
(1993) 09 CAL CK 0006
In the Calcutta High Court
Case No : Civil Order No. 2260 (W) of 1988

Bhagwan Singh Rathor

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(5)
Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 311(2)

Citation : (1994) 2 ILR (Cal) 53

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : Biswanath Bajpayee, for the Appellant; Kazi Mohammad Ali, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—The final order of removal from service dated December 31, 1984, passed by the Commandant, C.I.S.F. Unit, MAMC, Durgapur-10, being annex. "E" to the writ petition and the appellate order dated October 30, 1985, affirming the said decision passed by the Deputy Inspector-General, Central Industrial Security Force (Eastern Zone), being annex. "G" and the Revisional order dated November 3, 1986, passed by the Director-General, Central Industrial Security Force, which is annex. "I" to the writ petition have been impugned, in the instant writ petition on various grounds.

2. This writ petition was moved before Mahitosh Majumder J. challenging the aforesaid three orders, on February 29, 1988, when direction for affidavit had been passed and ultimately, this writ petition came up for final hearing before me on May 17, 1990 and it was further heard on September 5 and 13, 1990.

3. Mr. Biswanath Bajpayee, learned Advocate appearing at the final hearing of the writ petition, has assailed the enquiry proceeding and the order of removal on various grounds.

4. In the first place he has contended that in the matter of conducting the enquiry, the disciplinary authority had not allowed the writ Petitioner reasonable opportunity for defending his case which would be evident from the records of the enquiry proceedings.

5. Short facts stated in the instant writ petition are as follows:

The Petitioner, being a Constable attached to Central Industrial Security Force (hereinafter referred to C.I.S.F.), was proceeded in a departmental proceeding after service of memorandum of, charges dated September 17, 1983, in respect of the following charges:

Article of Charge--I

That the said C.I.S.F. No. 7638254 Constable Bhagwan Singh is hereby charged with "Gross Misconduct" in that on 18.7.83, he brought his family with him to Durgapur and started living in a hired accommodation without taking prior, permission from the competent authority. This conduct on the part of this Constable is highly unbecoming of a member of an Armed Force and hence the charge.

Article of Charge--II

That the said C.I.S.F. No. 7638254 Constable Bhagwan Singh is hereby charged with "Gross Indiscipline" in that on 30.8.83 at 09.45 hrs., he misbehaved with No. 7003127 Head Constable U.S. Pagrolra of this Unit, using some unparliamentary language while the charged Constable was performing "A" shift duty at R.P. Duty of H. Qrs. C.I.S.F. Unit, MAMC, Durgapur-10. This disorderly behaviour on his part is unworthy of a member of a disciplined force and hence the charge.

Article of Charge--III

That the said No. 7638254 Constable Bhagwan Singh was earlier also awarded the following punishments in course of his service career for similar delinquencies:

1. Vide Asstt. Comdt., C.I.S.F. Unit, FCI (FSD) Dighaghat final order No. V-15014/Disc-Digha/810543 dated 3.3.81, his increment was withheld for one year without cumulative effect for using abusive language on 21.1.81.

2. Vide Asstt. Comdt., C.I.S.F. Unit, MAMC, Durgapur final order No. V-15014/82/Ad.II/MAMC/996 dated 3.3.82, "3 days" pay fine for dereliction of duty on 23.1.81.

3. Vide Comdt., C.I.S.F. Unit, MAMC Durgapur final order No. V-15014/82/Ad.II/MAMC/1966 dated 17.6.82 "Censured" for using unparliamentary language before the Commandant in his Request Room no. 28.5.82.

4. Vide Comdt., C.I.S.F. Unit, MAMC Durgapur Final Order No. V-15014/82/Ad..II/MAMC/2144 dated 1.7.82, his increment was withheld for a period of two years

with cumulative effect for being in possession of a stolen G.I. Pipe which was recovered from his rented house on 21.5.82.

6. It will appear from the aforesaid charges that the Petitioner was charged with gross misconduct, as he has started living in a hired accommodation, without taking prior permission from the competent authority. Secondly, he was charged with gross indiscipline as on August 30, 1983, at 9.45 hours he had misbehaved with the Head Constable U.S. Pagrolra of the Unit by using some unparliamentary language, while the charged Constable was performing "A" shift duty at R.P. Duty of H. Qrs. C.I.S.E. Unit, MAMC Durgapur-"10. According to the disciplinary authority this disorderly behaviour on his part was unworthy of a member of a disciplined force and accordingly he was charge-sheeted.

7. According to the disciplinary authority, the Petitioner, Bhagwan Singh Rathor, earlier was awarded certain punishment for similar delinquency in his service career as contained in Article of Charge III.

8. In the penultimate paragraph, on the basis of the charge-sheet the disciplinary authority, namely, the Commandant, formed an opinion that those aforesaid punishment awarded to Constable Bhagwan Singh Rathor should be taken in a consideration, while fixing the quantum of punishment, if the Articles of Charges I and II are proved against him.

9. Thus, according to Mr. Bajpayee, appearing for the writ Petitioner, disciplinary authority had not only proceeded with closed mind, only to punish the writ Petitioner, by reason of the aforesaid charge-sheet but had not allowed to take defence helper and/or lawyer's assistance, in the enquiry and the writ Petitioner being a half-literate person was denied with reasonable opportunity to defend his case at the enquiry.

10. In support of his submission Mr. Bajpayee has relied on the observations of the Special Bench judgment of this Court in the case of Nripendra Nath Bagchi v. Chief Secretary Government of West Bengal AIR 1961 Cal. 53, 54, 55), wherein P.B. Mukherjee J., sitting with P.N. Mukherji J., in construing Civil Services (Classification, Control and Appeal) Rules 1955 and the provisions of Article 311(2) of the Constitution relating to affording reasonable opportunity, P.B. Mukherjee J. (as His lordship then was) delivering the majority judgment for the Special Bench observed as follows:

The Petitioner's first grievance is that he was denied the use of a lawyer and therefore, the principles of natural justice have been violated. Rule 55, which I have quoted elsewhere, expressly requires "adequate opportunity" to be given to the public servants. The question then is, can the assistance of a lawyer be regarded as part of such "adequate opportunity". The learned Advocate-General has relied on the well-known authority of T. Rajagopala Aiyangar Vs. The Collector of Salt Revenue, and contended that the words "to be heard in person" in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules expressly excludes the right to be represented by a lawyer in support of this

contention. He has cited other authorities of AIR 1944 72 (Federal Court); Manuaru Veeraswami Vs. The Provincial Government of Madras and Another, ; Lakshmi Narain Gupta Vs. A.N. Puri and Another, and Punjab State v. Bhagat Singh (S) AIR 1955 P&H 118 at p. 122.

The question now in India has to be judged not only on the expressions "adequate opportunity" and "to be heard in person" in Rule 55 but also in the light of the expression "a reasonable opportunity of showing cause" in Article 311(2) of the Constitution. If on the particular facts and complexity of a case, assistance of a lawyer is regarded as a part of reasonable opportunity, then denial of such an opportunity is violation alike of the constitutional protection under Article 311(2) and the principles of natural justice. The leading authority of the case of ILR 1938 Mad. 127 : AIR 1937 Mad. 735 and the decision on the Federal Court and other Courts on the same subject, did not have occasion to consider this in the light of the Constitution. Assistance of a lawyer cannot always be regarded as a part of "reasonable opportunity to show cause". Courts in India on the particular facts of some cases have held that assistance of a lawyer was not part of a reasonable opportunity. It may on the facts of a particular case be a luxury, unnecessary or immaterial. What is reasonable opportunity in the Indian Constitutional Context of Article 311(2) will depend on the fact of each case and the Constitution has laid down no hard and fast rule by defining reasonable opportunity for all cases.

What then are the facts in this case? As many as 30 prosecution witnesses, 13 defence witnesses and 2 Court witnesses were examined by the Tribunal. Can it be said on such facts that the assistance of a lawyer even to take notes which is all that the Petitioner claims where so much of deposition had to be noted marshalled and shifted, was not a part of reasonable opportunity? Having regard to the volume of depositions, number of witnesses and documents, I have come to the conclusion on the facts of this case, the refusal to allow the Petitioner the assistance of a lawyer even for the purpose of making notes was denial of "adequate" opportunity" under Rule 55 and "reasonable opportunity" under Article 311(2) of the Constitution.

11. In the said Special Bench judgment (H.K. Bose J. contra) held as follows:

Having regard to the volume of depositions, number of witnesses and documents dealt with in the departmental proceedings in the instant case, that the refusal" to allow the public servant (Additional District Judge) the assistance of a lawyer even" for the purpose of making notes was denial of adequate opportunity under Rule 55 and reasonable opportunity under Article 311(2) of the Constitution.

12. Mr. Bajpayee has also placed strong reliance on another Division Bench judgment of this Court decided by B.C. Basak and Satyabrata Mitra JJ. in the case of Director (Inspection and Quality Control), Export Inspector Council of India and Ors. v. Kalyan Kumar Mitra and Anr. 1987 (2) C.L.J. 344 wherein Their lordship held that where there has been violation of principles of natural justice,

further question, as to where any act of prejudice has been suffered, was immaterial and irrelevant.

13. The learned Judges of the said Division Bench also was of the view that on the question of assistance of lawyer to the delinquent in a departmental proceeding, that is, to an officer charged for misconduct ordinarily unless the presenting officer himself is a legally trained person or when the enquiry involves complicated question of fact or of law, refusal of lawyer is not a ground for holding the proceeding to be in violation of the principles of natural justice.

14. Further, it was held in a case where a disciplinary authority wants to hold a disciplinary enquiry he must be satisfied that there is at least some prima facie case requires to be enquired into. Merely because there is some allegation against a Government servant, that should not lead to an order directing a disciplinary enquiry. Otherwise this would result in untold and unlimited misery to all Government employees and a boon to other Government or non-Government employees who may want to prejudice the career of the employee concerned. Therefore, it is fit and proper that before such a formal statutory disciplinary enquiry is ordered some preliminary enquiry be made to ascertain whether there is even a prima facie case; that is, a case for a disciplinary enquiry under the Rules.

15. Having considered the aforesaid submissions of Mr. Bajpayee, I wanted to ascertain from Mr. Kazi Mohammad Ali, the learned Advocate appearing for the C.I.S.F. authorities as to what decision had been taken by the appellate authority, namely, the Deputy Inspector-General, C.I.S.F. (Eastern Zone), on the basis of the appeal preferred by the writ Petitioner, which has been annexed as annex. "E" to the writ petition.

16. Mr. Kazi Mohammad Ali, learned Advocate appearing for the Respondents, has drawn attention of this Court to the memorandum of appeal from p. 36 of the brief, wherefrom it appears that the writ Petitioner prayed before the appellate authority to go through the records and to reappraise all the evidence where the said evidence is commensurate to inflict punishment of removal from service, but unfortunately, I do not find excepting observation in para. 4 of the appellate order that the said appellate authority has merely recorded that he has scrutinised the file and found that the Appellant received full opportunity to defend himself and that the charges against the Appellant have been proved.

17. Having considered the submissions of the learned Advocates appearing for both the parties, therefore, it will be necessary for me to decide whether by reason of not granting lawyer's assistance, the Petitioner being a half-literate person has been denied reasonable opportunity, within the meaning of Article 311(2) of the Constitution read with the relevant Rules for conducting enquiry.

18. In my view, the observations of P.B. Mukherjee J. in the Special Bench case of Nripendra Nath Bagchi Supra in para. 55, is applicable with full force in the present case.

19. In my view, the Petitioner has been denied reasonable opportunity to defend his case before the enquiry officer by reason of not granting of legal assistance, although the Petitioner did not make any formal prayer for granting of such legal assistance.

20. Indeed, in view of the decision of the Supreme Court in the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, in interpreting Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967, the Supreme Court held that refusal to permit a Government servant to engage a legal practitioner where the prosecution having appointed a trained prosecutor to present the case, vitiates the enquiry.

21. Accordingly, in my view, the enquiry having been vitiated, the final order of removal from service and the appellate order and the revision order cannot be sustained in law. Further, in the facts of the present case, I am of the view regarding Articles I and II of the charges, the said charges are delightfully vague in nature as no particulars of gross misconduct or indiscipline having been mentioned in the said charges, the Petitioner was not in a position to give a suitable reply to exonerate the said charges.

22. In the result, writ Petitioner is entitled to succeed and the order of removal from service dated December 31, 1984, (annex. "E") and the appellate order dated October 30, 1985, (annex. "G") and the Revisional order dated November 3, 1986, (annex. "I") are accordingly set aside by issue of a writ in the nature of certiorari.

23. The Petitioner is entitled to be reinstated with full back wages after making suitable deduction with the subsistence allowance which has been paid to the writ Petitioner.

24. The Respondents will be entitled to initiate fresh proceeding on the basis of specific charge afresh and in accordance with law and not with the present charges with the memorandum of charges if they are so advised, in accordance with law.

25. The writ petition is allowed, as above.

26. There will be no order as to costs.

27. Let a xerox copy of this order be given to the learned Advocate on record for the Petitioner on observing all necessary formalities, as prayed for.