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**(2004) 01 GAU CK 0008**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 227 of 1999**

Karunamoy Acharjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 27-01-2004

**Acts Referred:**

Central Reserve Police Force Rules, 1955 — Rule 27, 27(1), 27(2), 27(3), 27(5)  
Constitution of India, 1950 — Article 226

**Citation :** (2005) GLT 378 Supp

**Hon'ble Judges :** T. Vaiphei, J

**Bench :** Single Bench

**Advocate :** Asok Potsangbam, for the Appellant; K. Kumar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

T. Vaiphei, J.—This writ petition under Article 226 of the Constitution of India is filed by the Petitioner for quashing the letter No. VIII-1/99-RKS, dated 6.3.1999 (Annexure- 9) issued by the Respondent No. 4 requiring him to produce defence witnesses, etc. and the entire departmental proceedings subsequent to the enquiry report dated 15.10.1998.

2. The case of the Petitioner in brief is that while he was serving as Head Constable/Radio Operator at Langjing, Imphal under "D" Coy, 2 Signal Bn. Imphal, he was placed under suspension in contemplation of a departmental enquiry against him for collection of unauthorised and provocative radio message inciting signal personnel against Government, etc. Towards that end, a memo of articles of charges was served upon him on 11.2.1998 (Annexure-A/2). The petitioner submitted his written statement of defence on 25.2.1998. One R.K. Sahay, Asstt. Commandant of 2-Sig. Bn. CRPF was appointed as the Enquiry Officer of the departmental enquiry. Thereafter, the enquiry was started against the Petitioner and three others and between 21.8.1998 and 2.10.1998, examinations of witnesses on behalf of the prosecution and defence were completed and the D.E. was closed for writing the report of the E.O. Though

enquiry reports were given in respect of 3 other charged officials but not enquiry report was given to the Petitioner. On the basis of the enquiry reports, punishment was given to the said three officials. It is the case of the Petitioner that he was not on duty at the relevant time i.e. from 9 a.m. to 3 p.m. of 29.1.1998 but was on out-pass (Annexure- A/6). It is the further case of the Petitioner that in the course of enquiry, none of the prosecution witnesses made any statement about his presence at the T.P. Network Room and that even the three witnesses, namely, P.U. Jose, R.R. Pillai and M. Sekar, who were found guilty to the charges in the D.E. and were given punishment, deposed before the E.O. that the Petitioner was not present at the said T.P. Room at the relevant time. It is contended by the Petitioner that the enquiry report duly signed which was received by him through postal means revealed that the charge against the Petitioner was not proved.

3. It is also contended by the Petitioner that even though the law requires that a copy of the enquiry once prepared, should be furnished to the delinquent official, the Petitioner was not furnished with such a report. Instead of closing the D.E. on the basis of the enquiry report, according to the Petitioner, three more prosecution witnesses, namely, P.J. Jose, R.R. Pillai, and M. Sekar were recalled and were examined again on 12.1.1999 and 6.3.1999. It is further averred that by the impugned letter, the Petitioner was directed to produce within 15 days defence witnesses, exhibits and written defence statement for the second time against the same charges based on the same set of facts. Thereupon, the Petitioner prayed for extension of time on 16.3.1999 for consulting a legal expert but was given only 2 days time and to produce the list of witnesses, etc. on 19.3.1999. It was under such circumstances that the Petitioner was compelled to approach this Court.

4. The Respondents resisted the writ petition by filing their counter-affidavits wherein they, inter alia, point out that since 29.1.1998 was a working day and the Petitioner was on duty in the office on that day and that out pass is given to leave the campus only on holidays for long time. It is thus contended that no out pass was given to the Petitioner on that day as claimed by him and that he (sic) got his name entered in the gate register by fraudulent means after the commencement of the departmental proceedings. On the question of closing of the enquiry, the Respondents assert that the D.E. has not yet been closed and the same maybe allowed to reach its logical conclusion in terms of Rule 27(c) of the Central Reserve Police Force, 1955 (hereinafter referred to as "the Rule"). It is contended that since the enquiry officer did not examine vital prosecution witnesses cited in the Memo of articles of charges, the enquiry proceeding was found to suffer from gross shortcomings and irregularities contrary to the Rules leaving the Respondents with no alternative but to direct the enquiry officer to examine further witnesses vide the letter dated 7.11.1998. The Respondents submit that their action was fully justified and empowered by Rule 27(c)(5)(6) of the Rules and that no illegality was committed by them thereby. The Respondents also categorically deny that any second departmental enquiry was

ordered by them as alleged by the Petitioner. They categorically assert that the impugned proceeding is the first and only departmental enquiry against the Petitioner, which is still in progress since 11.2.1998. It is also contended that a copy of the enquiry report at Annexure-7 was not officially communicated to the Petitioner and the same was obtained by him by manipulation and fraudulent means from the office of the B/2 Sig. Bn. CRPF, Imphal. It is also contended that the disciplinary authority has not passed any final report on Annexure-7 due to shortcomings/procedural defects referred to earlier. The Respondents submit that the disciplinary authority has right to return the enquiry proceeding to the Enquiry Officer so long as the enquiry is not conducted in accordance with Rule 27(c)(5)(6) of the Rules. It is denied that there was any mala fide intention on the part of the Respondents in returning the enquiry proceedings. It is also submitted that the Petitioner has been given the right to adduce further evidence in support of his defence and that instead of availing of such opportunity, he adopted dilatory tactics and non-cooperation in the enquiry proceeding thereby stalling smooth conclusion of the ongoing proceeding. It is, therefore, submitted that appropriate orders be passed by this Court for smooth and timely completion of the D.E. proceedings.

5. On reading and re-reading of the rival pleadings, it is obvious that the first point for determination in this case is whether the proceedings subsequent to the enquiry report dated 15.10.1998 can be said to be a second departmental enquiry. The procedure for departmental enquiry in respect of CRPF personnel is engrafted in Rule 27(c) of the Rules. Rule 27(c)(1) and (2) prescribe the manner in which the charges are to be framed. Rule 27(c)(3) provides for the mode of exhibiting documents which are being relied on in support of the charge. Then comes Rule 27(c)(4) and (5) which indicate the manner and procedure of recording the evidence of witnesses. Rule 27(c)(6) is the crucial provision with which we are presently concerned and the same maybe reproduced hereunder:

(6) If the Commandant has himself held that enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings, to the Commandant, who shall record his findings and pass orders, where he has power to do so.

6. The above provisions contemplate that a departmental enquiry can be conducted by the Commandant himself or by any officer other than the Commandant. If the Commandant himself conducts the enquiry, he shall record his findings and pass orders where he has power to do so. The powers of the Commandant are enumerated in SI. Nos. 1 to 8 and column No. 5 of the Table appended to Rule 27 of the Rules. If the enquiry is conducted by the any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant, who shall record his findings and pass orders, where he has powers to do so. In the instant case, there is no dispute that the enquiry is conducted by an officer other than the

Commandant. There can be no dispute that the enquiry officer submitted his report to the Respondent No. 3 sometime in October, 1998. In terms of the above provision, it was for the Respondent No. 3 to record his findings and to pass appropriate order in that regard. Ordinarily when the disciplinary authority agrees with the findings of the enquiry officer holding the charge against the official as proved or not proved, he may impose a penalty thereon if the charges are found proved or exonerate him from the charge if not proved. Once this process is completed, the departmental enquiry can be said to have been closed. Till the departmental proceeding comes to an end by passing final order as referred to earlier, there can be no second departmental enquiry. We are not yet concerned with the legality or otherwise of conducting a second departmental enquiry. In the instant case, the so-called enquiry report dated 15.10.1998 was apparently not acted upon by the disciplinary authority but was returned to the enquiry officer for taking further evidence on the ground of gross shortcomings or procedural defects attributable to non-examination of vital witnesses cited by the prosecution in the memo of articles of charges. Therefore, the contention of the Petitioner that the enquiry proceedings subsequent to the said report dated 15.10.1998 amount to a second departmental enquiry is, to my mind, unwarranted and not acceptable in law. No fresh articles of charges have been framed by the Respondents against the Petitioner. Nor is a fresh set of allegations made against the Petitioner. On the contrary, the prosecution witnesses were examined again in support of the same article of charges in which no findings have been recorded by the disciplinary authority upon the said enquiry report. It is, therefore, my considered opinion that there are no materials on record which persuade me to hold that there is a second departmental enquiry against the Petitioner in respect of the original/the same set of charges levelled against him.

7. Having rejected the contention that the Petitioner has been subject to a second departmental enquiry, the second question which arises for consideration is whether the disciplinary authority has the power to return the enquiry report and direct the enquiry officer to conduct further enquiry. To recapitulate the facts, it may be noticed that the enquiry report apparently submitted to the disciplinary authority sometime in the month of October, 1998 and that the enquiry report held the charges against the Petitioner not proved. It is the case of the Respondents that the disciplinary authority did not intend to act upon the said enquiry report since there were gross shortcomings/procedural defects resulting from non-examination of vital witnesses cited by the prosecution in the memo of articles of charges in the course of enquiry and accordingly referred the matter back to the enquiry officer for taking further evidence, which is permissible by Rule 27(c)(6) of the Rules. It is the further contention of the Respondents that since the disciplinary authority did not intend to act upon the said report, it was considered not necessary to furnish a copy of the report to the Petitioner. On the other hand, it is contended by Shri A. Potsangbam, the learned senior counsel for the Petitioner that the enquiry report was not accepted by the

disciplinary authority since the findings therein did not appeal to them and that the disciplinary authority is determined to hold one enquiry after another until the charge against the Petitioner is somehow made to establish to their likings.

8. The second limb of the provision of Rule 27(c)(6) of the Rules, which was earlier reproduced, indicates the power of the disciplinary authority. The extent and scope of this power has come up for consideration before the Hon'ble Apex Court in *Union of India and Others Vs. P. Thayagarajan*, Incidentally that case also involved the interpretation of Rule 27(c)(6) of the CRPF Rules, 1955. In that case, it was contended, inter alia, before the Apex Court that the disciplinary authority has no power to set aside an earlier enquiry and order a fresh enquiry. The decision of the Apex Court in *K.R. Deb Vs. The Collector of Central Excise, Shillong*, was cited by the learned Counsel for the Respondent in support of his contention. After referring to part 12 of the decision in *K.R. Deb (supra)*, their Lordships held:

8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant Rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore, we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature.

9. The proposition of law laid down therein concerning the power of a disciplinary authority for recording his findings on the enquiry report and of his power to pass appropriate orders including ordering de novo inquiry under certain circumstances are unambiguous in nature. The circumstances set forth therein are:

- (1) Where there has been no proper inquiry because of some serious defects having crept into the enquiry, or
- (2) Where some important witnesses were not available at the time of the enquiry or were not examined. Arider is, however, provided i.e. the provision would not enable the disciplinary authority to set aside the previous enquiry on the ground that the enquiry report does not appeal to the disciplinary authority.

Now, if the disciplinary authority is not precluded from ordering de novo inquiry after recording his findings on the enquiry report, can disciplinary authority be precluded from returning the enquiry report to the enquiry officer for further enquiry (not de novo enquiry) when the circumstances set forth above are found to be present? In my considered view, the answer must be in the negative.

10. Having determined the correct legal position as I see, it, let me now proceed to examine the point remaining in controversy. As already noticed, the Respondents assert that the enquiry report was not acted upon due to gross shortcomings/procedural irregularities arising out of non-examination of important witnesses already cited by the prosecution in the Memo of articles and not on the ground that the findings recorded in the enquiry report was not palatable to them. To verify this claim, at the desire of the Petitioner, this Court by the order dated 25.11.2003 had directed the Respondent to produce before me the files relating to the departmental enquiry and the letter/order dated 7.11.1998 referring the enquiry report. Both the documents are now placed before me. On going through the D.E. files, I find that no serious dispute can be raised against the correctness of the contentions of the Respondents already mentioned in their counter-affidavit. The contents of the letter dated 7.11.1998 show that the Respondent No. 3, who is the disciplinary authority, indeed pointed out the shortcomings of the enquiry proceeding, which may best be stated by reproducing below the relevant portions thereof ad verbatim:

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(a) The State of No. 681010085 Insp/RO M.P. Sharma, RGS Imphal Signal Centre i.e. P.W. 1 has not been recorded being important/vital evidence.

(b) As per the statement of HC/RO P.V. Jose and HC/RO R.R. Pillai during the course of preliminary enquiry deposed before P.E.O. that HC/RO K.M. Acharjee was very much present in the Signal Centre and forced passing of unauthorised message on 29.1.1998.

(c) During the course of Preliminary enquiry, it was never reported to the E.O. by OCB/coy by the RGS even when HC/RO K.M. Acharjee was emerging as the main conspirator and he was not available for recording his statement due to his going on sick report, that he was on out-pass on the particular date i.e. 29.1.1998 from 0900-1400 hrs. and therefore it is clear whatever was done later was to save the individual by himself or by anyone and as such, it may be an afterthought affair. It has correlation because during P.E., HC/RO R.R. Pillai and HC/RO P.V. Jone accused HC/RO K.M. Archarjee and stated that he was very much present in the signal centre.

(d) As per statement of No. 680251534 HC/RO Ram Ashray Prasad during the P.E. that he enquired from HC/RO R.R. Pillai as to what is the matter and HC/RO R.R. Pillai replied him that a log received from 65 Bn. which is in possession of HC/RO K.M. Acharjee. This fact HC/RO Ramashrey brought to the notice of the ACS Insp./RO M.P. Sharma. Therefore, statements of HC/ RO Ramashrey Prasad

and Insp/RO M.P. Sharma are further required to be recorded to strengthen the prosecution side.

(e) All the circumstantial evidence and statements of the witnesses in the P.S. which may be relied upon/used as material available on record, clearly indicates that HC/RO K.M. Acharjee was very much present in the signal centre on 29.1.1998 between 0900-1400 hrs.

....

11. After going through the contents of the aforesaid letters and the files relating to the departmental enquiry, it becomes obvious that the reasons for ordering of taking further evidence by the enquiry officer does not appear to be on the ground that the findings of the enquiry officer do not appeal to the disciplinary authority. On going through the order sheets of the enquiry officer, it may be observed that no serious attempt appeared to have been made by him to enforce the attendance of some of the important witnesses such as M.P. Sharma, R.A. Prasad, etc. who were apparently attached to the unit. Under the circumstances, the views taken by the disciplinary authority that the enquiry proceeding suffered from serious shortcomings and that the enquiry proceedings were not conducted in a manner prescribed by rules, are not wide off the mark and do not suffer from arbitrariness or irrationality. On the contrary, the misgiving of the Petitioner that fresh inquiry was ordered with the mala fide intention of fixing him at any cost, appears to be unfounded. On careful examination of the materials available on record, I have no hesitation to hold that the disciplinary authority is perfectly justified in coming to the conclusion that the enquiry proceeding till 15.10.1998 suffered from serious defects due to non-examination of important witnesses and that further enquiry was called for. In the view that I have taken, I do not find any ground for interference in the impugned letter dated 6.3.1999 (Annexure-A/9) or in the impugned proceeding of the D.E. held after the enquiry report dated 15.10.1998 (Annexure A/7).

12. For the reasons stated above, this writ petition is without merit and is accordingly dismissed. The interim order dated 19.3.1999 stands vacated. The Respondents shall proceed with and complete the departmental enquiry within a period of 3 months from the date of receipt of this order subject to the co-operation of the Petitioner. No cost.