
(2016) 01 TP CK 0013
In the Tripura High Court
Case No : WP(C) 190 of 2011

Anmol Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Citation : (2016) 01 TP CK 0013

Hon'ble Judges : Deepak Gupta, C.J. and Utpalendu Bikas Saha, J.

Bench : Division Bench

Advocate : R. Saha, Advocate, for the Appellant; A. Roy Barman, CGC, for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. This petition, by the petitioner, has been filed, challenging the order dated 01.11.2008 passed by the Commandant 124 Bn. CRPF, whereby he has been dismissed from service. This order of the Commandant was upheld by the DIGP on 12.03.2009 and the appeal filed by the petitioner was rejected. The petitioner has challenged these orders by means of this petition.

2. Briefly stated the facts are that the petitioner joined service with the CRPF on 10.02.1992. He worked at various places throughout the country such as Gujarat, Delhi, J&K, Assam, J&K, Jharkhand, Manipur, Haryana and finally the petitioner was transferred to Agartala on 05.03.2008, i.e. when he had put in 16 years of service. On 26.09.2008 a departmental inquiry was initiated against the petitioner and the charge against the petitioner was that while he was on duty he had left the CRPF camp without permission of the authorities and was found with a local tribal woman in a compromising position. On these charges an inquiry was started against him. The Inquiry Officer submitted a report holding that the charges were proved against the petitioner and on the basis of the said charges the petitioner was dismissed from service. Thereafter, he filed an appeal which

has been rejected and hence, this writ petition.

3. An inquiry has to be conducted in terms of Rule 27 of the Central Reserve Police Force Rules, 1955 (for short, "Rules") and Rule 27(c) which determines the procedure for conducting the departmental inquiry reads as follows:

"27. Procedure for the Award of Punishments.--

.....

.....

(c) The procedure for conducting a departmental enquiry shall be as follows:--

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary; if oral;

(i) it shall be direct;

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused;

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow

such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass orders where he has power to do so."

The rule does not specifically provide that there should be a separate Presenting Officer nor does it specifically provide that the accused should be provided with a Defence Assistant. However, there are a catena of authorities wherein it has been held that the rules of natural justice have to be read into rule 27 and that the rules of natural justice require that a Presenting Officer must be appointed because the Inquiry Officer cannot himself act as the Presenting Officer. The reason behind this is that if the Inquiry Officer and the Presenting Officer are one and the same person then virtually the Inquiry Officer becomes a Judge in his own cause. He assumes the role of the prosecutor and also the Judge.

4. A Division Bench of this Court in *Union of India & Ors. v. Kripesh Chandra Roy*, (2013) 1 TLR 17 has after referring to the entire law on the subject clearly held that the Presenting Officer must be separate and the Inquiry Officer himself cannot be the Presenting Officer. In this behalf reference may also be made to various other decisions: *Mutum Shantikumar Singh v. Union of India*, (2005) 3 GLR 243, *Chelfremog v. State of Tripura*, 2000 (2) GLT 604, *Baharul Islam (CT) v. Union of India*, 2001 (1) GLT 621. In all these cases it was held that if no Presenting Officer is appointed the Inquiry Officer assumes the role of the Judge as well as the prosecutor and this totally violates the rules and fundamental principles of natural justice.

5. Rule 27 does not even make a mention that the delinquent official against whom departmental inquiry is conducted is entitled to any Defence Assistant. We have no hesitation in holding that this will also have to be read into the Rules. We are dealing with a force like the CRPF wherein inquiries may be conducted against Constables who may not be well versed with procedure and law and it is an intrinsic part of the rules of natural justice that no man should be condemned unheard and every person who is accused of an offence should have a reasonable opportunity of defending himself. An inquiry under Rule 27 can lead to serious consequences including dismissal or removal from service. It also leads to other serious consequences like confinement to the quarter guard, etc. Such an inquiry must comply with the principles of natural justice. An inquiry which does not satisfy the fundamental rules of natural justice would be an inquiry which is totally violative of law and cannot be upheld. How can we expect a poor constable to prepare his case, that too without any Defence Assistant. We are clearly of the view that even though Rule 27(c) may be silent in this regard the right of the delinquent official to avail services of a defence assistant will

have to be read into the Rules.

6. Rule 27(c)(2)(iii) clearly provides that the accused shall be allowed to cross examine the witnesses. The art of cross-examination is not a simple art. It is not easy to cross-examine witnesses and therefore, the requirement of Defence Assistant will have to be read into the Rules.

7. As far as the present case is concerned, we find that though the witnesses were examined in the presence of the accused, there is nothing on record to show that any opportunity was given to the accused to cross-examine the witnesses. In fact, there is nothing on record to show that the accused was even informed that he has a right to cross-examine the witnesses. We have perused the inquiry record in detail. The statements of the witnesses have been recorded and thereafter, the Inquiry Officer has put certain questions to some of the witnesses and the answers of the witnesses have been recorded but no opportunity was given to the petitioner to cross-examine the witnesses.

8. Another damaging aspect of the case is that the order sheet, which has been maintained by the Inquiry Officer, is in a form containing four main columns and the last column is divided into two sub-columns containing the signatures of the accused and the Inquiry Officer. The order sheet consists of 15 orders out of which three orders are dated 26.08.2008 on one page and on the second page there are two orders of 29.08.2008 and one order of 30.08.2008. On the third page there is one order of 31.08.2008, one order of 01.09.2008, one order of 02.09.2008, one order of 03.09.2008 and one order reading 04.09.2008 to 18.09.2008, one order of 19.09.2008 and on the last page of the order sheet there are four orders dated 20.09.2008, 21.09.2008 to 24.09.2008, 25.09.2008 and 26.09.2008.

9. A perusal of this order sheet clearly indicates that this order sheet has been prepared in one go. Otherwise, it is impossible to type the order sheet in the manner in which it has been typed on separate dates. The signatures of the accused on all the pages in all the columns are in the same pen. The signatures of the Inquiry Officer are also in the same pen and the date is only given under the signature of the Inquiry Officer and not that of the accused. Finally this order sheet has been signed by the Inquiry Officer on 26.09.2008. It appears that this order sheet was prepared at a later stage.

10. This order sheet, even if it is accepted to be correct, makes interesting reading. The first order dated 26.08.2008 reveals that the Inquiry Officer has received an order from the Commandant for initiating inquiry proceedings against the petitioner herein. By the second order of the same date it is stated that he has received an order whereby the person has been appointed as Inquiry Officer. The third order of 26.08.2008 makes interesting reading. It is ordered that a letter be issued to the accused Anmol Kumar informing him that he should appear before the Inquiry Officer within 48 hours so that inquiry proceedings can be initiated. Simultaneously, in the same order it is mentioned that PWs 1 to 8 be

also issued summons to appear before the Inquiry Officer on 30.08.2008 and 31.08.2008. The least the Inquiry Officer could have done was to wait first for the accused to appear and thereafter, fix the dates for recording of prosecution evidence. On 29.08.2008 the accused appeared and admitted that he has received the charge sheet and the list of witnesses. He did not plead guilty. There was no Presenting Officer appointed, no defence assistance given and the case was adjourned to the next day for recording of the statement of the witnesses. No time was given to the accused to either consult somebody or to prepare his cross-examination and the witnesses were examined on 30.08.2008 and 31.08.2008 and on the next date, i.e. 01.09.2008 he was asked whether he wanted to lead any defence evidence and when he pleaded not guilty, 15 days time was given to him from 03.09.2008 to 18.09.2008 and the matter was disposed of. The manner in which the inquiry was conducted shows that all rules of natural justice were thrown to the wrench. The accused was not given any chance to defend himself.

11. Another interesting aspect of the matter is that bias of the Inquiry Officer is writ large. He has not administered any oath to any of the witnesses but what he has done is that before recording the statement of the witness he has warned the witness that he should give a truthful statement otherwise the statement would be used against the witness himself. This clearly indicates that the witnesses were threatened that they should speak in a particular manner otherwise action would be taken against the witnesses themselves. The relevant portion reads as follows:

"Byan dene se purv aapko yeh chetavani di jati hai ki aap jo bhi byan denge ve satya he denge anyatha aapka byan asatya paye jane par aapke viruddh bhi istemaal kya ja sakta hai"

Thereafter, somehow the witnesses have been cross-examined by the Inquiry Officer himself but the delinquent official or the accused was given no opportunity to cross-examine.

12. We are not going into the other aspects of the matter as to whether the charges framed against the petitioner were right or wrong but the manner in which the inquiry has been conducted shows that no reasonable opportunity was given to the petitioner to put forth his case. Therefore, we have no hesitation in setting aside the report of the Inquiry Officer only on the ground that the rules of natural justice were violated, the petitioner was not given effective opportunity to defend himself inasmuch as he was not allowed any Defence Assistant nor permitted to cross-examine the witnesses. We are also clearly of the view that there is violation of the rules of natural justice inasmuch as the Inquiry Officer virtually acted as the Presenting Officer also in the inquiry. He, therefore, became both prosecutor and Judge which would mean that he was a Judge in his own cause and that is a total violation of the rules of natural justice and shows bias. Lastly, bias is also writ large because of the very threatening warning given to the witnesses that they must speak the truth and if it is found that they are

not speaking the truth the statement would be used against them.

13. It was lastly contended by Mr. Roy Barman that since we are setting aside the inquiry report only on the grounds that the rules of natural justice have been violated the matter may be remitted back to the Inquiry Officer. He submits that the allegations against the petitioner are very serious and, therefore, the matter needs to be inquired into. He has relied upon the judgment of the Apex Court in *Bhagat Ram v. State of Himachal Pradesh*, reported in , 1983 (2) SCC 442 wherein the Apex Court held as follows:

"13.....Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is well-settled that in such a situation, it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence."

14. This prayer of Mr. Roy Barman is accepted. The respondents may initiate fresh inquiry proceedings on the basis of the same charge sheet *denovo* and hold inquiry in accordance with the rules of natural justice. The petitioner shall be allowed to rejoin service and intimation be given to him within six weeks from today where he has to report for service and after he reports for service the inquiry must be completed within three months thereafter. The petitioner has not worked for many years and therefore will be given only 50% of the back wages, within three months from today.

15. With the aforesaid observations and directions, the writ petition is disposed of. No order as to costs.