
(2008) 09 OHC CK 0011

In the Orissa High Court

Case No : O.J.C. No's. 3682 of 1994 and 6672 of 1992

Sudhanidhi Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 OHC CK 0011

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Advocate : C.A. Rao, S.K. Purohit, S.K. Behera and P.K. Sahoo, for the Appellant; L. Jena, Central Government Counsel, for the Respondent

Judgement

B.P. Das, J.—Shortly stated, the case of the Petitioner is that while serving as Naik in CISF Unit, BHEL, Bhopal, since 4.8.1984, he availed leave from 16.3.1985 to 14.04.1985 and came to his native village Mohanpur in the district of Cuttack. While on leave, he fell ill on 12.04.1985 and under the medical advice, sent a telegram for extension of his leave. Thereafter, the Petitioner received a telegram from O.P.4-Commandant wherein he was called upon to send an unfit certificate, failing which disciplinary action would be taken against him. Pursuant to the said order of the commandant of the Unit, the Petitioner sent an unfit certificate on 24.04.1985 with a prayer to extend his leave. After recovering from his illness, he reached Bhopal and submitted his joining report to O.P.4-Commandant on 29.8.1985 but the same was not accepted. Later on the Petitioner made a query and learnt that he was dismissed from service by order dated 18.8.1985. The said order was served on him on 29.8.1985. Against the order dated 18.8.1985 the Petitioner filed an appeal, which was also dismissed. Thereafter, he filed a revision and the same was also rejected. Against the said rejection, the Petitioner filed a writ application before this Court being O.J.C. No. 2634/ 1986, which was allowed by judgment dated 28.11.1991, the relevant part of which is extracted as hereunder: -

xxx xxx xxx 5. It is thus an admitted fact that the Petitioner has not been served with any notice of the disciplinary proceeding. It is true that the home address of the Petitioner was at Mohanpur and as he fell ill, he was being treated at Banki. But when the alleged notice in the disciplinary proceeding returned unserved with the endorsement that the Petitioner is not available there at his home address, the departmental authority should have taken steps to find out the correct addressor at least should have published the notice in the daily newspaper, so that the Petitioner could have known the same and would have appeared before the departmental authorities. While inflicting the major punishment of dismissal, the departmental authorities have not acted fairly in concluding the disciplinary proceeding ex parte without giving due notice of the same to the delinquent Government servant. Then again, we fail to understand as to how even before the receipt of the unfit certificate from the Petitioner pursuant to the telegram sent by the Commandant requiring the Petitioner to send the unfit certificate on 23.4.1985, the disciplinary proceeding had been initiated on 16.4.1985. That exhibits the bias of the authority concerned. The assertion of the Petitioner that pursuant to the order of the Commandant he sent an unfit certificate from the Medical Officer, Banki, has not been refuted by the opposite parties. In the premises, as aforesaid we have no hesitation to conclude that the Petitioner has been denied a reasonable opportunity of defending in the disciplinary proceeding and the disciplinary proceeding has been vitiated for non-compliance of the principles of natural justice. In view of our aforesaid conclusion, we would quash the order of dismissal passed against the Petitioner as well as the orders of the appellate and revisional authorities confirming the same annexed as Annexure-2, 3(i) and 5(i) and call upon the disciplinary authority to re-enquire into the charges levelled against the Petitioner and after giving an opportunity to the Petitioner to defend himself conclude the proceeding in accordance with law.

The writ application is accordingly allowed. There will, however, be no order as to costs.

2. Pursuant to the aforesaid judgment, the Petitioner joined his duty but the service benefits for the period from the date of his dismissal up to the date of reinstatement were denied to him, for which he filed O.J.C. No. 6672/1992 before this Court. During pendency of the aforesaid writ application, the Petitioner was again served with a notice for de novo enquiry dated 8.10.1992 in pursuance of the judgment passed in O.J.C. No. 2634/1986. The Petitioner attended the enquiry on 17.10.1992. On 25.10.1992 charge-sheet dated 14.5.1985 was served on the Petitioner, basing upon which he was proceeded earlier. The Petitioner submitted his explanation on 31.10.1992 and the inquiry proceeded. According to Mr. C.A. Rao, learned Counsel for the Petitioner, the Petitioner had prayed for allowing him to engage a defence counsel but the same was disallowed.

3. It is worthwhile to mention here that the earlier order of dismissal, which was

quashed by this Court in O.J.C. No. 2634/ 1986, was passed ex parte in the said proceeding. On 1.3.1993 final show cause notice was issued to the Petitioner in the subsequent proceeding enclosing a copy of the enquiry report, which IS written In Hindi. The Petitioner requested the Commandant by letter dated 4.3.1993 to supply him the English version of the said enquiry report but he refused to supply the same by the communication in Annexure-2 (ii), which is also written in Hindi. English version of Annexure-2(ii) is supplied to us by the Petitioner where from it appears that the same was refused on the ground that the Petitioner had participated in the enquiry, which was conducted in Hindi and he put his signature on the depositions endorsing the statement recorded in Hindi.

4. Mr. Rao, learned" counsel for the Petitioner, submits that the O.Ps. with a mala fide intention proceeded against the Petitioner with the same charge and as the authorities were pre-determined to dismiss the Petitioner from service, they passed the order impugned, which is illegal. According to him, the Petitioner could not give effective reply to final show cause, as the same was written in Hindi and its English version was not A supplied to him. The charges framed against the Petitioner, as mentioned in the English translated copy of the [mal order dated 3.3.1993, are as follows:-

Charge No. 1. no7211230naik S.N.Misra CISF UNIT BHEL, Bhopal has remained absent from his duty unauthorisedly from dtd.15.4.85 after completion of his leave.

Charge No. 2 No. 7211230 Naik S.N. Misra, CISF Unit BHEL, Bhopal has disobeyed the order of his authority.

5. According to Mr. C.A. Rao, the Department has failed to prove the aforesaid charges and the Enquiry Officer submitted his report in absence of examination of any witness from the side of the Department. That too, according to him, when the Petitioner after his recovery from illness proceeded to join his duty and submitted joining report, the O.Ps. should have allowed him to join his duty and sanctioned his leave. The penalty, which has been awarded to the Petitioner, according to him, IS harsh and grossly disproportionate to the charges levelled against him, which is liable to be set aside.

6. In the counter affidavit filed by the O.Ps., it is stated that the Petitioner despite the direction of the authorities did not join in the post, which amounted to indiscipline. The Petitioner did not conduct himself in a manner befitting the status of his employment in Security Force. That apart, there is No. information ever received from the Petitioner during his unauthorized absence except a telegram dated 15.4.1985. In response to the communication a telegram was sent to the Petitioner on 19.4.1985 directing him to send unfit medical certificate immediately with further direction that if the unfit certificate would not be sent to the authority, disciplinary action under the CISF Rules would be initiated. Since No. such reply was received from the Petitioner, following due procedure, the

competent authority dismissed him from service with effect from 18.8.1985, which was challenged in O.J.C. No. 2634/1986 and pursuant to the judgment dated 28.11.1991 passed therein, the Enquiry Officer conducted fresh enquiry as per the CISF Act and Rules extending reasonable opportunities of defence to the Petitioner, which he availed and ultimately, the charges against the Petitioner were proved. Agreeing with the findings of the Enquiry Officer, the Commandant after observing due procedure as per the CISF Rules awarded him the punishment of dismissal from service vide, order dated 30.3.1993. The Petitioner preferred an appeal to the DIG/WZ, CISF (M) but the same was rejected vide order dated 9.9.1993. Before commencement of the enquiry, the Enquiry Officer asked the Petitioner to take assistance of any serving CISF person in the unit but he declined. The competent authority did not allow the Petitioner to take assistance of defence counsel, as there was No. such provision in the CISF Act & Rules.

7. As to rejection of the request of the Petitioner for supply of English version of the enquiry report, it is stated that the same was turned down as the Petitioner was well conversant with Hindi and in case he was having any language problem, he could have objected at the time of enquiry so that enquiry could have been held in English language. That apart, the Petitioner had participated in the enquiry and put his signature on his own statement and endorsed the statements of the witnesses examined by the Enquiry Officer in the proceedings. According to Mr. L. Jena, learned Central Government Counsel, as there is No. violation of any principle of natural justice and as there is No. violation of any rule of procedure, this Court having limited jurisdiction under Article 226 cannot sit in the appeal on the decision of the disciplinary authority imposing punishment on the Petitioner and set aside the finding.

8. Mr. Jena, learned Central Government Counsel, relying upon the decision of the apex Court in *Government of India and Anr. v. George Philip* reported in (2006) 13 SCC 1, draws our attention to the observations made in paragraph-11, wherein it is held as follows:

11. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge.

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9. This is a case where the charges framed against the Petitioner are regarding

his unauthorized absence from duty for four months. But, fact remains that the Petitioner joined his duty voluntarily on 29.8.1985. In this case we confine ourselves only to the question as to whether the Petitioner has been given a fair deal in the entire proceeding. The records of the proceeding were produced before this Court wherein we find that the order, which has been challenged before this Court, is an outcome of a de novo proceeding in pursuance of the order of this Court passed in O.J.C. No. 2634/1986. We further find that the entire proceeding was conducted in Hindi and the statements made by the Petitioner were also recorded by some body in Hindi and the Petitioner put his signature in English endorsing the same. The case of the Petitioner that he has not been given a translated copy of the enquiry report. The allegation of the Petitioner is true in View of Annexure-2(ii), which is a communication in Hindi rejecting the Petitioner's request to give an English version of the same. It is not disputed that the Petitioner belongs to a non-Hindi speaking region, i.e., Orissa. There is also nothing on record to find out a single application or a document written by the Petitioner in Hindi nor anything to show that the Petitioner is well conversant with Hindi. To speak a language and to be conversant with that language and to understand the words and phrases of that language in a document is totally different things. The Petitioner may be able to speak and understand Hindi but there was No. reason on the part of the authorities to reject his application to get the English version of the final order. In our considered opinion, this is nothing but arbitrariness, which violates the principles of natural justice and amounts to refusal of a fair chance of hearing before the punishment is inflicted upon the Petitioner.

10. Apart from the above infirmity, looking at the charges framed and the punishment awarded, we find that the Petitioner has only remained absent for about four months on the ground of illness and after recovery he presented himself before the authorities to join the duty, which shows that there was No. willful intention of the Petitioner to flout the order. In this regard, we may rely on the decision of the apex Court in Union of India and others Vs. Giriraj Sharma, . The punishment of dismissal of the Petitioner from service is mainly for overstaying leave period. In our considered opinion, the punishment is harsh and disproportionate to the charges. Accordingly, we quash the order passed by the disciplinary authority imposing punishment of dismissal from service on the Petitioner as well as the order passed by the appellate authority, vide Annexures-4 & 6 and direct the O.Ps. to reinstate the Petitioner in service. The O.Ps. are at liberty to award minor punishment on the Petitioner. It is undertaken by the learned Counsel for the Petitioner that in that event, the Petitioner shall not claim any back wages for the period he remained out of duty.

Accordingly, the writ applications are disposed of.

R.N. Biswal, J.

11. I agree.