
(2008) 06 MAD CK 0072
In the Madras High Court
Case No : Writ Petition No. 13302 of 1998

P. Munirathnam

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-06-2008

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Constitution of India, 1950 — Article 21, 22, 22(5), 311(2)

Citation : (2008) 06 MAD CK 0072

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.N.G. Ezhilarasi, for the Appellant; P. Wilson, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of the learned Counsel for the parties and perused the records.

2. The petitioner was employed as a Constable in the Central Reserve Police Force [CRPF] on 02.4.1991. He was posted at several places and finally, at Jammu Tawi on 19.3.1997. On 17.8.1997, they celebrated the Raising Day and he was detained in the working group for shifting the store items from the ground and back to the store room. Another Constable by name Mukesh Chand was also detained to do that work. There was a quarrel between the petitioner and the said Mukesh Chand, who, according to the petitioner, used abusive language against him and also assaulted him. The petitioner, in order to save himself, threw a stone at the said Mukesh Chand which hit him on his forehead.

3. Instead of finding out the root cause for the trouble, the petitioner was suspended from duty by an order dated 20.8.1997. He was also served with a charge-memo dated 01.9.1997 stating that he had committed a misconduct punishable u/s 11(1) of the CRPF Act. The petitioner made a representation that it was an accident and he may be let off.

4. An enquiry was ordered to be conducted against the petitioner regarding the said misconduct. The petitioner sought for permission to have the assistance of a lawyer or an agent but that was also rejected thereby forcing to defend himself all alone. The petitioner hails from a southern state and he was not conversant with Hindi. Though he cannot read and write Hindi, the enquiry was conducted in Hindi. Therefore, the petitioner was not able to defend himself properly. On the basis of the said enquiry (in which reasonable opportunities were denied to him), he was dismissed from service by an order 18.12.1997.

5. The petitioner filed an appeal dated January 1998 to the second respondent. In that appeal, he had categorically stated that the enquiry proceedings were held in Hindi and he was not given any translated version. He also made a grievance about the denial of having the assistance of a lawyer / agent in the enquiry. The appellate authority the second respondent herein rejected his appeal. In paragraph 5 of the said order, the appellate authority recorded as follows:

The appellant has stated that during the course of enquiry he was denied of defence assistance and translated copy of the DE proceedings drawn in Hindi. No such requests are available on the record.

6. In paragraphs 8 and 20 of the counter affidavit filed by the Additional Deputy Inspector General, similar averments have been made and it is necessary to extract paragraph 8 of the counter affidavit:

The Enquiry Officer had read over and explained the day-to-day proceedings and the same were admitted as correct by the petitioner, for which the signatures in token of having understood the same are available in the DE proceedings file. At no stage did he request for translated version of DE proceedings or projected in Hindi. Before conducting the enquiry in Hindi, the Enquiry Officer had asked him whether he had any objection or otherwise, but didn't raise any objection and instead he stated that he had no such objection. He was given full opportunity to defend his case, which is evident from the DE file.

7. The petitioner was initially given the charge-memo in English and it is not clear as to why the respondents thereafter went ahead with the proceedings recorded in Hindi. At the earliest point of time, in the appeal memo dated January 1998, the petitioner had made a grievance with reference to denial of defence assistance as well as the proceedings being in Hindi with which he was unfamiliar and that he was not given any translated copy of the enquiry report. There is no point in the respondents relying upon the self-serving endorsement made by the Enquiry Officer regarding the satisfaction alleged expressed by the petitioner that too, in Hindi.

8. It is needless to state that a person must be given reasonable opportunity of defending himself in any departmental enquiry. In the appellate order as well as in the counter, there is only a bald denial about the request made by the petitioner for defence assistance and absence of the petitioner seeking the

proceedings to be conducted in the language known to him. The fact that he is unfamiliar with Hindi is not denied by the respondents and once that position is accepted, it is automatic that any proceedings conducted in the language other than the language known to the charge-sheeted person will be a meaningless exercise and will amount to denial of reasonable opportunity to defend oneself in an enquiry.

9. With reference to the first objection that he was not given the opportunity of having assistance of a Lawyer or a co-employee or a friend, it must be stated that a similar Rule under the Railway Protection Force Rules 1987 came to be interpreted by the Supreme Court in a recent judgment in D.G. Railway Protection Force and Ors. v. K. Raghuram Babu 2008 AIR SCW 2263. It was held against the charge-sheeted employee. The relevant passages found in paragraphs 8 to 10 of the judgment may be usefully extracted below:

Para 8: It is well settled that ordinarily in a domestic / departmental inquiry the person accused of misconduct has to conduct his own case vide *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, . Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide *Brook Bond India v. Subba Ram* 1961 (II) LLJ 417.

Para 9: Similarly, in *M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another*, , it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, , in which the whole case laws has been reviewed by this Court.

Para 10: Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules / standing orders provide for such a right. Moreover, the right to representation through someone, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

10. With reference to the second submission that the enquiry was not conducted in the language known to the petitioner, the respondents have come with the plea that this was not raised before the Enquiry Officer and only raised at the appellate stage. In this context, it is relevant to refer to the judgment of the Supreme Court in *Sawai Singh Vs. State of Rajasthan*, and the passages found in paragraphs 15 to 17 may be reproduced:

Para 15: Shri B.D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the

charges.

Para 16: It has been observed by this Court in *Surath Chandra Chakrabarty v. State of W.B.* that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of A.P. v. S. Sree Rama Rao* and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.

Para 17: The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See *K.L. Tripathi v. State Bank of India.*) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the *sine qua non*.

Therefore, the objection of the respondent cannot be accepted as they had failed to prove that reasonable opportunities were provided to the petitioner.

11. What will amount to a "reasonable opportunity" was considered by the Supreme Court even in the absence of protection under Article 311(2) of the Constitution in its judgment in *Town Area Committee, Jalalabad Vs. Jagdish Prasad and Others*, . The following passage found in paragraph 1 may be usefully reproduced below:

Para 1: ...A reasonable opportunity is a term of well-known legal significance and includes an opportunity given to the employee to cross-examine the witnesses examined against him and to lead defence in support of his version....

12. In the present case, the petitioner is a Government servant having the protection under Article 311(2) of the Constitution against any punishment is meted out to him. Article 311(2) of the Constitution reads thus:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

1. Dismissal, removal or reduction in rank of persons employed in civil capacities

under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges [* * *]:

13. The words "has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges" has a necessary meaning and purport. It is only when an employee understands the charges, he can defend himself. When the petitioner had categorically stated that he is unfamiliar with Hindi and he cannot read and write, there is no gainsaying that he had been given a reasonable opportunity of being heard and that he was informed of the charges.

14. The Supreme Court has held that the deprivation of livelihood would also amount to deprivation of liberty and such an action of the employer must also conform to the safeguards provided under Article 21 of the Constitution India and the procedure for depriving livelihood must be a due and fair procedure. If the lowest employee like the petitioner, who is only a Constable in rank, if not told as to what is the evidence that was recorded against him and he was not given opportunity of cross-examining the witnesses who spoke against him, it cannot be said that reasonable opportunity has been given to him. Further, making representation against the findings of the Enquiry Officer is a valuable right. Providing the findings of the Enquiry Officer in Hindi language without any due translation, it cannot be said that the petitioner would have understood the same and made an effective representation against it. Therefore, the objection of the respondent that due procedure was followed, cannot be accepted.

15. The Supreme Court in the context of dealing with cases challenging orders of detentions, considered the right of a detenu under Article 22(5) of the Constitution. In many cases, it held that for making an effective representation, the grounds must be supplied in the language known to the detenu. Article 22(5) of the Constitution reads as follows:

22. Protection against arrest and detention in certain cases.-

...

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

16. In *Harikisan v. State of Maharashtra* 1962 Supp (2) SCR 918, the Supreme

Court held that in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand and in a script which he can read if he is a literate person. The following passages found in paragraphs 7 and 8 may be usefully extracted:

Para 7: It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that "he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard". The High Court negated the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detenu, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of Detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in Clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of *State of Bombay v. Atma Ram Sridhar Vaidya* Clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police

officer serving those on the detenu would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the Order of Detention is based.

Para 8: We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

17. Subsequently, in *Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others*, , an attempt was made by the Union of India to show that since the detenu had signed a number of documents in English, it must be presumed that he was fully conversant with English. Rejecting the said stand, in paragraph 2 of the judgment, it was observed as follows:

Para 2: ...The Under-Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English.

18. The Supreme Court has also held that if the grounds given to a detenu is couched in a language which is not known to him, it would amount to non-serving the grounds of detention and will vitiate the detention itself. In *Smt. Raziya Umar Bakshi Vs. Union of India and Others*, , the Supreme Court in paragraphs 3 to 5 observed as follows:

Para 3: ...The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie.

Para 4: In case of *Hadibandhu Das v. District Magistrate, Cuttack* it was clearly held that merely oral explanation of an order without supplying him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the instant case, it is not even alleged in the affidavit of Mr Shah that any translation or translated script of the grounds was furnished to the detenu.

Para 5: In this view of the matter, the detention becomes invalid on this ground alone. I would however like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands....

19. In *Surjeet Singh Vs. Union of India (UOI) and Others*, , the Supreme Court held that if the purpose of Article 22(5) of the Constitution is to afford a real opportunity of making representation against the order of detention, the service of the grounds should be in a manner to provide effective communication to the detenu. The following passages found in paragraphs 8 and 9 of the said judgment may be extracted below:

Para 8: In *Nainmal case Fazal Ali, J.*, who followed *Hadibandhu* case held that the communication of the grounds of detention in a language understood by the detenu was an essential requirement for the validity of a detention order which, in the absence of such requirement being fulfilled, would be repugnant to the provisions of Article 22(5) of the Constitution and would thus stand vitiated. And that is a view which has been consistently held by this Court.

Para 9: The facts with which we are here concerned, insofar as they are relevant to the decision of the point canvassed before us, are on all fours with those of the three cases cited above. As already pointed out, the grounds of detention were supplied to the two petitioners in the English language a language with which they were not conversant. The service of the grounds on them in that manner could not be considered under the circumstances to be effective communication to them thereof so as to afford to them a real opportunity of making a representation against the order of detention.

20. In *Kubic Darusz Vs. Union of India (UOI) and Others*, , the Supreme Court held that mere explaining the contents will not amount to communicating the grounds of detention. The following passage found in paragraph 6 of the judgment may be relevant to be quoted:

Para 6: Where it is stated that the detaining authority explained the grounds of detention to the detenu, court insists on adequate proof in the absence of any translation being furnished. Thus in *Lallubhai Jogibhai Patel v. Union of India* the detenu did not know English but the grounds of detention were drawn up in English and the detaining authority in affidavit stated that the Police Inspector while serving the grounds of detention fully explained the grounds in Gujarati to the detenu. Admittedly, no translation of the grounds of detention into Gujarati was given to the detenu. It was held that there was no sufficient compliance with the mandate of Article 22(5) of the Constitution which required that the grounds of detention must be communicated to the detenu. "Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the

grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. This follows from the decisions in *Harikisan v. State of Maharashtra* and *Hadibandhu Das v. District Magistrate*.

21. In the light of the above, it can be safely held that the right guaranteed under Article 22(5) of the Constitution is not different from a right conferred under Article 311(2) and, therefore, the case rendered in detention case can well form the basis for considering the language in which an enquiry should be conducted against a Government servant so that it would amount to a reasonable opportunity of being heard in respect of those charges. This is especially in the context that the Supreme Court has held that dismissal is a deprivation of a livelihood and the livelihood has been equated to the term "liberty" found in Article 21 of the Constitution of India. Article 21 protects the right to livelihood as an integral facet of right to life. [See *Narendra Kumar Chandla Vs. State of Haryana and others*,]. Further, since the right to be represented by a legal practitioner or by any agent has also not been considered as part of principles of natural justice as referred to by the Supreme Court in *D.G. Railway Protection Force and Ors. v. K.Raghuram Babu* [cited supra], it is all the more reason that a charge-sheeted must be given proper opportunity to defend himself.

22. In the *Kubic Darusz*'s case (Cited supra), the Supreme Court also upheld the power of the Court to consider the facts and circumstances in a case to reasonably ascertain as to whether the detenu was feigning ignorance of the language. The relevant passage found in paragraph 9 of the said judgment may be usefully extracted below:

Para 9: ...We are of the view that it would be open for the court to consider the facts and the circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as to understand the grounds of detention and the contents of the documents furnished."

23. In this context, it is clear that even though the ground that the petitioner was unfamiliar of Hindi language was raised in the appeal grounds, neither in the order of the appellate authority nor in the enquiry report, the said assertion was denied by the respondents. Hence, it can be safely concluded that the petitioner was not familiar with Hindi.

24. In the present case, the punishment meted out to the petitioner was dismissal, which is a death penalty in the industrial jurisprudence. Therefore, this Court has no hesitation to believe the statement made by the petitioner that he was denied the reasonable opportunity of defending himself in the enquiry as it

was held in Hindi, the language with which the petitioner was not familiar. Any amount of statement made by the respondents about the notings made by the Enquiry Officer, which also was in Hindi, will not cure the defect crept in to the enquiry record.

25. Under the above circumstances, the enquiry conducted by the respondents will have to be necessarily set aside and accordingly, set aside. The writ petition will stand allowed. The impugned order of dismissal dated 18.12.1997 as confirmed by order dated 27.3.1998 will stand set aside. The petitioner is entitled to have all the consequential benefits. If the respondents want to conduct an enquiry afresh, that will have to be done only in the language known to the petitioner and he must be given the assistance of an agent as provided in the Rules to defend himself in the enquiry. No costs.