
(1997) 07 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 356 of 1989

Ramkanwar Deswal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1), 14, 14(15), 15(5), 23
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226

Citation : (1999) 2 GLT 562

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : A.K. Bhowmik and T.K. Deb, for the Appellant; K.N. Bhattacharjee and S. Bhattacharjee, for the Respondent

Judgement

N.G, Das, J.—This application under Article 226 of the Constitution of India has been filed by the Petitioner challenging the legality and validity of the order No. F.4/19/87-Estt(CRPF) (Pers II) dated 21st July, 1989 contained in Annexure-6 whereby the Petitioner who was holding the post of Deputy Superintendeht of Police, Central Reserve Police Force was reduced to a lower post, namely, Inspector for a period of one year pursuant to the departmental proceeding which has been held against him.

2. I have heard Mr A.K. Bhowmik, the learned senior Counsel appearing on behalf of the Petitioner and Mr K.N. Bhattachaijee, learned Senior Central Government Standing Counsel appearing on behalf of the Respondents.

3. The facts relevant for disposal of this application are that the Petitioner was initially appointed as Constable in Central Reserve Police Force (for short CRPF) on 3.10.1959. Thereafterhe got successive promotions and at the relevant time he was holding the post of Deputy Superintendent of Police and he was posted in 30th Battalion, CRPF, Kapurthala, Punjab with his posting at Company Head

Quarters at Kabirpur. At the time of filing the writ petition the Petitioner was serving as Inspector on reversion with effect from 21st of July, 1989 and was posted in 42nd Battalion, CRPF in Tripura. The charge that was framed against the Petitioner is as under:

That Shri R.K. Deswal, Dy SP while posted and functioning as OC E Coy, 30 Bn CRPF during the period from 11.6.96 till date in Punjab on 31.10.1987 at 2045 hrs left for Coy Hqrs Dhun Mand from Adm Base Kabirpur in a single vehicle with inadequate strength and permitted a small party of 4 members to return from Ferry point Dhun Mand to Coy Adm Base in dark hours in utter disregard and violation of instructions issued by die Commandant on the subject which resulted in death by ambush and snatching of arms and ammunition of two CRPF Constables.

Thus Shri Deswal failed to maintain absolute devotion to duty and thereby violated provisions contained in Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

4. Before framing of the charge the Petitioner was, however, put under suspension with effect from 1.11.87 by a Signal (Annexure-I) issued by Inspector General. The Petitioner challenged this order of suspension by filing an appeal under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 (for short CCS (CCA) Rules, 1965) to the appellate authority on the ground that Inspector General had no power and competence to place him under suspension inasmuch as he was appointed by the President of India. This appeal was not allowed and instead of that an order viz. Order No. F.4/19/87-Estt (CRPF) dated 17th of December, 1987 was issued by the Director General of CRPF whereby the President of India in exercise of the powers of conferred by Sub-rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 placed the Petitioner under suspension with retrospective effect from 1.11.1987. The Petitioner has challenged the suspension order as such an order with retrospective effect cannot be passed.

5. The other grounds that have been taken by the Petitioner for quashing the order of punishment are that some evidences were recorded during his absence and that even though the Petitioner by his letter dated 19.5.1988 wanted various documents and cited 10 witnesses, the Inquiring Officer neither made those documents available to him nor summoned all the witnesses for examination. Apart from this, it has also been alleged that as per the charge-sheet only 5 witnesses were cited as prosecution witnesses but during enquiry 8 witnesses were examined. The Petitioner was not informed by any notice about examination of witnesses other than the cited witnesses. Moreover, the Inquiring Officer did not allow the Petitioner reasonable time to submit his defence statement and that he was also not afforded any opportunity of taking any defence assistant.

6. The Respondents resisted the writ petition by filing a joint affidavit-in-opposition wherein they denied all the material allegations of the writ petition. It

has been contended that the departmental enquiry was conducted under the provision of Rule 14 of the CCS (CCA) Rules, 1965 and the Petitioner was given all sorts of opportunities not only for inspection of the documents he wanted but he was also afforded opportunity for adducing witnesses in support of his defence.

7. Before entering into the rival contentions it may be mentioned here that the High Court is not a Court of appeal over the decision of the authorities holding a departmental enquiry; it is concerned to determine whether the enquiry was held by the authority competent on that behalf, and according to the procedure prescribed, and whether rules of natural justice were complied with or not. It is also not the function of the High Court to review of the evidence and to arrive at an independent finding. But the High Court will undoubtedly interfere with when the departmental authority is found to have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules. The Supreme Court in the case of State of Andhra Pradesh Vs. Sree Rama Rao, held:

The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds.

8. Keeping the above dictum of the Supreme Court in view I may now proceed to advert to the contentions canvassed at the Bar by learned-Counsel for the Petitioner. Mr A.K. Bhowmik, the learned senior Counsel appearing on behalf of the Petitioner has, at the very outset, submitted that the order of suspension contained in Annexure-1 was bad in law as the Inspector General was not the competent authority to pass such an order. It is not denied. But what has been contended by Mr K.N. Bhattachajee, learned Senior Central Government Standing Counsel is that subsequent to the order contained in Annexure-1 a regular order of suspension contained in Annexure-2 was passed on 17th of

December, 1987 whereby it was specifically mentioned that suspension of the Petitioner would be effective from 1.11.1987. The question which has, therefore, posed for consideration is whether such an order of suspension with retrospective effect can be passed.

9. In the case of R. Jeevaratnam Vs. The State of Madras, the Appellant was dismissed from service by an order dated 17th of October, 1950 with retrospective effect from the date of his suspension, that is to say, from May 20, 1949. Counsel for the Appellant argued that this order of dismissal dated 17th of October, 1950 having been passed with retrospective effect was illegal and inoperative. The Supreme Court made the following observation in respect of this point:

The order dated October 17, 1950 directed that the Appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the Appellant be dismissed, and (2) the dismissal to operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the Appellant as from October 11, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective.

10. Applying the ratio of the aforesaid decision of the Supreme Court we may now look into the suspension orders that were passed in respect of the Petitioner. Admittedly the first suspension order was passed by a radio message contained in Annexure- I. This order of suspension was alleged to have been passed by the Inspector General, CRPF was not competent to pass such an order of suspension a subsequent order, namely, order dated 17th of December, 1987 contained in Annexure-2 was passed by the competent authority. This Annexure-2 order shows that the Petitioner was put under suspension with effect from 1.11.1987. Therefore, it is clear from this order contained in Annexure-2 that the Petitioner was put under suspension with retrospective effect. In view of the decision of the Supreme Court as quoted above I am unable to accept this order of suspension as a valid one.

11. The next point of criticism advanced by learned senior Counsel for the Petitioner is that even though the authority appointed an officer of the rank of Deputy Superintendent of Police for conducting the case on behalf of the prosecution, the authority neither appointed any defence assistant for the Petitioner nor he was afforded any opportunity of appointing any officer of his choice to conduct the case on his behalf as defence assistant. The contention of Mr Bhattacharjee in this regard is that the Petitioner was holding the post of Deputy Superintendent of Police and as such he was quite competent to conduct the case himself. But the contention of Mr Bhowmik is that the rules of natural justice require the Inquiring Officer either to appoint a defence assistant or to pass some order offering an opportunity to the Petitioner that he may take the assistance of an officer of his choice. In support of his contention Mr Bhowmik

has referred to a decision of the Supreme Court rendered in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, In this case their Lordships held as under:

Where the department is represented by a Presenting Officer, it would be the duty of the department to see that the delinquent employees, more particularly where he is a Class-IV government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding enquiry, is entitled to be defend by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the enquiry shows that the delinquent government servant was at a comparative disadvantage compared to the Disciplinary Authority represented by the Presenting Officer and as in the present case a superior Officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a government servant belonging to the lower echelons of service would, unless it is shown that he had not suffered any prejudice, vitiate the enquiry. This is the principle deducible from Rule 15(5) of the C.C.A. Rules.

12. In the instant case the records of the proceeding which have been produced before this Court show that by an order dated 13th of April, 1988 (vide No. F.4/19/87- Estt(CRPF)(Pers.II) one Rajender Ghai, Assistant Commandant, 9th Bn CRPF was appointed as Presenting Officer. The order sheets of the proceeding have been produced before this Court. But on going through the order sheets I do not find that the Inquiring Officer passed any order informing the Petitioner that he was entitled to take the assistance of a defence assistant. Mr Bhattacharjee's contention that the Petitioner was competent enough to defend himself is not acceptable by reason of the fact that in view of the aforesaid decision of the Supreme Court it was incumbent upon the Inquiring Officer to pass an order informing the Petitioner that he was entitled to be represented by an officer of his choice to defend him.

13. The third contention urged by Mr Bhowmik is that the Petitioner made a specific prayer to call for some documents and also by that application he cited 10 persons as his defence witnesses. In para 9 of the writ petition it is found that the Petitioner stated that by his letter dated 19.4.88 he cited 10 persons as his defence witnesses but during enquiry the Inquiring Officer only examined one of those witnesses. In the counter affidavit the Respondents replied the contention of para 9 as stated above under para 9 of their counter, the relevant portion of which may be extracted as follows:

In feet on 19.13.88, the Petitioner denied the charge framed against him vide Order dated 16.3.88 (copy annexed at Aimexure-3). The Petitioner on the same day was asked to submit a list of defence witnesses and also documents in defence, if any, by 30.5.88. The Petitioner produced only one witness in defence. During die course of inquiry 8 P.W.s. and one defence witness were examined in

the presence of the Petitioner who also cross examined them. The EO completed the process regarding recording of prosecution evidence by 22.6.88, though the date for producing the defence witnesses and documents in defence was 30.5.88, but the Petitioner produced only one defence witness Shri R.K. Phogat on 2.6.88 who was examined by the Enquiry Officer.

14. In view of the aforesaid statement by the Respondents it is necessary to look into the order sheets. The original records of the departmental proceeding have been produced before this Court which contain 196 pages. On scrutiny of this proceeding file I find that order sheets are at page Nos. 1 and 2. As already stated that as per the statement made under para 9 of the counter affidavit some order was passed on 16.3.88. The order dated 16.3.88 is the charge. No order is found to Have been passed on 16.3.88. Under para 9 of the counter affidavit it has been averred that on the same day the Petitioner was asked to submit a list of defence witnesses and also documents in defence, if any, by 30.5.88. But the order sheets do not show that any such order was passed on 16.3.88. However, as per this statement the Petitioner was asked to file the list of his defence witnesses and documents by 30.5.88. But no order was passed on 30.5.99. The order dated 19.5.88, however, shows that Defendant was allowed to submit a list of defence witnesses and documents, if any, by 30th of May, 1988. The next order that was passed after 19.5.88 was on 20.6.88. This order dated 20.6.88 reads as under:

Regular proceedings in the DE against Shri R.K. Deswal, Dy SP started. Shri Rajendra Ghai, Assistant Commandant, Presenting Officer was present. Shri R.K. Deswal, Dy SP, the Charged Officer was also present. Statements of following prosecution witnesses were recorded.

15. This order shows that on this date two prosecution witnesses were examined. The order dated 21.6.88 shows that 5 more witnesses were examined on this date an on the following day i.e. on 22.6.88 one more witness, namely, P.W.8 was examined and thereafter the case was fixed on 23.6.88 when the defence statement of the Petitioner was recorded. On this date one defence witness, namely, R.K. Phogat was also examined. The order dated 23.6.88 shows that after recording the evidence of R.K. Phogat, D.W. 1 proceedings were declared to have been completed.

16. The order sheets of the proceeding do not show why no other defence witness was examined. On the other hand the order sheets show that on 23.6.88 when the case was fixed for defence statement the evidence of one D.W. was also recorded on the same date.

17. The Petitioner has contended that he was not given sufficient time for preparation of his defence statement and adducing defence evidence. The above orders as discussed clearly show that after closure of the prosecution evidence sufficient time was not given to the Petitioner.

18. Apart from this, it has been argued by Mr Bhomik that the statements of the

prosecution witnesses on which reliance were placed were recorded in absence of the Petitioner and that copies of those statements were not furnished to the Petitioner when they were produced before the Inquiring Officer for cross-examination. P.W. 2 Shri C.M. Bakshi is one of those witnesses. His deposition is available at page 41 of the departmental proceeding-record. His this statement clearly shows that he made a statement before one Y.V.K. Reddy during preliminary enquiry. He did not make fresh statement. On the other hand he testified his previous statement which was recorded on 16th of November, 1987. The deposition sheets do not show that the statement was read over to the Petitioner. Similarly statements of P.W. 3 and P.W. 4 also show that their statements were recorded on 30.11.87 by Mr. Reddy, Commandant. They simply testified their previous statements which were not read over to the Petitioner on 21.6.88 when they were produced for cross-examination. The Inquiring Officer who was appointed is one Mr B. Chakraborty, DIG, CRPF.

19. In the case of the The State of Punjab Vs. Bhagat Ram, the Supreme Court held as under:

It is unjust and unfair to deny the Government copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity is cross-examine the witnesses unless the statements are given to him he will not be able to have an effective and useful cross-examination.

20. Mr Bhowmik has also contended that some witnesses who were not cited in the charge-sheet were examined without giving any notice to the Petitioner and as such the Petitioner has been prejudiced. I find considerable force in the submission of Mr Bhowmik as in my opinion before examining the new witnesses the Inquiring Officer ought to have issued fresh notice to the Petitioner informing him the names of those new witnesses. But that having not been done, the Petitioner, in my opinion, has been prejudiced. This is a clear violation of the principles of natural justice as also Rule 14(15) of the CCS (CCA) Rules, 1965.

21. It is now settled by series of decisions of the Supreme Court that after closure of the evidence of prosecution side the delinquent must be given a further opportunity of giving evidence in his own defence. But in the instant case on going through the order sheets I find that on 22nd of June, 1988 the prosecution witness was examined fixing the next date on the following day i.e. 23.6.1988. On this date the Inquiring Officer not only took the statement of the Petitioner but also recorded the evidence of one defence witness and thus after recording the evidence of one defence witness closed the proceeding.

22. The categorical defence of the Petitioner is that due to shortage of vehicle all the officers were moving in one vehicle and they did not take force in a separate

vehicle and it was very much within the knowledge of Inspector General, CRPF. This defence, if established by defence witness, cannot be lightly brushed aside.

23. Therefore, having agree to all the facts, circumstances and infirmities pointed out above, I am constrained to hold that the order of punishment awarded to the Petitioner cannot stand and accordingly I quash the order of punishment contained in Annexure-2.

24. During arguments Mr Bhowmik has submitted that the Petitioner already retired from service on superannuation. Therefore, the Petitioner would be entitled to get the difference of pay between the scale of Inspector and Deputy Superintendent of Police with effect from 21st of July, 1989 till the date of retirement on superannuation. He will also be entitled to get his pensionary benefits on re-fixation of his basic pay.

25. The Rule is thus made absolute and the Respondents will pay costs to the Petitioner.