

SUPREME COURT OF INDIA

Vinod Kumar

Vs.

Union of India

C.A.Nos.7565-7566 of 2004

(B.S.Chauhan and Swatanter Kumar JJ.)

17.06.2011

ORDER

1. These appeals have been preferred against the judgment and order dated 28.11.2003 passed by the High Court of Delhi in Writ Petition Nos. 7930-31 of 2003, by which the High Court dismissed the Writ Petitions against the order of termination of services of the Appellants passed by the Disciplinary Authority and affirmed by the Appellate Authority.

2. Facts and circumstances giving rise to these appeals are as under:

A. Appellants Vinod Kumar and Sandeep Kumar were appointed as Constables/Drivers in the Central Reserve Police Force (hereinafter called 'CRPF'). The Appellants had been carrying out the duty of patrolling and for that purpose, they were having the fire arms also. Both of them were placed under suspension vide order dated 12.11.2000 on the allegation of gross misconduct and misbehaviour. Subsequently, they had been served the chargesheet dated 17.12.2000 containing two articles of charges that they had committed an act of gross indiscipline, misconduct, irresponsibility and negligence as being the members of force, they consumed liquor beyond prescribed limit and fired indiscriminately 23 and 29 rounds respectively, from their weapons (9MM Carbines) in the air which was prejudicial to good order and discipline of the force as was punishable under Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called the 'Act 1949') read with Rule 27 of the CRPF Rules, 1955.

B. In order to hold regular inquiry under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, an Inquiry Officer was appointed vide order dated 26.2.2001. The Appellants/delinquents were asked by the Inquiry Officer to give name of defending assistants, list of witnesses and list of documents in support of their defence vide order dated 5.3.2001.

C. The inquiry was concluded strictly in accordance with law though the Appellants/delinquents did not lead any defence. The Inquiry Officer submitted his report dated 27.4.2001 holding both the Appellants guilty on both the charges. A copy of the Inquiry Report was sent to the each of the Appellants and they were given opportunity to submit their comment on the same.

D. After completing all the legal formalities, the matter was considered by the Disciplinary Authority. The Disciplinary Authority considered the inquiry report alongwith all other materials and imposed the punishment of dismissal from service vide order dated 6.6.2001. The Appellants preferred statutory appeal which stood dismissed by the Appellate Authority vide order dated 27.8.2002.

E. Being aggrieved, the Appellants further challenged those orders of dismissal by the Disciplinary Authority and that of the Appellate Authority by filing Writ Petition Nos. 7930-31 of 2003 which have been dismissed by the High Court vide common order dated 28.11.2003. Hence, these appeals.

3. It has been canvassed on behalf of the Appellants that the High Court did not pass a speaking and reasoned order and the writ petitions had been dismissed in limine, thus, such an order is not sustainable in law. The statutory authorities have not acted strictly in accordance with the statutory provisions; sufficient opportunity of defence was not provided to the delinquents; the inquiry had been conducted in utter disregard to the statutory provisions of the Act 1949 and Rules 1955. More so, the punishment so awarded is excessive and disproportionate to the offence committed by the Appellants, if any.

4. On the contrary, Shri Ashok Bhan, learned Counsel appearing for the Respondents, has opposed the appeal with vehemence, contending that power of judicial review is limited to the extent to examine that disciplinary proceedings had been conducted in accordance with law and delinquent had ample opportunity to

defend himself. Judicial review lies against the procedure in decision making and not against the decision itself. The inquiry had been conducted giving strict adherence to the statutory provisions. A large number of witnesses had been examined who proved the charges and, thus, no interference is called for.

5. We have considered the rival submissions made by the learned Counsel for parties and perused the records.

6. The record of the case reveals that both the Appellants remained present throughout the inquiry, however, they did not lead any evidence in their defence. Nor they give any list of witnesses or documents in support of their case. The witnesses examined by the department, particularly, Coy. Com, G.R. Varma, (PW.1), H.C. Abhay Singh (PW.2), H.C. Shiv Balak (PW.3) supported the case of the Department stating that after hearing the sound of firing, they came out and saw that both the Appellants were firing in the air, though no one was injured. CHM Abhay Singh (PW.2) cordoned off the barrack on the instruction of G.R. Varma (PW.1) and entered the room of the Appellants and asked the reason of firing. The Appellants replied that they were in the mood of firing. Both the Appellants were interrogated by G.R. Varma (PW.1) on 12.11.2000, and 50 cartridges were recovered from the spot. Two cartridges could not be traced out. Ct. R.P. Pandey (PW.4) deposed that he had not seen either of the Appellants firing in the air but he deposed that Rum was distributed that night and each of the jawan was issued 60 M Ls. Rum. Ct. C. Ramesh (PW.5) deposed that he had seen the Appellants firing.

7. We could find no reason as to why either of the said witnesses would depose falsely against any of the Appellants. The order dated 6.6.2001 passed by the Disciplinary Authority is very elaborate and reflects the application of mind by the Disciplinary Authority on each and every aspect of the matter. The said Authority recorded the finding that after consuming the liquor more than the prescribed limit, the Appellants fired 23-29 rounds respectively, thus, i.e. 52 rounds in the air from their respective 9MM Carbines without any proper order or purpose and deliberately caused grave danger and damages, causing loss of government property, rounds and ammunition. The appropriate punishment of dismissal had been imposed after considering the gravity of charges.

8. The Appellate Authority dealt with each ground and additional ground taken by the Appellants subsequently, and re-appreciated the entire evidence and examined the findings recorded by the Disciplinary Authority. The Appellate Authority re-

appreciated the evidence on record, scrutinised the order passed by the Disciplinary Authority, but reached the same conclusion vide order dated 27.8.2002.

9. The High Court undoubtedly did not deal with the matter elaborately, however, we do not see any reason to interfere with the order of punishment. We cannot ignore the fact that the incident occurred in the operational area of Jammu & Kashmir wherein the militant groups are always on the look out to inflict heavy casualties on the security forces deeply in trail and adjoining areas. The inquiry had been conducted strictly in accordance with law. We do not find that there has been violation of any statutory provision or principles of natural justice.

10. Considering all the circumstances, particularly the facts that the Appellants had been members of the disciplined force; place of incident; and the manner in which the Appellants committed the delinquency, it cannot be held that punishment of dismissal from service is disproportionate to the charges proved against them.

11. In such a fact-situation, we do not see any cogent reason to interfere with the orders impugned. The appeals lack merit and are, accordingly, dismissed. No costs.

12. The appeals are dismissed in terms of the signed order.

13. No costs.