

(1999) 12 GAU CK 0014

In the Gauhati High Court

Case No : Civil Rule No. 323 of 1989 and C.R. 107 (K) of 1989

Md. Ramzan (Constable)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-12-1999

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27, 27(7)
Constitution of India, 1950 — Article 226

Citation : (2000) 1 GLT 284

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : S. Ali and N. Ahmed, for the Appellant; U. Das, CGSC, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—This is an application under Article 226 of the Constitution of India challenging the order of removal of the Petitioner from service vide order No. VIII -4/84/14-Estt dated 16.3.1985. The Petitioner was enrolled as Constable in Central Reserve Police Force (CRPF) and was posted in 3rd Bn CRPF. He served in different parts of India and he was also posted in 14th Bn CRPF. This 14th Bn when moved to Nagaland Petitioner also had to go to Nagaland and while at Nagaland the Respondent authority proposed to hold an enquiry against the Petitioner under Rule 27 of the CRPF Rules for alleged misconduct as reflected in the article of charges read with imputation of misconduct (Annexure-1 and 1/1). According to the Petitioner the language of the charges were in English and, as per his statement, Petitioner could neither read nor write English except Urdu. Therefore, he took the charges to one Shri S.P. Bhalla, OC, "B" Coy who wrote the reply in Hindi at the instance of the Petitioner which he could not read. However, said Bhalla told, according to the Petitioner, that he has denied the charges. The authority appointed one Shri B.K. Vora, Asst. Commandant 14th BN CRPF as Enquiry Officer to enquire into the matter. The Petitioner alleged that on the date of alleged occurrence the DSP, S.P. Bhalla subjected the Petitioner to

severe physical and mental torture with the help of his men as a result of which he suffered serious mental agony and had to be admitted in the Army Hospital on 5.4.84. Doctors of the hospital, after treatment, discharged the Petitioner on 7.9.84 and advised to take the Petitioner to Civil Psychiatrist. Accordingly, Petitioner was taken to the Civil Hospital at Dimapur on 10.9.84 and he remained under treatment upto 18.9.84. The Civil Hospital at Dimapur referred the case of the Petitioner to the Mental Hospital at Kohima for further treatment and he was under treatment in Kohima Mental Hospital for sometime. The said Mental Hospital advised to send the Petitioner on leave to relieve him from the mental agony for which he was suffering, but inspite of the medical advice the Petitioner was not sent on leave but kept in Battalion Headquarter upto 5.10.84 where he was tortured mentally. Ultimately Petitioner was sent on leave on 5.10.84 on account of his sickness and he was on leave upto 16.11.84. Petitioner reported for his duty on 17.11.84. The enquiry against the Petitioner started from December, 1984 and the Enquiry Officer recorded the statement of the Petitioner on 12.12.84. After recording his statement the Enquiry Officer recorded the statement of other witnesses. Petitioner alleged that he was not allowed to cross examine the aforesaid witnesses. He, therefore, alleged that Enquiry Officer though recorded the statement of the witnesses, at no stage it was read out and explained to the Petitioner. Petitioner further averred that the Enquiry Officer allowed him to submit written defence statement and list of witnesses within a period of 15 days but the Enquiry Officer did not furnish the copy of statement of witnesses recorded by him to enable the Petitioner to prepare his statement of defence and as such Petitioner could not properly submit his written statement. The written statement of defence of the Petitioner was written in Hindi by the Petitioner with the help of a colleague jowan. Petitioner further alleged that since the real charge against him was relating to molestation of a civilian girl the said girl was not examined properly. That the girl was brought in and her statement was recorded by the Enquiry Officer which was in Nagamese and the same was translated to English. That, as the Petitioner could understand neither Nagamese nor English, therefore, he could not understand the communication of the girl to cross examine her. The Enquiry Officer submitted his report to the Commandant and the Commandant by his order dated 16.3.1985 removed the Petitioner from service. Petitioner thereafter preferred appeal before the appellate authority which was also rejected. Hence the Petitioner moved this Court challenging the aforesaid order of removal.

2. This Court by a judgment and order dated 17.9.92 (in CR 107(K)/89) set aside the order of removal on the ground of alleged violation of Sub-rule 7 of Rule 27 of the CRPF Rules, 1955. The Department preferred appeal before the Division Bench which also upheld the decision of the learned Single Judge. The matter went upto Supreme Court and when it was pointed out before the Supreme Court by the Department that Rule 27(7) of the Rules was deleted as far back as in 1980, the Supreme Court set aside the order of the learned Single Judge as well as the Division Bench and remitted back the matter to the High Court for

disposal in accordance with law.

3. The Respondents in their affidavit have contested the contention of the Petitioner but the Respondents, despite directions, failed to produce the connected records. The order dated 16.3.1985 was based on the testimony of PWs 1, 2 and 3. Those PWs stated that the delinquent officer confessed his guilt before Shri SP Bhalla, Dy SP who recorded the confessional statement. For no good reason said Shri S.P. Bhalla was not examined. Petitioner's allegation is that he was not furnished with the testimony of the witnesses for which he could not properly counter the allegations. As mentioned earlier, records were not produced before this Court. The Petitioner raises the issue of non-furnishing of copies of the statement of the PWs recorded by the preliminary Enquiry Officer. The appellate authority did not take it seriously and proceeded with the matter on the ground that the Petitioner did not make any proper request before the authority. Furthermore, Petitioner was given a chance to go through the papers of the preliminary enquiry, as mentioned in the affidavit, but no such material was produced before this Court to show that the Petitioner was allowed to go through the same. Petitioner also raised the plea before the appellate authority that at least the Department ought to have produced the molested girl for his cross examination or otherwise provide him the opportunity to examine her as defence witness, but the appellate authority in a casual manner only observed that instead of making arrangement to procure the DW by the department it was the responsibility of the Petitioner to procure the defence witness. The Respondent authority mainly emphasised about the nature of the offence and fraternization to the people of Nagaland. There can be no two opinion on fraternization with the locals by the CRPF but at the same "time one cannot overlook, in the matter relating to enquiry, where the livelihood of a person is concerned, the concerned person is to be afforded a fair opportunity to defend his own case. The writ Court cannot go into the evaluation of evidences but at the same time it was incumbent on the authority to lead some evidence in support of the allegation. Admittedly the authority acted on the alleged confession of the Petitioner made before Shri S.P. Bhalla. The said Bhalla since not produced for cross examination before the authority naturally the evidence on confession could not have been acted upon. From the contents of the petition it appears that the Petitioner was denied with the opportunity with the fairness of the action which affected the ultimate decision making process.

4. For the foregoing reasons the impugned order of removal is set aside. Consequently, the order dated 17.9.92 passed by the learned Single Judge in CR 107(K)/89 is upheld. The Petitioner is ordered to be reinstated in service within three months from today. There shall be no order as to backwages. However, the Petitioner shall be entitled to seniority and other service benefits except backwages.

5. With this the writ petition is allowed to the extent above.