
(2006) 05 GAU CK 0047
In the Gauhati High Court

B.S.Yambem, Commandant CRPF

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0047

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : N.Ibotombi Singh, Kh.Babulindro Singh, H.N.K.Singh, Advocates
appearing for Parties

Judgement

1. Heard Mr. H. Nabakumar Singh, learned senior counsel assisted by Mr. Kh. Babulindro, learned counsel for the petitioner and Mr. N. Ibotombi, learned CGSC for the respondents. [2] In this writ petition, the petitioner is seeking the following reliefs:

?1. To issue Rule nisi calling upon the respondents to show cause;

2. To issue writ of certiorari for quashing the Departmental Enquiry now in progress before the Respondent No. 4 for the reasons submitted in the petition;

Or,

In the alternative, to direct the respondents to allow the petitioner to engage the services of a practicing Advocate in the ongoing Departmental Enquiry as the very nature of the case demands, in the interest of all concerned.

2(a) to quash and set aside the withdrawal order (AnnexureA/7) as unjustified, unreasonable and also bad in the eyes of law.

3. To pass any order or issue any direction as the Hon"ble Court deemed just, fit and proper in the facts & circumstances of the present case; Pending disposal of the writ petition, it is further prayed that an interim order be passed restraining the authority from proceeding further with the said DE, in the interest of justice.?

[3] At the very outset, Mr. H.NK Singh, learned senior counsel for the petitioner submits that the writ petitioner is confining only to the relief No. 2 (a) to quash and set aside the withdrawal order/letter dated 15.3.1999 (AnnexureA/7 to the writ petition) for withdrawing the punishment of ?warning? and fine imposed to the writ petitioner and for initiating disciplinary proceeding for the same incident.

[4] The succinct facts basing on which the petitioner filed the present writ petition are that; the petitioner joined service in the CRPF as a Deputy Superintendent of Police in the year, 1971. By dint of his efficiency, sincerity and dedication to duty he was given promotion to the next higher post and finally to the rank of Commandant. In the year, 1994 the petitioner was posted at 61 Bn CRPF located at Mantripukhri, Imphal. It is said that his sincerity and devotion to his duty, was appreciated by the senior officers of the CRPF and for an example, the Inspector General of Police, N/Sector, CRPF, West Block No. 8, 110066, R.K.Puram, New Delhi under his letter dated 22.9.1994 conveyed his appreciation to the writ petitioner and also recommended cases for cash award to the writ petitioner.

[5] The deployment of CRPF in the State of Manipur is mainly for counter insurgency operations. According to the petitioner, for conducting such operations effectively, the CRPF used to take the assistance of civilian informers including the surrenderees, bail out members of various underground outfits like KCP, PLA, NSCN etc and such persons were coded as CAT. As per verbal instructions of Shri NK Tewary, VSM, the then IGP (Ops), Manipur & Nagaland CRPF, the petitioner being the Commandant of 61 Bn CRPF had no alternative but to keep the CAT parties in his battalion and utilize their services in counter insurgency operations. It is also said that the service of those CAT parties were fruitfully utilized in many operations.

[6] The petitioner being the Commandant of 61 Bn CRPF was not personally issuing the arms and ammunitions from the Kote of HQ Company to the CRPF personnel of 61 Bn CRPF. Unfortunately sometime in between 3.6.1995 and 5.7.1995 one AK 47 Rifles along with some ammunitions were lost from the Kote of HQ Company of the 61 Bn CRPF. The said weapon i.e. AK 47 Rifles was last issued to one L/Naik Man Bahadur. In connection with the lost of the said Rifles i.e. AK 47 Rifles, having Butt No. 77, Body No. 313422, a Court of Inquiry was constituted by the CRPF authority and vide letter dated 28.5.1997 of the DIG (Ops) CRPF, Imphal, petitioner was required to give his written explanation regarding the 7 points raised in the said letter. In response to that the petitioner gave his written statement vide his letter dated 7.8.1998 thereby explaining the circumstances under which he kept and utilize the service of CAT parties.

[7] On the basis of the finding of the Court of Inquiry, the IGP, N/Sector vide his letter No. 1 X27/95NSADM 3 dated 24.6.1998, writ petitioner had been warned for laxity of his part in the loss of the said AK 47 Rifles and also the order to recover 75 per cent of the total cost of arms and ammunitions i.e. Rs.3750/ and 25 per cent i.e. 1250/ from the L/Nk No. 793020336, Man Bahadur respectively.

The said order of the IGP, N/S had been intimated by the DIGP, CRPF (AJMER) under his order No. 203/98 dated 3rd July, 1998. The petitioner also specifically stated that the said order of the IGP N/Sector which was intimated by the DIGP, CRPF, AJMER under his order No. 203/98 dated 2.7.98 had been fully implemented. After implementation of the said order the matter regarding the loss of the AK 47 Rifles having Butt No. 77, Body No. 313422 along with 2 magazines and 90 rounds of 7.62 had finally been closed. But without giving any show cause notice to the petitioner and also without hearing the petitioner the Inspector General of Police, N/Sector CRPF, New Delhi under his letter/order being No. 1.X.27/95NSADM.3 dated 15.3.1999 informed the petitioner that the matter regarding the loss of the said AK 47 Rifles having Butt No. 77 and Body No. 313422 along with 3 magazines and 90 live round ammunitions of the 61 Bn CRPF which had been finally closed had been opened suo motu by the Director General and decided that the 'warning' administered upon the petitioner by the competent authority does not commensurate to the gravity of the offence and as such the 'warning' administered earlier is withdrawn. Copy of the said letter/order of the IGP, N/S, CRPF, New Delhi dated 15.3.1999 is available at AnnexureA/7 to the present writ petition. Hence this writ petition for challenging the said letter/order of the IGP, N/S, New Delhi dated 15.3.1999 on the ground that the said impugned letter/order was issued in clear violation of the principles of natural justice and also the impugned letter/order having no reason for withdrawing the earlier punishment imposed to the writ petitioner for the same incident is arbitrary and perverse and also that the impugned letter/order was issued arbitrarily and whimsically without following the fair procedure.

[8] The respondents also filed their Affidavit in opposition. In their Affidavit in opposition nothing is mentioned as to how and why the impugned letter/order dated 15.3.1999 was issued for withdrawing the earlier punishment imposed to the petitioner for the same incident without giving opportunity of show cause to the petitioner and also in violation of the principles of natural justice. In the Affidavit in opposition, the respondents did not deny that the earlier punishment in respect of the loss of AK 47 Rifles along with some ammunitions imposed to the petitioner had been fully implemented before issuing the impugned letter/order dated 15.3.1999 for withdrawing the earlier punishment imposed to the petitioner. For easy reference, the impugned letter/order dated 15.3.1999 is quoted hereunder in entirety:

OFFICE OF THE IGP, NORTHERN SECTOR, CRPF, NEW DELHI 110066

No.I.X.27/95NSAdm.3 Dated Mar 99

To

Shri B.S.Yambem, Commandant (U/S) Central Reserve Police Force at GC, CRPF, Imphal. (through DIGP (OPS) CRPF, Imphal)

Subject: LOSS OF ONE AK47 RIFLE BUTT No. 77 BODY No. 313422 LONG WITH 3 MAGAZINES AND 90 LIVE ROUNDS AMMUNITION OF 61 BN CRPF, REGARDING

WITHDRAW OF WARNING.

Please refer to this office letter of even No. dated 24.6.98 and your acknowledgement dated 24.7.98.

2. After review of the case, it has been observed that the Director General that warning administered upon you by the competent authority does not commensurate with the gravity of the offence. Therefore, warning administered earlier by the undersigned is withdrawn.

(D.P.SINHA) IPS

Inspector General of Police, NS

CRPF, New Delhi.

Dated the 15th March, 1999.?

[9] The learned senior counsel appearing for the petitioner in order to substantiate case of the petitioner that the impugned letter/order dated 15.3.1999 is cryptic and is also not a speaking order and hence illegal, had referred to the decision of the Apex Court in:

(1) Mohinder Singh Gill & Anr Vs The Chief Election Commissioner, New Delhi & Ors: (1978) 1 SCC 405 (CB),

(2) Laishram Tomba Singh Vs State of Manipur & Ors: (1984) 2 GLR 225,

(3) Union of India & Anr Vs GTC Industries Ltd Bombay: (2003) 5 SCC 106, (4) State of AP Vs B.Satya Rao : (2004) 11 SCC 332.

[10] The ratio laid down by the Apex Court as well as this Court in Mohinder Singh Gill & Anr Vs The Chief Election Commissioner, New Delhi & Ors (supra), State of AP Vs B.Satya Rao (supra) and Laishram Tomba Singh Vs State of Manipur & Ors (supra) are that recording of reasons in the order having civil consequences is one of the requirement of principles of natural justice and its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the impugned letter/order dated 15.3.1999 admittedly no reason is mentioned for withdrawing the earlier punishment imposed to the writ petitioner for the same incident i.e. loss of arms and ammunitions which has already been implemented except the finding that the warning administered upon the writ petitioner by the competent authority does not commensurate with the gravity of the offence. This court is of the considered view that the submission of learned senior counsel for the petitioner has the force of law.

[11] In order to fortify the case of the writ petitioner that the impugned letter/order dated 15.3.1999 was issued in clear violation of the principles of natural justice and fair procedure has pressed into service the decisions of the Apex court in the following cases:

(1) Canara Bank & Ors Vs Debashis Das & Ors: (2003) 4 SCC 557,

(2) Ram Singh Vs State of Haryana & Ors: (1998) 8 SCC 738.

[12] The adherence to principles of natural justice as recognized by all civilized States is of supreme importance that even an administrative order which involves civil consequences must be consistent with the Rule of natural justice. The expression 'civil consequence' encompass infractions not merely property or personal right but of civil liberties, a material deprivation, and non pecuniary damages. In its wide umbrella comes everything that affect a citizen in his civil life. Further, principles of natural justice are those Rules which had been laid down by the Court as being the minimum protection of right of the individual against arbitrary procedures that may be adopted by a judicial, quasi judicial and administrative authority while making the order effective those rights. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence. Para 13, 14, 15, 16, 17 and 19 of the judgment in Canara Bank & Ors Vs Debashis Das & Ors (supra) are quoted hereunder:

13. Natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expression 'natural justice' and 'legal justice' do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from necessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasijudicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is that is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of

the case before any adverse order is passed against him. This is one of the most important principles of natural justice.

It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the ? Magna Carta?. The classic exposition of Sir Edward Coke of natural justice requires to ?vocate, interrogate and adjudicate?. In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated:

?[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

Since then the principle has been chiseled, honed and refined, enriching its content, Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasijudicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term ?principles of natural justice? is not easy to determine. Lord Sumner (then Hamilton, L.J.) in R. v Local Govt. Board (KB at p.199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. V. Spackman Lord Wright observed that it was not desirable to attempt ?to force it into any Procrustean bed? and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give ?a full and fair opportunity? to every party of being heard.?

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What a particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away.

Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression ?civil consequences? encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and nonpecuniary damages. In its umbrella comes everything that affects a citizen in his civil life.?

[13] In the case of Ram Singh Vs State of Haryana & Ors. (supra) the earlier

order of penalty of stoppage of two annual increments with cumulative effect imposed to Shri Ram Singh by the General Manager had been withdrawn later on suo motu and Shri Ram Singh was dismissed from service on the basis of previous conduct and previous record. The Apex Court set aside the subsequent orders for withdrawal of the earlier punishment by suo motu and dismissal of Shri Ram Singh from service without giving any opportunity of show cause to Shri Ram Singh. In the instant case also by the impugned letter/order dated 15.3.1999 had withdrawn the earlier order of punishment imposed to the petitioner by suo motu without giving any opportunity of show cause to the writ petitioner and also the impugned letter/order is a non speaking order. Only on this score also the impugned order is liable to be quashed and set aside.

[14] Having regard to the law laid down by the Apex Court and also for the reasons discussed above, this court is of the considered view that interference to the impugned letter/order dated 15.3.1999 is called for. Accordingly, the impugned letter/order dated 15.3.1999 is hereby set aside and writ petition is allowed.

Parties are to bear their own costs.