Work) Ranbir Singh (PW-10) deposed that no money was recovered from the search of the petitioner.

ix) AO/GD Amar Pal Singh (PW-11) deposed that petitioner had declined to give any statement stating that he was under tremendous tension.

x) SI/Disc.S.C.Shah (PW-12) had produced the service record of the petitioner before the Inquiry Officer.

6. When examined by the Inquiry Officer, the petitioner pleaded false implication and to the last question: whether do you want to say anything more orally? The petitioner replied: At the main gate of the IOC Refinery at 1700 hrs. you yourself can go and see on a working day that whether any vehicle could be kept on hold for 20 minutes and whether he could be spoken to? Due to heavy rush neither any vehicle could be stopped and kept on hold nor anybody could be spoken to."

7. Relevant would it be to note that during inquiry a GD entry NO.14 recording the time 16.45 hours and the date 24.2.2009 was produced as per which the incident of `100/- being recovered finds recorded.

8. The inquiry concluded, indicting the petitioner and the Inquiry Officer submitted the Inquiry Report to this effect. The Disciplinary Authority furnished the Inquiry Report to the petitioner for his reply and after considering the Inquiry Report, and the reply filed by the petitioner, final order was passed by the Commandant, Central Industrial Security Force on 02.03.2010, imposing penalty of reduction in the pay scale by one stage from the present stage, for a period of 5 years. However, Appellate Authority, vide Order dated 08.07.2010, enhanced the penalty to one of compulsory retirement with pensionary benefits. The said Order passed by the Appellate Authority was maintained by the Revisional Authority, while rejecting petitioner's revision petition on 12.10.2010.

9. What is sought to be highlighted by learned counsel for the petitioner is that the false implication of the petitioner in this case to get rid of him, is backed by documentary proof. During the course of hearing, our attention was drawn to paragraph no: 11 of the writ petition to point out that vide detailed reply of 27.05.2010 it was disclosed that prior to this incident, petitioner had made three applications to higher authorities apprehending his victimisation and had sought interview, which was not granted. In corresponding paragraph no:11 of the counter affidavit of respondents, the factum of petitioner making complaints as detailed in reply (Annexure P-7) is not disputed. However, it is cryptically said by the respondents in the counter affidavit that the said complaints were inquired into and were found to be false.

10. True copies of these three complaints made by the petitioner to the higher authority on 13.01.2009, 03.02.2009, and 23.02.2009 are annexed as Annexure P-1 and in the counter affidavit, respondents have not denied the contents of these three complaints (Annexure P-1) by conceding that they are matter of record. A bare reading of these three complaints (Annexure P-1) makes it clear that the petitioner had an apprehension of being implicated in a false case during the duty hours and ironically the third complaint made by the petitioner was on 23.02.2009, i.e., just a day prior to this incident of 24.02.2009.

11. Respondents have neither disclosed nor placed on record any report to indicate as to on what basis petitioner's complaint (Annexure P-1) were found to be without basis.

12. We are conscious that this Court in writ jurisdiction would not interfere with finding of fact recorded in domestic inquiry but if it is found that the finding returned is perverse, then certainly it would be amenable to judicial scrutiny. If a conclusion of the Disciplinary Authority is found to be based on apparently implausible evidence, when viewed from the point of view of a prudent person, then penalty order would be perverse.

13. The evidence led at the Inquiry has been critically scrutinised by us in view of the peculiar backdrop of this case, i.e., the apprehension expressed by the petitioner vide complaints (Annexure P-1) prior to this incident of being implicated in a false case. In this background, it assumes importance as to why the petitioner was not caught red handed with the bribe money, especially when as per Inspector Naresh Chauhan (PW-8) as well as the alleged eye witnesses Ct.Dharambir (PW-4) and lady Ct.Meena Tiwari (PW-5) were purportedly present at the spot. When confronted with this improbable aspect, learned counsel for the respondent could not justify it.

14. The evidence of the aforesaid three witnesses set up against the petitioner is rendered totally untenable not only in view of the aforesaid infirmities which goes to the root of the matter, but because neither the complainant Mr.Vivek Konoor has come forward to depose nor the bribe money was recovered from the petitioner. The case set up against the petitioner falls flat on the ground as

petitioner had allegedly passed on the bribe money to Ct.Rakesh Kumar (PW-3) who has fortunately for the petitioner and unfortunately for the respondents, not supported the version of the respondents.

15. Normally, discrepancies regarding the time or distance in the departmental inquiry are not to be given undue importance but in the instant case, it does assume importance that the star witnesses are discrepant in their deposition regarding checking of the vehicle of the complainant by the petitioner. For instance, Ct.Dharambir Singh (PW-4) has stated in his evidence that the petitioner had kept the complainant waiting at the spot for about 20 minutes whereas lady Ct.Meena Tiwari (PW-5) had contradicted Ct.Dharambir Singh (PW-4) by positively asserting that the complainant was kept waiting at the spot for just four or five minutes. It otherwise does not stand to reason as to why petitioner would demand a bribe when the complainant was proceeding to leave the premises. In any case, what is of vital importance is the fact that no plausible explanation is coming forth as to why the petitioner was not caught red handed when there was ample opportunity to do so. CCTV footage was the best evidence available with the respondents, which has been withheld by them and on this account, adverse inference is drawn against the respondents. After letting vital evidence to slip by, respondents cannot legitimately rely upon the ancillary evidence to nail down the petitioner, more so, when the petitioner was apprehending false implication, which came true just within 24 hours.

16. Initiation of disciplinary proceedings against the petitioner was with a pre-determined mind to get rid of him. This becomes obvious from the fact that the evidence led against the petitioner at the inquiry is not only improbable but is highly implausible for the reasons as indicated by us, as above.

17. As per Ct.Meena Kumari and even as per Ct.Dharambir Singh they saw the petitioner in conversation with Vivek Konoor and as per Meena Kumari she could even hear the conversation. If this be so it is surprising that the two allowed the petitioner to walk away and then claim that they caught the petitioner after he had passed on the money to Rakesh Kumar. Further, as per the two witnesses, the car driven by Vivek Konoor came out of the complex around 5.00 PM. According to

the two, petitioner spoke to Vivek Konoor for 10-20 minutes and thereafter Vivek Konoor left. They intercepted with Vivek Konoor and questioned him. Vivek Konoor told them that he had bribed the petitioner. Having seen the petitioner walk away, the two claimed to have moved in the said direction and saw petitioner handover money to Rakesh Kumar from whom the money was stated to be recovered. If the incident commenced at 5.00 PM, and the events transpired as deposed to by PW-2, there is no way for the money to be recovered prior to 5.30 PM and we find it strange that at 4.45 PM a general duty entry has been made that `100/- was recovered.

18. The Inquiry Officer has failed to analyse the evidence with respect to the circumstances. The distinctive features of the evidence which totally discredits the version has not even been discussed. And lastly it assumes extreme importance that the CCTV footage admittedly available as per Inspector Ranbir Singh, which was the best evidence has been withheld.

19. As explained by us hereinabove, the so-called second charge was in fact listing the past penalties inflicted upon the petitioner for absence and thus was not in the nature of a charge as a charge is to be understood. It was simply pointing out to the petitioner that if he was found guilty of the first charge, the department would take into consideration his past conduct while levying a penalty. Since we have found that the first charge has not been established, the question of the petitioner suffering any penalty on account of the so-called second charge does not arise since the second charge was not a charge as is understood in law but was merely a reference to the past conduct of the petitioner which could be used only upon charge No.(i) being proved and for the purposes of justification of the penalty which would have been imposed.

20. In the light of the foregoing narration, we find that what petitioner had apprehended and had expressed in his complaint just a day prior to this incident had come true. This is being so said in view of the afore-noted inherently untenable evidence which has come on record. Thus we find it extremely difficult to sustain the finding of guilt returned and the penalty imposed against the petitioner. Consequently, final order of 2.3.2010 holding the petitioner guilty,

penalty Order of 8.7.2010 as well as the Revisional Order of 12.10.2010 (Annexure P-9) are hereby quashed and a writ of mandamus is issued to Respondents to reinstate the petitioner with all consequential benefits, save and except that the petitioner would not be entitled to the salary for the period intervening the compulsory retirement and the reinstatement.

21. The writ petition is allowed with costs in the aforesaid terms.

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