

(2005) 02 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 297 of 2002

Mutum Shantikumar Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27, 27(2)
Constitution of India, 1950 — Article 311(2)

Citation : (2005) 1 GLT 413

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Kh. Tarunkumar Singh, for the Appellant; N. Ibotombi, CGSC, for the Respondent

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—It is the bounden duty of the concerned authority to act judiciously whenever the Rule of natural justice is applicable. No doubt, the Rule of natural justice is applicable to the departmental proceedings against a Govt. employee. Therefore there is insistence upon the department of "Fair hearing" in the departmental proceedings, against a Govt. employee. No doubt, whenever the Govt. of the concerned authority in the departmental enquiry acted in flagrant prejudice of the Rule of natural justice and fair play, the said departmental proceedings is liable to be quashed. It may, here, be recalled that Lord Diplock in the Council of Social Service Union v. Minister for the Civil Services stated that "judicial review, as I think, development to a stage to day when, without reiterating any analysis of the stage of which development has come about, one can conveniently classify under three heads: the grounds on which the administrative action is subject to control by judicial review. The first ground I would call "illegality", the second ground "irrationality" and third ground "procedural propriety". That is not to say that further development on a case by case basis in course of time add further grounds. I have in my mind particularly

possible adoption in the future of the principle "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community". The Apex Court in *Sugarbai Sugarbai M. Siddiq and Others Vs. Ramesh S. Hankare (D)* by Lrs., held that "the court is concerned not with the decision but with the decision making process."

2. Heard Mr. Kh. Tarunkumar Singh, learned Counsel for the Petitioner as well as Mr. N. Ibotombi Singh, learned CGSC for the Respondents.

3. In the above accepted principle of law, this writ petition is required to be discussed and disposed of. A short factual matrix will suffice for the decision of the present writ petition. The writ Petitioner was appointed as Constable (General Duty) at the Group Canter, C.R.P.F. Langjing, Imphal, Manipur in the month of January, 1994 and he was posted at various places within the territory of India. While he was posted at Sibsagar, Assam, there was an unfortunate incident on 13.4.2000 at Sabji Mandi Market, Sibsagar, Assam. For that incident the writ Petitioner was placed under suspension in contemplation of a disciplinary proceeding vide order of the Commandant being No. P./VIII-2/2000-27-EC-II dated 13.4.2000. Thereafter, the Commandant 27 BN C.R.P.F. issued a memorandum dated 18.4.2000 for holding a departmental enquiry against the Petitioner and two article of charges were framed against him. The said two article of charges are quoted hereunder:

Article-1

That, the said No. 901004697 CT/GD N. Daimary of D/27 Coy, C.R.P.F. No. 940270123 CT/Dvr K.H. Brojen Singh of HQ/27 Bn. C.R.P.F. and No. 941150344 CT/GD M. Shanti Kumar of F/27 Bn. C.R.P.F., while functioning as Constable/Constable (Driver) during the period April 2000 committed an act of Gross misconduct in their capacity as a member of the force u/s 11(1) of C.R.P.F. Act, 1949 in that they left the lines (STF Camp, Dak Bungalow) and proceeded to station Charalie and Sabji Mandi Market, Sibsagar without obtaining any permission from the competent authority, which is unbecoming of a member of the force and against the good order and discipline of Force.

Article-11

That the said No. 90100467 CT/GD N. Daimary of D/27 Bn. C.R.P.F., No. 940270123 CR/CVr K.H. Rrojen Singh of HQ/27 Bn. C.R.P.F. and No. 941150344 CT/ GD M. Shanti Kumar of F/27 Bn, C.R.P.F., while functioning as Constable/Constable (Driver) during the period April, 2000 committed an offence of indiscipline/misconduct in their capacity as a member of the Force u/s 11(1) of C.R.P.F. Act, 1949 in that, they left the lines (STF Camp. Dak Bungalow) and proceeded to station Charali and consumed liquor and created nuisance with local Civilians resulting into fight nearby Sabji Mandi Market, Sibsagar, which is unbecoming of a member of the force and against good order and discipline of the Force.

4. The enquiry officer, after holding the disciplinary proceedings for the said two article of charges against the Petitioner, submitted a report to the effect that the said two article of charges were proved partially. The Commandant-27 BN, C.R.P.F. issued the impugned order being No. P/VIII-10/2000-27-EC-II dated 30.8.2000 basing on the said report of the enquiry officer for dismissing the Petitioner from service (Annexure-A/7 to the writ petition). The Petitioner being achieved by the said dismissal order dated 30.8.2000 (Annexure-A/7 to the writ petition) filed an appeal on 27.9.2000 before the Deputy Inspector General of Police (Admn) C.R.P.F. Group Centre, Langjing, Imphal, Manipur. The D.I.G.P. (Admn), C.R.P.F. Imphal, Manipur also dismissed the said appeal by passing an order dated 8.11.2000 (Annexure-A/9 to the writ petition). The revision petition filed by the Petitioner against the dismissal order dated 30.8.2000 (Annexure-A 7 to the writ petition) and the said order of the D.I.G.P. (Admn) C.R.P.F. Imphal, Manipur dated 8.11.2000 (Annexure-A/9 to the writ petition) also had been rejected by the I.G.P., C.R.P.F., Imphal, Manipur vide his order being No. R. XIII-1/2001-Admn-1/ 1852 dated 12.2.2001 (Annexure-A/11 to the writ petition) It is an admitted fact of both the parties that no presenting officer was appointed in the said disciplinary proceedings initiated against the Petitioner and the enquiry officer proceeded the said disciplinary proceedings without presenting officer against the writ Petitioner. The only main thrust of the writ Petitioner in the writ petition is that because of the non-appointment of the presenting officer in the said departmental enquiry against him, principle of natural justice and fair play had been violated in holding the disciplinary proceedings against him and as a result thereof the proceedings of the disciplinary proceedings is liable to be quashed on that score only. In this regard the learned Counsel appearing for the Respondents submits that there is no question of violation of natural justice and denial of fair procedure in holding the disciplinary proceedings against the writ Petitioner inasmuch as the said disciplinary proceedings was held in compliance with the Rule 27 of the C.R.P.F. Rules, 1955. The relevant portions of Rule 27 is quoted hereunder:

27.* * * *

(e) The procedure for conducting a departmental enquiry shall be as follows:

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hours before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral;

(i) it shall be direct,

(ii) it shall be recorded by the Officer conducting the enquiry himself in the

present of the accused;

(3) When documents are relied upon in support of the charge they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence, be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry, If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If the pleads "Not guilty", he shall be required to file a written statement, and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such documents to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the 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.

1 [(7)[***]

(cc) notwithstanding anything contained in this rule:

(i) Where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or

(iii) where the Director-General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.

5. From the bare perusal of the Rule-27 of the C.R.P.F. Rules, 1955, it is clear that Rule-27 does not bar the competent authority from appointing a presenting

officer in the disciplinary proceedings for holding the same in a fair manner in compliance with the requirement of the principle of natural justice, principle of which, are being discussed in the following paras, and Rule-27 is completely silent about the appointment or non-appointment of the presenting other in the disciplinary proceedings.

6. The Apex Court (Constitution Bench) had discussed the scope and object of natural justice and its applicability to administrative enquiry in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it, Para-20 (of AIR) in A.K. Kraipak (supra) is quoted hereunder:

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent year. In the past it was thought that it include just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George Vs. University of Kerala and Others, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

7. The Apex Court in *State of Maharashtra and Others Vs. Vijay Vasantrao Deshpande*, had discussed the applicability of principles of natural justice in the departmental enquiry and held that the principles of natural justice have to be read into Regulation 7(2). (*Punjab National Bank Officer Employee's (Discipline and Appeal) Regulations, 1977* though it is silent on this aspect Para-19 (of SCC) in *Punjab National Bank and Ors. (Supra)* is quoted hereunder:

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reason for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

8. The Apex Court in *State Govt. Houseless Harijan Employees "Association v. State of Karnataka and Ors.* reported in (2001) 1 SCC 610 took the similar view that "the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication". Paras-27 and 28 (of SCC) in *State Govt. Houseless Harijan Employees" Assn. (supra)* are quoted hereunder:

27. This Court has consistently held that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication.

28. In the case of *Union of India v. Col J.N. Sinha* this Court said (SCC p. 461, para 8):

It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intent to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by the necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice.

9. The Apex Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* reported in (2001) 1 SCC 182 held that the object of the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Doctrine of natural justice is incapable of exact definition. However, it is synonymous with

fairness. Compliance or non compliance therewith has to be examined on the totality of the facts and circumstances in each case. In Kumaon Mandal Vikas Nigam Ltd. (supra), the Apex Court held that there is violation of the principles of natural justice in the departmental enquiry because of non-appointment of the presenting officer. The relevant portion of para-22 in Kumaon Mandal Vikas Nigam Ltd. (supra) is quoted hereunder:

22. The sixty-five page report has been sent to the Managing Director of the Nigam against the Petitioner recording therein that the charges against him stand proved what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative, if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice.

10. This court in Chelfremog v. State of Tripura and Ors. reported in (2000) 2 GLT 604 and Baharul Islam (CT) v. Union of India and Ors. reported in 2001 (1) GLT 621 held that in the departmental proceedings where no presenting officer was appointed, the enquiry officer has assumed the role of the judge as well as prosecution inasmuch as in the absence of presenting officer, the enquiry officer must examine the witnesses and exhibited documents. This will be a total violation of the rules and fundamental principles of natural justice. Therefore, the procedures adopted by the enquiry officer in holding the departmental enquiry does not fulfill the requirement of fair procedure in conducting enquiry against the delinquent. In such circumstances "the reasonable opportunity of being heard" as emphasized in Article 311(2) of the Constitution of India had been deemed to the concerned government employee (delinquent) The similar view is also taken by this Court (Division Bench Dr. Rajyamalla Buzarbaruah v. the Assam Administrative Tribunal and Ors. reported in (1983) 1 GLR 71 . The Apex Court in Dr Rash Lal Yadav Vs. State of Bihar and Others, held that the concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely (i) no one shall be a judge in his own cause, and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural juice, courts will read the said requirement in enactments that are silent and insist on its application even in

cases of administrative action having civil consequences.

11. From the above discussions, I am of the considered view that for complying with the rule of natural justice and fair procedures, appointment of presenting officer is a must in a disciplinary proceedings against a C.R.P.F. Constable and the Rule-27 of the C.R.P.F. Rules, 1955 by expressly or necessary implication does not exclude the application of the rule of natural justice and fair procedures. In this regard, Mr. Ibotombi Singh, the learned C.G.S.C. appearing for the Respondents, draws the attention of this Court in a decision of the Apex Court reported in *Union of India and Others Vs. P. Thayagarajan*, and submits that the Apex Court has upheld validity of the Rule-27 of C.R.P.F. Rules, 1955. On the careful perusal of the decision of the Apex Court in *Thayagarajan (supra)*, it is clear that the Apex Court held that if there be a particular procedure for examination of witnesses in the disciplinary proceedings under Rule-27(c)(2) of C.R.P.F. Rules, 1955, the enquiry officer should follow that prescribed procedures. In the present case in hand, as stated above, the Rule-27 neither prescribes nor excludes the appointment of the presenting officer for holding disciplinary proceedings in compliance with the principles of natural justice and fair procedures against a C.R.P.F. Constable for the article of charges against him

12. For the reasons discussed above the disciplinary proceedings against the Petitioner is illegal and it was held in violation of the principle of natural justice. Therefore, the disciplinary proceedings against the Petitioner is liable to be quashed. Accordingly, the disciplinary proceedings against the writ Petitioner is hereby quashed and in consequence thereof, the impugned dismissal order dated 30.8.2000 (Annexure-A/7 to the writ petition), the order of the D.I.G.P. (Admn), C.R.P.F. dated 8.11.2000 (Annexure-A/9 to the writ petition) and order of the I.G.P. C.R.P.F. dated 12.2.2001 (Annexure-A/11 to the writ petition) are quashed. The writ petition is allowed and the writ Petitioner should be reinstated in service forthwith.

13. It is made clear that, the concerned authority shall decide and take appropriate decision about the arrear pay and allowances, i.e. the pay and allowances of the writ Petitioner for the period from the date of passing the impugned dismissal order dated 30.8.2000 till his reinstatement under the order of this Court. No order as to costs.