

(2005) 02 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 2888 of 2000

Ram Avtar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11
Constitution of India, 1950 — Article 14, 16

Citation : (2005) 99 CLT 698 : (2005) 106 FLR 280 : (2005) OLR 602 Supp

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : R.K. Rath, for the Appellant; Bharati Dash, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. R. K. Rath, Learned Counsel for the petitioner and Mrs." Bharati Dash, Learned Additional Standing Counsel for the Central Government.
2. Initially, this Writ Petition was filed by the petitioner with a prayer to quash the Department Proceeding initiated against him by the opposite parties, to declare the ex parte enquiry as violative of the principles of natural justice in which the petitioner was not allowed to engage a Defence Assistant to defend his case and to direct the opposite parties to hold a fresh and impartial enquiry in the Departmental Proceeding.
3. But during the pendency of the Writ Petition the opposite parties have concluded the Departmental Proceeding and passed the impugned order of dismissal of the petitioner from service and, as such, by way of amendment, the petitioner has also challenged the said order of his dismissal from service passed by the opposite parties.
4. The brief facts of the case are that the petitioner was a member of the Central Reserved Police Force which is governed under the Central Reserve Police Force

Act, 1949 and the Rules made thereunder, i.e., Central Reserve Police Force Rules, 1955. Disciplinary proceeding was initiated against the petitioner u/s 11(b) of the Act. At this stage, it is not necessary to discuss all these things. In short, during the course of enquiry, the petitioner desired to allow him to take assistance of a person of his choice for the purpose of his defence. His proposed defence against was Gopinath Pattanaik. But the Enquiring Officer refused the said request on the ground that Shri Gopinath Pattanaik; OPS-1 is not a retired Central Government Servant.

5. Learned Counsel for the petitioner has drawn attention of this Court to a letter dated 30.11.1999 of the Enquiring Officer addressed to one S. K. Nayak, who was also a member of the Central Reserve Police Force, Bhubaneswar. In the said letter same Gopinath Pattanaik OPS-1 (Retd.) was allowed to act as Defence Assistant in the Departmental Proceeding initiated against Shri S. K. Nayak and he was directed to attend the hearing on 18.2.1999. Learned Counsel for the petitioner has submitted that in case of the petitioner, the same person was disallowed that in case of the petitioner, the same person was disallowed to act as the Defence Assistant while in case of another member of the C.R.P.F. he was allowed to act as the Defence Assistant and as such the opposite parties have discriminated the petitioner, in defending himself in the Disciplinary Proceeding and thereby violated Articles 14 and 16 of the Constitution of India.

6. Learned Additional Standing Counsel for the Central Government has submitted that since the dismissal order has been passed in this case, the petitioner should have filed an appeal, which is provided under the Rules, as the same is statutory in nature.

7. No doubt, during the pendency of the Writ Petition the order of dismissal of the petitioner from service was passed. However, the question for consideration before this Court is that when the petitioner put forth his grievance before the Enquiring Officer for engaging a Defence Assistant, he has been denied to engage one Gopinath Pattanaik as his Defence Assistant to defend his case before finalisation of the Disciplinary Enquiry but in a similar circumstance how the same person (Gopinath Pattanaik), has been allowed to act as a Defence Assistant in the case of another member of the same Organization (C.R.P.F.). Even if the petitioner could not have been granted a chance to engage a Defence Assistant there was little scope to interfere with the order of dismissal imposed against him by this Court, unless the petitioner would have exhausted the departmental/alternative remedy available to him under the Statute. When the petitioner had already raised his grievance much prior to passing of the final order to engage a Defence Assistant, which was denied to him, this Court is inclined to interfere at this stage even though the Departmental remedy has not been exhausted more particularly when the same defence assistant has been denied in respect of the petitioner on the ground that he is not a retired Central Government servant but allowed in respect of another person and both the them belong to the same organization.

8. The procedure for conducting a Departmental Enquiry has been laid down in the Central Reserve Police Force Rules, 1955. In the said Rules, it is nowhere mentioned that the delinquent employee shall not be allowed to engage a Defence Assistant because the person of his choice is not a retired Central Government Servant, is not a correct approach. It is well settled that the principles of natural justice should not be violated even to a member of the Armed forces.

9. In O.J.C. No. 2121 disposed of on 22.11.1991 a Division Bench of this Court headed by the Hon'ble Chief Justice has held that refusal to allow a Defence Assistant is against the requirement of principle of natural justice and cannot be upheld by the finding of the Enquiring Officer as the petitioner did not get reasonable opportunity to defend his case. The relevant part of the judgment is quoted hereunder:

"The last submission of the Learned Counsel is that as the petitioner was not provided any defence assistant, he was highly prejudice in defending himself proper in the enquiry. In this connection, it is submitted by Shri Mohapatra appearing for the opposite parties that from the statement made in Paragraph 6 of the petition it is not known if the petitioner had asked for any defence assistant to conduct the case on his behalf. This submission is countered by Shri Ramdas by stating on the strength of Bhagat Ram Vs. State of Himachal Pradesh and Others, that the disciplinary authority has to apprise a person like the petitioner, who belongs to a low rank, of his right to have a defence assistant. As no counter has been filed in the present case, the statement that the petitioner had not been provided with any defence assistant to conduct his case remains uncontroverted. Because of this, we have no alternative but to accept this averment for the present. Now, if that was the opposition, we cannot uphold the finding of the Inquiry Officer, as the petitioner did not get reasonable opportunity to defend himself. Reliance on a report of enquiry held in violation of the principles of natural justice is not permissible."

10. In the instant case, in addition to above there is one more thing that in the enquiry conducted against another member of the C.R.P.F. i.e., No. 710580284 CT S. K. Nayak, GQCoy GC, CRPF, Bhubaneswar, Shri Gopinath Pattnaik was allowed to act as the Defence Assistance while in case of the petitioner said Gopinath Pattanaik has been refused to be his Defence Assistance because he is not a retired Central Government Servant, which is highly discriminatory and, in our view, this is in gross violation of Articles 14 and 16 of the Constitution of India. An organization like Central Reserve Police Force should not have followed/ adopted such a method in respect of its employees. A disciplined institution like C.R.P.F. is not expected to do discrimination between its employees and thereby denying reasonable opportunity to the delinquent officials to defend themselves. A disciplinary proceeding being quasi judicial in nature attracts the principle of natural justice as because the order in the proceeding involves civil consequences. Appearance through a defence assistant is a requirement of

natural justice because Class IV or Class III employees cannot be picted against a legally sound presenting officer. Deprivation of livelihood by an order of dismissal has to be just, fair and reasonable. However, requirement of natural justice cannot be denied to any one.

11. In view of the above mentioned facts and circumstances of the case, we have no hesitation to hold that the petitioner has not been granted reasonable opportunity to defend his case in course of the Disciplinary Proceeding and as such principles of natural justice has been violated in his case. Consequently the final order of dismissal passed by the Disciplinary Authority is not sustainable in the eye of law and the same is liable to be quashed. Accordingly, the Order dated 1.4.2000 (Annexure-14) is quashed. The opposite parties are directed to conduct the Disciplinary Proceeding from the stage of the order was passed on 11.3.1999, i.e., the stage when the petitioner was refused to engage a Defence Assistant. It is also made clear that we have not interfered with regard to submission of the charge-sheet and its reply to the Disciplinary Proceeding. The opposite parties may proceed further in the Departmental Proceeding and allow the petitioner to engage a Defence Assistant to defend his case and thereafter conclude the enquiry in accordance with law within a period of six months from the date of receipt of this order.

12. The writ petition is accordingly allowed. There shall be no order as to costs.