

(1999) 01 GAU CK 0035
In the Gauhati High Court
Case No : Civil Rule No. 75 of 1996

Jogeswar Rahang

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 14

Citation : (1999) 1 GLT 76

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : M. Gautom, for the Appellant; K.K. Mahanta, C.G.S.C., for the Respondent

Judgement

J.N. Sarma, J.—This writ application has been filed challenging the order dated 24.9.95 passed by the Commandant, 78th Bn Central Reserve Police Force, ZUBZA-Kohima, Nagaland removing the Petitioner from his service with effect from 24.9.95 vide Annexure-B.

2. The Petitioner herein joined the CRPF as a constable in the year 1991 after completion of training. The Petitioner was rewarded for his satisfactory service in the force. On 27.4.95, the Petitioner alongwith the coy was moving from Barpeta Road in Assam to Nagaland. No reservation was available and as such, the Petitioner and some other travelled in a sleeper 3 tier coach. The coy had to get down at Mariani beyond Dimapur, but when they reached Dimapur they were told to get down at Dimapur Rly Station. There was great rush in the Rly station. The Petitioner alongwith other coy personnel started unloading the coy stores, kitty and rations and in that process the Petitioner left his rifle, on the lower berth of the coach. The Petitioner wanted to go inside the coach after unloading to bring the rifle, the rifle was kept hidden behind the seat. By the time, the train had already left. The Petitioner reported the matter to CHM and the Petitioner alongwith one NCO went to Dibrugarh the last stoppage of the train and found

the missing rifle. It was deposited by the Railway authority in the custody of the Magistrate. The rifle was released by the Magistrate and was brought back in the next day. Thereafter on 15th May, 1995 a show cause was issued informing the Petitioner that an enquiry shall be held against the Petitioner under Rule 27 of the Central Reserve Police Force Rules for misconduct. Thereafter an enquiry was conducted. The enquiry was conducted in English. The Petitioner did not know English, nor he was given the assistance of anybody. Even the Enquiry Officer cross-examined the witnesses brought by the authority. Thereafter the order of removal was served on the Petitioner even without serving a copy of the enquiry report on the Petitioner. Hence, this writ application.

3. Rule 27 of the Central Reserve Police Force Rules (hereinafter called as the "Rules") provides for punishment and the punishment of removal or dismissal from service or reduction to a lower rank can be inflicted after formal departmental enquiry.

4. I have heard Mr. M. Gautam, learned Advocate for the Petitioner, Mr. K.K. Mahanta, learned Sr. CGSC for the Respondents. But no records was produced at the time of hearing.

5. Three grounds are urged by the learned Advocate for the Petitioner. (i) that the punishment imposed is not commensurate with the gravity of the offence and is severe in the facts and circumstances of the case, (ii) that there was procedural irregularity in the enquiry, (iii) All negligence do not amount to misconduct.

6. Let us take up the point No. 1 first. It is the law that the punishment imposed on a person must not be severe so as to shock the conscience. Here is a case where there was negligence on the part of the Petitioner, but all negligence cannot be deemed to be so serious as to justify the removal of a person from service. If any authority is required for this proposition of law, one may have a look at *Ranjit Thakur Vs. Union of India (UOI) and Others*, That was a case of Court martial and the Supreme Court pointed out that sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. *Bhagat Ram Vs. State of Himachal Pradesh and Others*, where the Supreme Court pointed out that it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India.

7. Following this law, I find that the punishment of removal imposed on the

Petitioner is a severe punishment shocking the conscience and accordingly that punishment is to be set aside. The question is that whether the matter should be remitted back again to the authority or appropriate punishment can be given by this Court to cut short the litigation. As agreed to by the counsel for both the parties, I decide to impose necessary punishment.

8. Accordingly, for the negligence of the Petitioner, punishment of fine of an amount of one month's pay and allowances shall be imposed on the Petitioner. With this punishment the order of removal from service shall be quashed and the Petitioner shall be taken back in service within a period of 2 (two) months from the date of receipt of this order. The Petitioner shall obtain the certified copy of this order and shall produce the same before the authority to do the needful in terms of the order. The other benefits of service shall be given to the Petitioner.

9. Regarding the 2nd ground, relying on the case of Bhagatram (supra), it is urged by the learned Advocate for the Petitioner that whenever an enquiry is held against an employee of the lower rank, he should be offered due assistance of one other employee of the department who can properly assist him in the matter. But that was not done in the instant case. On this ground also, the procedure of fairness has been violated by the authority in conducting the enquiry.

10. Accordingly, this writ application is partly allowed as indicated above. I make no order as to costs.