

(2008) 07 DEL CK 0006

In the Delhi High Court

Case No : Writ Petition (C) No. 1763 of 1979

B.P. Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Army Rules, 1954 — Rule 95
Border Security Force Rules, 1969 — Rule 122
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1)
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 102, 110, 27
National Security Guard Rules, 1987 — Rule 118

Citation : (2008) 153 DLT 15 : (2009) 1 ILR Delhi 556

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : G.D. Gupta and S.R. Kalkal, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner was appointed as Constable with the CRPF on 28th July, 1963. The petitioner during his tenure of service is stated to have spent about 14 years in the North Eastern States of Nagaland and Manipur. The trouble for the petitioner began when he was suspended on 12th December, 1978 under Rule 10(1) of the CCS(CCA) Rules, 1965 (hereinafter referred to as the "said CCS Rules") pending disciplinary action u/s 11(1) of the CRPF Act, 1949 (hereinafter referred to as the said Act). The disciplinary proceedings culminated in an order of dismissal of service of the petitioner dated 21st March, 1979. The appeal preferred by the petitioner before the competent authorities was dismissed on 30th May, 1979. The petitioner thereafter filed the present petition. The petitioner's case has unfortunately been pending for disposal since a long period of time. It has only now come up for final disposal.

2. The charge against the petitioner is that he refused to accept the movement

order dated 9th December, 1978 to move to a platoon of the CRPF at Tezu and thus committed an act of disobedience in the said process.

3. It is not necessary to go into the details of the fact finding by the enquiry officer as confirmed by the disciplinary authority and the appellate authority for the reason that this Court does not sit as a court of appeal to re-appreciate the material on record. Suffice to say that the petitioner has some grievance even about the enquiry officer as he imputed bias. The reason for the same is stated to be some past litigation initiated by the petitioner along with certain other personnel for benefits under the Third Pay Commission.

4. We have put it to learned senior counsel for the petitioner that his submissions must confine to parameters of judicial scrutiny of such a findings of the enquiry report and thus learned Counsel fairly concentrated only on two aspects to point out procedural infirmities in the proceedings which would require the proceedings to be set at naught.

5. The first grievance is that before proceeding against the petitioner by way a disciplinary enquiry, a preliminary enquiry was held. The statements of the witnesses were recorded in the preliminary enquiry and those statements were not available to the petitioner despite repeated requests. The petitioner thus claims that he was handicapped in the cross-examination of witnesses of the department and that is why he did not actually cross-examine the witnesses. It is, however, not in dispute that at the request of the petitioner inspection was given of such depositions before the preliminary enquiry. The factual matrix shows that in the departmental enquiry the witnesses of the department were examined on 3rd and 4th of January, 1979. Inspection of the statements recorded in the preliminary enquiry was given to the petitioner on 5th January, 1979 and the witnesses were again recalled for cross-examination on 6th January, 1979 but the petitioner failed to cross-examine the witness.

6. Learned senior counsel for the petitioner has referred to the judgment of the Supreme Court in the *The State of Punjab Vs. Bhagat Ram*, to contend that the supply of such statements in the preliminary enquiry was a mandatory requirement and thus non-supply would vitiate the disciplinary proceedings. Learned senior counsel in this behalf has referred to the facts of the said case where the statements recorded by the Police in the course of investigation of witnesses to be examined in the departmental enquiry were not supplied by the State but only synopsis were given. This was held not to be a reasonable opportunity. It was observed in para 7 as under:

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which enquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witness produced against him. The

object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

7. Learned Counsel for the respondents on the other hand contends that the preliminary enquiry was held only with the object of ascertaining whether the departmental enquiry ought to be held and not part of the preliminary enquiry including the depositions was relied upon during the departmental proceedings. It is thus contended that until and unless the said statements are relied upon, they have no bearing on the departmental enquiry. Since the petitioner was insisting on the statements, inspection was given and even copies of the depositions recorded in the departmental proceedings were supplied subsequently though the witnesses had been examined in the departmental enquiry in the presence of the petitioner.

8. In our considered view, there is force in the contention of learned Counsel for the respondents. The judgment in *State of Punjab v. Bhagat Ram* case (supra) would only apply if documents or even depositions of preliminary enquiry prior to departmental proceedings are sought to be relied upon during the departmental proceedings as material against the accused person. Once all the witnesses are being called afresh, their depositions recorded and opportunity given for cross-examination, there is really no requirement of supply of depositions of preliminary enquiry not relied upon. The respondents have even given inspection to the petitioner of these testimonies recorded in the preliminary enquiry and thus in any case the petitioner cannot make a grievance in respect of the same.

9. The second plea raised by learned senior counsel for the petitioner is that no defence assistant was made available to the petitioner which compromised the defence of the petitioner. The petitioner claims to have no great educational qualifications and thus could not personally carry out his defence. In this behalf, a specific averment has been made in para 14 of the writ petition. In the counter affidavit it is sated that the Rules of the respondents do not provide for a legal counsel in a departmental enquiry.

10. We feel that the respondents are under a misconception that the petitioner was asking for a legal counsel. The record shows that the petitioner was asking only for an assistant by name who was a clerk in the Delhi Milk Scheme. Be that as it may, the respondents could have provided for a friend of the accused even from the personnel serving the respondent. This was not done with the result that the petitioner could not and did not examine the witnesses of the department.

11. Learned Counsel for the respondents, however, submits that Rule 27 of the CRPF Rules, 1955 (hereinafter referred to as "the CRPF Rules") provide for a complete procedure in this behalf. Sub Rule (c) reads as under:

(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 refused 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 refused 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.

12. Learned Counsel thus submits that there is no provision in the CRPF Rules for

providing a defence assistant. Learned Counsel submits that as observed by this Court herein above on the first aspect that no copies of documents were required to be supplied as provided in Sub clause 3 of Clause c of Rule 27 of the CRPF Rules on a same parameter in the absence of any provision for defence assistant, the petitioner cannot be permitted to make a grievance in that behalf. Learned Counsel further submits that this is at best a technical defect which cannot be set at nought the enquiry proceedings.

13. In this behalf learned Counsel has referred to a judgment of the learned Single Judge of this Court (as he then was) in civil writ petition No. 3920/1999 titled as Ram Bihari Shukala v. Union of India and Ors. decided on 6th December, 2001. In para 8 of the said judgment it has been observed that the non-provision of the assistance of a lawyer did not violate the principles of natural justice under the CRPF Rules.

14. Learned senior counsel for the petitioner has drawn our attention to Rule 102 of the CRPF Rules which reads as under:

102. Other conditions of service.- The conditions of service of members of the Force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status.

15. The submission of learned senior counsel for the petitioner thus is that Clause c of Rule 27 of the CRPF Rules does not prohibit providing a defence assistant even if it does not specifically provide for such defence assistants. It is thus submitted that in view thereof Rule 102 of the CRPF Rule would come into play and the said rules would equally apply to the present case for provision of defence assistant. We may note that the CCS Rules specifically provide for a defence assistant which is not even in dispute. Such a person need not be a lawyer. It may also be taken note of that even while passing the suspension order, the same has been done in exercise of powers under CCS Rules read with the said Act. We may also note that under Rule 110 of the CRPF Rules the superior officers are subject to CCS (Classification from a control and appeal) Rules, 1957.

16. The scheme of the said Act and the CRPF Rules thus show that for certain matters relating to the service personnel specific provision has been made under the CRPF Rules. Wherever such specific provision is not made the CCS Rules apply. Rule 27 Clause c of the CRPF Rules refers to the disciplinary proceedings and the manner of conduct for the said proceedings. It does not specifically prohibit providing of defence assistant even though it does not specifically provide for such defence assistant. It is possible that a charged personnel does not even ask for defence assistant. In such a case, in the absence of any specific rules to provide for the same, the respondents may not be at fault. However where a person specifically asked for such a defence assistant, a reading of Rule 27 (c) read with Section 102 of the CRPF Rules does suggest to us that CCS

Rules come into operation in this behalf and the respondents ought to have made available a defence assistant to the petitioner.

17. We are unable to accept the plea of learned Counsel for the respondents that the non-providing of such assistant is merely a technical defect which ought to be ignored while considering the nature of relief. The absence of such assistant goes to the root of the matter and compromises the defence.

18. We may note with some satisfaction that the respondents have themselves remedied the position in this behalf by issuing a circular No. 06/05 dated 16th September, 2005 providing for a defence assistant as and when requested for by the charged officer though this has prospective effect. The said circular is extracted here below:

CIRCULAR ORDER No. 06/05

Of late it is observed that various Courts have quashed the orders of dismissal/removal passed by the disciplinary authority against the delinquents solely on the ground of failure to provide Defence Assistant in the Departmental Proceedings.

2. The procedure for conducting departmental enquiry for Non Gazetted ranks has been laid down in Rule 27 of CRPF Rules, 1955. In the said Rules there is no provision for engagement of Defence Assistant by the delinquent employees in the departmental proceedings initiated against them. In such cases where the petitioners have raised the issue of Deptt having not provided Defence Assistants in the inquiry, the Deptt has tried to defend its interest citing absence of specific provision in this regard. However, in many cases Courts have not accepted this plea of the Deptt and have instead observed that disciplinary proceedings being quasi judicial in nature attract the Principles of natural justice as the order in the proceeding involves civil consequences. It has been held by the Apex Court in a catena of judgments that the deprivation of livelihood by an order of dismissal has to be just, fair and reasonable. As such the requirements of natural justice cannot be denied to any one.

3. Keeping in view the inherent problems likely to be faced by the administrative authority on account of requirement of a number of personnel to act as Defence Asstts in the large number of inquiries pending with the Deptt, on the one hand and at the same time the requirements of natural justice to be fulfilled in keeping with the observation of the Courts, it is hereby advised that in all Departmental Proceedings against NGOs in CRPF, the delinquent person may be represented/assisted by a person from within the rank whose services the delinquent may be able to procure and who shall be called as " Defense Assistant".

4. Such provision would be on the pattern of provision titled "Defending Officer and friend of accused" available in Rule 95 of Army Rules, 1954, Rules 122 of BSF Rules 1969, Rules 118 of NSG Rule 1987 and Rule 123 of ITBP Rules 1994. The Defence Asstt shall have the same rights and duties as applicable to a counsel under the rules and shall be under the like obligations. "The Defence

Assistant" may advise the delinquent on all points and suggest questions to be put to the witnesses but he shall not examine/cross examine the prosecution witness or address the Enquiry Officer. This provision be made applicable only in respect of those charged officials who make specific demand for Defence Asstt. In cases where the delinquents do not wish to avail the provision of Defence Assistants mentioned above, the I.O.s should duly record/mention the same in the order sheet to this effect.

5. This may be brought to the notice of all concerned.

(J.K. SINHA)

DIRECTOR GENERAL

19. The said circular has in fact cited the reasons for its issuance as non-acceptance by the Courts of the plea based on Rule 27 of the CRPF Rules for not providing such defence assistants as disciplinary proceedings being quasi judicial in nature attract the principles of natural justice as the order in the proceedings involve civil consequences. The Apex Court has also held in a catena of judgments that deprivation of livelihood by an order of dismissal has to be just, fair and reasonable and principles of natural justice cannot be denied. Once this principle has fortunately been incorporated in the circular of the respondent itself, there can be hardly any reason not to extend the same in the pending litigation which has yet not attained finality.

20. The result of the aforesaid is that on this short ground aforesaid the order of dismissal of service against the petitioner is quashed.

21. The question thus arises as to what is the relief which ought to be granted to the petitioner. The consequence of quashing of the order of dismissal would have been to restore the petitioner to service with all consequential benefits, giving an opportunity to the respondents to start the disciplinary proceedings afresh. This course of action is not feasible as the petitioner would have by now retired from service. The long lapse of time has taken care of this as the petitioner is aged about 66 years.

22. Learned senior counsel for the petitioner fairly concedes that a reasonable result must enure as a consequence of the aforesaid defect in the departmental proceedings and thus confines his relief to pensionary benefits without claiming the back wages, seniority benefits, etc. as a consequence of the disciplinary proceedings being quashed. In this behalf learned senior counsel for the petitioner has fairly drawn our attention to a Division Bench judgment of this Court in *Des Raj Shanwal (Lt. Col.) v. Union of India and Ors.* 2004 (1) SCR 191, where the petitioner was held entitled to retiral benefits without back wages where the petitioner had reached the age of superannuation during the long process of adjudication of dispute for 23 years. In another case in *Ex. Sepoy Sube Singh v. Union of India and Ors.* 140 (2007) 26 a Division Bench of this Court while moulding the relief had held that where a person ought not to have

been discharged in terms of an impugned order, the petitioner can get service pension without directing petitioner's reinstatement in service or granting any other pensionary benefits to him. The petitioner was held entitled to only service pension and other benefits due on completion of the minimum period of pensionable service.

23. Learned Counsel for the respondents submits that the petitioner has served for a little less than 15 years while the pensionable service is 20 years. Learned Counsel thus submits that unless the petitioner would have actually completed 20 years of qualifying service, the petitioner ought not to be granted the said benefit.

24. On a conspectus of the fact of the present case we are of the view that the ends of justice would be served by following the course of action as in Ex. Sepoy Sube Singh case (supra). This is so since it is the respondents who are to blame for the situation which has arisen. The petitioner would have continued in service and completed the qualifying pensionable period to earn the pension. The service was cut short by the order of dismissal which has been set aside. We see no reason why the petitioner should not be held entitled to the service pension and other benefits due on the completion of 20 years of service in the CRPF. This can be achieved by directing that instead of the petitioner's dismissal taking effect on the date mentioned as per the impugned order, the petitioner shall be deemed to have retired on completion of 20 years of pensionable service without the extended period of service or entitling the petitioner to any arrears of salary. This is the exact course of action followed in Ex Sepoy Sube Singh case (supra).

25. The writ of mandamus is issued directing the respondents to treat the petitioner as in service till completion of 20 years of service and to grant to the petitioner the service pension and other benefits due upon completion of 20 years of service in the CRPF without any arrears of pay or seniority and the petitioner would be deemed to have completed pensionable service as on the date of his discharge which would be date of completion of 20 years of service. The amount due to the petitioner be remitted to the petitioner within three months from today.

26. The petition is allowed in the aforesaid terms leaving parties to bear their own costs.