

**(2006) 12 GAU CK 0015**  
**In the Gauhati High Court**

Mahendra Kr. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 18-12-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2007) 1 GLT 648

**Hon'ble Judges :** B.S. Reddy, C.J.;B.P. Katakey, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

B.P. Katakey, J.—The appellant filed the writ petition being Writ Petition (c) No. 3399/2003 challenging the order dated 16th/17th of August, 2002 passed by the disciplinary authority dismissing the petitioner from service as Head Constable of the Railway Protection Force (in short, RPF) mainly contending that the procedure required to be adopted in the disciplinary proceeding initiated against him has not been complied with, inasmuch, the Enquiry Officer in coming to the finding that charges have been proved, has placed reliance on the statements made by two persons, namely, Ram Avatar Singh and Shri Bijendra Singh before the preliminary enquiry conducted by the authority prior to issuance of charge memo, without producing them before the disciplinary proceeding conducted against him, for cross-examination by the appellant, thereby denying the appellant of his right to cross-examine the witnesses and consequently violating the principles of natural justice. Such order of dismissal has also been challenged on the ground that the disciplinary authority before disagreeing with the finding recorded by the Enquiry Officer in the enquiry report did not issue any notice to him asking him to show cause as to why the charge levelled against the appellant should not be held to be proved by disagreeing with the finding recorded by the Enquiry Officer in the enquiry report.

2. The appellant while serving as Head Constable of RPF and posted in NF Railway, Lumding, was served with a charge sheet being charge memo dated

06.04.2000 by the disciplinary authority asking him to show cause as to why the disciplinary action should not be taken against him for commission of gross misconduct by taking a sum of Rs. 60,000/- with a commitment to arrange appointment of the nephew of Shri Ram Avatar Singh as constable in RPF of NF Railway. The appellant on receipt of the said charge memo submitted his reply denying the allegations levelled against him. The disciplinary authority being not satisfied with the reply submitted by the appellant decided to hold a disciplinary proceeding against him and consequently the Enquiry Officer was appointed, who during the enquiry proceeding conducted by him examined two witnesses, namely, Shri M.C. Medhi and Shri S.K. Basak in support of the charges levelled against the appellant who conducted the preliminary enquiry against appellant. These witnesses were duly cross-examined by the appellant. The said witnesses also exhibited the statements of Ram Avatar Singh and Bijendra Singh made during the preliminary enquiry. The Enquiry Officer, thereafter submitted the report dated 15.04.2000 with the finding that the allegation of taking a sum of Rs. 60,000/- by the appellant from Ram Avatar Singh could not be proved. However, the Enquiry Officer in the said report has held that the demand of money has been proved. The disciplinary authority thereafter forwarded the said report submitted by the Enquiry Officer to the appellant vide communication dated 14.06.2002 for submission of his representation against the finding of the Enquiry Officer, if any. The appellant submitted his representation against the finding. The disciplinary authority by the order dated 16th/ 17th of August, 2002 dismissed the appellant from service by disagreeing with the finding recorded by the Enquiry Officer in the report that the allegation of taking a sum of Rs. 60,000/- has not been proved, which according to the disciplinary authority has been duly proved in the proceeding conducted against the appellant.

3. The learned single Judge upon hearing the learned Counsel for the parties, by the judgment and order dated 08.06.2004 dismissed the writ petition by holding that under the Railway Protection Rules, 1987 there is no requirement of giving prior opportunity to the delinquent before the disciplinary authority disagree with the finding recorded by the Enquiry Officer, which, such authority can do, if the evidence on record is sufficient for the said purpose. The learned single Judge has rejected the contention of the appellant relating to non-examination of Ram Avatar Singh and Bijendra Singh in the proceeding and taken into account their statements recorded in the preliminary enquiry by the disciplinary authority in passing the order of dismissal, on the ground that the appellant having himself brought on record of the enquiry the evidence in affidavit of the said two persons, he cannot complain of not giving him an opportunity to cross-examine the said two persons.

4. We have heard Mr. D.K. Mishra, learned senior counsel for the appellant as well as Mr. J. Singh, learned senior standing counsel for N. F. Railway, assisted by Ms. B. Devi, appearing on behalf of the N.F. Railway-respondents. We have also perused the records of the disciplinary proceeding conducted against the appellant, which has been produced by the learned Counsel, appearing on behalf

of the respondents.

5. Mr. Mishra learned senior counsel for the appellant challenging the disciplinary action taken against the appellant as well as the judgment and order passed by the learned single Judge has submitted that admittedly neither Ram Avatar Singh nor Bijendra Singh from whom the appellant allegedly had taken a sum of Rs. 60,000/- to arrange for selection and appointment of Shri Bijendra Singh as constable in RPF of NF Railway, were not examined in the disciplinary proceeding conducted against the appellant, and therefore the statements made by them in the preliminary enquiry conducted by the department prior to issuance of the charge memo cannot be relied upon for the purpose of recording the finding that the charge against the appellant has been proved, without producing them for cross-examination by the appellant in such proceeding. According to Mr. Mishra non-production of those two persons for cross-examination and placing reliance on the statements made by those two persons in the preliminary enquiry, amounts to violation of principle of natural justice as the appellant has been denied the opportunity of cross-examination, which is the basic requirement in a disciplinary proceeding conducted against a charge officer. The learned senior counsel therefore submits that the finding recorded by the Enquiry Officer as well as the finding recorded by the disciplinary authority that the charge against the appellant has been proved by placing reliance of statements of such persons, cannot be sustained in the eye of law.

6. It has further been submitted by the learned senior counsel that the affidavit, on the basis of which the learned single Judge has come to the finding that the appellant having produced the said affidavit cannot complain about the denial of opportunity to cross examine those witnesses, are in fact in support of the appellant and on the other hand the statements made by those two persons in the preliminary enquiry were against him and therefore they must be produced in the enquiry for cross examination by the appellant and in failure to produce such witnesses for cross examination, the statements made by them in the preliminary enquiry cannot be taken into consideration for recording that the charges levelled against him has been proved, as has been done in the instant case, by the disciplinary authority. Mr. Mishra, in support of his contention has placed reliance on the decision of the Apex Court in the State of Mysore Vs. S.S. Makapur, and State of Uttar Pradesh Vs. Om Prakash Gupta,

7. The learned senior counsel appearing on behalf of the respondents on the other hand supporting the disciplinary action taken against the appellant as well as the judgment & order passed by the learned single Judge has submitted that no wrong, has been committed by the disciplinary authority in placing reliance on the statements of Ram Avatar Singh and Bijendra Singh recorded during preliminary enquiry conducted against the appellant as the copies of such statements were duly exhibited in the disciplinary enquiry, conducted against the appellant and those officers, who conducted preliminary enquiry were duly cross-examined in the proceeding. It has further been submitted that the learned

single Judge has rightly rejected the contention of the appellant in that regard as he having filed the affidavits of those two persons in the proceeding cannot complain about not giving them the opportunity of cross-examine.

8. The scope of judicial review of a disciplinary action taken by the authority is very limited. The Court in exercise of power under Article 226 of the Constitution of India has the power to interfere with a disciplinary action taken against the charge officer, if such action is taken on the basis of the disciplinary proceeding conducted against such officer in violation of the Rules governing such proceeding or in violation of the principle of natural justice. The court's jurisdiction is circumscribed by limits of judicial review to correct an error of law or procedural error leading to manifest injustice or violation of natural justice.

9. In the instant case, it is an admitted position of fact which is also home out of the record of the disciplinary proceeding conducted against the appellant, that there was a preliminary enquiry conducted by Mr. S.K. Basak and Mr. M.C. Medhi, who were examined as witnesses in the disciplinary proceeding against the appellant and in support of the charge levelled against him, vide charge memo dated 06.04.2000. In the said preliminary enquiry, the statements of Shri Ram Avatar Singh and Shri Bijendra Singh were recorded wherein they have alleged taking a sum of Rs. 60,000/- by the appellant for arranging appointment of Bijendra Singh as constable in RPF. On the basis of the report submitted by the Enquiry Officers (Mr. S.K. Basak and Mr. M.C. Medhi) on such preliminary enquiry, the authority has decided to initiate disciplinary proceeding, against the appellant and consequently the charge memo dated 06.04.2000 was issued to him. The records produced by the respondents reveal that in the disciplinary proceeding conducted against the appellant, Shri Basak and Shri Medhi, who conducted the preliminary enquiry, were only examined in support of the charge levelled against the appellant, who during their examination exhibited the statements made by Ram Avatar Singh and Bijendra Singh in the preliminary enquiry. It is also an admitted position of the fact that neither Ram Avatar Singh nor Bijendra Singh were examined in the proceeding in support of the charges or produced for cross-examination by the appellant by taking the statements made in the preliminary enquiry as examination in chief.

10. As discussed above, the scope of judicial review of a disciplinary action taken against the charge officer is very limited. The Court can interfere with such proceeding or the action taken thereof, if there is procedural impropriety or violation of principle of natural justice. Non-compliance of the procedural safeguards, in a given case, may vitiate the disciplinary action taken against a charged officer. It is the bare minimum requirement of natural justice that statement made by a person against a charged officer, cannot be taken into account without making such persons available for cross examination by the charged officer. In the instant case, the statements made in the preliminary enquiry by Ram Avatar Singh and Bijendra Singh were relied upon by the disciplinary authority while recording the finding that the charge levelled against

the appellant has been proved, even though those persons were never produced in the disciplinary proceeding for cross-examination by the appellant. Such course of action amounts to denial of opportunity to the appellant to cross-examine and to challenge the version of those persons made against the appellant, which strikes at the root of the disciplinary action taken, against the appellant as the same has caused manifest injustice to the appellant.

11. The Apex Court in *State of Mysore and Ors. v. Shivabasappa Shivappa Makapur* (supra), while considering whether the statement of witnesses examined before the preliminary investigation can be taken into account by the disciplinary authority while passing the order of dismissal from service, without affording the opportunity to the charged officer to cross-examine those witnesses has observed that the obligation is cast on the disciplinary authority not to act on any information which may have received unless they put it to the party against whom it is to be used and give him the fair opportunity to explain it. It has further been observed that the person against whom a charge is made should know the evidence, which is given against him, so that he might be in a position to give his explanation by affording him an opportunity to cross-examine. It has further been observed that the requirement of principle of natural justice is complied with when the statement made by a witness in the preliminary enquiry is made available to the charge officer and he is allowed to cross-examine such witness. In the *State of Uttar Pradesh v. Om Prakash Gupta* (supra), it has been observed by the Apex Court that the statement of witnesses taken at the preliminary stage of the enquiry, if were used at the time of formal enquiry, it will not vitiate an enquiry if those statements are made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements.

12. In the instant case as discussed above, Ram Avatar Singh and Bijendra Singh gave their statements in the preliminary enquiry against the appellant and those statement have been used by the disciplinary authority without producing them for cross-examination by the appellant in the formal enquiry conducted against the appellant and thereby denying him reasonable opportunity of being heard in the enquiry by taking into account the said adverse statements. The disciplinary authority having passed the order of dismissal placing reliance on the statements of those two persons recorded during preliminary enquiry, acted in violation of principle of natural justice and therefore the order of dismissal from service cannot stand the judicial scrutiny. The finding of the learned single Judge that the appellant cannot complain about the non production of those persons for cross-examination as he himself produced the evidence on affidavit of those two persons, is also not acceptable in law as in the said affidavit, those persons have denied taking or offering any money to the appellant for the purpose of securing employment and on the other hand, the statements of those persons which have been taken into consideration by the disciplinary authority, were against the appellant. Such statement being adverse to the appellant, those cannot be taken into consideration for holding him guilty of the charges unless they are made

available for cross-examination in the formal enquiry conducted against the appellant.

13. In view of the aforesaid discussion, we are of the view that the judgment and order dated 08.06.2004 passed by the learned single Judge suffers from legal infirmity. The order of dismissal from service dated 16th/17th of August, 2002 passed by the disciplinary authority also cannot stand in the eye of law. Hence, both the order dated 16th/17th of August, 2002 passed by disciplinary authority dismissing the appellant from service as well as the judgment dated 08.06.2004 passed by the learned single Judge are hereby set aside. The appellant is to be taken back in service with all service benefits.

14. The appeal as well as the writ petition are accordingly allowed. No cost.