

(2022) 05 GAU CK 0054

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4648 Of 2020

Shiv Narayan Balai

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 311(2)

Central Civil Services (Conduct) Rules, 1964 — Section 3(1)(ii), 3(1)(iii), 3(1)(xix)

Citation : (2022) 05 GAU CK 0054

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : R Mazumdar

Final Decision : Dismissed

Judgement

1. The writ jurisdiction of this Court has been sought to be invoked by the petitioner by questioning the legality and validity of a disciplinary proceeding initiated against the petitioner vide memorandum of charge dated 06.03.2020. The basic grounds of challenge are that the charge memo does not contain any materials that would constitute misconduct and has been issued to save the superior authority. It is further alleged that though a personal hearing was held on 26.06.2020 with the Superior Authority, the outcome of the same was not made known to the petitioner.

2. Before going to the issue which has arisen for determination in this case, it would be convenient to state the facts of the case in brief.

3. The petitioner is a Commandant serving in the Central Reserve Police Force (hereinafter CRPF). A Commandant heads a Battalion which consists of at least three numbers of Companies. It is the case of the petitioner that on 28.01.2019, the Inspector General, NES, ordered for ensuring proper supervision, command and control for upcoming GPE 2019. The parliamentary Guidelines 2019 was issued on 18.02.2019 for the Force Commanders. The petitioner was nominated

as the District Nodal Officer through order dated 11.03.2019 to coordinate the movement and deployment of CAPF Coys, Assam. However, the petitioner was also intimated for additional deployment on 02.04.2019 of CAPF/SAP Coys for election duty in the district of Jorhat and Lakhimpur in the 1st Phase.

It was informed again on 02.04.2019 that the 2nd in Command was required to be placed as the District Nodal Officer instead of the Commandants who were moving out with Coys. The petitioner on 03.04.2019 had requested for defining the role and responsibility of the Commandant as Nodal Officer and also as Supervisory Officer. The Deputy Inspector General of Police (hereinafter DIGP) too sought clarification from the office of the Inspector General of Police.

On 04.04.2019, the 2nd in Command of the 10th Bn. was detailed as District Nodal Officer. The petitioner therefore on the next day i.e. 05.04.2019 directed the 2nd in Command of his Unit to move to the districts of Jorhat and Lakhimpur to supervise the deployment of 6(six) Coys of 10th Bn.

However, on 06.04.2019 a signal was made by the DIGP whereby he directed the petitioner to go through all the instructions mentioned in the OPS handbook 2001 and GPE 2019 to perform his duties accordingly rather than moving with the companies. The petitioner had again asked for further clarification regarding the direction.

On 07.04.2019 an order was passed whereby the petitioner was relieved of all election related duties with a stipulation that separate orders were being issued regarding disciplinary action against the petitioner.

The petitioner issued a clarification to the aforesaid order stating his confusion as to the duties for which he was unable to perform what he was asked for.

On 08.04.2019 a preliminary enquiry was initiated to find out about the petitioner's disobedience of orders of Senior Officer. The petitioner, however, affirmed on 09.04.2019 that he would reach the scheduled areas ahead of the polling day. But he was informed that he had been relieved of all his election duties.

Again on 11.04.2019, the petitioner was informed that the 2nd in Command will remain as District Nodal Officer for Barpeta and Baksa and on 17.04.2019 fresh deployment of Companies were made for 3rd phase election in Assam.

4. Finally, on 06.03.2020 a Memorandum of charges was issued against the petitioner whereby he was directed to show cause by filing a Written Statement of the Defence within ten days which he had done. As it appears that the authorities were not satisfied with the reply of the petitioner and accordingly on 09.07.2020, both the Enquiry Officer and Presenting Officer were appointed.

5. It is the case of the petitioner that since the allegations pertained to the said two officers, on 31.07.2020 he had made a representation to the DGP for changing of the Enquiry Officer as well as the Presenting Officer. However, in

spite of much persuasion, no such change was made. The petitioner alleges that due to the fact that the Enquiry Officer and Presenting Officer were not changed, he will not be dealt fairly in the ensuing Departmental Proceeding and accordingly the present petition has been filed.

6. It may be mentioned that this Court vide order dated 10.11.2020 had granted liberty to the petitioner to file appropriate application for interim order which was accordingly filed and subsequently in IA(C)/348/2021, this Court had passed an interim order staying all further proceedings in the disciplinary action. The said interim order was mainly passed on the consideration of the on-going pandemic and which however was extended from time to time.

7. I have heard Shri R. Mazumdar, learned counsel for the petitioner. I have also heard Ms. B. Sarma, learned CGC. The materials placed before this Court have been carefully examined.

8. Shri Mazumdar, the learned counsel for the petitioner submits that the Memorandum of charge dated 06.03.2020 contains allegations against the petitioner which are absolutely incorrect and cannot in fact be termed as any misconduct. By referring to the said Memorandum of charge annexed as Annexure-22, it has been submitted that there is only one charge against the petitioner which relates to that tenure of the petitioner as Commandant 10th Bn. (State Force Coordinator), a signal was given on 11.03.2019 by which the petitioner as District Nodal Officer was directed to coordinate the movement and deployment of CAPF Coys in the two districts of Barpeta and Baksa. Subsequently, vide signal dated 02.04.2019 the petitioner was detailed as the Supervisory Officer for deployment of Six Service Coys of a Unit i.e. 10th Bn. CRPF in upper Assam. The said directions which were issued to ensure strict compliance which however was not done. Consequently, it has been alleged that the petitioner had failed to maintain the devotion to duty enacted in a manner unbecoming a Government Servant. The further allegation is that the petitioner had failed to maintain discipline in discharge of his duties and did not obey the lawful orders duly communicated to him. There was allegation of violation of Rules 3(1) (ii), (iii) and (xix) of the CCS (Conduct) Rules, 1964.

9. The learned counsel for the petitioner submits that the charges are based on facts which in actual terms may not constitute any misconduct. The controversy is with regard to movement of the troops and the person to lead them. According to the petitioner, the instructions given by the DIG was not in accordance with law and therefore, those were not liable to be executed. The learned counsel goes a step further that the lawful orders were that of the DGP which were being followed by the petitioner and therefore no action of the petitioner can be held to be any kind of misconduct.

10. The second leg of the argument on behalf of Shri Mazumdar, the learned counsel for the petitioner is that in the midst of the controversy, he had a personal interaction with the Director General of CRPF whose opinion was

allegedly in favour of the petitioner as according to the authority, the case of the petitioner was liable to be closed and this meeting was allegedly video-graphed and therefore, a prayer was made for production of the same before this Court. The learned counsel for the petitioner was sanguine that once the said records are produced there would be no occasion to proceed against the petitioner in the impugned disciplinary proceedings.

11. Shri Mazumdar, the learned counsel for the petitioner prays for interference by this Court and accordingly set aside the disciplinary proceeding.

12. In support of his submission, the learned counsel for the petitioner had placed reliance upon a decision of the Hon'ble Supreme Court in the case of Kashinath Dikshjta Vs. Union of India reported in (1986) 3 SCC 229 and the following paragraphs were pressed into service –

"12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.

14. In view of the pronouncements of this Court it is impossible to take any other view. As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the appellant has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment of the High Court is set aside. The impugned order of dismissal dated November 10, 1967 passed against the appellant is quashed and set aside. We further declare that the impugned order of dismissal is a nullity and nonexistent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on January 31, 1983. Taking into account the facts and circumstances of this case and the time which has elapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the

charges in question. We therefore direct the State Government not to do so.”

13. On the other hand, Ms. B. Sarma, the learned CGC has vehemently opposed the writ petition. The learned CGC submits that an affidavit-in-opposition has been filed on 29.07.2021 in which, the authorities have made the position clear and has contended that no case for interference is made out. The learned CGC has submitted that the present action is nothing but an attempt to pre-empt and stall the duly initiated disciplinary proceeding on absolutely flimsy grounds.

14. The learned CGC has clarified that the application for change of the Presenting Officer and Enquiry Officer was duly considered and was rejected by a speaking order. Similarly, with the regard to the application for personal hearing, the same was duly replied by the Office of the Directorate General, CRPF vide communication dated 19.11.2020. In the said communication it has been specifically mentioned that in the personal hearing with the DG no facts or reasons could be brought out to reconsider the proposed action against the petitioner. With regard to the issue of supply of documents including statements of witnesses recorded in the preliminary enquiry, though no such request was made by the petitioner, copies of all listed documents were provided to the petitioner along with the Memorandum of charges. The learned CGC submits that in fact all the relevant documents were given to the petitioner twice.

15. Ms. Sarma, the learned CGC has submitted that the allegation against the petitioner is of serious nature which involves serious operational misconduct by not obeying the orders of his seniors. It is submitted that in the contemplated disciplinary proceeding, all opportunities would be afforded to the petitioner to defend his case and whatever grounds have been taken by the petitioner in the present writ petition would be available to him in the disciplinary proceeding. She accordingly contends that the writ petition is premature and accordingly liable to be dismissed. As regards the interim order operating the learned CGC submits that the same was passed at a later stage in an application on a wholly different consideration namely the situation prevalent at that time concerning the Covid pandemic and that situation is no longer existing presently.

16. In support of her submission, the learned CGC has placed reliance upon the following case laws-

- i. Chandrama Tewari Vs. Union of India {1987 (Supp) SC 518};
- ii. Syed Rahimuddin Vs. Director General, CSIR {(2001) 9 SCC 575}

17. In the case of Chandrma Tiwari (supra), the Hon’ble Supreme Court has held that the mere fact of non-supply of documents to a delinquent, per se, may not constitute a procedural infirmity unless it is able to be shown that such non supply had caused prejudice to the delinquent.

18. In the case of Syed Rahimuddin (supra), it has been laid down that the findings of a disciplinary enquiry are findings of fact and interference is permissible only in case when the said finding is perverse. As regards the

allegation of bias the Hon'ble Supreme Court had held as follows-

"6. The only other contention that survives for consideration is the allegation of bias. Though no specific allegation of bias had been made but the contention is based upon the very reasoning of the enquiring officer and the conclusion arrived at. According to the counsel for the appellant, a reference to the order of the enquiring officer would indicate that the said officer was actuated with bias and proceeded to deal with the materials with that bias in mind which resulted in the ultimate conclusion of finding of guilty on the charges levelled against the delinquent. We were taken through para 4.2 which is at p. 290, Vol. II of the paper-book that is produced before us and before the Tribunal para 4.11 which is at p. 296 of the same volume, had been placed. On going through the aforesaid two paragraphs, we are unable to accept the contention that the assertions made in those paragraphs indicate or establish any bias of the enquiring officer towards the delinquent. Bias, undoubtedly, would have to be established either by evidence or on the materials on record which are relied upon by the enquiring officer in coming to his conclusion as to the guilt of the delinquent. In the case in hand, after applying our mind to the relevant materials, we do not find any substance in the allegation of bias made by the delinquent as against the enquiring officer."

19. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

20. The allegations against the petitioner appears to be primarily that of disobedience to the order / directions of a superior authority. The allegation needs to be tested in the context of the attending facts and circumstances. The petitioner is none other than a Commandant of the CRPF which is, without any doubt a discipline force wherein maintenance of strict discipline is the essence of the employment. The basis of the challenge appears to be that there is another set of contrary directions by a higher authority. The said ground appears to be prima facie unacceptable as it was not up to the petitioner to take up such a plea at a stage when he was to lead a Battalion from one place to another which, is a very serious and important activity.

21. Before venturing to the validity or otherwise of the charge against the petitioner, this Court is serious doubts as to whether there is any cause of action justifying the petitioner to approach this Court. Admittedly, the disciplinary proceeding is at a very nascent stage wherein the defence of the petitioner is yet to be considered. In any case, it is the entire burden on the part of the authorities to prove the charge against the petitioner and also answer the question as to whether the charge would constitute misconduct. The said stage having not even arrived, this Court is of the opinion that there is hardly any cause of action in the present writ petition. This Court is not oblivious of the fact that the initiation of disciplinary proceeding can never be challenged. However, such challenge is circumscribed by limited grounds mainly relating to the

jurisdiction of the authority to initiate such disciplinary proceeding. However, that is not the pleaded case in the instant writ petition.

22. The case of Kashinath Dikshjta (supra) relied upon by the petitioner will not come to the aid of the petitioner inasmuch as the same was a case wherein the Hon'ble Supreme Court was examining the requirement of reasonable opportunity to answer to the charges which included supply of the documents. In the instant case, admittedly, the documents relied upon by the authorities have been served upon the petitioner and there is no pleadings that the petitioner is deprived of a reasonable opportunity.

23. With regard to the case laws relied upon by the respondents, namely Chandrama Tewari (supra) and Syed Rahimuddin (supra), this Court is of the opinion that since the documents had already been afforded to the petitioner, the question of prejudice will not come. Further, this Court is in humble obeisance with the principles laid down in Syed Rahimuddin (supra) that interference in a disciplinary enquiry is permissible only in case where there is no materials come to the conclusion of imposing a penalty. In the instant case, the conclusion is yet to be arrived at.

24. As regards the allegation of bias, it is a settled law that bias is a perception of the person making such allegation and the burden is a heavy one to discharge. The minimum requirement is of adequate pleadings to establish some previous animosity or rivalry with the person in respect of whom bias has been alleged. In the instant case, the initial burden does not seem to have been discharged by the petitioner and therefore, this Court is not in a position to accept the ground of bias for interfering into the disciplinary proceedings. Further, as indicated above, the Hon'ble Supreme Court in the case of Syed Rahimuddin (supra) has laid down that bias would have to be established either by evidence or on the materials on record which are relied upon by the Enquiry Officer and that stage is yet to be arrived at in the present case.

25. In view of the aforesaid discussion, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition stands dismissed. Consequently, the interim order operating stands vacated.

26. No order as to cost.