
(2002) 12 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 2151 of 1997

Ram Niwas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2003) 1 GLR 498 : (2003) 1 GLT 562

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : D.K. Mishra and N. Sinha, for the Appellant; G. Sinha, Addl. CGSC, for the Respondent

Judgement

I.A. Ansari, J.—When the disciplinary authority initiates a disciplinary proceeding against his employee and appoints an enquiry officer for holding the enquiry, but does not care to find out from, or refuse to listen to, the employee as to how the enquiry had progressed, whether the enquiry held was fair and when the disciplinary authority ignores the fact that the previous statement of a witness has been relied upon without producing the witness for cross-examination, when a confessional statement allegedly made by the employee as an accused to a police officer is relied upon without calling for the police officer as a witness at the enquiry and without ascertaining the voluntariness and truthfulness of the confessional statement so made and when in such circumstances, the enquiry report is not furnished to the employee to enable him to have his say in the matter, can the finding of the enquiry officer and the penalty imposed in consequence thereof be sustained by the Courts are some of the significant questions which this writ petition has raised for consideration by this Court.

2. With the help of the present application made under Article 226 of the Constitution of India, the petitioner, a pioneer in GREF, has approached this Court with the prayer to set aside and quash the impugned order, dated 11.2.1996, passed by the respondent No. 4, namely, Commander, 48 BRTF, dismissing the

petitioner from service.

3. In a nutshell, petitioner's case may be stated as follows: The petitioner was a pioneer (Sepoy) in the General Reserve Engineering Force (popularly known as GREF). At the relevant time, the petitioner was serving under 1444 Bridge Construction Committee under 48 Border Roads Task Force located in Arunachal Pradesh. While the petitioner was so serving, an FIR was lodged, on 13.11.1995 at Mahadevpur Police Station (Arunachal Pradesh) by one Sri Harichandra Phukan of Krishnapur Village alleging, inter alia, that accused Ram Nivas (that is, the present petitioner) had taken away informant's daughter, namely, Miss Bhadrawati Phukan @ Smt. Santi Phukan to his house, at Aligarh, in the State of Uttar Pradesh in the month of April, 1995, but it was, then learnt by the informant from a letter received from his said daughter that after taking her to Aligarh, the petitioner had sold her to someone for Rs. 12,000. Based on this FIR, Mahadevpur Police Station Case No. 13/95 u/s 420/366 IPC was registered against the petitioner was taken into custody by police on 16.11.1995. On 3.10.1995, a letter was received by the Unit concerned from the said Sri Harichandra Phukan reiterating the allegations made in the FIR as indicated hereinbefore. Later on, the alleged victim girl, namely, Smt. Santi Phukan appeared before the police and her statement was recorded on 19.12.1995, wherein she stated to the effect that the petitioner had taken her to the house of one Om Vir Singh in UP and kept her there for some time and, then, the petitioner brought her to and kept her at, his sister's house for two months and during her stay at the house of petitioner's sister, she (Smt. Santi) came to know that she had been sold by the petitioner for Rs. 12,000. On 04.1.1996, the petitioner was released from custody on the criminal case having been withdrawn by Sri Harichandra Phukan aforementioned on the basis of a compromise reached between the informant and his said daughter, on the one hand, and the petitioner, on the other. In this compromise petition, it was mentioned that the complainant's daughter was a major, she had gone to Rajasthan on her own free will with one Ranbir Singh of village Sikrora and she had married Ranbir Singh, While the petitioner was under judicial custody, he had been placed under suspension, on 27.11.1995, on the ground that he had remained in detention for more than 96 hours. By Memorandum, dated 15.12.1996 (Annexure 3 to the writ petition) the respondent No. 4, namely, Commander, HQ BRTF (GREF), C/O 99 APO, served the petitioner with articles of charge and statements of imputation informing the petitioner that an enquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, was proposed to be held against the petitioner and the petitioner was directed to file his written statement in defence the relevant portions of the memorandum being as follows:

ANNEXURE -1 Statement of articles of charge framed against Shri Ram Niwas GS 168623Y Pnr of 425RM PI care 1444 BCC (GREF).

Article - I That the said Shri Ram Niwas GS 168623Y Pnr, while deployed at Dett 425 RM PI Murthy Camp/Krishnapur and while proceedings on EL in April 1995

took Miss Bhadrawati Phukan with him on 15 April, 1995 and took her to Aligarh/ Rajasthan with intention to marry her, while a spouse is living. Thus Shri Ram Niwas GS 168623Y Pnr violated Sub Rule (iii) of Rule 3 of CCS (Conduct) Rules, 1964.

Article - II That the said Shri Ram Niwas GS 168623Y Pnr, on objection from his wife to marry Miss Bhadrawati Phukan, betrayed and sold her for Rs. 12,000. Thus Shri Ram Niwas GS 168623Y Pnr, violated Sub Rules (i) and (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964

ANNEXURE - II Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed, against Shri Ram Niwas GS 168623Y Pnr df 425 care 1444 BCC (GREF).

Article - I That the said Shri Ram Niwas GS 168623Y Pnr, while deployed at Dett 425 PI Murthy Camp/Krishnapur had fallen in love with Miss Bhadrawati Phukan and while proceeding on EL in April 1995, the said Shri Ram Niwas GS 168623Y Pnr took Miss Bhadrawati Phukan with him on 15 April, 1995 and took her to Aligarh/Rajasthan with Intention to marry her, while a spouse is living.

Article - II That the said Shri Ram Niwas GS 168623Y Pnr, on objection from his wife Smt. Malti Devi and relatives to marry Smt. Bhadrawati Phukan, while a spouse is living, betrayed and sold Smt. Bhadrawati Phukan for Rs. 12,000.

The petitioner submitted his written statement in defence denying the allegation that he had taken Smt. Santi Phukan alias Smt. Bhadrawati Phukan with intention to marry her and/or that he had sold her for Rs. 12,000. In course of time, Smt. S K Saha, Assistant Executive Engineer (Civil) OIC, 1501 BSC (GREF) was appointed as Inquiry Officer and T C Issac, A UDC, as presenting officer. The inquiry was accordingly conducted and upon receiving the inquiry report, the respondent No. 4 vide his order, dated 11.12.1996 (Annexure 6 to the writ petition) dismissed the petitioner from service under Rule 11 (ix) of the CCS Rule 1965. The petitioner preferred an appeal, dated 31.1.1997, but the same was also turned down. Hence this writ petition.

4. The petitioner contends that the inquiry held was completely illegal and against all-cannons of natural justice inasmuch as he was not given any opportunity of participating in the disciplinary proceedings, the witnesses were examined behind his back and that even copy of the inquiry report, contrary to the provisions of Rule 15(1-A) of the CCS (CCA) Rules, 1965 were not furnished to him causing thereby serious prejudice to him.

5. The respondents have filed their affidavit-in-opposition, wherein it has been contended, inter-alia, that while conducting the inquiry, provisions of all the relevant rules and principles of natural justice were followed, but the petitioner refused to sign any paper nor did he cross-examine the witnesses.

6. I have carefully perused the materials on record. I have heard Mr. D K Mishra, learned Senior counsel appearing on behalf of the petitioner, and Mrs. G Sinha,

learned Additional CGSC, appearing on behalf of the respondents.

7. It has been submitted, on behalf of the petitioner, that though Smt. Santi Phukan or Smt. Bhadrawati Phukan was the sole and most material witness, who could have proved the allegations levelled against the petitioner, she was neither cited as a witnesses in the disciplinary proceeding nor was she examined as a witness. Her non-examination has caused, submits Mr. Mishra, serious prejudice to the petitioner and great miscarriage of justice. Mr. Mishra has also submitted that though the disciplinary authority relied upon the statement allegedly made to the police by the petitioner, while he was in the police custody, admitting the allegations levelled against him, yet even the police officer, who recorded the statement of the petitioner, was not examined and no opportunity was afforded to the petitioner to cross-examine the police officer and prove the involuntary nature as well as falsity of the alleged statement. Seen from this angle, submits Mr. Mishra, the enquiry held was wholly illegal and contrary to the principles of natural justice.

8. In support of his contention that non-examination of materials witnesses aforementioned is sufficient to set aside the finding of the enquiry, in question, Mr. Mishra has referred to the case of Ministry of Finance and Another Vs. S.B. Ramesh, .

9. It is further submitted by Mr. Mishra that is unbelievable that the petitioner, who is of the rank of Sepoy and a person subject to the Army Act for the purpose of discipline, could dare to defy the authorities concerned by refusing to participate in the inquiry and/or by refusing to put his signature on the requisite papers.

10. It is pointed out by Mr. Mishra that the copy of the inquiry report, contrary to the provisions of 15(1-A) of the CCA (CCS) Rules, 1965, and contrary to the law laid down in Union of India and others Vs. Mohd. Ramzan Khan, , was not furnished to the petitioner before the same was acted upon by the disciplinary authority and this has caused serious prejudice to the petitioner's right to prefer appeal and/or approach this court. Viewed from this angle too, submits Mr. Mishra, the impugned order of dismissal deserves to be set aside, particularly, because there is no assertion, further points out Mr. Mishra, in the affidavit-in-opposition of the respondents that any copy of the inquiry report was ever furnished to the petitioner.

11. Controverting the above submissions made on behalf of the petitioner, Mrs. Sinha has submitted that the departmental proceeding conducted against the petitioner was held in accordance with law and it was the petitioner who had refused to participate in the proceeding by Cross examining the witnesses. It is also submitted by Mrs. Sinha that non-furnishing of the inquiry report has not . caused any prejudice to the petitioner and hence, non-furnishing of the inquiry report to the petitioner cannot be ground for interfering with the findings of the enquiry and/or with the penalty imposed on the petitioner. In support of this

contention, Mrs. Sinha relies S.K. Singh Vs. Central Bank of India and Others, .

12. Having heard learned counsel for the parties and upon perusal of the materials on record, I find that there is no assertion in the affidavit-in-opposition by the respondents that the report of the inquiry was furnished to the petitioner before the penalty of dismissal from service was imposed on him, rather, Mrs. Sinha has argued that non-furnishing of the inquiry report has not caused any prejudice to the petitioner.

13. Situated thus, it is not difficult to conclude that the report aforementioned was not furnished to the petitioner before the dismissal order was passed against him.

14. In the case of Mohd. Ramzan Khan (supra), which arose out of 42nd Amendment of Constitution of India, whereby Article 311(2) of the Constitution of India, which provided for giving opportunity of showing cause against the punishment proposed to be inflicted on a delinquent, was done away with, the Apex Court laid down that giving enquiry report to the delinquent is necessary to enable the delinquent to know what conclusions have been arrived at by the Enquiry Officer and whether the conclusion reached are correct. Providing such an opportunity to the delinquent is, according to the Apex Court, a demand of the principles of natural justice, which every such enquiry must adhere to:

15. I am guided to adopt the above views from the observation made the Apex Court in Mohd. Ramzan Khan (supra), which read as :

"With the Forty Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the inquiry officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the inquiry officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the inquiry officer records a finding of guilt and propose a punishment so far as the delinquent is concerned. In a quasi judicial matter, if the delinquent is being deprived of knowledge of the materials against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

* * *

Deletion of the second opportunity from the scheme of Article 311(2) the Constitution of India has nothing to do with providing a copy of the report to the delinquent in the matter of making representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of

the inquiry report to meet the recommendations of the inquiry officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof..... we make it clear that wherever there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal of any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to charge hereafter." (Emphasis is supplied)

16. In the subsequent case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the Apex Court had the occasion to consider the judgment of Md. Ramzan Khan's case (supra) and while answering the question whether furnishing of the enquiry report to the petitioner is essential, notwithstanding the 42nd Amendment, the Court drew a distinction, in this regard, between an enquiry, which has been held by an Enquiry Officer appointed by the disciplinary authority, and an enquiry, which has been held by the disciplinary authority itself. In the latter case, there is no report and, hence, question of furnishing of a copy of the findings of the disciplinary authority to the delinquent before the penalty is imposed on him does not arise at all, but if the enquiry is held by a person other than the disciplinary authority, then, principles of natural justice require that a copy of the enquiry report along with the Enquiry Officer's recommendations, if any, in the matter of proposed punishment, be supplied to the delinquent in order to let him know the conclusions of the Enquiry Officer so as to enable him to have his say in the matter. If it is not so done, it would make the final order imposing penalty, if any, liable to challenge.

17. It needs to be noted that Section 15(1-A) was introduced into CCA (CCS) Rules way back in 1995 with the obvious purpose of enabling the disciplinary authority to know as to how the proceeding of the inquiry progressed, what version the delinquent has to offer about the subject-matter of the inquiry conducted against him and what are his explanations to the incriminating materials placed on record during the course of the inquiry and/or what comments he has to offer with regard to the findings of the inquiry officer. In the case at hand, all these aspects of the matter were lost sight of by the disciplinary authority and the penalty of dismissal was imposed without fulfilling and basic minimum requirement of Rule 15(1-A).

18. Since the petitioner has taken the plea that the inquiry was not conducted In his presence and though this plea may or may not be true, the fact remains that

this is an aspect of the matter, which the disciplinary authority would have had the opportunity to go into and ascertain, but by not furnishing the enquiry report, the disciplinary authority denied to itself of an effective opportunity to learn as to how the enquiry had progressed and/or was conducted ? Thus, the prejudice caused to the petitioner is glaring. The case law relied upon by Mrs. Sinha is not of much avail to the respondents inasmuch as the case of SK Singh (supra) will not apply to a case in which prejudice caused to the delinquent is too glaring to be lost sight of. In the case at hand, the prejudice caused to the petitioner and the pleas taken by him are of fundamental importance, but the same were not considered or could not have been considered effectively by the disciplinary authority, for, on account of non-furnishing of the copy of the inquiry report to the petitioner, the petitioner could not have pointed out to the disciplinary authority as to how or why the reasoning applied by the Enquiry Officer were wrong or where, in reaching the conclusions, the Enquiry Officer had gone wrong.

19. True it is, as has been contended by Mrs. Sinha, that mere non-furnishing of enquiry report will not be enough for the Courts to interfere with the findings and/or penalty imposed by the disciplinary authority unless prejudice is shown to have been caused thereby to the delinquent. It will, thus, depend on the facts of every given case whether prejudice has been caused to the delinquent employee or not. In this regard, following observations of the Apex Court in Managing Director, ECIL (supra), are pertinent :-

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not Incarnations to be invoked nor rites to be performed on all and sundry occasions. Whether, in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstance of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits." (Emphasis is supplied)

20. In the case at hand, I have already indicated hereinabove that prejudice caused to the petitioner on account of non-furnishing of the enquiry report is too glaring to be lost sight of. Thus, though non-furnishing of the report of inquiry, in the face of the facts of the present case, is in itself sufficient to set aside and quash the impugned order to dismissal, yet in view of the reasons, which I shall, now, allude to I do not propose to dispose of this writ petition simply on the ground of non-furnishing of the inquiry report.

21. Turning to yet another fundamental aspect of this writ petition, namely, non-examination of relevant witnesses, what I find of utmost importance to note is that according to the memorandum, dated 15-08-1996 (Annexure 3 to the writ petition), the petitioner was furnished with a list witnesses, who were to be examined at the inquiry. These witnesses were (i) IC 48944 Capt. Manoj Kumar

OIC 425 RM PI, (11) GS 157707 and (iii) NT II SB Kulkarni 1444 BCC.

22. Out of the three witnesses mentioned hereinabove, only Sri S B Kulkarni was, according to the record of the proceedings, examined by the Enquiry Officer and this witness, in no uncertain words, told the inquiry officer that he did not know whether the petitioner had taken away the victim girl or not. In other words, Sri S B Kulkarni's statement did not even remotely help the disciplinary authority in proving the charge against the petitioner.

23. The inquiry officer has, however, I notice, relied on the statement of Smt. Bhadrawati Phukan recorded by the Magistrate u/s 164 Cr.PC as well as the statement of the petitioner recorded by the police as stated hereinbefore. Surprisingly enough, however, Smt. Bhadrawati was neither cited as a witness nor was she examined at the inquiry, though the truthfulness of her statement made u/s 164 Cr. PC stood seriously falsified by the subsequent compromise petition, wherein she herself claimed to have gone away voluntarily with Ranbir Singh aforementioned and not with the petitioner and married the former. Thus, the petitioner had not opportunity of proving or satisfying the inquiry officer that his version that he had not taken away Smt. Bhadrawati was true and/or that the statement made by Smt. Bhadrawati was untrue.

24. Similarly, the petitioner also did not receive the opportunity to cross-examine the police officer, who had allegedly recorded the statement of the petitioner, wherein the petitioner is said to have stated that he had taken away the said woman. It is also important to note that a witness is not required to sign a statement u/s 162 Cr. PC and hence, the person, who had the burden of proving that the statement was voluntary and true, namely, the Police Officer concerned ought to have been examined at the enquiry, particularly, when the petitioner did not admit the voluntariness and/or truthfulness of the said statement, but this too was not done.

25. It does not mean, I must hasten to add, that under no circumstances, statement made in the form of admission or confession to a police personnel by an accused during his interrogation, admissible in the departmental proceeding. In fact, the law is to the contrary. Since the Evidence Act does not apply to the departmental proceeding, it logically follows that such admission or confession can be safely acted upon if the disciplinary authority is satisfied that the statement is voluntary and true. I am guided to adopt this view from the law laid down in *Kuldip Singh Vs. State of Punjab and Others*, . In this case, the Apex Court has laid down as follows :

"In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of investigation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement." (Emphasis is supplied by me)

26. At the same time, I must also make it clear that in the absence of the police officer who recorded the statement of the accused, disciplinary authority must show as to how it accepted the correctness and/or voluntariness of the statement made by the delinquent. In fact, in the case at hand, there is not even a particle of material on record to show that the Inquiry Officer made even slightest effort to determine whether the statement allegedly made to the Police Officer u/s 161 Cr.PC by the delinquent was voluntary and/or true. In the absence of any such material on record, reliance placed by the Enquiry Officer on such statement is completely against the principles of natural justice and the disciplinary authority has committed monumental error of law by relying on such a report.

27. I may also refer to *Kuldeep Singh Vs. The Commissioner of Police and Others*, wherein it has been observed as follows ;

"32. Reasonable opportunity contemplated by Article 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

33. In *State of Mysore v. Shyabasappa Shivappa Makapur*, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The statement was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rule of natural justice were sufficiently complied with.

34. In *Kesoram Cotton Mills Ltd. v. Gangadhar and State of U. P. v. OM Prakash Gupta* the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination". [Emphasis is supplied]

28. From what has been observed and laid down by the Apex Court in *Kuldeep Singh (supra)*, It is clear that all witnesses in the disciplinary enquiry shall be examined in the presence of the delinquent, who shall be given opportunity of cross-examining the witness and even a witness, whose previous statement is required to be brought on record of the departmental enquiry, has to be offered for cross-examination except, perhaps when his presence cannot be procured at

all.

29. That a witness, whose statement is required to be used in a disciplinary enquiry, has to be, normally produced for cross-examination by the delinquent in the departmental proceeding is also emphasised by the Apex Court in Union of India and Others Vs. P. Thayagarajan, .

30. In the case at hand, there is nothing on record to show that the presence of Smt. Bhadrawati and/or of the police officer, who is said to have recorded delinquent's statement, during investigation, could not have been procured for the purpose of the disciplinary enquiry. Situated thus, non-examination of the witness aforementioned was not only in violation of the principles of natural justice, but also against the settled position of law and the same has, undoubtedly, caused, for the reasons discussed above, serious prejudice to the petitioner and the enquiry report, which followed such an enquiry, if allowed to stand on record, would, in my firm view, cause serious miscarriage of justice.

31. Strictly speaking, therefore, the charge levelled against the petitioner that he had taken away Miss. Bhadrawati Phukan and/or had sold her away remained wholly unsubstantiated by any dependable piece of material on record.

32. Situated thus, there can be no escape from the conclusion that the whole proceeding initiated and conducted, in the instant case, was misconceived and the basic principles of natural justice were not followed, which, undoubtedly, vitiated the proceeding. Reference made by Mr. Misra to the case of S B Ramesh (supra) is, therefore, not wholly misplaced.

33. What crystallizes from the above discussion is that the material witnesses, who could have been examined and ought to have been examined, in the face of the peculiar nature of the facts of this case, were not even cited as witnesses and without having any dependable and/or reliable material on record, the charge was treated as proved. This apart, the copy of the inquiry report was not furnished to the petitioner and the same caused, as indicated hereinabove, serious prejudice to the petitioner.

34. Because of what have been discussed above, I am fully of the view that the impugned order of dismissal, dated 11.12.1996, is illegal and cannot be allowed to stand good on record. This does not, however, mean, I must hasten to add that in future no departmental proceeding can be held against the petitioner by curing the defects, which have mentioned hereinabove.

35. In the result and for the reasons discussed above, this writ petition succeeds. The impugned order, dated 11.12.1996, aforementioned dismissing the petitioner from service is hereby set aside and quashed and the petitioner is directed to be treated to have remained in service without any break. The respondents are, however, left at liberty to take such action against the petitioner as may be permissible under the law.

36. This writ petition shall stand disposed of in terms of the above directions.

37. No order as to costs.