
(2010) 08 AHC CK 0013
In the Allahabad High Court
Case No : Special Appeal No. 1391 of 2010

Narayan Chandra Mohapatra	Vs	APPELLANT
Inspector General of Police C.R.P.F. and Others		RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27(7)
Constitution of India, 1950 — Article 226, 311

Citation : (2010) 6 AWC 6484 : (2011) 2 UPLBEC 1236

Hon'ble Judges : F.I. Rebello, C.J.; A.P. Sahi, J

Bench : Division Bench

Advocate : K. Ajit, for the Appellant; R.B. Singhal, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

F.I. Rebello, C.J. and A.P. Sahi, J.—The Appellant, a Constable of the Central Reserve Police Force, is in appeal against the judgment of a learned single Judge dated 28.7.2010 whereby his challenge to the termination order dated 7th July, 2010 has been declined on the ground of availability of an alternative remedy of filing an appeal under the Central Reserve Police Force Rules, 1955.

2. The Appellant was recruited in the year 1989 and while posted in Manipur in the year 1997, he was subjected to a disciplinary enquiry and was dismissed from service. The appeal filed against the same was also dismissed whereafter he approached the High Court of Orissa by filing a petition being O.J.C. No. 8032 of 1999, which was disposed of with a direction to reconsider the defence of the Appellant. The appellate authority partly allowed the appeal on 19th October, 2006 with a direction for his reinstatement in service, and payments for the period during which the Appellant remained outside service was denied. The said order was challenged claiming salary, which petition is stated to be still pending.

3. The Appellant was transferred to Srinagar (Jammu and Kashmir) and thereafter to Balaghat, Chhatisgarh from where he sought voluntary retirement

and pension in March, 2009. The Appellant was completing 20 years of service in May, 2009 and thereafter he opted for the aforesaid retirement. He was transferred to Group Centre, C.R.P.F. at Allahabad on 15th June, 2009 from where he moved his application for voluntary retirement. The Appellant alleges that since the said application was pending, therefore, he made a request to the authorities to consider the same even if he was due for promotion.

4. It is alleged that the Appellant left for his home State to Cuttack in Orissa and he was surprised to receive the order dismissing him from service passed by the Deputy Inspector General of Police at Allahabad.

5. The Appellant challenged the same by filing Civil Misc. Narayan Chandra Mohapatra v. Inspector General of Police, C.R.P.F. and Ors. Writ Petition No. 43508 of 2010 giving rise to the present appeal on the ground that no opportunity was given nor any enquiry was conducted and the Respondents in terms of Rule 27 (7) (cc) (ii) read with Article 311 of the Constitution of India, without giving any plausible reason for dispensing with the enquiry, treated the charge to be grievous enough so as to warrant his outright dismissal. The Petitioner contended that the order is invalid, inasmuch as, keeping in view the nature of the charges alleged and the manner in which the information was allegedly gathered, clearly demonstrates that the Appellant has been victimized on the basis of an alleged trap, which is not founded on any facts and the story has been woven like an Indian Rope Trick to dispense with the enquiry.

6. Sri K. Ajit, learned Counsel for the Appellant submits that in view of the ratio of the decisions of the Apex Court in the case of Chief Security Officer and Others Vs. Singasan Rabi Das, in the case of Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, and the Division Bench judgment of this Court in the case of Yadunath Singh Vs. State of U.P. and Others, the authorities have clearly acted in utter violation of the C.R.P.F. Rules, 1955, hence, the learned single Judge committed an error by relegating the Appellant to the alternative remedy.

7. He submits that the order dated 7th July, 2010 being in violation of the C.R.P.F. Rules, 1955 without there being any cogent reason for dispensing with the enquiry, the same deserves to be set aside.

8. Sri R.B. Singhal, learned senior counsel for the Respondents contends that keeping in view the nature of the charges and the involvement of the ladies and young girls of the families of the C.R.P.F. personnel, the authority was justified in arriving at the conclusion that it was not reasonably practicable to hold a departmental enquiry. He submits that the conclusion drawn by the authorities, that the females residing within the campus are of a very well civilized society, hence they are not ready to come out to give statements on such a dirty episode, is founded on the material on record. The learned single Judge was therefore justified in relegating the Appellant to the alternative remedy for filing an appeal. He therefore, submits that in view of a statutory remedy available, the law is well-settled that this Court can refuse to exercise discretion under

Article 226 of the Constitution of India.

9. Having heard learned Counsel for the parties, it is settled law that there are exceptions to the rule of alternative remedy being applied as a Thumb Rule in every case and such exceptions have been spelled out in a series of decisions of the Apex Court. To refer to one of them, it would be apt to mention Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, followed in the decision of the Apex Court in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

10. Coming to the facts of the present case, the impugned order dated 7th July, 2010 proceeds to dismiss the Appellant without holding an enquiry on the ground that there were ample reasons to believe that it was not reasonably practicable to hold a departmental enquiry. The order records that the indecent and obscene behaviour of the Appellant was humiliating to the occupants within the campus of the Group Centre, who were living with their families including female members. Whenever the Appellant was confronted he used to manage his escape. Such reports were being received for long and as such, on 5th July, 2010 in a meeting of the Officers of the Group Centre, the said point was discussed in detail and all the Officers of the Group Centre were directed to keep a close watch on the Appellant. On 6th July, 2010 an internal intelligence report is alleged to have been received at about 11.15 p.m. at night that the Appellant was roaming about in the family line area in the campus of the Group Centre. As his gestures and overtures were obscene and indecent as indicated in the impugned order, a trap was laid and he was caught red handed in the family quarter area by an Officer of the Group Centre on 6th July, 2010 at about 11.30 p.m. at night.

11. A very peculiar aspect indicated in the impugned order is that all efforts were made to conduct an enquiry but the families including the girls and women, who had reported against the Appellant declined to openly come out and give statements due to the shameful act and the social stigma that might result on account of such enquiry. What is surprising is that immediately the following day, i.e., on 7th July, 2010, the impugned order has been passed.

12. Rule 27(7)(cc)(ii) of the C.R.P.F. Rules, 1955 under which such an enquiry can be dispensed with is quoted below:

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

13. A perusal of the said Rule leaves no room for doubt that the satisfaction to be recorded, has to be founded on a valid reason. In the instant case, the facts enumerated above demonstrate that firstly an intelligence report was received, which must have been tendered by an official of the organisation. Secondly, a trap was laid and the Appellant is alleged to have been caught red handed at about 11.15 p.m. at night according to the impugned order by an Officer of the Group Centre. Thirdly, efforts are alleged to have been made to conduct an

enquiry. All these three aspects leave no room for doubt that the Officers of the C.R.P.F. were very much involved in factually and physically apprehending the Appellant apart from the ladies and the girls, who might have been witnesses to the incident. The Officers themselves, therefore, were witnesses to the incident which is said to be narrated as a trap where the Appellant was allegedly caught red handed.

14. The incident therefore had other witnesses including the Officers, who are stated to have received the intelligence report and then having caught the Appellant red handed. Such witnesses are not heresay witnesses or aliens to the incident. There is nothing in the order which may indicate that these Officers had refused to present themselves as witnesses in a departmental enquiry. The alleged behaviour of the Appellant might have been unethical and unpardonable but the question is could the punishment order have been passed on the pretext that there was a valid reason for not holding the enquiry in the absence of witnesses.

15. What is noticeable is that the Appellant was allegedly caught hold of at 11.30 p.m. at night and the very next morning he has been dismissed from service. There is nothing on record or in the impugned order to indicate that as to what efforts were made for collecting evidence and who were the witnesses who within a span of few hours had refused to co-operate with the enquiry. This aspect of the matter raises a serious doubt about the bona fides of the authority who appears to have proceeded unreasonably in the matter. The action appears to have been taken in hot haste which has elements of malice in law. An undue haste, exhibited by an authority, has been described as such in the cases of Dr. S.P. Kapoor Vs. State of Himachal Pradesh and Others, Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, and Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,

16. It appears that the entire action was concluded in a jiffy throwing over board all rules and all fundamental principles of fair play. The episode is alleged to have begun before midnight and concluded the next morning by a dismissal order.

17. The circumstances as discussed hereinabove and upon a reading of the impugned order, the conclusion drawn by the authority that there was ample reason for not holding an enquiry as the females involved may not come out to give statements, is absolutely irrational and without adverting to the abovementioned aspects of the matter. The reason, therefore, given in the impugned order for dispensing the enquiry is not in conformity with law and we are supported in our view on the Judgments relied upon by the learned Counsel for the Appellant and referred to hereinabove.

18. The Appellant could have been subjected to an enquiry and even if, the female witnesses had declined to be part of the enquiry on account of any humiliation or any such exceptional circumstance, such an excuse was not available for the Officers, who were part of the intelligence report and the raiding

party having allegedly caught the Appellant red handed. The reason, therefore, given in the order impugned is neither rational nor acceptable in law. It is not a case where it was impossible or impracticable to call the officers to give evidence who were actual witnesses to the scene. The presumption raised in the dismissal order, therefore, does not in any way support the same and accordingly, we are of the opinion, that the same is unsustainable.

19. Having found that the order on merits is unsustainable due to noncompliance of the relevant provisions of the C.R.P.F. Rules. 1955, we are of the opinion that the learned single Judge fell into an error by relegating the Appellant to an alternative remedy. Similar was the position in the case of Yadunath Singh (supra) where this Court in paragraph 7 ruled as follows:

The question as to whether the Petitioner has an alternative remedy or not is not to be gone into in the present case when on the facts on record, the reason given in the impugned order does not appear to be germane to the inquiry. The satisfaction recorded by the authority does not proceed on a reasonable ground and, therefore, it is not necessary for us to relegate the Petitioner to the alternative remedy of filing an appeal. We are satisfied that the competent authority has not applied its mind in correct perspective and the order being contrary to law, the direction of the learned single Judge to avail the alternative remedy does not commend to us.

20. Accordingly, the objection raised on behalf of the Respondents that the Appellant deserves to be relegated to the alternative remedy and, therefore, the order impugned does not require any interference, is rejected.

21. For the reasons given hereinabove, the order impugned in the writ petition dated 7th July, 2010 is hereby quashed. The judgment of the learned single Judge is set aside.

22. In the ordinary course, the Respondents are at liberty to proceed to hold an enquiry against the Appellant in accordance with the provisions of the C.R.P.F. Act and Rules, but in the instant case we find that the Appellant himself had made a request for voluntary retirement. It is also indicated in the pleadings that the said request has not been disposed of so far. If that be so, and in view of the aforesaid assertion, It would be more appropriate for the authorities to proceed to consider his request for retirement instead of resorting to a fresh enquiry in the matter. The Respondents shall be at liberty to consider the same and pass appropriate orders in accordance with law within a period of six weeks from the date of production a certified of this order.

The appeal is accordingly allowed. No order as to costs.