

(1985) 07 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 1981 of 1984

Abhay Kumar Nayak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 311

Citation : (1985) 2 OLR 239

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : D.S. Misra, with legal aid, for the Appellant; Ganeswar Rath, Addl. S. C. (Central), for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This case has brought to lime light the havoc that cold and rigid approach and attitude may cause to a human being when a modicum of compassion and humanism could have brought about his salvation. On the forensic plane, however, it raises the question : Is the dismissal of the petitioner—a constable in the Central Reserve Police Force—just, fair and reasonable ?

2. The Central Reserve Police Force was constituted under Central Act LXVI of 1949. Inter alias, its duty was to preserve and restore order in any local area within the Union in the event of disturbance therein. The petitioner was appointed to the force as a constable with effect from September 20, 1971. For a decade he served at different places inside the Union and at the relevant time he was posted at Bhubaneswar, the battalion headquarters. On May 11, 1983, he was commanded to relieve a constable of the 66th battalion who was to proceed on leave. He was to accompany a unit which was also proceeding to Mizoram. The petitioner has alleged that though the other members of the unit were provided with arms and ammunitions, he was not provided with the same. He

apprehended danger to his life, His pleading for supply of arms went unheeded. Adequate allowance was not provided. Out of Rs. 200/- given to him, he was directed to pay Rs. 150/- to his wife for maintenance of his family which would be left behind. The petitioner complained of the inadequate funds that he was to carry. He has alleged that his life was twice in danger at the hands of the terrorists but due to sheer luck, he could survive. Despite such happenings, his Commandant refused to provide him with arms. He was directed after sometime to return to his headquarters. On the way he was not provided with food. As he had no money, he starved. He has made some allegations against the Commander of the unit. Return from Mizoram not being relevant, it is unnecessary to recount the same. He was placed under suspension on May 13, 1983. For a month and a half, he was not given subsistence allowance. A sum of Rs. 90/- only was paid out of the Reserve Police Fund. A copy of the memorandum initiating the proceeding has been filed as Annexure-B. Four heads of charges were framed and were as hereunder :

"Article-I

That the said No. 710506034 Ct. Abhoy Kumar Nayak in his capacity of a member of the force refused to perform duty without arms when called upon to do so by a lawful authority. His such refusal amounts to an act of disobedience u/s 11(1) of CRPF Act, 1949.

Article-II

That the said No. 710606034 Ct. Abhoy Kumar Nayak as a member of a party which was returning from 66 Bn. CRPF to GC, CRPF, Bhubaneswar en-route misbehaved with the party commander No. 680381018 NK Kedar Nath Pal and against the order of the party commander left the party and his personal belongings at Howrah Railway Station and returned alone, of his own, to GC, CRPF, Bhubaneswar. His action amounts to acts of disobedience and misconduct u/s 11(1) of CRPF Act, 1949.

Article-III

That the said No. 710606034 Ct. Abhoy Kumar Nayak misbehaved with the SM Har Lai in roll call and spoke in a manner unbecoming of a member of the force. His action amounts to acts of disobedience and misconduct u/s 11(1) of CRPF Act, 1949.

Article-IV

That the said No. 710606034 Ct. Abhoy Kumar Nayak while in close arrest in GC, Q. C. refused to take his meals in spite of direction to do so. His action amounts to acts of disobedience and misconduct u/s 11(1) of CRPF Act, 1949."

The petitioner has alleged that copies of the complaint, statements of witnesses on the basis whereof the proceeding was initiated were not furnished to him. Dates of enquiry were not intimated to him. He was placed under cell and

witnesses were not examined in his presence in violation of all accepted principles and provisions contained in Rule 27 of Central Reserve Police Force Rules, 1955. Order of dismissal as per Annexure-1 was passed by the Commandant (opposite party No. 4) in the enquiry conducted behind his back. Copy of the report of the enquiring officer and copies of the statements of witnesses examined during the enquiry were not furnished to him. He preferred an appeal in darkness without knowing the materials placed against him in the enquiry, the reasoning and the findings of the enquiring officer. The appeal was dismissed by the Deputy Inspector General of Police (opposite party No. 7) as per Annexure-5. The petitioner has alleged that for 12 years, he has rendered blameless service. For his commendable service, he was given the "Kathin Seva" award and his service-sheet is without a blot. The rest of the lamentations in the writ application are not relevant for our purpose,

3. The opposite parties in their return have refuted that the petitioner was denied natural justice. They have denied that copies of statements of witnesses and copy of the complaint were not supplied to him. They have averred that the petitioner was not provided with arms and ammunitions while proceeding to Mizoram because he was to relieve a constable there. They have reiterated the allegations made in the charges and have pleaded that subsistence allowance and other entitlements were duly given to the petitioner and there was no denial at justice on that score. They have alluded to the conduct of the petitioner during the enquiry which, according to them, was grossly obstinate and non-co-operative. They have refuted the mala fides alleged by the petitioner. As that has no bearing, we do not refer to them. They have filed the report of the Commandant, 66th Bn. CRPF, Mizoram, furnishing the reasons for his reversion as Annexure-A and the notices Annexures-B and C to show that the petitioner was aware of the dates of hearing.

4. During hearing, the case took a different shape. In paragraph-8 it has been alleged by the petitioner that on March 7, 1983, he was taken to the Group Hospital of the battalion at Bhubaneswar and was admitted as an indoor patient and was then referred to the Government Medical College at Cuttack (S. C. B Medical College and Hospital) for advice and treatment. He was examined by Dr. Bimbardhar Das, Professor of Psychiatry and Mental Hygiene and a course of treatment was prescribed. This aspect has been admitted by the opposite parties in paragraph-4 of the return. It is stated :

".. In the month of March, 1983, the petitioner was found to be behaving irrationally and for that reason he was sent to Medical College, Cuttack, on the advice of Medical Officer in charge of Group Centre, CRPF, Bhubaneswar, where he was examined by the Doctor."

Annexure-A, the report submitted by the Commandant 66th Bn. CRPF, Mizoram, is very revealing and is as follows :

"No. 710606034 Ct. A. K. Naik of your Group Centre had reported at this location

with a party of Tear Smoke personnel under command of No. 680383485 NK. G. P. Sukla on 20.5.1983. On arrival at this location the party was kept at the Bn. Hqr. Right from the day the party had reached at this location, it was found that No. 710606034 Ct. A. K. Naik was in the habit of talking and acting in a strange manner. On 21.5.1983, he was produced for interview in the office of the Adjutant. The constable was wearing a large "Tilak" on his forehead while he was in full uniform. He was advised by the subordinate staff to remove the "Tilak" before he was marched in the office. The constable refused to comply. When questioned by the Adjutant also he started on with a string of irrelevant and incomprehensive replies. The Commandant also interviewed him. When questioned about the "Tilak" the constable started stating that he is a Panda from Jagannath Puri and he will always wear the "Tilak" and such gibberish. The constable was kept under observation. During the course of his stay it transpired that he was sent from GC, CRPF, Bhubaneswar, against his wishes on attachment to this unit and his family was at GC, CRPF, Bhubaneswar, and the constable declined to perform normal duties on the plea that he was having some direct communication with his "God". Since his case was suspected to be one of mental ailment, he was despatched back to GC, CRPF, Bhubaneswar, on 23.5.1983."

These materials changed the complexion of the problem and inclined us to think that possibly the real issue had been side-tracked and we were following a false scent. The matter required examination in depth. We thereupon called upon the parties to file further affidavits and documents relating to the illness of the petitioner since March, 1983. Pursuant to our direction, the petitioner filed Annexure-11 series, the tickets and prescriptions granted by the physician at the Group Hospital and the physician at the S. C. B. Medical College and Hospital. The opposite parties produced the original record maintained at the Group Hospital relating to the petitioner. We would refer to the documents a little later. At this stage we may refer to the pleadings.

The petitioner in his rejoinder has stated that he was not aware why he had been sent to the Specialist at the S. C. B. Medical College and Hospital. Later on he was told that he was suffering from "Manic depressive psychosis", he had not the means to purchase the medicines prescribed. The opposite parties in their return have admitted that the petitioner was under treatment from 21-5-83 to 31-8-1983. There was no material to show that the petitioner was under treatment from 1-4-1983 to 2-6-1983 as alleged by the petitioner. The charges related to the period when he was not ill, i.e., the incidents dated 11-5-1983, 23-5-1983, 28-8-1983 and 29-8-1983. They have admitted that he was under treatment at the Group Hospital from 8-6-1983 to 11-6-1983 for mental ailment. But he was normal on 12-6-1983. He again complained of mental trouble on 17-6-1983 and was treated at the hospital. Regarding the conduct during the enquiry, they have averred that the petitioner appeared on June 26, 1983 and expressed that he would not participate as he did not believe in oral enquiry nor did he give any reply to the questions asked by the enquiring officer.

5. From the documents produced by the opposite parties before us, it appears that on March 18, the ailment was diagnosed by the physician at the Group Hospital as "depressive psychosis" and he was detained. On March 19, 1983, instructions were left at the hospital for keeping watch on the patient. On March 21, the physician noted the ailment to be aggressive in nature and in the ticket recorded that the petitioner had earlier been treated at the Capital Hospital and there had been a recurrence of the ailment "since 4 days". He advised thereupon that the patient should be referred to the S. C. B. Medical College and Hospital for admission to Psychiatry department and for treatment. He was discharged from the Group Hospital on March 25, 1983 at the request of his elder brother. But on March 28, he was again readmitted. It was reported that his wife had attempted suicide and the petitioner was weeping in severe repressive mood, He remained under the treatment of the psychiatrist. On March 29, he was found in a "deeply thinking mood". On March 30 he was "argumentative, shouting, threatening to (commit) suicide, refused to eat". The attending physician advised a strong and alert guard to keep watch. Next day he was discharged. That very day, i. e , on March 31, he appeared before the Professor of Psychiatry, S. C. B. Medical College and Hospital. Dr. B. Das advised admission to the Hospital and treatment there as an indoor patient. His wife, however, strongly objected. The petitioner too was unwilling. The Professor prescribed a course of treatment and advised him to take rest for one month at home and return with another guardian when he was prepared for admission to the Hospital as an indoor patient. Annexure-II(a) shows that on June 8, he had reeling sensation in the head. He was "thinking something vague and was having frequent dreadful thoughts" and was suffering from Insomania. On June 11, the ailment was diagnosed as "Psychoneurosis (violent form)." The advice given was : (a) patient to be detained under proper guard, (b) he was to be referred to S. C B. Medical College Psychiatry department and (c) vigil over the patient to be kept and his condition to be intimated every 8 hours to the Medical Officer on emergency duty (See Annexure-11/c). On June 12, he was better. His behaviour was normal (See Annexure-11/d). On June 16, his behaviour was seen to be abnormal. Annexure-13, dated November, 25, 1983 goes to indicate that the petitioner was examined by the Psychiatry Specialist, Capital Hospital, Bhubaneswer, and was found to be suffering from "Manic depressive psychosis" and was in the "hypomanic stage".

6. The various symptoms of the mental illness of the petitioner from early part of March, 1933 till November, 1983 and his behaviour and conduct are not to be studied in isolation but as parts of a larger whole. May be he was having lucid intervals. But there is, little doubt that he was suffering from mental disorder. Annexure-A records the incident of May 21, which is in close proximity to the incidents which are the subject matter of the first two charges. The report is based on the personal observation of the Commandant at Mizoram. It discloses that the petitioner behaved in an abnormal manner, he was in the habit of talking and acting in a strange manner, his talks were irrelevant and incomprehensible.

He was kept under observation. He claimed to be having some direct communication with God and was suspected to be suffering from some "mental ailment". The incident which is the subject-matter of the first charge happened 10 days before the incident at Mizoram and the incident relating to the second charge, two days later. From 8-6-1983 to 18-6-1983 he was again under treatment for mental illness. His ailment had already been diagnosed as depressive psychosis, manic depressive psychosis/psychoneurosis (violent form) etc. The petitioner was in need of treatment for his cure. Having regard to his case history preceding and succeeding the alleged incidents, the proper course was a sensitive approach to the human problem. His conduct and behaviour could not be viewed as that of a sane person exercising his volition. The Commandant at Mizoram perceived that the petitioner was mentally ill. So he was sent back. Instead the petitioner was departmentally proceeded against and was ultimately dismissed.

7. This is not one of those common run of employee's dismissal cases. It exhibits different symptoms.

8. We are of the view that the conduct and behaviour of the petitioner being symptomatic of mental and emotional disorder, the proper course was to make him hale again by treatment and not visit him with punishment. The petitioner exhibited psycho-pathological phenomena. He was schizophrenic. Even during the enquiry he was no different. His conduct disclosed that he was not in a sound state of mind; his refusal to participate, his endorsement on the notice "I am prepared to make written submissions but I refuse to participate in oral enquiry"; his behaviour before the enquiring officer. The lapses were not trivial. He had a history of recurrence of psychoneurosis of violent form. The approach and attitude of a schizophrenic are strange indeed. His abnormal mind has abnormal perceptions and reactions. Hence, though from the point of view of the opposite parties denial of arms and ammunitions to the petitioner was not irregular, it highly disturbed the petitioner's mental balance by affecting his dignity. It crossed his mind that arms and ammunitions had been denied to him because he was a mentally deranged person. That might have hurt his ego and brought out mental instability. It is also revealed from the records of the enquiring officer that the petitioner refused to perform duty at the gate without arms on the night of May 1.

9. We are labouring on these aspects to drive home the point that not only was the petitioner a psycho-pathological patient before the incidents but had recurrence of disorder. The petitioner was not given a systematic treatment. In fact, his illness was not viewed seriously.

10. There is no material before us to show that he had been cured by the time of initiation of the enquiry or during it. The facts and circumstances go to indicate that the petitioner was not in a sound state of mind also during the enquiry. Hence, it was not open to the authorities to proceed with the enquiry and conclude the same. No proceeding was available to be taken until he was

completely cured of the ailment. The proceeding, therefore, stands vitiated, We have, therefore, no hesitation in quashing the dismissal of the petitioner.

12. Apart from the consideration, as aforesaid, the order of dismissal suffers also from an incurable vice. We extract the order of dismissal :

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3. As per the report of that Inquiry Officer, it is seen that No. 710606034 Ct. Abhoy Kumar Nayak did not co-operate with the enquiry officer in the conduct of enquiry. It is seen from the proceedings and order sheet that adequate opportunity under the Rules were given to the individual to present his case. But he deliberately avoided the enquiry which itself is a serious matter of disobedience and misconduct. On account of his non co-operation the enquiry had to be conducted ex parte.

4. I have gone through the proceedings of the enquiry. The Inquiry Officer has adhered to all the requirements of Rule. The prosecution has substantiated the charges levelled against the delinquent has not produced any evidence in his defence despite repeated advice and opportunities.

5. Giving due weightage to the prosecution evidence and the behaviour of the individual in the enquiry, I consider that No. 710606034 Ct. Abhoy Kumar Nayak is not a fit person to be retained in the force. He is, therefore, dismissed from service from the date of issue of this order."

It is indisputable that the disciplinary authority concluded that the petitioner was not a fit person to be retained in the force by resting his decision also on the behaviour of the petitioner at the enquiry, though the behaviour of the petitioner at the enquiry was not the subject-matter of the charges. There can be no doubt that the behaviour of the petitioner influenced the disciplinary authority in imposing the punishment of dismissal because he was of the opinion that he was not a fit person to be retained in the force. It is difficult to say to what extent the behaviour of the petitioner at the enquiry influenced the punishing authority. We are aware of the decision of the Supreme Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, that nullification of one of the charges does not vitiate the punishment. *Bidyabhushan's* case, however, is not an analogue. Here the behaviour of the petitioner at the enquiry appears to be the main force, the chief plank on which the punishment rests. The punishment, therefore, is unsustainable.

13. Mr. D. S. Misra, the learned counsel for the petitioner, has contended also that failure to supply a copy of the report submitted by the enquiring officer to the petitioner has vitiated the proceeding. A number of authorities have been cited. It is too late in the day to dispute that report of the enquiring officer is a vital document in a departmental proceeding. Where the final order itself does not refer to the materials in detail, but merely refers to the enquiry report, the servant needs must know the materials which have been taken into account by

the enquiring officer. To avail of the remedy available to him under the law and to satisfy himself that he has not been dealt with arbitrarily or whimsically the employee should know how and why he has been punished. Without the report he will be like a man called upon to fight in darkness and to throw darts aimlessly and at unknown objects. Therefore, the remedy to be meaningful and adequate, the opportunity provided should be just and fair. If the report is supplied, the servant may be able to demonstrate that the reasons which persuaded the enquiring officer to find against him are erroneous, uncalled for or that the enquiry officer has used extraneous materials or failed to consider relevant materials etc.

The obligation to supply arises from another consideration, namely, it acts as a deterrent against possible arbitrary action by the authorities taking a decision. In *State of Gujarat Vs. R.G. Teredesai and Another*, it was observed :

"...The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe..."

On the same parity of reasoning, it can be held that the supply of report was essential in order to enable him to exercise the right of appeal. Denial thereof has vitiated the appellate decision dated February 29, 1984 (Annexure-5). The counsel for the opposite parties referred us to a decision of the Calcutta High Court in the case of *Malik Ram Vs. Hindusthan Cables Ltd. and Others*, where it has been observed :

"...So the question arises having regard to the fact that he was given an opportunity to show cause why he should not be dismissed whether it was incumbent upon the authorities to supply him with copies of the depositions of the witnesses and also with a copy of the report submitted by the enquiring officer. In other words, whether the rules of natural justice demand that if a delinquent is given an opportunity as a matter of grace to show cause why the proposed punishment should not be imposed, he must be supplied with the copies of the depositions and with a copy of the report of the enquiring officer. In my opinion, no question of natural justice arises in a case like this. So far as the passing of the order of dismissal is concerned, it is after all a purely administrative order within the discretion of the punishing authority. The punishing authority is not bound to accept the report submitted by the enquiring officer. He has to form his own opinion on the materials placed before him. Therefore, even if the delinquent is not supplied with the copies of the depositions or with a copy of the report of the enquiring officer for the purpose of showing cause why the proposed punishment should not be imposed upon him, when he is not entitled as of right to a notice to show cause, the question of natural justice does not arise at all."

Having regard to the well-settled legal position, we are not prepared, with

respect, to accept the aforesaid statement as correct. Whether or not he has a right to notice to show cause, when an opportunity is provided, he is entitled to a copy of the report so as to meaningfully and adequately avail of the opportunity. It is not fair to take away in the other what is given in one hand.

Reliance has been placed by the Addl. Standing Counsel (Central) on a decision " reported in Suresh Koshy George Vs. University of Kerala and Others, . This is a case relating to a disciplinary proceeding against a student by the University of Kerala. The Supreme Court has observed that the provisions under Article 311 of the Constitution of India have no application to disciplinary proceedings against students. In that context, it has said that it is not necessary to supply a copy of the report on the basis of which notice to show cause why the proposed punishment should not be imposed to the delinquent student is issued. The case is not on all fours. As we have indicated earlier, where the order passed by the disciplinary authority is cryptic and has not independently discussed the materials and followed its own reasons and came to its independent conclusions on merits, the report is a vital document for the exercise of the appellate remedy available to the servant and to satisfy the petitioner above all that he has not been dealt with arbitrarily, capriciously or whimsically. It may be different where the action proposed is not based on the report (See State of Gujarat Vs. R.G. Teredesai and Another, and State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, .

14. Mr. Rath for the opposite parties has contended that the petitioner not having exhausted the departmental remedies, the writ application should be rejected as not maintainable. Exhaustion of alternative remedy is not an absolute proposition. Where jurisdiction is questioned or principles of natural justice have been infringed, it is the settled law that an aggrieved party may approach this Court for an appropriate writ without availing of the alternative remedy. Even in other cases, it is in the discretion of the Court having regard to the facts and circumstances. It is neither prudent nor possible to exhaustively state the different situations in which a writ application is entertainable without exhausting the alternative remedy.

Having regard to the nature of the case and the conclusions we have reached, there is no substance in the objection.

15. There is no gainsaying the fact that whether it be armed forces charged with the defence of the country, or the police and other forces charged with maintaining law and order and unity and integrity of the country, the morale and discipline should be of highest order. As it has been aptly said : "Morale and discipline are indeed the very soul of an army. Any relaxation in the matter of morale and discipline may prove disastrous and ultimately lead to chaos and ruination affecting the well being and imperilling the human rights" of the entire people of the country" (Bhagwati, J. as he then was) in R. Viswan and Others Vs. Union of India (UOI) and Others, . The force is constituted by human beings. Its efficacy and efficiency depend upon the earnestness and dedication of each of its

members. Lack of humanism in dealing with the human beings constituting the force would also equally affect the morale of the force. We have tested the case of the petitioner not with reference to formal rules governing disciplinary proceedings but by the touch-stone of universal jurisprudence, that is, the principles of fairness, reasonableness and justness. If the petitioner had been given the treatment he deserved, he could as well prove himself a dedicated sentinel of India's unity and integrity like any other. In our view, the proceeding was unjust and unfair. The enquiry is vitiated and the order of dismissal is void. The appellate order affirming the void order is void too.

16. In the result, we allow the writ application and quash Annexures-1 and 5. In the facts and circumstances, there would be no order as to costs.

B.K. Behera, J.

17. I agree.