

(1997) 09 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 53 of 1997

G.T. Lala

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 311(1)

Citation : (1998) 3 GLT 378

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : A. Nilamani Singh and Bimol Singh, for the Appellant;
Nautuneshwari Devi, for the Respondent

Judgement

N. Surjamani Singh, J.—The order dated 2.2.88 as in Annexure A/3 to the writ petition placing the Petitioner under suspension, the order dated 26.9.88 dismissing the Petitioner from service as Constable for his absence of 220 days without leave as in Annexure A/5 and also the appellate order dated 3.12.96 rejecting the appeal of the Petitioner as in Annexure A/8 are the subject matters under challenge in this writ petition.

2. According to the writ Petitioner, he is a citizen of India, born and brought up and permanently residing in the State of Manipur, and rather, he is an unsophisticated tribal having his home in village and upbringing in the interior hill area of Manipur.

3. He was appointed as Constable in the Manipur Police Department vide order No. 1/7/82-R dated 29.9.82 passed by the Dy. Inspector General (Range) Manipur, the Respondent No. 2 herein. While he was serving in the Ukhrul DHQ in the year 1987, he was illegally and improperly transferred to Thoubal District purportedly under an order bearing No. E/36/17/87-PHQ (UKL) dated 18.5.87 and, thereafter, he was released on 24.6.87. On 25.6.87, he left Ukhrul DHQ with an intention to join his duty at Thoubal DHQ within a permissible period of 10 days of joining at the new place of his posting. During the said joining time, he

had visited his home village to see his dear and near ones. But as ill-luck would have it, he fell ill seriously from pulmonary T.B. and accordingly he was medically examined and given treatment at the Bishnupur District Hospital with effect from 2.7.87 and he was advised by the concerned Medical Officer to take rest for 90 days for his recovery.

4. He also got his medical treatment in the community Health Centre, Parbung, Churachandpur for the period from 3.10.87 till 31.1.88 on which he felt a bit better. Thereafter, he proceeded to Thoubal and on 1.2.88, he reported for duty at Thoubal DHQ with a written application to the S.P. Thoubal stating the reason for the delay in reporting for duty. Relevant medical certificates issued by the Medical Officer concerned, were also submitted alongwith the said written application to the S.P. Thoubal. But without affording him any opportunity of showing cause and/or defending himself, the SP Thoubal issued an order dated 2.2.88 placing the Petitioner under suspension purporting it to be an order under Rule 66-II of the Police Manual.

5. A Departmental Inquiry as against the writ Petitioner was said to have been initiated but no copy of any definite charge or charges or any statement of allegations on which such charges were based or of any other circumstances to be taken into consideration in passing order imposing punishment, were ever furnished or communicated otherwise to the writ Petitioner. No witnesses were examined in presence of the writ Petitioner and no opportunity has been afforded to the writ Petitioner for representing him by any Officer of his choice for his defence and, he was also not asked as to whether the writ Petitioner wanted also to be represented by a Government servant for his defence.

6. Without any justification, the SP, Thoubal/the Respondent No. 1 herein, served a so-called final show cause notice to the writ Petitioner on 18.8.88 deciding to impose the major penalty of dismissal from service and giving an opportunity of making a representation on the penalty proposed. As the writ Petitioner again fell ill for some months thereafter, he was unable to submit any such representation. Moreover, copy of the inquiry report and also a copy each of other relevant documents relating to the enquiry were never furnished to the writ Petitioner alongwith the said final show cause notice" and thus, he was not given any reasonable opportunity to submit an effective and purposeful representation.

7. By an order dated 26.9.88 as in annexure A/5 to the writ petition issued by the Respondent No. 1, the writ Petitioner was dismissed from service. Being dissatisfied with the order of dismissal, the writ Petitioner preferred an appeal to the Dy. Inspector General of Police (Range), by presenting a memorandum of appeal dated 16.12.88 through the Respondent No. 1. When no decision of the appellate authority, who is the Respondent No. 2 herein, on the said appeal was communicated to the writ Petitioner for more than 7 years, the writ Petitioner approached this Court with a writ petition being Civil Rule No. 590 of 1996 for quashing the dismissal order dated 26.9.88

8. This Court disposed of the said writ petition on 6.9.96 directing the Respondent No. 2 to dispose of the said appeal of the writ Petitioner by a speaking order within a period of 3 months from the receipt of the said order.

9. It is also the case of the writ Petitioner that, after only a superficial consideration of the appeal, the Respondent No. 2 issued the impugned order dated 3.12.96 rejecting the appeal in a perfunctory manner and without any reasons.

10. Mr. A. Nilmani Singh, learned senior Advocate for the writ Petitioner contended, that under Rule 75 (c) of the Assam Police Manual Part III as applied to the personnel of Manipur Police Department, hereinafter referred to as Police Manual for short, only the Inspector General of Police can transfer a Police Constable from one District to Anr. and the Superintendent of police/the Respondent No. 1 herein, has no jurisdiction and power to issue such transfer order dated 18.5.87. According to Mr. Nilmani, as per entry in column 4 of Schedule read with Rule 66-II and IV of the Police Manual, suspension is a major punishment and for the purpose or imposing such punishment, necessary pre-condition and procedure has been prescribed under Rule 66-III but the Respondent did not comply with the said provisions of law laid down under Rule 66-III of the Police Manual while passing the penalty of suspension as in Annexure A/3 to the writ petition.

11. The learned senior Advocate further submitted, that without following the prescribed procedure of law, rather in violation of the principles of natural justice, the impugned dismissal order dated 26.9.88 as in Annexure A/5 to the writ petition was passed by the Respondent No. 1 inasmuch as the entire Departmental proceeding, rather, the inquiry as against the writ Petitioner is vitiated as the delinquent writ Petitioner was not asked by the authority as to whether the writ Petitioner wanted also to be represented by a government servant of his choice for his defence. Supporting the case of the writ Petitioner, Mr. Nilmani Singh had relied upon a decision of the Apex Court rendered in Bhagat Ram Vs. State of Himachal Pradesh and Others, wherein, the Apex Court held thus:

It is well established that, in a disciplinary enquiry, the delinquent has a right to cross-examine witnesses examined on behalf of the disciplinary authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. The provisions contained in the Central Services Rules do make adequate provisions for the same and there should be substantial compliance of them. The principle deducible from the provision contained in Sub-rule (5) of Rule 15 upon its true construction is that where the department is represented by a presenting officer, it would be the duty of the delinquent officer, more Particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be award of technical rules prescribed for holding inquiry, that he is entitled to be defended

by Anr. government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the joint inquiry of the delinquent and his Superior officer shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a superior officer, Co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the inquiry. In fact, justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of Anr. Government servant before the commencement of inquiry. At any rate the inquiry officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Govt. servant belonging to the lower echelons of service, he would further be informed that he is antitled under the relevant rules to seek assistance of Anr. Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the inquiry without obtaining assistance, one can say there is substantial compliance with the rules.

Where in a joint enquiry a class IV Government servant, a forest Guard, recruited either in late fifties or early sixties when the expectation of higher educational qualification for service as a forest Guard could not have been expected, had to participate in disciplinary proceeding and was pitted against a presenting officer representing the disciplinary authority and a co-delinquent who was his superior being defended by Anr. officer and three important witnesses out of five whose evidence was relied upon against the delinquent were examined before he became aware that he had a right to engage someone to defend him and availed of that opportunity when the Inquiry officer had not recalled the 3 witnesses who were examined when the delinquent was personally present the enquiry must be deemed to have been vitiated.

12. Shri Nilmani went on to contend that, even assuming but not admitting ,the charges levelled against the writ Petitioner are proved, the penalty of dismissal from service so far imposed upon the writ Petitioner is highly disproportionate penalty. The SP, Thoubal/the Respondent No. 1 herein, was not the appointing authority of the writ Petitioner and was/is subordinate to the DIG (Range) who was/is the appointing authority of the writ Petitioner and as such the impugned orders contravene Article 311(1) of the Constitution of India, Shri Nilmani contended.

13. At the hearing, Smti Naute-neshwari, the learned Counsel for the

Respondents argued, that reasonable opportunity of being heard was afforded by the competent authority before the impugned order of dismissal as in Annexure A/5 was issued as against the writ Petitioner. The writ Petitioner has been summoned and asked to appear before the inquiry officer through wireless messages for the purpose of the said inquiry, but the writ Petitioner has failed to appear before the Inquiry Officer, Smti Nautuneshwari Devi contended. As per enquiry report, the writ Petitioner has been summoned several times to appear before the Inquiry officer by sending signal to R/O Thoubal and O/C Churachandpur Police Station, but he failed to appear before the Inquiry officer on every dates without giving any cause, O/C Churachandpur Police Station, by his signal under No. 2018/CCPS/88 dated 18.5.88 stated, that the writ Petitioner has been informed about the inquiry and obtained his signature. However, the delinquent failed to appear before the Inquiry Officer and accordingly, inquiry has been proceeded ex-parte and, as such, the principles of natural justice and violation of it is not attracted in the instant case, Smti. Nautuneshwari Devi further argued.

14. The Respondents did not file affi-davit-in opposition to the writ petition.

15. For just determination of the real points in controversy between the parties, this Court by an order dated 5.8.97 directed the learned Govt. Advocate to produce the relevant document/file relating to the departmental proceeding being No. 6/88 dated 2.2.88 as against the writ Petitioner, The said file has been placed and produced before this Court.

16. I have perused the said file.

17. Now, this Court is to examine as to whether the competent authority had committed procedural error or violated the principles of natural justice while passing the impugned order of dismissal or not, and whether the impugned order as in Annexures A/5 and A/8 to the writ petition suffer from any infirmity or illegality.

18. On perusal of the said file relating to DE No. 6/88 dated 2.2.88 bearing No. RR No. 71/SDPO-SGN/88/3 dated 6.2.88, there is no material for establishing the fact that the concerned Inquiry officer enquired from the delinquent writ Petitioner whether he would like to engage anyone from the department or any government servant to defend him and also, there is no whisper from the end of the said Inquiry Officer about the entitlement of the writ Petitioner to seek assistance of Anr. government servant for his defence. The related signal being No. 2018/CCPS/88 dated 18.5.88 available in the record refers to a signal bearing No. E/17/12/86-SP-TAB dated 16.5.88, and it stated that the writ Petitioner has been informed by obtaining his signature. The figure "88" appearing on the relevant date "16.5.88" is inter-polated. Moreover, there is no document on record pertaining to the said signal bearing No. E/17/12/86-SP-TAB dated 16.5.88 but there are other two documents pertaining to signal bearing No. E/17/12/86/SP-TAB dated 20.5.88 and Anr. signal being No. 3/6/SDPO-

SGN/88 dated 15.5.88. The first signal of 20.5.88 speaks about the direction to the writ Petitioner for his appearance before the Inquiry Officer on or before 26.5.88 and the same refers to Anr. signal No. 3/6/SDPO-SGN/88 dated 15.5.88 i.e. the second signal dated 15.5.88 sent by the said SDPO, the Inquiry Officer, for appearance of the writ Petitioner on 25.5.88.

19. On further perusal of these messages singnals, it cannot be concluded that proper notices had been served upon the writ Petitioner by the inquiry officer for appearance of the writ Petitioner on a firm date in connection with the said inquiry. The record further reveals that the Inquiry officer recorded the statements of one witness, namely Shri Bijoy Kumar Chetri on 14.6.88 in absence of the writ Petitioner. There is also no material on record to establish the fact that the statement of the said witness, Shri Bijoy Kumar Chetri shall be recorded by the Inquiry officer on 14.6.88. Moreover, Anr. message signal which is available at the internal page 15 of the file speaks that the writ Petitioner has not appeared before the Inquiry officer and futher directed the writ Petitioner to appear on 30.6.88. Now , it is established that the statement of Shri Bijoy Kumar Chetri was recorded on 14.6.88 before the said date of appearance of the writ Petitioner which falls on 30.6.88 for the purpose of the said inquiry. In my considered view, there are certain irregularities in the said inquiry coducted by the Inquiry officer in the instant case.

20. It is well known that departmental inquiries which were considered administrative at one time are now being considered as quasi judicial in character.It is also well settled that, even an administrative order involves civil consequences, it should be made consistently with the rule of natural justice. This established principle of law finds its place in number of cases and decisions rendered by the Apex Court, particularly in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and in A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

21. The violation of natural justice amounts to the decision void, and the violation of such principles if exists/existed in the order passed in quasi judicial proceeding by competent authority, the Courts shall always invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India for quashing the said decision.

22. In the book, "Administrative Law", Prof H.W.R. Wade has said:

Where an administrative act or decision is vitiated by a breach of natural justice, the Court may award any appropriate remedies. The remedy will frequently be certiorari to quash, on the footing that the vitiated decision is void and a nullity.

Traditionally natural justice has been confined to the two rules now to be discussed; that a man may not be judge in his own cause; and that man's defence must always be fairly heard. It has not, as yet, included the requirement that reasons should be given for decisions. On the other hand there is an isolated judicial statement that natural justice requires decisions to be passed on some

evidence of probative value. The Courts are now so conscious of natural justice that they may well extend its scope in both these directions...

Further in the same book, Prof. Wade has also stated:

How far can these obvious principles of justice be transplanted from its native judicial soil into the territory of administration? Can the Courts impose an administrative technique of their own devising by laying down standards, and are there any standards of universal validity? The answer is that the Courts have succeeded in enforcing the principle very widely, broadly speaking in all cases where legal rights or status are affected by the exercise of administrative power, saving only cases where the difficulty is insuperable; and that, accordingly, natural justice has become a doctrine with a high degree of universality. It does not follow that it need be modelled strictly on Court procedure; hearing need not always be oral hearings, nor need sources of evidence always be disclosed. But in general the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and right to argue.

23. It is also well settled that, the delinquent is entitled to the copy of the inquiry report before the disciplinary authority takes a decision regarding guilt or innocence on him and the refusal to furnish such a copy amounts to denial of reasonable opportunity. These principles of law finds its place in a decision of the Apex Court rendered in *Managing Director, EOIL, Hyderabad etc. Appellants v. B. Karunakaran etc.* Respondent reported in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, In the instant case, it is crystal clear that no copy of the inquiry report was furnished to the writ Petitioner before the disciplinary authority takes a decision regarding the imposition of a major penalty of dismissal from service upon the writ Petitioner. On these two existing grounds, namely, (i) failure on the part of the Inquiry Officer to enquire from the writ Petitioner whether he would like to engage anyone/government servant of his own choice for his defence and (ii) non -supply of the inquiry report to the writ Petitioner before the disciplinary authority takes a decision regarding the guilt of the writ Petitioner, the impugned order of dismissal as in Annexure A/5 to the writ petition deserves to be quashed. Moreover, the impugned order of dismissal as in Annexure A/5 was passed by the Respondent No. 1 in complete violation of the principles of natural justice and the same suffers from procedural error established by law. Apart from this, the Respondent No. 1 namely the S.P. Thoubal, was not the appointing authority of the writ Petitioner and was it subordinate to the Respondent No. 2/DIG (R) who was/is the appointing authority of the writ Petitioner and as such ,the impugned dismissal order passed by Respondent No. 1 is in complete violation of the provisions of law laid down under Article 311(1) of the Constitution of India. In my considered view, these established principles of law and the facts in existence were not properly considered by the appellate authority while passing the impugned order dated 3.12.96 as in Annexure A/8 to the writ petition and, as such, the decision taken by the Respondents under the impugned orders as in Annexures A/5 and A/8 to

the writ petition are vitiated by a breach of natural justice and accordingly, the impugned orders dated 26.9.88 and 3.12.96 in Annexures A/5 and A/8 are accordingly declared void and nullity and thus quashed.

24. Applying the above principles of law laid down by the Apex Court and also considering the nature of the case, liberty is given to the Respondents to hold fresh inquiry from the stage of furnishing of the charge-sheets and appointment of the Inquiry Officer in accordance with the related rules as on today, if so advised, as it is the wisdom of the Respondents in the matter. Further, considering the existing facts and circumstances of the case, I direct the Respondents to take back the writ Petitioner in service forthwith. It is also made clear that, the Respondents shall decide the matter relating to the entitlement of arrear, salary of the writ Petitioner in accordance with the related Rules, including the Fundamental Rules as the jurisdiction vests upon the Respondents under the aforesaid related Rules.

25. In the result, this writ petition is allowed but, no cost.