
(2011) 03 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 11903 (W) of 2006

R.K. Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 34, 36, 36(10), 36(15), 36(16)
Constitution of India, 1950 — Article 226
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 22, 22(2), 6, 9(21)

Citation : (2011) 3 CALLT 210

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : K.B.S. Mahapatra and Mr. Gokul Chandra Chakraborty, for the Appellant; Soma Panda, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The Court: The petitioner in this Article 226 petition dated May 10, 2006 is questioning an order of the disciplinary authority dated May 8, 2003 (at p.61) inflicting the punishment of removal from service with immediate effect affirmed by the appellate and revising authorities by orders dated August 7, 2003 (at p.84) and March 4, 2004(at p. 130) respectively.

2. While working as a constable in the Central Industrial Security Force (in short CISF) the petitioner was suspended with effect from November 15, 2002.

3. The disciplinary authority issued a charge-sheet dated November 19, 2002 making the following allegation:

That No.004340182 Constable R K Sharma of CISF Unit, NSCBI Airport Kolkata entered in the International Terminal Building at about 2200 hrs on 12.11.2002 without any official business and indulged himself in a scuffle with Si/Fire Rajesh Kumar who was detailed at MEDH(ITB) by way of catching hold the uniform of the latter in the visitor's Lounge of International Terminal Building in presence of

visitors, passengers and employees of Airport Authority. Thus, No. 004340182 Constable R K Sharma committed an act of gross indiscipline, misconduct, insubordination and tarnished the image of the Force.

4. The disciplinary authority appointed an inquiring authority. While on behalf of the disciplinary authority four witnesses were examined, the petitioner examined two witnesses in proof of his case that he did not catch hold of uniform of SI/Fire Rajesh Kumar and engage himself in scuffles with the officer as alleged in the charge-sheet. The inquiring authority submitted a report dated April 5, 2003 that the charge was proved.

5. Accepting the findings of the inquiring authority the disciplinary authority inflicted the punishment of removal from service and the petitioner's statutory appeal and revision application were rejected by the respective authorities.

6. The admitted position is that the revision application and the appeal decided on the basis of parawise comments submitted on behalf of the disciplinary authority behind the petitioner's back were rejected by the respective authorities without disclosing to the petitioner what case was submitted by the disciplinary authority and also without giving him opportunity of hearing.

7. According to counsel for the respondents since the relevant rules did not require the authorities deciding the revision application and the appeal to supply the parawise comments submitted on behalf of the disciplinary authority and give the petitioner an opportunity of hearing, it cannot be said that failure to supply the relied on parawise comments and give the petitioner opportunity of hearing has incurably vitiated the decisions of the authorities.

8. She has been given opportunity to consider the Supreme Court decision in Ram Chander Vs. Union of India (UOI) and Others, and she has submitted that the principle laid down in the case will not apply to this case in which opportunity of hearing would have been a mandatory statutory requirement only in case of enhancement of penalty.

9. The appeal of the petitioner was to be decided in terms of the provisions of Rule 52 of the Central Industrial Security Force Rules, 2001.

10. The relevant parts of sub-rule (2) of rule 52 are quoted below:

(2) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider -

(a) whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and passes orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such directions it may deem fit in the circumstances of the case,

(iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.

11. In *Ram Chander* their Lordships were considering whether an order dated March 11, 1972 passed by the Railway Board dismissing *Ram Chander*'s appeal was in conformity with the requirement of rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

12. The relevant parts of the rule quoted in para 3 of the report were as follows:

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and passes orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

In that case their Lordships said, in para.24 of the report, as follows:

...:Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel*'s case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that maybe passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given.

13. In view of the principle laid down by the Supreme Court in *Ram Chander*

after considering the provisions of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 which are in pair material with the provisions of rule 52(2) of the Central Industrial Security Force Rules, 2001, I am of the view that both the revising and the appellate authorities dismissing the petitioner's revision and appeal relying on undisclosed parawise comments submitted by the disciplinary authority and without giving the petitioner any opportunity of hearing, acted in gross violation of the principles of natural justice.

14. Even though the provisions of Rule 52 did not specifically require the appellate and the revising authorities to hear the petitioner, in my opinion, they were under an obligation to decide the revision and the appeal complying with the principles of natural justice which are rules of fair play and justice.

15. I am unable to accept the argument that opportunity of hearing was to be given only if there was a proposal to enhance the punishment. Such a proposition will be inconsistent with the elementary principles of fair play and justice, for it is inconceivable that a person suffering a punishment of reduction in rank will get an opportunity of hearing if the appellate authority is of the view that the punishment should be enhanced, but a person suffering a punishment of removal from service will not get an opportunity of hearing only on the grounds that there is no scope for enhancing the punishment.

16. The foregoing conclusion leads to the question whether it is necessary for this court to examine the validity of the order of the disciplinary authority. After hearing counsel for the parties and examining the case revealed by the pleadings, I am of the opinion that it is.

17. Admittedly, the disciplinary authority did not appoint any presenting officer and counsel for the petitioner has submitted that the lapse has vitiated the whole inquiry. According to counsel for the respondents appointment of a presenting officer was not a mandatory requirement of law. The inquiry was conducted in terms of the provisions of rule 36 of the Central Industrial Security Force Rules, 2001.

18. Clause (c) of sub-rule (5) of Rule 36 provides as follows:

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

Clause (b) of sub-rule (10) of Rule 36 provides as follows:

(b) The Inquiring Authority shall, if the enrolled member of the Force fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the enrolled member of the Force may, for the purpose of preparing his defense -

....

Sub-rule (15) of Rule 36 provides as follows:

(15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the enrolled member of the Force. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

19. While sub-rule (16) of Rule 36 provides that if it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the presenting officer to produce evidence not included in the list given to the enrolled member of the Force, clause (c) of sub-rule (18) of the rule provides that the inquiring authority may, after the completion of the production of evidence, hear the presenting officer, if any, appointed and the enrolled member of the Force, or permit them to file written briefs of their respective cases, if they so desire.

20. It is evident from the provisions of Rule 36, especially the ones in sub-rule (15) of the rule that the presenting officer is supposed to play a very important role in the inquiry, and especially when witnesses in support of the articles of charge are examined. This means that allegations made by the disciplinary authority are to be proved by adducing oral and documentary evidence which shall be produced by the presenting officer, and not by the inquiring authority himself.

21. Hence it cannot be said that in view of the provisions of clause (c) of sub-rule (5) of the rule appointment of a presenting officer is not a mandatory requirement, for in the absence of a presenting officer the inquiring authority will be required to discharge both the functions of the inquiring authority and the presenting officer, - an impermissible role of judge and prosecutor.

22. In this case, admittedly, the inquiring authority acted both as the inquiring authority and the presenting officer. The four witnesses examined in proof of the articles of charge were examined by the inquiring authority himself, who also cross-examined the petitioner who submitted his statement of case and examined two witnesses who deposed in support of his case. In my opinion, this amounted to the inquiring authority acting both as the prosecutor and the judge, and the procedure incurably vitiated the whole inquiry.

23. One more important aspect of the inquiry is related to compliance with the provisions of clause (b) of sub-rule (18) of Rule 36. Clause (b) of the sub-rule is quoted below:

(b) The Inquiring Authority may, after the enrolled member of the Force closes,

his case, and shall, if the enrolled member of the Force has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the enrolled member of the Force to explain any circumstances appearing in the evidence against him.

24. Admittedly, the petitioner did not examine himself, he only submitted his statement of defense, and the inquiring authority did not generally question the petitioner on the circumstances appearing against him in the evidence for the purpose of enabling the petitioner to explain any circumstances appearing in the evidence against him.

25. On the contrary, the inquiring authority virtually cross-examined the petitioner with respect to his case stated in the statement of defense. In my opinion, non-compliance with the provisions of clause (b) of sub-rule (18) of Rule 36 has vitiated the proceedings incurably.

26. Mr. Mahapatra has rightly relied on the Supreme Court decision in *Moni Shankar Vs. Union of India (UOI) and Another*, . There while examining the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968 their Lordships held that compliance with the provisions of the rule providing for such an opportunity as is provided in clause (b) of sub-rule (18). of Rule 36 was a mandatory requirement, and that non-compliance amounted to denial of opportunity to the charged employee to explain the circumstances appearing against him.

27. Here the allegation against the petitioner was that after entering the International Terminal Building without any official business he caught hold of the uniform of SI/Fire Rajesh Kumar and thus indulged himself in a scuffle with the SI.

28. SI/Fire Rajesh Kumar was examined by the disciplinary authority as PWI and after analyzing his evidence the inquiring authority concluded as follows:

From the statement of PW-I and Ex. PI/PW-I, it was found that PW-I caught hold the hand of charged official with the intention to take him to the Asstt. Commandant (ITB) who was present at his office at that time. This might be the initial stage of scuffling. On resisting by the charged official, pulling-pushing was happened between them (PW-I and charged official) and in that scuffling the PIC of charged official got damaged. Lastly the charged official released himself by pushing back PW-I and went from there.

29. The petitioner and a lady constable Mukesh Kumari both were working at the same place and the incident recorded by the inquiring authority in his report (one quoted hereinbefore from his report) happened because Mukesh Kumari a family relation and hence sister of the petitioner informed him that SI/Fire Rajesh Kumar had been sexually harassing her. Mukesh was examined by the petitioner as DWT and a lady colleague of Mukesh Kumari was examined as DW2.

30. In her evidence Mukesh Kumari categorically stated that SI/Fire Rajesh

Kumar was harassing her over telephone from the time she was performing duty in "A" coy; and that he always "Ulia-sidha Boat Karta Tha" saying why I did not come outside that he wanted to speak some urgent talk, and that he wanted to meet me". She further said that on November 12, 2003 Rajesh Kumar waiting at the main entrance gate in ITB in civil dress harassed her, and that when she met the petitioner (her Bhaiya) she told him "about the incident when Bhaiya saw me in weeping condition."

31. It is in the context of the facts stated by Mukesh Kumari that the inquiring authority further recorded in his report as follows:

From the written defense statement of the charged official it was clearly found that the charged official involved himself in argument with PW 1 inside the International Terminal Building in connection with a complaint of sexual harassment of L/const. Mukesh Kumari and lastly he (charged official) became upset with the behavior of PW 1 as stated by the charged official. From the statement of PW 1, it was found that as the matter told by the charged official (most probably the complaint of sexual harassment of L/ct. Mukesh Kumari) was not clear to him (PW 1), he wanted to take him (charged official) to the Asstt. Commandant. In turn the charged official resisted himself to go to the Asstt. Commandant and it resulted a scuffling (pulling-pushing) between them (PW 1 and charged official). In the scuffling the PIC of the charged official got damaged.

32. After analyzing the evidence the inquiring authority concluded as follows:

From the above facts, it appeared that neither there was a pre-planning of charged official to involve himself in a scuffling nor the PW 1 had an idea of happening of this type of scuffling. The difference of opinion between PW 1 and the charged official at that particular moment resulted in argument and consequently converted it in scuffling for the denial of the charged official to go to the Asstt. Commandant (ITB). Moreover, if PW 1 assaulted the charged official, then there was no reason for charged official to leave the place without reporting the matter to the Asstt. Commandant who was available in his office at ITB at that time.

33. After analyzing the evidence as aforesaid and recording the conclusion as quoted hereinbefore the inquiring authority put to him the following questions:

Now the question is -

- 1) Whether the scuffle could be avoided and
- 2) Who is dominant and responsible for the scuffle held in such place and time in presence of passengers and visitors and PIC holders/staffs of Airport Authority available there.

34. It is evident from the two questions put by the inquiring authority to himself that the questions were absolutely beyond the scope of the allegations made in the articles of charge. The inquiring authority came to the conclusion that the

charge leveled against the petitioner was proved, because, though he was not on duty at the International Terminal Building, he went there and disturbed Si/Fire Rajesh Kumar who was on duty and involved himself in the scuffle in the visitors lounge in presence of passengers and visitors and other staff available there.

35. Rajesh Kumar himself deposed that he caught hold of the petitioner for taking him to the Asstt. Commandant, and that while the petitioner was resisting there was a scuffle between them. It is the petitioner's own case that he went to the International Terminal Building for asking Rajesh why he was harassing his sister, lady constable Mukesh Kumari. On these facts, I am of the opinion that the inquiring authority's conclusion that the charge leveled against the petitioner was proved is perverse. The principal feature of the charge was that the petitioner caught hold of Rajesh Kumar's uniform and started a scuffle. Rajesh Kumar himself deposing in support of the charge did not support this case.

36. The disciplinary authority just agreed with the findings of the inquiring authority. The petitioner's detailed representation against the findings of the inquiring authority did not receive due attention of the disciplinary authority. The disciplinary authority did not examine whether the person who conducted the inquiry complied with the mandatory requirements of the provisions of Rule 36.

37. I am, therefore, of the view that the order of the disciplinary authority and the report of the inquiring authority both are liable to be quashed. On the facts, there is no question of saying that the disciplinary authority will be at liberty to proceed with the charge-sheet or conduct a fresh inquiry, for the charge was not supported by Rajesh Kumar, the principal witness of the disciplinary authority, though he was directly examined by the inquiring authority.

38. For these reasons, I allow the petition, set aside the orders of the revising, the appellate and the disciplinary authorities and the report of the inquiring authority. The petitioner shall be reinstated into employment within four weeks from the date of communication of this order and within four weeks thereafter he shall be given all benefits to which he would have been entitled in the absence of the order of the disciplinary authority removing him from service. No costs. Certified Xerox.