

(1997) 11 GAU CK 0016
In the Gauhati High Court

Case No : Writ Appeal No. 60 of 1996 in Civil Rule No. 2131 of 1990

Krishna Pada Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (1998) 1 GLT 228

Hon'ble Judges : M. Ramakrishna, C.J.; B. Biswas, J

Bench : Division Bench

Advocate : N. Dhar and P.B. Mazumdar, for the Appellant; K.N. Choudhury, Sr. C.G.S.C., for the Respondent

Judgement

M. Ramakrishna, C.J.—The Appellant was the Petitioner in Civil Rule No. 2131 of 1990, wherein he had challenged the impugned order of the competent authority dismissing him from service as Constable, SSB, for the grounds set out in the writ petition under Article 226 of the Constitution of India. After hearing learned Counsel on both sides, by an order made on 2nd November, 1995, the learned Single Judge dismissed the writ petition holding that there were no grounds to interfere with the impugned order of dismissal. Hence this appeal.

2. We have heard Mr. N. Dhar, learned Counsel for the Appellant as well as Mr. K.N. Choudhury, learned Sr. Central Govt. Standing Counsel appearing for the Respondents.

3. Mr. N. Dhar, learned Counsel for the Appellant, having taken us through the grounds of appeal, the grounds of the writ petition and the orders of the learned Single Judge under appeal, though urged certain grounds as taken in the appeal, we are of the view that he has been able to make out one ground which is sufficient to set aside the order of the learned Single Judge.

4. The chronological events culminating with the impugned order of dismissal are

as follows:

Unfortunately, in an incident of normal exercise being conducted in the camp, a bullet from the .303 rifle held by the writ Petitioner suddenly went off, which resulted in serious injury to a certain person who later on succumbed to the injury. The Petitioner was arrested on 26.11.1979 and he was proceeded for the offence u/s 302 IPC. It is stated that he was convicted on 19th March, 1983 for the said offence u/s 302 IPC and he was sentenced to undergo imprisonment for life. It is stated that thereafter that order was appealed and the appellate Court set aside the order of conviction releasing the writ Petitioner on 28th August, 1989.

5. The salient aspect as required for the disposal of the present appeal, is that after the Petitioner has been arrested on 26th November, 1979, he was released on bail on 25th January, 1980. The competent authority of the Department has taken suo motu action to hold departmental proceedings against the Petitioner on the ground that he has deserted the post and he is liable for punishment under the C.R.P.F. Act, 1949. Accordingly an enquiry was ordered. A notice was issued to him on 18th November, 1980. An Enquiry Officer in this behalf has been appointed on 1st February, 1981. A notice to attend the enquiry was issued to the Petitioner on 24th June, 1981. Subsequently, two notices came to be issued on 10th July, 1981 and 2nd April, 1982. However, it is stated that since the Petitioner did not choose to attend the enquiry and defend himself, the Enquiry Officer concluded the case on 3rd April, 1982 and thereafter a second show cause notice was issued on 23rd March, 1983 and the order of dismissal was passed thereafter, which was challenged in the writ petition.

6. One of the grounds urged in support of the appeal is that the learned Single Judge failed to consider that when the second show cause notice was issued on 23rd March, 1983, as on that day the Petitioner was behind the bars inasmuch as he has been convicted on 19th March, 1983 and he was taken to the prison on that day. Therefore, as on that day he was not free to answer or to submit the reply to the second show cause notice, as contemplated under Article 311(2) of the Constitution. Unfortunately, according to the learned Counsel for the Appellant, this aspect of the matter has not been considered, though urged, by the learned Single Judge. He therefore submits that this may be considered by the appellate Court for giving relief.

7. We have perused the order of the learned Single Judge and also the grounds of the appeal. By a perusal of the order of the learned Single Judge while disposing of the writ petition it is seen that the learned Single Judge did not consider this relevant point taken in the writ petition and urged at the time of argument as to whether the competent authority was right to pass the impugned order knowing fully well that the writ Petitioner was unable to answer and to furnish his reply to the second show cause notice, which is mandatory in accordance with the law. In other words, since the writ Petitioner was unable to answer the second show cause notice as he was suffering behind the bars as a

convicted person, the competent authority ought to have seen that this is a case where an opportunity should be given to the writ Petitioner as contemplated under the provisions of Article 311(2) of the Constitution. Since this matter has not been considered by the learned Single Judge, we are of the view that on this ground alone the writ petition deserves to be allowed.

8. Mr. K.N. Choudhury, learned Sr. Central Govt. Standing Counsel, however, argued that this ground which has now been urged by the Appellant, could have been as well urged before the appellate authority by tiling an appeal, since the impugned order of dismissal is subject to an appeal, which the Appellant did not choose to avail. However, we are of the view that though this provision of the law was available to call in question the impugned order in an appeal under the statute, we are of the view that since the writ Petitioner has undergone imprisonment and has been convicted by the competent Court of law, the disability of the Petitioner should have been considered by the competent authority before imposing punishment.

9. Therefore, on this ground the appeal is allowed in part. The order of the learned Single Judge made on 2nd November, 1995 in Civil Rule No. 2131/90 is set aside. The impugned order made by the competent authority on 13th July, 1983 dismissing the Petitioner/Appellant from service is hereby quashed. The Respondents are directed to issue a fresh second show cause notice as required under Article 311(2) of the Constitution read with the provisions of the Conduct Rules and after providing an opportunity to the Petitioner to show cause by way of a representation, they may proceed to pass appropriate orders in accordance with the law from the stage of issuing a second show cause notice.

10. Ordered accordingly.