
(1989) 05 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 11 of 1980

R.K.Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-05-1989

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27(cc)(ii), 27(cc)(ii)
Constitution of India, 1950 — Article 14, 14, 226, 226, 311(2)

Citation : (1989) 2 GLJ 451

Hon'ble Judges : R.K.Manisana Singh, J and Y.Ibotombi Singh, J

Bench : Division Bench

Advocate : S.N.Chetia, T.Nandakumar Singh, Advocates appearing for Parties

Judgement

Y. Ibotombi Singh, J.

1. It is very unfortunate that an occurrence which took place in the year 1979 has been still hanging on the head of the petitioner for about a decade or so. This case illustrates the consequence of an unjust order passed by an officer on the higher rung against subordinate officer of the lower rung.

2. By this petition under Article 226 of the Constitution of India, the petitioner has sought for issuing an appropriate writ or direction quashing the order dated 25.7.79 passed by Shri R. N. Rao, Commandant Group Centre, CRPF., Imphal dismissing the petitioner from his service as Head Constable and also the order dated 20.9.79 passed by Brig. R. B. Raja, retired Deputy Inspector General of Police. CRPF converting the said order of dismissal into one of reduction to the lower rank for one year with the condition that on repromotion, the petitioner shall not retain his original seniority in the rank of Head Constable etc.

3. The relevant facts giving rise to the present petition are as follows :

In the month of June, 1979, the Central Reserve Police Force personnel resorted to countrywide agitation for better service condition by increasing their pay and other amenities. The CRPF personnel posted in this tiny State of Manipur also

participated in the said agitation by indulging in various acts of indiscipline and misconduct, such as, disobeying the order of the superior authority, deserting their posts, etc.

4. The petitioner Shri R. K Yadav, who was then a Head Constable, was one of the agitators who absented themselves from duties unauthorisedly and indulged in various acts of indiscipline and misconduct.

5. In exercise of his powers conferred by subrule (cc) (ii) o Rule 27 of the Central Reserve Police Force Rules, 1955 read with clause (b) of second proviso to clause (2) of Article 311 of the Constitution, Shri J. N. Rao, Commandant Group Centre, Central Reserve Police Force, Imphal passed an order on 25. 7. 79 dismissing the service of Shri R. K. Yadav from his service as Head Constable. It is to be noted here that Shri J. N. Rao, having satisfied that in the facts and circumstances any attempt to hold departmental inquiry by serving a written charge sheet and following other procedures in the manner provided in the Central Reserve Police Force Rules, 1955 will be frustrated by the collective action of the agitators, did not hold an inquiry.

6. Having felt aggrieved by the said order of the Commandant, the petitioner preferred an appeal to the Deputy Inspector General of Police, CRPF, Kohima. While confirming that the appellant committed an offence which led to him to dismissal from service, the Deputy Inspector General of Police, CRPF held that punishment awarded namely, dismissal from service is too harsh and, therefore, he passed the following orders :

"(i) Order of Commandant GC CRPF Imphal issued vide No. P. VIII1/79GC dated 25 July 79 is hereby quashed and Ex HC RK Yadav is reinstated in service from the date he rejoins duty.

(ii) He is reduced to the rank of Naik (GD) for a period of one year. On repromotion, he will not regain his original seniority in the rank of Head Constable.

(iii) The day of absence on 25. 6. 79 on which he took part in collective agitation will be treated as Not ON DUTY and will not count towards seniority, promotion, pay, future increment and pension etc.

(iv) Period from the date of dismissal to the date he rejoins duty shall be treated as leave of kind due to him."

7. It is for the quashing of the said order passed by Shri J. N. Rao, Commandant and the order passed by the Deputy Inspector General of Police that the petitioner has filed the present petition under Article 226 of the Constitution of India.

8. Right in the beginning, the learned counsel for the respondent has made a preliminary objection as to the maintainability of the petition. The learned counsel endeavours to apply the doctrine of exhaustion of the statutory remedy

as a bar to the exercise of jurisdiction under Article 226 of the Constitution of India. It is correct that under Rule 29 of Central Reserve Police Force Rules, 1955 a member of the force whose appeal has been rejected by a competent authority may prefer petition for revision to the next superior authority, and that the power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.

9. Shri T. Nandakumar Singh, the learned counsel for the petitioner, on the other hand, vehemently submits that the doctrine of exhaustion of statutory remedy will not be applicable in the present case inasmuch as the orders passed by the Commandant as well as the Deputy Inspector General of Police, on the face of the orders, are erroneous resulting in injustice and also as the same are violative of Article 14 of the Constitution. There is no dispute that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. It is the rule of convenience and discretion rather than the rule of law inasmuch as the limitation that before asking for relief under Article 226, the party must exhaust an alternative remedy will not be found in the Constitution. There is, therefore, no doubt that the existence of alternative remedy does not normally oust the jurisdiction of the Court. It is well settled that where the question of infringement and fundamental right arises, or where on undisputed fact the authority had assumed their jurisdiction not vested in them by law or where the authorities has assumed jurisdiction which they do not, and passed an order and direction resulting grave injustice to the parties or where the order made on the face of it is erroneous resulting in injustice, the doctrine of consummation of statutory remedy will not be applicable.

10. In the case in hand, the petitioner's case is that the said order passed by the Commandant and also the order passed by the Deputy Inspector General of Police, on the face of the orders are erroneous resulting in injustice. It is also the case of the petitioner that the orders are violative of Article 14 of the Constitution of India. Therefore, if the allegations of the petitioner are substantiated the Court can exercise its discretionary powers under Article 226 of the Constitution of India by passing the provision of Rule 29 of CRPF Rules. This brings us to the consideration for the question whether the allegations of the petitioner are substantiated or not.

11. On this point, Shri Nandakumar Singh, the learned counsel for the petitioner has made four fold arguments. Firstly, he maintains that there was not sufficient materials for dispensing with the provisions of the departmental inquiry as provided in the Central Reserve Police Force Rules, 1955, and therefore, the impugned order dated 25. 7. 79 passed by R. N. Rao, Commandant is on the face of it, erroneous resulting in injustice. Secondly, the learned counsel submits that the finding of the Deputy Inspector General of Police that the appellant indulged in act of indiscipline, violence and misconduct is perverse inasmuch as

the same is not supported by the facts and evidence on record and, therefore, the impugned order passed by the Deputy Inspector General of Police is, on the face of it, also erroneous resulting the injustice. Thirdly, the learned counsel urges that while awarding punishment, the Deputy Inspector General of Police offended the provisions of Article 14 of the Constitution of India inasmuch as he passed the order discriminately and against the rule of equality. Lastly, the learned counsel forcefully contends that the punishment awarded against the petitioner is not commensurate with the misconduct committed by the petitioner and therefore it is violative of Article 14 of the Constitution.

12. We now take up the first point raised by the learned counsel. There is no dispute that the departmental inquiry can be dispensed with if there are sufficient materials for doing so. Shri. T. Nandakumar Singh the learned counsel for the petitioner, with his usual frankness, has conceded at the bar that the enquiry can be dispensed with. His only grievance is that there were not sufficient materials for taking such a recourse. Therefore, the question now arises for consideration is whether there were sufficient materials for not taking up the normal procedure of departmental inquiry. There is no dispute that the agitation in question was extended throughout the length and breadth of this country and that a large number of CRPF personnel participated in the agitation. Likewise, there is no dispute that at least more than ICO CRPF personnel posted in this tiny State of Manipur also participated in the agitation. Besides, there were a good number of sympathisers too. Under the circumstances, it would not be possible to hold departmental inquiry by serving a written charge sheet and following other procedures in the manner as provided in the Central Reserve Police Force Rules, 1955. After all, the Central Reserve Police Force is one of the important limbs of the force which maintains law and order in the country and, therefore, it is the bounden duty of the authority concerned to take an urgent and proper step to maintain discipline among the personnel before it was too late". Therefore, in our considered view, the Commandant was fully justified in dispensing with the departmental inquiry as provided in the Central Reserve Police Force Rules, 1955. We do not, therefore find any substance in the above contention of the learned counsel.

13. Having settled up this point, we again take up the second point raised by the learned counsel for the appellant. There is no dispute that the petitioner participated in the agitation. His only case is that he did not play exceptional role which would justify the Disciplinary Authority to treat him differently while awarding punishment. Now, the contention of the learned counsel for the respondent is that the petitioner played a different role by instigating the constables to participate in the agitation and that this is proved by the materials on record. It is correct that while deciding point 8, the Deputy Inspector General of Police had observed that the statements of various witnesses revealed that the appellant (petitioner) indulged in acts of indiscipline, violence and misconduct by unauthorisedly absenting himself from duty.

14. We must confess for our failure to understand as to the sources of the statements of the witnesses mentioned therein. We said so, because, there is nothing on the record to establish that the statements of the witnesses were recorded by any competent authority. Admittedly, the departmental inquiry had been dispensed with. Again, there is no mention in the order as to the name of the person or persons who gave statements. The statements of these witnesses are not in "the file. Therefore, there is no material to support this finding of the Deputy Inspector General of Police. It is to be noted here that the Deputy Inspector General of Police did not even make a faint attempt to distinguish the part played by the petitioner and those of the other personnel who got lesser punishment. At any rate, there was no material before him to establish that the petitioner instigated the other CRPF personnel. After all, in his impugned order, the Deputy Inspector General of Police had not stated that the petitioner instigated the other CRPF personnel to participate in the agitation. Hence, we find force in the above contention of the learned counsel for the appellant.

15. The next contention of the learned counsel for the petitioner is that the order of dismissal or the order of reduction to the lower rank with a condition not to regain his seniority on his repromotion to the Head Constable are violative of Article 14 of the Constitution of India inasmuch as the other Head Constables who actively participated in the agitation like the petitioner have not been punished in the similar manner. We find force in the above contention of the learned counsel for the petitioner. On perusal of the order dated 4. 8. 79 passed by Shri R. N. Rao, Commandant (Annexure A/6), it is candidly seen that some Head Constables," namely, K. D. Backward, D. C. Ralekar etc. who absented themselves from morning parade and duties and participated in the public procession and demonstrations have been punished under section 11 (3) of the CRPF Act, 1949 by awarding censure and by treating the date of their absence as IWP without considering it as break in service. It is also seen that some other Head Constables namely Satibir Singh, A. D. Deose, Chhetu Ram and Prakash have also been punished under section 11(1) and 11 (3) of the Act. The punishment awarded against them are (1) severe censure, (2) stoppage of special pay for six months and (3) one unauthorised absence on 25. 6. 79 to be treated as LWP without breaking in service. The charges on the basis of which the above punishments were awarded against the four Head Constables and the charges levelled against the present petitioner are exactly the same. Moreover, as discussed in the above the contention of the learned counsel for the respondents that the petitioner not only participated in the agitation like other Head Constables, but also instigated the constables to join in the agitation and therefore, the authority concerned awarded more severe punishment against him, has not been established. After all, the finding of the Deputy Inspector General of Police does not disclose that the petitioner had played a different role by instigating the other CRPF personnel to participate in the agitation. The position, therefore, is that the petitioner participated in the agitation like the other aforementioned Head Constables. It follows, therefore, that the orders

passed by the Deputy Inspector General are discriminatory and violative of Article 14 of the Constitution of India.

16. Having settled on this point also, we again take up the last point raised by the learned counsel of the petitioner for consideration. In the case of Bhagat Ram vs. State of Himachal Pradesh, AIR 1983 SC 454 at para 15 the supreme Court made an opoch making decision that the penalty imposed must be commensurate with the gravity of the misconduct and that if the penalty is not commensurate to the gravity of the misconduct, it would be violative of Article 14 of the Constitution. Thus, there is no dispute that the punishment must be commensurate with the gravity of the misconduct. Point is, whether the punishment awarded by the Deputy Inspector General against the petitioner, that is; reduction to the lower rank for a period of one year with a condition not regain his seniority on his repromotion etc. is commensurate with the gravity of the misconduct committed by him. It is admitted by all sides that the agitation was extended throughout the length and breadth of the country. A sizeable number of CRPF personnel participated in the agitation to ventilate their grievances as to their scales of pay and other service amenities. While appreciating that it is the, foremost duty of the Disciplinary Authority to maintain discipline among the members of the force which maintains the law and order of the country, we cannot but to point out that it is also the bounden duty of the Disciplinary Authority not to do anything which will cause is general moral degradation among the members of the force. In the case in hand, as discussed in the. above, the Disciplinary Authority made a discriminatory treatment to the petitioner by awarding the punishment of reduction to the lower rank for a period of one year with a condition not to regain his seniority etc. on his repromotion to the Head Constable. The fact that the Disciplinary Authority awarded censure as a punishment, in respect of other Head Constables who participated in the agitation like the petitioner amply shows that the punishment awarded against the petitioner is not commensurate with the gravity of misconduct said to have been committed by the petitioner. Therefore, in view of the discriminatory treatment given to the petitioner, we have been persuaded irresistibly to hold that the impugned orders are violative of Article 14 of the Constitution of India. It follows that it is a fit case to invoke our jurisdiction under Article 226 of the Constitution to do away the erroneous and illegal decision of the lower appellate authority which caused injustice to the petitioner.

17. For these reasons, the impugned orders must not be allowed to stand, and we accordingly set aside the same. Normally, in such a situation, the case is to be sent back to the appellate authority for rehearing. But as stated in the above, an occurrence which took place in the year 1979 has been still hanging on the head of ythe petitioner for about a decade or so. In fact, he has been suffering both mentally and physically for so many years due to the unjust orders passed by his own superior officers. Under the circumstances, it will not serve the ends of justice if the case is remanded to the Court below for retrial.. Having regard to the above fact and circumstances, we direct that punishment awarded against

the petitioner by the Deputy Inspector General be converted into the following punishments :

- 1) severe censure,
- 2) stoppage of special pay for six months and
- 3) one unauthorised absence on 25. 6. 79 to be treated as LWP without break in service.

We think, the above punishment will meet the ends of justice. The result is that the petition is partly allowed to the extent indicated above.

R. K. Manisana, J.I agree.