

**(2009) 12 DEL CK 0252**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 2757 of 1996**

Brij Lal Thakur

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 04-12-2009

**Acts Referred:**

**Citation :** (2009) 12 DEL CK 0252

**Hon'ble Judges :** Suresh Kait, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Ranbir Singh Kundu, for the Appellant; A.K. Bhardwaj and Jagriti Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—At the outset we may note that neither the record of enquiry, nor the report of the Enquiry Officer, much less the impugned order inflicting punishment of dismissal from service inflicted upon the petitioner has been filed by the petitioner, who challenges the action of the respondents in terminating his service.

2. We are pained to note that the pleadings in the writ petition are disjunctive and one gets no clue whatsoever as to what is the case of the petitioner.

3. However, since the record of enquiry has been produced before us we propose to dispose of the writ petition with reference to the record of enquiry.

4. We crystallize the submissions urged by learned Counsel for the petitioner which needs to be dealt with.

5. It is firstly urged that there is no evidence against the petitioner to sustain the finding of guilt. It is secondly urged that the petitioner was not granted the opportunity to cross examine the witnesses of the prosecution. It is thirdly urged that the petitioner has been acquitted by the Court of Sessions with respect to the trial of the petitioner for having committed rape on Ms. Pathurang Reang.

6. Relevant facts are that on 7th April, 1995 a charge memo was served upon the petitioner alleging that while on duty under the command of Civil Police SI D.R.Majumdar and SI/DG D.C.Dogra the petitioner went to a hut along with his rifle under pretext of fetching drinking water. He misbehaved with the female members staying in the hut.

7. At the enquiry held, the female alleged to be the target of the beastly instinct of the petitioner; namely Pathurang Reang was cited as PW-13.

8. SI D.R.Majumdar was cited as PW-10 and SI D.C.Dogra was not cited as a witness, but we note from the record of enquiry that he has been examined.

9. At the enquiry Ms. Pathurang Reang deposed against the petitioner and we note that the petitioner has not cross examined her.

10. We may note that the record of enquiry shows that the petitioner has not cross examined any witness.

11. SI D.R.Majumdar deposed that a written complaint was received from the husband of the prosecutrix. SI D.C.Dogra deposed that after the complaint was received an identification parade was conducted at the village in which the prosecutrix pointed out and identified that it was the petitioner who had molested her.

12. We note that after the prosecution led its evidence i.e. at the culmination of the enquiry, the petitioner was generally examined with reference to the evidence against him and in response to question No. 2 he admitted that the evidence of all witnesses of the prosecution was recorded in his presence and copy thereof was immediately supplied to him. In response to the next question i.e. question No. 3 he admitted that he was granted an opportunity to cross examine all the witnesses of the prosecution and he voluntarily chose not to cross examine any.

13. Thus, the allegation of the petitioner that he was denied the opportunity to cross examine the witnesses is false.

14. The incriminating evidence against the petitioner is the testimony of Ms. Pathurang Reang as also the testimony of SI D.R.Majumdar and SI D.C.Dogra. We note that the testimony of Ms. Pathurang Reang clearly inculpatates the petitioner.

15. That the prosecutrix chose not to respond to the summons issued by the Court of Sessions at Tripura resulting in the petitioner being acquitted is neither here nor there for the reason it is settled law that in relation to a domestic enquiry the Court has to consider the evidence led at the domestic enquiry. We may note that in the decision reported as 2007 (10) SCC 385 Noida Entrepreneurs Association v. Noida and Ors. in para 11 and para 16 it was observed as under:

11. A bare perusal of the order which has been quoted in its totality goes to

show that he same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular v. Union of India and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh.*] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan v. T.Srinivas*, *Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry* and *Uttranchal RTC v. Mansaram Nainwal*.

8. ..The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as in flexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own fact and circumstances. These would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short the Evidence Act.]. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. A three-Judge Bench of this Court in *Depot Manager, A.P.SRTC v. Mohd. Yousuf Miya* (SCC 704-05, para 8) analyzed the legal position in great detail on the above lines.

x x x

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the

departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.

16. We may note that the record produced by the respondent shows that the order of penalty inflicted upon the petitioner was duly served upon him.

17. As a Member of the CRPF the petitioner had no business to misbehave with a civilian female and outrage her modesty.

18. With reference to the record of enquiry produced, we find no merit in the writ petition which is dismissed.

19. Since the petitioner is without a job, we refrain from awarding costs.