
(2003) 04 GAU CK 0036
In the Gauhati High Court
Case No : WP (C) No. 628 (AP) of 2001

Bhupen Borah

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Citation : (2003) 2 GLR 350 : (2003) 3 GLT 249

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : J. Hussain, for the Appellant; R.H. Nabam, Addl. Sr. G.A., for the Respondent

Judgement

I.A. Ansari, J.—By making this application, the petitioner, who is a Sub-Inspector of Police under the Department of Home, Government of Arunachal Pradesh, has approached this Court seeking issuance of appropriate writ/writs setting aside the impugned order, dated 30.6.1992 (Annexure-IV to the writ petition) whereby penalty of reduction of pay by three stages for the period of three years without cumulative effect and postponement of increment of pay during the period of punishment has been imposed on the petitioner following a departmental proceeding drawn against the petitioner.

2. In nutshell petitioner's case may be stated as follows : The petitioner, on the basis of a transfer order, joined at Pasighat, on 5.11.1990, in the capacity of Sub-Inspector of Police. Before his transfer to Pasighat, the petitioner had, suddenly, fallen ill due to his posting at a place of high altitude. The petitioner had accordingly approached the respondent No. 3 and, upon examination of medical certificates and petitioner's representation, the respondent No. 3, namely, I.G.P., Arunachal Pradesh, posted the petitioner to Pasighat in East Siang District. Soon after joining of his duties at Pasighat, Sri P. Bagra, Deputy Superintendent of Police, Pasighat, who was holding the charge of the office of the Superintendent of Police, Pasighat, made an order, on 5.11.1990 (Annexure-1 to the writ petition) transferring the petitioner from Pasighat to Tuting Police Station, which

is located at a very high altitude area, and the petitioner was accordingly released. The petitioner submitted a representation to the respondent No. 5, namely, Superintendent of Police, East Siang, Pasighat, informing him the reason of his transfer to Pasighat, but Sri Bagra aforementioned, who was holding the charge of the office of Superintendent of Police, Pasighat, rejected the representation of the petitioner vide order dated 6.11.1990 (Annexure-2 to the writ petition). The petitioner, then, submitted an application to Sri Bagra requesting him to allow the petitioner to proceed to police headquarters to meet the respondent No. 3 for redressal of his grievances, but this prayer too was rejected without assigning any reason therefor. The petitioner, then, tried to receive free Airlift from Pasighat to Tuting, i.e., his new place of posting. As the petitioner could not avail free airlift from Pasighat to Tuting, he left for Tuting via Mohanbari after sending requisite information in this regard to the respondent No. 5. The petitioner arrived at Mohanbari on 16.11.1990 and submitted a prayer to DDST, Mohanbari, for free air lift to Tuting, but, suddenly, the petitioner received a message that his mother had fallen seriously ill. In such compelling circumstances, the petitioner came to his home in the district of Sonitpur and found his mother in unconscious state. As the petitioner got involved in arranging proper treatment for his mother, he could communicate to the respondent No. 5 only on 5.12.1990 regarding his failure to join Tuting police station. This apart, the petitioner also suffered from colitis, headache, bleeding from nostrils, his case was diagnosed as a case of "sinus T.B." and he had to remain under treatment of ENT Specialist at Tezpur Civil Hospital. The petitioner, while at home, received notice from the respondent No. 5 directing the petitioner to join his place of posting at Tuting within 3 days. Despite representations made by the petitioner to the respondent Nos. 4 and 5 for changing his place of posting on the ground that Tuting is a high altitude area, petitioner's repeated requests were not acceded to; rather, a departmental proceeding was initiated against him for his alleged unauthorized absence from duty. For the disciplinary proceeding so drawn, Sri P. Bagra aforementioned was appointed as enquiry officer. Upon conclusion of the enquiry, Sri Bagra submitted his enquiry report and vide order dated 30.6.1992 (Annexure-IV to the writ petition), the disciplinary authority, namely, respondent No. 4 accepted the enquiry report and inflicted penalty as hereinabove described. The appointment of Sri Bagra, however, as enquiry officer was highly unjust and unfair inasmuch as it was Shri Bagra, who had posted the petitioner to Tuting and whose order aforementioned, the petitioner is said to have violated by remaining absent from duty. However, this aspect of the matter has been ignored not only by the disciplinary authority, but also by authorities superior to the disciplinary authority. Feeling aggrieved by the penalty so imposed, the petitioner preferred an appeal on 3.8.1992, but the same was turned down vide order dated 2.7.1993 (Annexure-5 to the writ petition) issued by the respondent No. 3. The petitioner, then, submitted an application for review of the penalty to the respondent No. 2, namely, Commissioner, Department of Home to the Government of Arunachal Pradesh, but this review application too was turned down vide order, dated 15.6.1999. The report of the

enquiry officer was never furnished to the petitioner, which was highly illegal and this lapse, on the part, of the enquiry officer, is in itself sufficient to interfere with the penalty imposed on the petitioner. The petitioner accordingly has approached this Court seeking reliefs as hereinabove indicated.

3. The respondents have contested this case by filing their affidavit-in-opposition, their case being, briefly stated, thus ; The petitioner remained absent from duty for a period or almost one year without any authority of law. The disciplinary proceeding drawn against him under the CCS (CCA) Rules, 1965, was held in accordance with the provisions contained therein and there was no mala fide. During the course of the departmental proceeding, the petitioner did not raise any objection to the appointment of Sri Bagra as enquiry officer and did not ask for any change in this regard. The enquiry conducted was fair and just. As the findings of the enquiry were supported by materials on record, the disciplinary authority accepted the findings and imposed the penalty, which was commensurate with the gravity of the charge and it is for this reason that the authorities superior to the disciplinary authority upheld the penalty imposed on the petitioner. The petitioner's posting to Pasighat was not on medical ground, but in the interest of public service. The petitioner was transferred to East Siang District and it was for the district Superintendent of Police to decide where the petitioner would be posted within the East Siang district. The petitioner was posted to Tuting police station, because the same was functioning without an officer. Hence, petitioner's posting to Tuting was on account or exigency of service. The writ petition is without any merit and the same may be dismissed.

4. I have perused the materials on record. I have heard Mr. J. Hussain, learned counsel for the petitioner, and Mr. R. H. Nabam, learned Addl. Senior Government Advocate appearing on behalf of the respondents.

5. It has been submitted by Mr. J. Hussain that no one can become a judge in his own cause. Since the order posting the petitioner to Tuting was made by Sri P. Bagra and it was this order, which the petitioner had allegedly violated and had remained absent from duty, it was highly unfair on the part of the disciplinary authority to make Sri Bagra the enquiry officer. It is next contended by Mr. Hussain that the enquiry report submitted by Sri Bagra was not furnished to the petitioner before imposing the penalty and, hence, the penalty imposed on the petitioner without furnishing enquiry report to him is bad in law.

6. Controverting the above submissions made on behalf of the petitioner, learned addl. senior Govt. advocate has submitted that the petitioner never raised any objection against the appointment of Sri Bagra as enquiry officer and it is only after conclusion of the enquiry that he raised objection in this regard. It is also submitted by Sri Bagra was fair and since his findings were supported by materials on record, the same were accepted. It is further submitted by Sri Nabam that non-furnishing of enquiry report has not caused any prejudice to the petitioner.

7. Let me, first, consider as to what bearing non-furnishing of the enquiry report to the petitioner will have on the penalty imposed on the petitioner.

8. It is clear from the law laid down by the Apex Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, that giving enquiry report to the delinquent is necessary to enable the delinquent to know what conclusions have been arrived at by the enquiry officer and whether the conclusions reached are correct. Providing of such an opportunity to the delinquent is, according to the Apex Court, a demand of the principles of natural justice, which every such enquiry must adhere to.

9.1 am guided to adopt the above views from the observations made by the Apex Court in Md. Ramzan Khan (supra), which read as follows :

"With the Forty Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the inquiry officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the inquiry officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the inquiry officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

*** *** *** Deletion of the second opportunity from the scheme of Article 311(2) the Constitution of India has nothing to do with providing a copy of the report to the delinquent in the matter of making representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the inquiry report to meet the recommendations of the inquiry officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. We, therefore, come to the conclusion that supply of a copy of the inquiry report alongwith recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof..... we make it clear that wherever there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal of any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the

report would amount to violation of rules of natural justice and make the final order liable to charge hereafter."(emphasis is supplied)

10. In the subsequent case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the Apex Court had the occasion to consider the judgment of Md. Ramzan Khans case (supra) and while answering the question whether furnishing of the enquiry report to the petitioner is essential, notwithstanding the 42nd Amendment, the Court drew a distinction, in this regard, between an enquiry, which has been held by an enquiry officer appointed by the disciplinary authority, and an enquiry, which has been held by the disciplinary authority itself. In the latter case, there is no report and, hence, question of furnishing of a copy of the findings of the disciplinary authority to the delinquent before the penalty is imposed on him does not arise at all; but if the enquiry is held by a person other than the disciplinary authority, then, principles of natural justice require that a copy of the enquiry report along with the enquiry officer's recommendations, if any, in the matter of proposed punishment, be supplied to the delinquent in order to let him know the conclusions of the enquiry officer so as to enable him to have his say in the matter. If it is not so done, it would make the final order imposing penalty, if any, liable to challenge.

11. However, a closer reading of the observations made in B. Karunakar's case (supra) makes it amply clear that mere non-furnishing of enquiry report is not enough to set aside and quash the penalty imposed on the aggrieved employee and that before the Court strikes down the penalty, it must furnish the enquiry report to the delinquent and ask him to show how he has been prejudiced by non-supply of the report. If after hearing the parties, Court comes to the conclusion that the employee had been prejudiced because of non-supply of report, the penalty may be set aside, but if the employee fails to show prejudice, the penalty shall not be interfered with. In this regard, following observations of the Apex Court in B. Karunakar case (supra) are of immense significance:

"The answer to the question what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him; in some cases, the non-furnishing of the report may have prejudiced him gravely, while in other cases, it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations and the invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused to the employee or not on account or the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the

report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should case the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court I Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment. The Court I Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts."

12. In short, thus, unless non-furnishing of enquiry report is shown to have prejudiced the delinquent, the mere fact that the enquiry report has not been furnished to the delinquent before imposing penalty can be of no avail to the delinquent.

13. In the case at hand, the petitioner has not even whispered in his writ petition that the non-furnishing of enquiry report has caused any prejudice to him. Even at the time of hearing, no grievance of prejudice having been caused to the petitioner as a result of non-supply of enquiry report has been made. Hence, the mere fact that no copy of the enquiry report was furnished to the petitioner cannot be made a ground to interfere with the penalty imposed on the petitioner.

14. Coming, however, to the question as to whether the appointment of Sri P. Bagra as enquiry officer is in itself enough to set aside the findings of the enquiry, it is important to bear in mind that the justice must not only be done, but must be shown to have been done. In the case at hand, the order posting the petitioner to Tuting had been, admittedly, passed by Sri Bagra. The petitioner made a representation against this posting order seeking change on the ground that for medical reasons, his posting to Tuting, which is situated at a higher altitude, be changed. This request was not acceded to by Sri Bagra. The petitioner is, thus, claimed to have ignored the order of Sri Bagra and remained in unauthorized absence from duty, whereas the petitioner's case was that on failing to get his posting to Tuting changed, he proceeded for Tuting and it was at Mohanbari that he was, suddenly, informed about the serious illness of his mother and he had to rush home, where he had to remain engaged in looking after his mother and could inform the Superintendent of Police, East Siang, only on 5.12.1990 by telegram explaining the reasons or his inability to join Tuting

police station. The petitioner, then, according to the case set up by the petitioner, fell sick and had to remain absent from duty on the ground of such sickness and he was diagnosed as a case of "sinus T.B.". The plea, which the petitioner has so taken, may or may not be true, but the fact of the matter is that Sri Bagra cannot be said to be a disinterested person and he ought not to have been entrusted with the enquiry, for, the ultimate object of the enquiry was to determine whether the plea taken by the petitioner was true or not.

12. Situated thus, there is no hesitation in my mind that Sri Bagra, being an interested person, ought not to have been appointed as enquiry officer. The fact that the petitioner did not raise any objection at the time, when the enquiry was in progress, is not material in this regard. This aspect of the matter appears to have been, if I may reiterate, completely ignored by the disciplinary authority and by authorities superior thereto.

13. In short, thus, the holding of the enquiry by Sri Bagra as enquiry officer was against all canons of natural justice and, hence, the enquiry report submitted by Sri Bagra and in consequence thereof, the penalty imposed on the petitioner cannot be allowed to stand good on record inasmuch as if the same is not interfered with, it will cause serious miscarriage of justice.

14. In the result and for the reasons discussed above, this writ petition partly succeeds. The appointment of Sri Bagra aforementioned as enquiry officer is hereby set aside and quashed and in consequence thereof, all further proceedings of the enquiry, in question, including the impugned order imposing the penalty shall accordingly stand set aside and quashed. The respondents are, however, left at liberty to appoint another enquiry officer in place of Sri Bagra aforementioned and proceed with the matter in accordance with law.

15. No order as to costs.