

(2015) 05 OHC CK 0029
In the Orissa High Court
Case No : O.J.C No. 7854 of 1998

Purna Chandra Padhi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)

Citation : (2015) 2 OLR 244

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : M. Rath and S.K. Mishra, for the Appellant; S.K. Das, Central Government Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner while working as Naik Fitter in the 39th Battalion of Central Reserve Police Force (hereinafter referred to as "CRPF") a departmental proceeding initiated against him on conclusion of which he was removed from service vide Annexure-5, which was confirmed in appeal vide Annexure-9. The petitioner has filed this application praying to quash Annexure-3, the final order passed in departmental enquiry dated 23.03.1996, Annexure-5, the order dated 17.03.1997 passed by the disciplinary authority dismissing the petitioner from service and Annexure-9, the order dated 31.07.1997 confirming the order of dismissal passed by the disciplinary authority.

2. The short fact of the case, in hand, is that the petitioner was enrolled as a Fitter Constable in the CRPF on 20.04.1988 and was posted in Group Centre, CRPF, Bhubaneswar (Orissa) up to September, 1989. The petitioner reported on transfer to 39 Bn, CRPF on 02.10.1989 and remained at Bn Headquarters till the date of his dismissal i.e. 10.04.1997 (AN). The petitioner got his promotion in the year 1992 as Lance Naik Fitter and thereafter, he was promoted to the rank of Naik Fitter in the year 1995. He rendered service in different states like Odisha (BBSR), Manipur, Delhi, Punjab (Jalandhar), Jammu and Kashmir and Assam

(Haflong). While the petitioner was serving as Lance Naik Fitter in the 39th Battalion of the CRPF at Haflong in Assam, he committed an act of grave misconduct on 28.01.1996 at about 2100 hours in that he went to the guard room of the MR Park night guard at Railway Field, Haflong and indulged in loose talks having sexual overtones etc. and picked up quarrel with a member of the guard EX.CT (Dvr.), Subas Chandra who was taking rest there on his cot. The quarrel resulted in scuffle and exchange of blows. They were separated by the Guard Commander who was available in the tent. Later on after about 15 minutes the petitioner again tried to enter into the guard room along with a small knife in his hand but was foiled by the guard Commander. The action of the petitioner amounted to a misconduct under Section 11(1) of Central Reserve Police Force Act, 1949 (hereinafter the "1949 Act"). A preliminary enquiry was conducted into the case in which a prima face case was made out against the petitioner. By order dated 17.06.1996, the petitioner was placed under suspension on contemplation of a disciplinary proceeding against him by the authority in exercise of power conferred by sub-Rule(1) of Rule 10 of Central Reserve police Force Rules, 1965 read with Rule 27 of Central Reserve Police Force Rules, 1955, hereinafter to be referred to as "1955 Rules". During the period of suspension, the Head Quarters of the petitioner was fixed at 39th Bn. CRPF Haflong (Assam) and he was allowed to draw subsistence allowance at an amount equal to leave salary which the Government servant would have drawn, if he had been on leave on half average pay or half pay and in addition to dearness allowance based on such leave salary, under the provisions of FR-53(i) (ii)(a) and he has also been entitled to detachment allowance at sliding scales as permissible under Rule 46(C) of 1955 Rules up to 90 days during the period of suspension. On 18.06.1996, the petitioner was served with an office order containing some article of charges, statement of imputation etc. on the allegation of commission of gross misconduct under Section 11(1) of the 1949 Act which is as follows.

"11(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considered to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force, that is to say:-

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter-guard for not more than twenty eight days with or without punishment drill or extra guard, fatigue or other duty; and
- (e) removal from any office of distinction or special emolument in the force."

3. Mr. K.K. Siva Prasad, Commandant-39 B, CRPF was appointed as Inquiry Officer, who found the petitioner guilty and imposed a penalty of reduction in rank to Lance Naik Fitter for a period of one year w.e.f. 23.09.1996 vide Office Order dated 23.09.1996 in Annexure-3. But the disciplinary authority in exercise of power vested under Rule 29(d) of 1955 Rules, issued notice to the petitioner as to why punishment imposed shall not be enhanced to dismissal from service for commission of serious misconduct on 22.01.1997 in Annexure-4. Finally the Disciplinary Authority imposed the punishment of dismissal from service on 17.03.1997 vide Anneure-5. Against the said order of imposition of penalty by the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority, but the appellate authority rejected the appeal and confirmed the order of dismissal passed by the Disciplinary Authority in Annexure-9 dated 31.07.1997. Hence this application.

4. Mr. A. Mishra, on behalf of Mr. N.K. Mishra, learned Senior Counsel for the petitioner, urged that the entire proceeding is vitiated due to non-compliance of the provisions envisaged under the CRPF Act and Rules framed thereunder inasmuch as the same is in violation of principles of natural justice, fair play besides lack of adequate opportunity and more so, the Inquiry Officer being the Disciplinary Authority, he himself has acted as prosecutor and judge of his own cause. It is further urged that the Disciplinary Authority ignored the material evidence available on record, proceeded with extraneous matters and passed the order of dismissal which is highly disproportionate to the misconduct alleged against the petitioner when he had already rendered 8 years of unblemished service to the Force and more so, the inquiry conducted by the Inquiry Office is vitiated due to non-supply of the relevant documents. Since the inquiry was vitiated due to non-compliance of the principle of natural justice, any punishment imposed on such inquiry cannot be sustained and as such, the proceeding has to be quashed. In order to substantiate his case, he has relied upon the judgment of Supreme Court in State of U.P. and Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131 : (2010) 124 FLR 857 : (2010) 1 JT 617 : (2010) 2 LLJ 334 : (2010) 2 SCALE 42 : (2010) 2 SCC 772 : (2010) 1 SCC(L&S) 675 : (2010) 3 SCR 326 : (2010) 2 SLJ 59 : (2010) 2 SLR 159 : (2010) 2 UJ 788 .

5. Mr. S.K. Das, learned Central Government Counsel urged that the action taken by the authority is wholly and fully justified being in consonance with the provisions of CRPF Act and Rules framed thereunder. It is also stated that during the departmental enquiry the petitioner was also given opportunity as admissible and therefore, the action taken against the petitioner by the Disciplinary Authority is within the purview of law. Since the petitioner committed gross misconduct and charges levelled against him having been proved beyond any shadow of doubt, the order of imposition of penalty by the disciplinary authority as well as the appellate authority is wholly justified and fair. So far as the contention that Enquiry Officer acted as a prosecutor and judge, is not justified in view of the fact that the petitioner was given opportunity in the inquiry proceeding and therefore, the inquiry having been done in accordance with law

basing upon which the punishment was imposed, the same should not be interfered with by this Court.

6. On the basis of the facts pleaded above, it appears that for constitution and regulation of an Armed Central Reserve Police Force, Central Reserve Police Force Act, 1949 has been enacted. To give effect to the provisions of the act, in exercise of the power conferred under 1949 Act, Rule has been framed called, Central Reserve Police Force Rules, 1955. Chapter-VI of 1955 Rules deals with discipline. Rule-27 deals with procedure for the award of punishments. Sub-Rule (c) of Rule 27 lays down the procedure for conducting a departmental enquiry and as per sub-rule (1) of the Rules, 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 be given to him at least 48 hrs. before the commencement of the enquiry. Sub-rule (2) of the said Rule 27 states that at the commencement of the enquiry, the accused shall be asked to enter a plea of "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 presence of the accused

(iii) the accused shall be allowed to cross examine the witnesses.

Sub-rule (3) states that 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. Sub-rule (4) speaks that 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 he 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. Sub-rule (5) states that 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 document 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.

Sub-rule (6) states that 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 order where he has power to do so. This being the procedure envisaged under the statute, as it appears while conducting such inquiry against the petitioner, the procedure as envisaged under the Rules has not been followed. The documents which have been relied upon in Annexure-3 neither has been produced nor has been shown to the petitioner so as to give effective reply nor the list of witnesses by whom the articles of charges against the petitioner are proposed to be substantiated has been given. Though the same has been indicated in the articles of charges, no adequate opportunity has been given for cross-examination of such witnesses. It is stated that the petitioner has admitted the fact though he pleaded guilty partly while giving his statement. Though the prosecution witnesses 2 and 4 are the key witnesses, the petitioner has not been allowed to cross-examine them to dislodge the allegations made against him. As it appears, the enquiry proceeding is vitiated due to non-compliance of the principles of natural justice to the extent that the documents relied upon have not been supplied to him.

7. In *The State of Punjab Vs. Bhagat Ram*, AIR 1974 SC 2335 : (1974) 29 FLR 439 : (1974) LabIC 1442 : (1975) 1 SCC 155 : (1975) 2 SCR 370 : (1974) 6 UJ 664 , *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.*, AIR 1982 SC 937 : (1982) 45 FLR 289 : (1982) LabIC 1234 : (1982) 2 LLJ 180 : (1982) 2 SCC 376 : (1982) 2 SLJ 259 , *Kashinath Dikshita Vs. Union of India (UOI) and Others*, AIR 1986 SC 2118 : (1986) 2 LLJ 468 : (1986) 1 SCALE 909 : (1986) 3 SCC 229 : (1986) 2 SLJ 278 , the apex Court held that non-disclosure of documents would amount to denial of reasonable opportunity. In para-10 of the counter affidavit filed by the opposite parties, it is admitted to the following effect:

"10. X x x x x The opp.party No. 4 is not bound to issue each and every documents to the petitioner for which the petitioner himself is fully responsible and cannot blame to opposite party No. 4. x x x x "

8. In *Indu Bhushan Dwivedi Vs. State of Jharkhand and Another*, AIR 2010 SC 2472 : (2010) 126 FLR 994 : (2010) 6 JT 385 : (2011) 1 LLJ 719 : (2010) 11 SCC 278 : (2011) 1 SCC(L&S) 64 : (2010) 4 SLR 422 : (2010) 6 UJ 3168 , the apex Court has held that reasonable opportunity includes the duty to disclose material adverse to the employee, even when there is no statutory rule to this effect.

9. In *The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu*, (2006) 111 FLR 1190 : (2007) 1 LLJ 1004 : (2006) 11 SCALE 264 : (2007) 1 SCC 338 : (2007) 1 SCC(L&S) 254 : (2006) 8 SCR 73 Supp , it is stated by the apex Court that if any material is sought to be used in an enquiry, a copy thereof should be supplied to the party against whom such enquiry is being held.

10. In *Roop Singh Negi Vs. Punjab National Bank and Others*, (2009) 120 FLR 610 : (2009) 2 JT 176 : (2009) 2 LLJ 21 : (2009) 1 SCALE 284 : (2009) 2 SCC 570 : (2009) 1 SCC(L&S) 398 : (2009) 3 SLJ 14 : (2009) 4 SLR 78 : (2008) 1 UJ 183 , the apex Court has gone to the extent that mere production or disclosure of document is not enough and the contents of the documents have to be proved by examining the witnesses. This being the provision of law governing the field and the same having not been complied with in course of enquiry and as such, the enquiry having not been conducted in consonance with the provisions of Rule 27(c) of the 1955 Rules, the same is vitiated.

11. In *State of U.P. and others v. Saroj Kumar (supra)*, the apex Court held that the departmental enquiry conducted against the delinquent officer cannot be treated as casual exercise and the enquiry proceeding also cannot be conducted with closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a delinquent officer is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

12. In view of the solemn admission made in the counter affidavit that the opposite party No. 4 is not bound to supply all the documents, that ipso facto indicates that the authorities are proceeding in a closed mind and the entire action has been taken in contravention of the principles of natural justice and more so, the witnesses, who have been examined have not been allowed to be cross-examined by the petitioner and basing on the statement made by such witnesses, when the disciplinary authority in exercise of its review power imposed the penalty of removal from service, which has been confirmed by the appellate authority, without considering the contentions raised by the petitioner in appeal, both the orders passed by the disciplinary authority as well as the appellate authority in Annexures-5 and 9 cannot be sustained in the eye of law. Accordingly, the same are hereby quashed and the opposite parties are directed to reinstate the petitioner in service with all the consequential benefits in conformity with the provisions of law.

13. The writ application is allowed. No order as to cost.