

**(2005) 05 AHC CK 0087**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 28551 of 1991

Chandeswar Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 19-05-2005

**Acts Referred:**

Constitution of India, 1950 — Article 141, 142, 226, 311, 311(2)

Railway Protection Force Act, 1957 — Section 17

Railway Protection Force Rules, 1987 — Rule 151, 153

**Citation :** (2006) 5 AWC 4668

**Hon'ble Judges :** Anjani Kumar, J

**Bench :** Single Bench

**Advocate :** S.K. Om, R.K. Tiwari, R.N. Tripathi, Nar Singh Dixit, Hasim Khan, C.B. Gupta and R.K. Saini, for the Appellant; Lal Ji Sinha and M.S. Negi and S.C., for the Respondent

**Final Decision :** Dismissed

## Judgement

Anjani Kumar, J.—This is a writ petition by the petitioner who was working as Head Constable in the Railway Protection Special Force at the relevant time and was posted at the RPSF Out Post, Butari Railway Station in Punjab on 29th September 1989. The petitioner, who was posted at the aforesaid Railway Out Post, as alleged by the petitioner was taken over by the terrorists armed with revolvers and AK-47 rifles. The terrorists took over the entire arms and ammunitions leaving behind some ammunitions. As a consequence of the above the petitioner was charge-sheeted by the respondents. The petitioner was suspended by order dated 3rd October 1989 and was attached to Headquarters No. 2 Bn. Railway Protection Special Force, Rajahi Camp, Gorakhpur (U.P.).

2. The petitioner was issued a charge sheet by order dated 19th October 1989 which has been annexed as Annexure-1 to the writ petition. The charges leveled against the petitioner run as under:-

"Charges.

1. Gross Negligence in that while he was on duty as the Party Incharge of the Rly. Station Guarding of RPSF party at Butari Rly. Station failed on 29.9.1989 at about 20.30 hrs to discharge his duty as the Party Incharge/Guard Commander which resulted snatching/looting of Arms/Ammunition of the detachment. Moreover, due to his lack of control and command Constable Mahatam Rai could not be available at the Butari Rly. Station at the time of occurrence and on duty sentry CT Las Chand Yadav also remain Inactive.

2. Cowardiceness. In that while on duty on 29.9.89 at about 20.30 hrs at Butari Rly. Station as party incharge/Guard Commander, instead resisting, he himself surrendered to the threatening of terrorists and also made other members of his detachment including the sentry on duty to similar action and thereby got the Arms/Ammunition looted/snatched by the terrorists."

3. The petitioner submitted his written statement to the charges on 22nd December 1989. A copy of the said statement is Annexure-2 to the writ petition. The petitioner's defence was that the outpost was raided by terrorists and the petitioner was overpowered by terrorists with AK-47 rifles pointing at his head and threatening of the life if any resistance was offered. In that circumstances the petitioner had no remedy except to surrender to the wishes of the terrorists. It is also defence of the petitioner that the petitioner has been denied and deprived of legal rights as provided under Article 311 of the Constitution of India and also under the provisions of Public Servant Enquiry Act, under the RPF Act, 1957 and RPF Rules 1987. The petitioner's further stand is that proceedings have been initiated against the petitioner under Rule 153 of RPF Rules, 1987 which (sic) down procedure for imposing major punishment. According to the petitioner this Rule 153 has been annulled by the Lok Sabha vide Lok Sabha Bulletin Part II, Motion No. 2164 dated 16th March 1988 and as such the charge sheet, enquiry and the penalty imposed are absolutely illegal and invalid. According to petitioner no trial as contemplated u/s 17 of RPF Act was held. Consequence upon the aforesaid charge sheet and the submissions of the petitioner, the petitioner along with others was directed to appear before the Enquiring Authority who conducted the enquiry which according to the petitioner was against the principles of natural justice. The Enquiring Officer submitted its report to the Disciplinary Authority. The Disciplinary Authority passed order dated 26th March 1990 dismissing the petitioner from service. Against the order dated 26th Marc 1990 dismissing the petitioner from service the petitioner submitted an appeal. The appellate authority by its order dated 31st January 1991 rejected the appeal filed by the petitioner. Against the appellate order dated 31st January 1991 the petitioner filed a revision before respondent No. 2 which has been dismissed by the revisional authority, respondent No. 2, by its order dated 10th June 1991. It is these orders, namely, the order passed by the revisional authority dated 10th June 1991, the order of the appellate authority dated 31st January 1991 and the order dated 26th Marc 1990 dismissing the petitioner from service have been challenged by means of this writ petition on the ground:

1. Because Rule 153 of RPF Rules prescribing punishment stands annulled by Lok Sabha vide its Bulletin Part II, Motion No. 2164 dated 16.3.1989 so far it relates to Punjab, as such the charge sheet, the enquiry and order of penalty imposed stand vitiated.

2. Because proceedings beginning from the charge sheet and enquiry is contrary to the mandatory provisions of Rule 151 of RPF Rules.

3. Because all the 8 accused persons have been charged and prosecuted and 5 have been retrained in service while the petitioner along with 2 others has been dismissed from service and the petitioner has been denied the benefit of equality before law and equal protection guaranteed by the constitution, as such the order passed against the petitioner deserves to be quashed.

4. Because the show cause notice issued to the petitioner though refers to the report of the enquiry officer, but copy of the enquiry report has not been supplied to the petitioner. Thus, the provisions of Article 311(2) of the Constitution of India have been violated.

4. The respondents have filed counter affidavit denying the allegations of the petitioner that the orders impugned in the present writ petition suffer from any error much less an error of law as alleged by the petitioner. Before this Court learned counsel for the petitioner has argued that a joint enquiry was conducted which was contrary to the rules and also because of the same one delinquent was used as witness of the charges against another. This statement has been denied in the counter affidavit wherein it has been stated in reply to paragraph 15 of the writ petition that the charge sheet was issued against eight persons including the petitioner and enquiry was held separately against all the eight persons. It is denied that there was any joint enquiry or common proceedings. Thus the same point was argued before the appellate authority and the revisional authority. Both have recorded findings against the petitioner to the effect that there was no joint enquiry as suggested by the petitioner. This Court under Article 226 of the Constitution of India will not interfere the findings arrived at by the Disciplinary authority and affirmed by the appellate authority and the revisional authority.

5. In reply to the aforesaid submissions respondents counsel has demonstrated that in paragraph 20 of the counter affidavit it is categorically stated that Sadhu Saran Singh was cross-examined by the petitioner. Thus this argument deserves to be dismissed. On the question of violation of principle of natural justice the appellate authority has recorded a finding which runs as under:-

"His further contention that the rule of natural justice has been violated by holding a joint-enquiry is not tenable, as in the instant incident all the persons responsible have been charge-sheeted separately for the lapses on their part and everyone of them has been given opportunity to defend his case and also cross-examine the witnesses as per the provisions of the extant rules without violating any rule of the natural justice."

6. Before the revisional authority the similar point was raised but was rejected.

7. In this view of the matter in my opinion the arguments that principle of natural justice are violated or that the petitioner has been denied opportunity to defend himself are not tenable and conserve to be rejected and are hereby rejected.

8. It was then contended by the learned counsel for the petitioner that from the material on the record it is apparent that a report of enquiry officer has not been supplied to the petitioner. This aspect of the matter has been dealt with by the disciplinary authority and the appellate authority and they have found that even assuming that the report of the enquiry officer was not supplied to the petitioner, but the petitioner has failed to demonstrate that any prejudice has been caused to him because of non-supply of enquiry report.

9. Lastly it is submitted that the petitioner and two others alone have been subjected to order of dismissal while rest were given other punishment and not the dismissal from service. Therefore, this Court in exercise of jurisdiction under Article 226 of the Constitution of India should interfere with the quantum of punishment of dismissal and should modify the order of dismissal as that of the persons learned counsel for the petitioner relied upon the decision of this Court reported in *State of U.P. and Another Vs. C.S. Sharma*, and the single Judge decision of this Court reported in *Ram Bachan Yadav Vs. Commandant, P.A.C. 20th Battalion and Others*, . and the decision of Apex Court reported in *U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others*,

10. A perusal of the judgment (sic) upon by learned counsel for the petitioner in the case of *U.P. State Road Transport Corporation (supra)* clearly demonstrates that:

"It is not, that the High Court can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings. Not only Supreme Court but also the High Court can interfere with the Punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court."

11. On the question of non supply of the enquiry officer's report to the petitioner along with a show cause notice, learned counsel appearing on behalf of the petitioner submitted that non supply of the report of the enquiry officer amounts to denial of the guarantee guaranteed under the provisions of Article 311(2) of the Constitution of India, which vitiate the entire proceedings and the order of punishment deserves to be quashed by this court in exercise of jurisdiction under Article 226 of the Constitution of India. Learned counsel for the petitioner further relies upon a Constitutional Bench decision of the apex Court reported in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, . In paragraph 30 of the aforesaid judgment of the Constitution Bench in the case of *Managing Director, ECIL, Hyderabad (supra)*, the apex Court has held as under :-

"30. Article 311(2) makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to received the Inquiry Officer's report notwithstanding the nature of the punishment.

Since the denial of the (sic) of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject."

12. That the Constitutional Bench in the aforesaid judgment has also held that the effect of non supply what would be the effect of non supply of the enquiry officer's report to the petitioner and what is the relief that should be granted by the Courts in such circumstance.

13. Here in the present case since it is admitted case that the report of the enquiry officer has not been supplied to the petitioner by the punishing authority, the dictum of the case fully apply to the present case. In the aforesaid judgment, the Constitutional Bench in paragraphs 31 and 32 has held as under :-

"31. Hence, in all cases where the Inquiry Officer report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause 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 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/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 shortcuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, land not any internal appellate or revisional authority], there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal

finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

32. In this connection we may refer to a decision of this Court in *The State Bank of India Vs. Shri N. Sundara Money*, where the Court has shown the proper course to be adopted where the termination of service of an employee is faulted on a technical ground. This was a case where an employee was appointed as Cashier off and on by the State Bank of India between July 31, 1973 and August 29, 1973. Together with the earlier employment, this nine days' employment during the said period had ripen into 240 days of broken bits of service. The employment, however, was terminated without notice or payment of retrenchment compensation. The Court moulded the relief taking into consideration the long period which had passed and directed that the employee would be put back to the same position where he left off, but his new salary will be what he would draw where he to be appointed in the same post "today" *denovo*. He was further directed to be ranked below all permanent employees in that cadre and to be deemed to be a temporary hand till that time. He was not allowed to claim any advantages in the matter is seniority. As for the emoluments, he was left to pursue other remedies, if any."

14. However, in the present case since the order of punishment has been passed by the punishing authority on 26th March, 1990, the dictum of Mohd. Ramjan Khan's case as held by the Constitutional Bench, referred to above, will not help the petitioner, as the said decision lays down the law prospectively. The decision of Mohd. Ramjan Khan's case 13 dated 20th November, 1990, whereas in the present case, the order of punishment is dated 26th march 1990, therefore in view of what has been held by the Constitutional Bench of the apex Court in the aforesaid case in paragraphs 33, 34 and 45, which are reproduced below :-

"33. Questions [vi] and [vii] may be considered together. As has been discussed earlier, although the furnishing of the Inquiry Officer's report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges, before the 42nd Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty, was issued to him. The right to prove his innocence to the disciplinary authority was to be exercised by the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law, that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the 42nd Amendment of the Constitution which abolished the second stage of the inquiry, viz., the inquiry into the nature of punishment. As pointed out earlier, it was mooted but not decided in E. Bashyan's case [supra] by the two learned Judges of this Court who referred the question to the larger Bench. It has also been pointed out that in K.C. Asthana's case [supra], no such question was either raised or decided. It was for the first time in Mohd. Ramzan Khan's case [supra] that the question squarely fell for decision before this Court. Hence till 20st November, 1990, i.e. the day on which Mohd. Ramzan Khan's case [supra] was decided, the position of law on the subject was not settled by this Court. It is for the first time in Mohd. Ramzan Khan's case [supra] that this Court laid down the law. That decision made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20st November, 1990. The law laid down was no: applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. The said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the Inquiry Officers report to the employee. The only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.

34. However, it cannot be gainsaid that while Mohd. Ramzan Khan's case [supra] made the law laid down there prospective in operation, while disposing of the case which were before the Court, the Court through inadvertence gave relief to the employees concerned in those cases by allowing their appeals and setting aside the disciplinary proceedings. The relief granted was obviously pericardium. The said relief, has therefore, to be confined only to the employees concerned in those appeals. The law which is expressly made prospective in operation there, cannot be applied retrospectively on account of the said error. It is now well-settled that the courts can make the law laid down by them prospective in operation to prevent-un-settlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. In this connection, we may refer to some well-known decisions on the point.

35. In I.C. Golak Nath and Others Vs. State of Punjab and Another, dealing with

the question as to whether the decision in that case should be given prosecutive or retrospective operation, the Court took into consideration the fact that between 1950 and 1967, as many as twenty amendments were made in the Constitution and the legislatures of various States had trade laws bringing about an agrarian revolution in the country. These amendments and legislations were made on the basis of the correctness of the decisions in *Sri Sankari Prasad Singh Deo Vs. Union of India (UOI)* and *State of Bihar*, and *Sajjan Singh Vs. State of Rajasthan*, viz., that the Parliament had the power to amend the fundamental rights and that Acts in regard to estates were outside the judicial scrutiny on the ground they infringed the said rights. The Court then stated that as the highest Court in the land, it must evolve some reasonable principle to meet the said extra ordinary situation. The Court pointed out that there was an essential distinction between the Constitution and the statutes. The Courts are expected to and they should interpret the terms of the Constitution without doing violence to the language to suit the expanding needs of the society. In this process and in a real sense, they make Laws. Though it is not admitted, such role of this Court is effective and cannot be ignored. Even in the realm of ordinary statutes, the subtle working of the process is apparent though the approach is more conservative and inhibitive. To meet the then extraordinary situation that may be caused by the said decision, the Court felt that it must evolve some doctrine which had roots in reason and precedents so that the past may be preserved and the future protected. The Court then referred to two doctrines familiar to American Jurisprudence, viz., Blackstonian view that the Court was not to pronounce a new rule but to maintain and expound the old one and, therefore, the Judge did not make law but only discovered or found the true law. That view would necessarily make the law laid down by the Courts retrospective in operation. The Court, therefore preferred the opinion of Justice Cardozo which tried to harmonise the doctrine of prospective overruling with that of stare decisis expressed in *Great Northern Railway v. Sunburst Oil & Ref. Co.*, [(1932) 287 U.S. 358, 77 Led. 360]. The Court also referred to the decisions subsequent to *Sunburst* and to the "Practice Statement (Judicial Precedent)" issued by the House of Lords recorded in (1966) 1 W.L.R. 1234 and pointed out that the modern doctrine as opposed to the Blackstonian theory was suitable for a fast moving society. It was a pragmatic section reconciling the two doctrines. It found law but restricted its operation to the future and thus enabled the Court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It was left to the discretion of the court to prescribe the limits of the retroactivity. Thereby, it enabled the Court to mould the relief's to meet the ends of justice. The Court then pointed out that there was no statutory prohibition against the Court refusing to give retroactivity to the law declared by it. The doctrine of stare decisis precluded any scope for retroactivity in respect of a subject matter that had been finally decided between the parties. The Court pointed out that the Courts in this land also, by interpretation, gave retroactivity of statutory provisions though couched in general terms on the ground that they affect vested rights. The Court then

referred to Articles 141 and 142 to point out that they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation therein is reason, restraint and injustice. These Articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such direction or pass such order as is necessary to do complete justice. The Court then held that in the circumstances to deny the power to the Supreme Court to declare the operation of law prospectively on the basis of some outmoded theory that the

Court only finds law but does not make it is to make ineffective a powerful instrument of justice placed in the hands of the highest judiciary of this land. The Court then observing that it was for the first time called upon to apply the doctrine of prospective overruling evolved in a different country under different circumstances, stated that it would like to move warily in the beginning. Proceeding further, the Court laid down the following propositions :

"[1] The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; [2] it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India: [3] the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before ".

15. To sum up this unless the petitioner demonstrates that because of the non supply of the report of the enquiry officer, he is in any way prejudiced in his defense, mere non supply of the report of the enquiry officer will not vitiate the order of punishment, which has been passed by the punishing authority.

16. In view of what has been stated above, since all the grounds raised by the petitioner are not sustainable, this writ petition has no force and is accordingly dismissed.