

(2015) 04 MAN CK 0017
In the Manipur High Court
Case No : Writ Petition (C) No. 309 of 2014

T. Solomon Zou	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) LabIC 3104

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : M. Devananda, for the Appellant; S. Rupachandra, ASG, Advocates for the Respondent

Judgement

Kh. Nobin Singh, J—Heard Shri M. Devananda, learned counsel appearing for the petitioner and Shri S. Rupachandra, learned ASG appearing for the respondents. The present writ petition has been filed by the petitioner praying for quashing/setting aside the impugned orders dated 28-07-2011, 13-04-2012 and 10-02-2014 issued by the respondents.

2.1 According to the respondents, the petitioner joined the Central Reserved Police Force (CRPF) as Constable (GD) in the Manipur & Nagaland Sector and served for about 8 (eight) years. A disciplinary enquiry was initiated against the petitioner under section 27 of the CRPF Rules, 1955 on the charge that the petitioner had fired one round of ammunition from his service rifle on 19-04-2011 without sufficient cause and accordingly, a memorandum dated 04-05-2011 enclosing therewith the charges and list of witnesses was issued to the petitioner with the direction that enquiry be commenced within 48 hours of the receiving the memorandum or submission of the reply by the petitioner. Since no reply was submitted by the petitioner, another memorandum dated 24-05-2011 was issued appointing Shri S.K. Yadav as Enquiry Officer. During the course of preliminary enquiry on 28-05-2011, the charges were read over to the petitioner and on being pleaded by the petitioner not guilty, the Enquiry Officer proceeded with the enquiry, examined the witnesses and the petitioner was given

opportunity to cross-examine the witnesses though he refused to do so. Thereafter, the petitioner was given 15 days time to produce documents/witnesses in his defence and since no documents/witnesses was produced nor did he submit any reply till 29-06-2011, the Enquiry Officer concluded the enquiry and submitted his report/proceeding to the Competent Authority on 04-07-2011, on the basis of which the Commandant of the Battalion passed the impugned order dated 28-07-2011 awarding the petitioner a penalty of removal from the force.

2.2 Being aggrieved by the impugned order dated 28-07-2011, the petitioner preferred an appeal which was dismissed vide order dated 13-04-2012 issued by the Dy. Inspector General of Police, CRPF, Range, Imphal. A Review Petition preferred against the order dated 13-04-2012 to the IGP, Manipur & Nagaland Sector was rejected by the IGP vide its order dated 10-02-2014.

3. Questioning the validity and correctness of the above impugned orders, the present writ petition has filed by the petitioner on some grounds but during the course of hearing, the counsel appearing for the petitioner has confined his argument mainly to the following three grounds:-

"(a) The Presenting Officer was not appointed resulting in violation of the principles of natural justice;

(b) The 48 hours time granted for submission of reply to the memorandum was very short and not sufficient denying an opportunity thereof;

(c) The punishment/penalty of removal from service awarded to the petitioner was not commensurate with the misconduct alleged to have been committed by the petitioner."

4. The writ petition is contested by the respondents by filing an affidavit in opposition wherein it is stated that the enquiry was conducted in accordance with the procedure prescribed under the CRPF Rules, 1955 and there was no violation of principles of natural justice and during the enquiry proceedings, the petitioner had admitted to have fired one round in air under depression due to refusal of leave. It is also stated that the punishment of removal from service was commensurate with the gravity of misconduct committed by the petitioner and the petitioner being in a disciplined force, his negligence could not be condoned.

5. Shri M. Devananda, learned counsel appearing for the petitioner has submitted that the non-appointment of presenting officer during the enquiry proceedings has violated the principles of natural justice and to substantiate his submission, he has relied upon the decision rendered by the Hon"ble Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131 : (2010) 124 FLR 857 : (2010) 1 JT 617 : (2010) 2 LLJ 334 : (2010) 2 SCALE 42 : (2010) 2 SCC 772 : (2010) 1 SCC(L&S) 675 : (2010) 3 SCR 326 : (2010) 2 SLJ 59 : (2010) 2 SLR 159 : (2010) 2 UJ 788 wherein the Hon"ble Supreme Court held :

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the Department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

Admittedly, no presenting officer has been appointed in the present case and the disciplinary enquiry was initiated under the provisions of Rule 27 of the Central Reserved Police Forces Rule, 1955 wherein there is no mandatory requirement of appointing a presenting officer. The question then arises is as to whether the non-appointment of presenting officer, when there is no provision in law for such appointment, is violative of the principles of natural justice or not. It may be appropriate for this court to examine as to what is the extent and scope of the principles of "Natural justice" in the light of various decisions rendered by the Hon"ble Supreme Court. In Union of India (UOI) and Another Vs. P.K. Roy and Others, AIR 1968 SC 850 : (1970) 1 LLJ 633 : (1968) 2 SCR 186 , the Supreme Court observed: "The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula". Similarly in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, AIR 1970 SC 150 : (1969) 2 SCC 262 : (1970) 1 SCR 457 the Supreme Court observed that what a particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case. In Canara Bank Vs. V.K. Awasthy, AIR 2005 SC 2090 : (2005) 4 CompLJ 249 : (2005) 2 ESC 225 : (2005) 105 FLR 630 : (2005) 4 JT 40 : (2005) 2 LLJ 461 : (2005) 6 SCC 321 : (2005) SCC(L&S) 833 : (2005) 61 SCL 144 : (2005) 3 SCR 81 : (2005) 2 SLJ 463 : (2005) AIRSCW 2005 : (2005) 3 Supreme 492 , after referring to several decisions, the Hon"ble Supreme Court stated: "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice". In Dev Dutt Vs. Union of India (UOI) and Others, (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 , the Hon"ble Supreme Court observed that the rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible.

6. From the aforesaid rulings of the Hon"ble Supreme Court, it is clear that the principles of natural justice being flexible, its application in a particular case would depend upon the facts and circumstances of that case. In the present case, the petitioner has not failed to point out as to how non-appointment of presenting officer has caused prejudice to him. Considering the extent and scope

of the principles of "natural justice" as stated above and facts of the present case, we are unable to accept the contention of the learned counsel for the petitioner that non appointment of the presenting officer in the present case has violated the principles of natural justice and the decision of the Hon"ble Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131 : (2010) 124 FLR 857 : (2010) 1 JT 617 : (2010) 2 LLJ 334 : (2010) 2 SCALE 42 : (2010) 2 SCC 772 : (2010) 1 SCC(L&S) 675 : (2010) 3 SCR 326 : (2010) 2 SLJ 59 : (2010) 2 SLR 159 : (2010) 2 UJ 788 , relied upon by him, will not apply to the facts of the present case. The counsel appearing for the petitioner has not brought to the notice of this court any other decision of the Hon"ble Supreme Court wherein the Hon"ble Supreme Court has laid down the law that even in the absence of any rule requiring for appointment of presenting officer, the appointment of presenting officer is a must in all disciplinary proceedings and non-appointment thereof will render the disciplinary proceedings vitiated. Therefore, we are of view that non-appointment of Presenting Officer in the present case is neither irregular nor illegal and it cannot be held that non-appointment of the Presenting Officer has prejudiced the petitioner.

7. The next submission of the learned counsel for the petitioner is that that the 48 hours time granted by the disciplinary authority to the petitioner for filing reply to the memorandum dated 04-05-2011 was too short and not sufficient thereby denying him the opportunity of filing his reply. It is true to some extent but the petitioner could have requested the disciplinary authority for extension of time. There is no material on record to show that the petitioner has ever made such a request to the disciplinary authority for grant of further time for filing his reply and on the contrary, the petitioner has allowed the enquiry proceedings continued and participated therein without any protest or objection. Therefore, we are of the view that no prejudice has been caused to the petitioner.

8. The last submission of the learned counsel appearing for the petitioner is that the punishment of removal from service awarded to petitioner is not commensurate with the misconduct alleged to have been committed by the petitioner. The learned counsel appearing for the respondents has denied it by contending that the punishment is commensurate with the grave misconduct as the petitioner has admitted to have fired a shot from his service rifle under depression due to denial of his leave. To establish the petitioner's misconduct, the Department has relied upon the evidence of five witnesses who are not eye-witnesses to the firing incident. All that the witnesses have stated is that they heard the sound of firing from a distance. There is no material to show that the petitioner was either grossly negligent or had attempted to commit suicide or had attempted to shoot any of his colleagues. Only conclusion that can be reached is that the petitioner has fired a shot from his service rifle which he subsequently claimed to have done it inadvertently. Considering the overall evidence, this court is of the view that the punishment of removal from service awarded to the petitioner is not commensurate with the misconduct alleged to

have been committed by the petitioner. The learned counsel for the petitioner has relied upon the decision rendered by the Hon"ble Supreme Court in the case of Mehnga Singh, Ex-Sub Inspector Vs. Inspector General of Police, PAP, Jalandhar Cantt. and Others, (1995) 71 FLR 825 : (1995) 6 JT 546 : (1995) 5 SCALE 215 : (1995) 5 SCC 682 : (1995) 3 SCR 244 Supp to contend that this court can reduce the punishment. We are unable to accept his submission and the punishment awarded by the disciplinary authority can not be substituted by the punishment that this court may deem fit and it is the disciplinary authority who can award appropriate punishment in accordance with law. In view of the aforesaid observations, we allow the present writ petition to the extent indicated above and consequently, quash and set aside the impugned orders dated 28-07-2011, 13-04-2012 and 10-02-2014 issued by the respondents and direct that the respondents shall consider the case of the petitioner in the light of the above observations and issue an appropriate order modifying the punishment, lesser than the present one, commensurate with the misconduct alleged to have been committed by the petitioner. This exercise shall be done within a period of three months from the date of receipt of a certified copy of this judgment and order.