
(2001) 01 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 4289 of 1995

Baharul Islam (CT)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27, 28
Constitution of India, 1950 — Article 311(2)

Citation : (2001) 1 GLT 621

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : B.C. Das, P.C. Dey and S. Roy, for the Appellant; U. Das, CGSC, for the Respondent

Final Decision : Allowed

Judgement

B. Lamare, J.—Heard Mr. B.C. Das, learned Counsel for the Petitioner as well as learned Central Govt. Standing Counsel for the Respondents.

2. By this writ petition the Petitioner has approached this Court for quashing the disciplinary proceeding initiated against him and also for quashing the impugned order of penalty by which he was dismissed from service. The case of the Petitioner is that on 10.4.91 he was appointed as constable of the CRPF and subsequently on 4.8.94 he was posted at Chumukedima, Nagaland as a Security Guard at the State Bank of India, Chumukedima. On 10.8.94 the Respondent No. 3 placed the Petitioner on suspension (Annexure-1 to the writ petition) and also furnished to him the memorandum dated 4.8.94 (Annexure-2 to the writ petition) whereby he was furnished statements of article of charges framed against the Petitioner. The statement of Articles of charges framed against him are as follows:

...ARTICLE-I

That the said No. 770430017 LNK Jasbir Singh and No. 913252101 CT Baharul Islam of E/43 Bn CRPF have committed an offence of misconduct in their capacity as member of the Force u/s 11(1) of CRPF Act, 1949, in that. On 25.7.94 while on SBI duty they have created an ugly scene at public place by entering into altercation and using abusive/unparliamentary languages among themselves.

ARTICLE-II

On 25.7.94 at about 1350 hrs. while No. 770430017 LNK Jasbir Singh No. 913252101 CT Baharul Islam were on security duty at SBI Chumukedima No. 913252101 Ch Baharul Islam disobeyed order of LNK Jasbir Singh and thus committed an act of misconduct in his capacity as a member of the force u/s 11(1) of CRPF Act, 1949. He had also assaulted LNK Jasbir Singh with steel helmet resulting head injuries sustained by LNK Jasbir Singh.

ARTICLE-III

On 25.7.94 at about 1350 hrs while they were on security duty at SBI Chumukedima, the said No. 770430017 LNK Jasbir Singh could not supervise and control his subordinate and found inefficient in the discharge of his duty in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949.

Therefore the joint departmental enquiry commenced on 18.9.94 and Respondent No. 3 appointed an enquiry officer to enquire into the charges framed against the Petitioner. On completion of the enquiry, the Enquiry Officer has submitted an enquiry report and on the basis of the enquiry report, the Respondent No. 3 passed order dated 20.2.1995 (Annexure-4) to the writ petition terminated the service of the Petitioner.

2A. Learned Counsel for the Petitioner has contended that the disciplinary authority has appointed only the enquiry officer to conduct the enquiry but no presenting officer was appointed to present the case on behalf of the disciplinary authority. In support of article of charges the Petitioner was also not given defence assistance of his choice nor he was informed that he was entitled to such assistance considering the facts that Petitioner is a Grade-IV employee. The counsel for the Petitioner contends that the enquiry officer has assumed the role of the Judge as well as prosecution inasmuch as in absence of presenting officer the Inquiry Officer himself examined the witnesses and exhibited the documents. According to the Petitioner it is totally violative of the rules and fundamental principles of natural justice. Learned Counsel for the Petitioner further contends that against the order dated 20.2.95 (Annexure-4) to the writ petition an appeal was preferred under Rule 28 of the CRPF Rules, 1955 before the Respondent No. 2 but the said Appeal of the Petitioner was dismissed by order dated 25.4.95 (Annexure-6 to the writ petition) by the Respondent No. 2. Petitioner therefore approached this Court by way of writ petition.

3. The main contention of the learned Counsel for the Petitioner is that the

disciplinary authority did not appoint any presenting officer nor informed the Petitioner that he is entitled to engage defence assistance on his choice and that he has every right to defend his case but on the Ors. hand the enquiry was conducted in one sided and as such, the impugned order dated 20.2.95 and 25.4.95 passed by the Respondent Nos. 2 and 3 are liable to be set aside and quashed. Learned Counsel for the Respondents on the Ors. hand submitted that Rule 27 of the CRPF Rule 1995 does not visualize appointing of defence assistance nor of presenting officer and that the enquiry conducted by the enquiry officer and affirmed by the Respondent No. 2 was strictly of the provision of the CRPF rules as aforesaid.

4. I have perused the writ petition as well as the documents and affidavit filed by the Respondents. It is settled law that even if the rules does not provide for appointment of presenting officer giving of opportunity to defence and proper information to the Petitioner to defend himself and to appoint the defence assistance of his choice. The disciplinary authority should at least afford opportunity to the Petitioner to defend himself in a proper manner keeping in view the fundamental principle of natural justice. In *Dr Rash Lal Yadav Vs. State of Bihar and Others*, a law laid down by the Apex Court regarding principle of natural justice is applicable to the instant case. In *Dr. Rash Lal Yadav v. State of Bihar* in said case the Apex Court has also down principle of natural justice which as follows:

So also in 1983 Lab IC 1839 (*Dr. Rajyamalla Buzarbarua v. The Assam Administrative Tribunal and Ors.* this Court held as follows:

...It appears that the Enquiry Officer himself questioned the delinquent officer before he inspected the documents he wanted to inspect. On the day of enquiry also it was the Enquiry Officer alone who put all the questions to the Petitioner. The delinquent officer was not asked as to whether he liked to examine witnesses in defence. No witnesses having been examined there was no question of the delinquent officer being given any opportunity to cross-examine.

When an oral hearing is given in a disciplinary proceeding the authorities must be careful to give the delinquent officer opportunity to comment on any adverse statement. In an oral hearing the Tribunal must (a) consider all relevant evidence which a party wishes to submit; (b) inform every party of all the evidence to be taken on account. Whether derived from any party or independent; (c) allow witnesses to be questioned; (d) allow comment on the evidence and documents on the whole case was observed in *R. v. Dy. Industrial Commr. Ex parte Moore* (1965) 1 B 456. The right to call and examine witnesses is, therefore, as a general rule, of the procedure required by natural justice. This may also be said to be the requirement of reasonable opportunity envisaged in Article 311(2) of the Constitution of India and spelled out in Rule 9 of the Rules. Rule (5) of Rule 9 envisages the presenting officer to present the case of the disciplinary authority and a government servant to present the case of the delinquent officer. The Inquiring Authority shall consider such documentary evidence and such oral

evidence as may be relevant material and the Government servant to be entitled to cross-examine witnesses examined in support of the charges and in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing. The Inquiring Authority is also to prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore; and the Disciplinary Authority shall, if it is not the Inquiring Authority consider the record of the inquiry and record its findings on each charge as required by Sub-rule (9).

On perusal of the records of the inquiry it appears that these rules were not at all followed in case of the Petitioner. There was, therefore, palpable violation of the Rules. This also tantamounted to the violation of the principles of natural justice there having been no evidence, oral or documentary, produced at the enquiry and the delinquent officer having not been given any opportunity to explain....

So also in 1993 Lab IC 521 (Inspector General of Police, Bhubaneswar and Anr. v. Sukanta Kumar Nayak of Orissa High Court held as follows:

...The next question is whether providing of opportunity to have a defence assistant is a part of natural justice. It is well settled that the requirements of natural justice cannot be put in a strait jacket. They vary from case to case and circumstances to circumstances. They may also vary from person to person. All that has to be seen in this regard is that a delinquent is provided with a reasonable opportunity of defending himself. It is well known that every man does not have the ability to defend himself. He cannot bring out a point in his favour or the weakness in the Ors. side. He may be tongue-tied or nervous confused or wanting in intelligence. He cannot examine or cross-examine witnesses. If justice is to be done, he ought to have the help of someone to speak for him. This is how Lord Denning, M.R. thought in *Pett v. Greyhound Racing Association* (1968) 2 WLR 1471.

It would be appropriate to refer in this connection to *C.L. Subramaniam Vs. Collector of Customs, Cochin*, where the court observed in paragraph 16 that the rule laid down in *Pett's* case had not commended itself to that court. But then, a different note was struck in paragraph 12 of *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, It may be stated that in *Pett's* case or, for that matter, in the two aforesaid case of the Apex Court, the question for consideration was regarding representation of the delinquent in the domestic enquiry by a counsel, whereas we are not considering in the present case such a question. Even so, we may point out that in *Dilip Kumar*, after referring to the case of *C.L. Subramaniam (supra)*, it was stated in paragraph 12 that--

We have reached a stage in our onward march to fairplay in action that where in

an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....

Keeping in view the above decision, it is a settled law that the minimum opportunity should be given to the Petitioner to defend himself which is not done in the instant case, as appeared from the enquiry report, which was produced along with report by the Respondents. It is therefore crystal clear that enquiry proceeding was conducted against the Petitioner is against the fundamental principles of natural justice and it is violative of the principle of natural justice and consequent thereto the order dated 25.4.95 passed by the Respondent No. 2 affirming the disciplinary proceeding is not maintainable as it based on wrong proceeding conducted by the enquiry officer.

In view of the above discussion, and considering the facts and circumstances of the case, I am of the opinion that the enquiry report against the Petitioner is liable to be set aside and quashed so also the impugned order of penalty dated 20.2.95 passed by the Respondent No. 2 is liable to be set aside and quashed. Accordingly the enquiry report and the order dated 20.2.95 passed by the disciplinary authority and the order dated 25.4.95 passed by the Respondent No. 2 are hereby set aside and quashed and the writ petition is allowed to the extent indicated.

No costs.