
(2008) 04 J&K CK 0011
In the Jammu And Kashmir High Court

Rakesh Pal Rana	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2010) 2 SLJ 93

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nirmal Singh, J.—Petitioner, a Deputy Commandant in the Central Reserve Police Force presently posted at 33 Bn. Channi Himat, Jammu,

came to be initially appointed on 8th of October, 1984 as Dy. S.P. The said post was re-designated as Assistant Commandant. The petitioner

thereafter came to be promoted to the post of Deputy Commandant in February, 1992. Through the medium of present writ petitions, the

petitioner seeks quashing of order impugned dated 24th of March, 2003, and to promote him to the rank of Second-in-Command w.e.f.

April/May, 1997, along with all consequential benefits and further promotion to the post of Commandant. Direction is also sought to respondents

to finalise the departmental enquiry initiated against the petitioner in February, 2000.

2. The case of the petitioner is that in the year April/May, 1997, when he was due for promotion to the post of Second-in-Command, the

Departmental Promotional Committee did not clear his name for the said promotion, whereas, this benefit was given to the persons who were

junior to the petitioner. This led the petitioner to file a Civil Rule No. 5789/97 in

the Gauhati High Court; which came to be disposed of with the following observations:

...I dispose of this writ petition with the direction that the petitioner's case for promotion with effect from 1997 will be considered by the DPC

afresh and in such consideration, the DPC will not take into consideration the adverse remarks for the two periods' as indicated in the affidavit in

opposition filed by the respondents and in case the DPC recommends the case of the petitioner for promotion in the rank of 2nd-in-Command, the

petitioner will be given promotion in the rank of 2nd-in-Command with effect from 1997, to be more precise, with effect from date on which his

immediate junior in the rank of Deputy Commandant was given promotion and the petitioner will be given all consequential service benefits

accordingly. It is needless to say that after such promotion the petitioner will be given due seniority in the rank of 2nd-in-Command in CRPF in

accordance with the relevant rules. The aforesaid exercise will be done by the authorities within a period of three months from the date of receipt

of a certified copy of this judgment from the petitioner. Since the writ petition has been allowed on this point alone, it is not necessary to decide the

other points raised by Mr. Bhattacharya.

In pursuance to the aforesaid directions passed by the Gauhati High Court, the case of the petitioner was considered by a Review Departmental

Promotion Committee but the recommendations made by it have been kept in a sealed cover.

3. The grievance of the petitioner is that the aforesaid action of respondents is in violation of the judgment passed by the Gauhati High Court as

there was no such direction to keep the result of the Review Departmental Promotion Committee in a sealed cover. It is thus submitted that a

direction may be given to respondents to open the sealed cover and promote the petitioner to the post of 2nd-in-Command as has been done in

the case of his juniors.

4. Respondents have filed counter stating therein that case of the petitioner along with others was considered by the Departmental Promotion

Committee for promotion to the rank of 2nd-in-Command on 7th of April, 1997, but the petitioner was graded unfit for the said promotion

because of adverse entries recorded in his ACRs for the period from 15th of July,

1991 to 13th February, 1992 and 10th of April, 1995 to 20th

of October, 1995. Thereafter in pursuance to the directions passed by the Gauhati High Court, a Review Departmental Promotion Committee was

convened on 9th of August, 2000 for considering the case of the petitioner for promotion to the rank of 2nd-in-Command but as a departmental

enquiry was pending against the petitioner, the findings of the Review Departmental Promotion Committee were kept in a sealed cover in terms of

the provisions of GOI (DOP&T) O.M. No. 22041/4/92-Estt(A) dated 14th of September, 1992.

5. Petitioner in the present case was subjected to a departmental enquiry on the following charges:

Article-1 : That the said Shri R.P. Rana, Deputy Commandant while posted and functioning as OM/MTO/Adjutant of 61 Bn CRPF, Mantripokhri,

Imphal during August, 1995, committed a serious misconduct in that when a copy of office order No. D.III.I/95-Ops-61 dated 7.8.1995

regarding detailment and dispatch of Shri Ram Singh Assistant Commandant and party for special operations in Dimapur area was handed over to

him on 13.8.1995, he deliberately antedated its acknowledgment for having received the same on 7.8.1995. Thus the said Shri R.P. Rana, by

(commandant failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions

of Rule 3(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-II :That the said Shri R.P. Rana, Deputy Commandant while posted and functioning in the aforesaid capacity during the aforesaid period

committed a serious misconduct in that when he received the ante-dated office order No. D.III.I/95-OPS-61 dated, 7.8.1995 on 13.8.1995 as

mentioned in Article-I of Charge above, he ordered his subordinates. MM/SI B.L. Roy to prepare antedated inspection reports of the three

vehicles which were used by Shri Ram Singh Asstt. Commandant and party for carrying contraband ganja to Didarganj. Thus, the said Shri R.P.

Rana Dy. Commandant failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the

provisions contained in Rule 3(i)(ii)(iii) of CCS (Conduct) Rules, 1964.

6. The Inquiry Officer after examining the entire evidence, exonerated the petitioner of the above charges and submitted his report to the

Disciplinary Authority. The Disciplinary Authority, however, after going through the report of the Inquiry Officer and other relevant record, was of

the view that the I.O. has not appreciated the evidence in its proper perspective and accordingly recorded a disagreement note by giving detailed

reasons. A copy of the said disagreement note along with the report of Inquiry Officer was supplied to the petitioner vide letter No. D. IX.33/95-

CRC dated 4th of April, 2002, and the petitioner was informed that the Disciplinary Authority will take a suitable decision taking into consideration

the report of the I.O., other relevant material on record and the representation, if any, to be filed by the petitioner. The petitioner thereafter filed a

representation before the authority concerned which was placed before the Disciplinary Authority. The said authority after taking into consideration

the report of I.O, the representation of the petitioner, other relevant material on record and the recommendation made by the Union Public Service

Commission, passed order dated 24th of March, 2003, which is impugned in writ petition SWP No. 839/03, whereby directing the reduction of

the pay scale of the petitioner to the lowest stage in the time scale of pay of Rs. 10,000-3,256-15,200/- for a period of three years w.e.f. 1st of

April, 2003, with a further stipulation that during the period of said reduction, the petitioner will not be entitled to increments of pay and on expiry

of the said period of reduction, the same will effect the postponing of the future increments of his pay.

7. Learned Counsel for the petitioner submitted that when he was exonerated of the charges by the Inquiry Officer, then before recording the

disagreement note, the Disciplinary Authority should have afforded an opportunity of hearing to the petitioner and it is only thereafter the said

authority should have disagreed with the findings recorded by the Inquiry Officer. In support of his submission, he placed reliance on the judgments

reported as State of Madras Vs. A.R. Srinivasan, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Mewa Singh and Others Vs.

Shiromani Gurdwara Prabandhak Committee, Yoginath D. Bagde Vs. State of Maharashtra and Another, Sher Bahadur Vs. Union of India (UOI)

and Others, State of Bihar and Ors. v. Lakshmi Shankar Prasad reported in, (2003) 3 LLJ 225SC Narinder Mohan Arya Vs. United India

Insurance Co. Ltd. and Others, and 2004 (1) SLJ 1. To further substantiate his argument, the learned Counsel for the petitioner also placed

reliance on Rules 14 and 15 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. It is thus submitted that the action of the

respondents in imposing the penalty upon the petitioner is not in accordance with the law and the rules aforementioned.

8. On the other hand, learned Counsel for the respondents submitted that the Disciplinary Authority being not bound by the conclusions of the

Inquiry Officer, has rightly taken the decision of imposing the penalty upon the petitioner on the basis of material available with it, and therefore, the

conclusion arrived by the Disciplinary Authority should prevail. Reliance in this regard was placed on the judgment of the Apex Court reported as

Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, .

9. After hearing learned Counsel for the parties and perusing the record, I am of the opinion that these petitions have no merit and deserve to be

dismissed.

10. In the present case, as noticed above, the Inquiry Officer after holding an enquiry into the matter, exonerated the petitioner of the charges

levelled against him. The Disciplinary Authority, however, disagreed with the findings recorded by the Inquiry Officer giving detailed reasons. The

petitioner was provided with the disagreement note along with a copy of the enquiry report and was given an opportunity to file a representation to

the authority concerned. Thereafter, on considering the matter afresh, the Disciplinary Authority imposed the penalty noticed above. Therefore, it

cannot be said that the petitioner was not afforded an opportunity before the imposition of penalty upon him by the Disciplinary Authority. In the

judgments relied upon by the learned Counsel for the petitioner, it is nowhere observed that the Disciplinary Authority is to give a hearing before

recording the disagreement note. In the aforesaid cases cited by the learned Counsel the petitioner, it has been observed that if the Disciplinary

Authority disagrees with the findings recorded by the Inquiry Officer and proposes to impose a penalty, then the delinquent official has to be given

an opportunity of being heard before imposing such a penalty. In the instant case, as noticed above, the petitioner was provided with a copy of

disagreement note along with the copy of the enquiry report. He was also given the liberty of filing a representation before the authority concerned,

therefore, it cannot be said that any of the constitutional right of the petitioner

was violated or that the principles of natural justice were not observed before passing of order impugned against the petitioner.

11. Even otherwise, the law is well settled that if the findings recorded by the Enquiry Officer or for that matter by the Disciplinary Authority are

perverse and not supported by evidence on record, it would be open to this Court to interfere in the matter but when the findings recorded by the

said authorities prima facie make out a case of misdemcan our against the delinquent official, then no interference is called for so far as the decision

of the Disciplinary/Punishing Authority is concerned and such a decision cannot be said to be in violation of the principles of natural justice.

Reliance in this regard can be placed on the judgment of the Apex Court reported as State of Orissa Vs. Bidyabhushan Mohapatra, . What was

observed in this regard by the Apex Court in para 9 of the judgment is being reproduced below:

...It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges 1(a) and (e) were

vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of

punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on the charges 1(a) and

1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of

five heads of the first charge and the second charge was found not liable to be interfered with the High Court and those findings established that the

respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider

the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority

subordinate to that by which he was appointed and that he shall not be dismissed or removed or reduced in rank until he has been given a

reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has

manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the Court in a case in which an order of dismissal of

a public servant is impugned, is not concerned to decide whether the sentence

imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justifiable; nor is the penalty open to review by the Court.... Therefore, if the order may be supported in any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the Enquiry Officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect - of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question.

12. In the case in hand also, as noticed above, the Disciplinary Authority of the view that the Inquiry Officer has not properly appreciated the evidence and other material available before it in reaching to a conclusion that the charges have not been proved against the petitioner and accordingly disagreed with the said conclusion. The Disciplinary Authority thereafter recorded the disagreement note and issued show cause notice to the petitioner along with a copy of the enquiry report and as indicated above, gave him the liberty of filing a representation also. After considering the matter, the Disciplinary Authority passed the order impugned, and therefore, it cannot be said that the conclusion arrived at by the said authority is not supported by any evidence or that the petitioner was not afforded an opportunity of hearing before passing the order impugned. The contention of the learned Counsel for the petitioner that the petitioner was not heard before recording the disagreement note by the Disciplinary Authority cannot be accepted. This is because the delinquent official is not to be heard while recording a disagreement note by the Disciplinary/Punishing Authority. It is only before the said authority proposes an action and passes the final order that the delinquent official is to be provided an opportunity of being heard, which in the present case, as indicated above, was done by the authority concerned. Therefore, the action of the Disciplinary Authority cannot be said to be not in accordance with the law

and thus cannot be interfered with.

13. So far as Rules 14 and 15 of the Rules of 1965, referred to above, on which reliance has been placed by the learned Counsel for the

petitioner, are concerned, Rule 14 deals with the procedure for imposing major penalties, which have been specified in Clauses (v) to (ix) of Rule

11. Reduction to a lower stage in the time scale of pay for a specified period and further stoppage of increments of pay during the period of such

reduction and on the expiry of such period, as to whether there will an effect of postponing the future increments as has been done in the case of

the petitioner, is defined a major penalty under Clause (v) of Rule 11. Rule 15 deals with the action on the inquiry report. Sub-rules (2), (3) and 4

of Rule 15 are relevant and are bring reproduced below:

15(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such

disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified

in Clauses, (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an

order of imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary

Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the

Government Servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during

the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it

shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation

on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary

Authority to the Commissioner its advise and such advise shall be taken into consideration before making an order imposing any such penalty on

the Government servant.

A perusal of the above Sub-rules (2) and (3) of Rule 15 shows that if the Disciplinary Authority disagrees with the findings recorded by the

Inquiring Authority, then, it can proceed further into the matter and record its own findings on any such charge levelled against the delinquent

official and impose the penalties specified in Clauses (i) to (iv) of Rule 11. However, it has been provided that in a case where the Disciplinary

Authority is of the opinion that it is necessary to consult the Commission, then the record of the inquiry has to be taken into consideration before

making an order of imposition of penalty. Sub-rule (4) of Rule 15 provides that in case the Disciplinary Authority records a finding on all or any of

the articles of the charges on the basis of the evidence adduced during the inquiry and is of the opinion that any of the penalties as specified in

Clauses (v) to (ix) of Rule 11, which includes the major penalties, should be imposed on the delinquent official, then, the said authority can impose

such penalty and it is not necessary to give the said official any opportunity of making a representation on the penalty proposed to be imposed. It

has, however, been provided that in every case where it is necessary to consult the Commission, the Disciplinary Authority has to forward the

record of the inquiry to the Commission for its advice and before imposing the proposed penalty, the advice of the Commission, if any, has to be

taken into consideration.

14. A perusal of the above Rules shows that it has nowhere been provided that if the Disciplinary Authority disagrees with the findings of the

Inquiring Authority then before recording the disagreement note, the delinquent official has to be provided any opportunity of hearing as is the

contention raised by the learned Counsel for the petitioner that the petitioner should have been afforded an opportunity of hearing before the

Disciplinary Authority recorded its disagreement note.

15. In the case in hand, the Disciplinary Authority, as indicated above, disagreed with the findings of the Inquiry Officer and after recording the

disagreement note issued a notice to the petitioner for taking an appropriate action against him in accordance with the rules. The petitioner was

provided a copy of the inquiry report and was given an opportunity to file a representation also before passing of the order impugned. Even the

Central Vigilance Commission on examination of the inquiry report and the relevant record, was of the opinion that the Inquiry Officer has not

appreciated the evidence in a proper perspective and it was observed that the disagreement of the Ministry of Home Affairs with the findings of the

Inquiry Officer in respect of the petitioner is in order. The Disciplinary Authority in the present case, before passing the order impugned, also

consulted the Union Public Service Commission, as is apparent from the perusal of paragraph 5 of the order impugned which reads as under:

5. AND WHEREAS, the President has considered the report of the Inquiry Officer, disagreement note, representation of the charged officer

dated 22.4.2002 and other relevant records of the case and also consulted the UPSC. After the said consideration, the President has come to the

conclusion that the charges levelled against the charged officer stand ""proved"" and accepted the advice of UPSC.

In view of the above, it cannot be said that any of the provision of the Rules aforementioned on which reliance has been placed by the petitioner,

has been violated by the authority concerned while taking action against the petitioner.

For the reasons mentioned above, these petitions are found to be without merit and are dismissed.