

(1994) 09 GAU CK 0027
In the Gauhati High Court
Case No : Writ Appeal No. 218 of 1994

Union of India and Ors.

APPELLANT

Vs

Irom Iboyaima Singh

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Citation : (1995) 1 GLJ 183

Hon'ble Judges : V.Dutta Gyani, J and J.Sangma, J

Bench : Division Bench

Advocate : R.P.Sharma, R.P.Kakati, A.K.Roy, Advocates appearing for Parties

Judgement

V. Dutta Gyani, J.—This appeal arises out of the judgment dated 3.6.93 passed by the learned Single Judge of this Court in Civil Rule No. 1878 of 1988, b thereby setting aside the order of termination of service passed against the respondent by the Commandant, 87th Bn. Central Reserve Police Force on 23.4.88 (Annexure C to the writ petition) on completion of disciplinary proceeding. The respondent was a Constable in the Central Reserve Police Force, in short CRPF, in its 87th Battalion. The charges levelled against him have been acquitted in extensor in the impugned judgment itself. The gist of all the three charges are that the writ petitioner respondent was absent himself from the campus of the Battalion on 6.8.87 around 21.00 hours without proper permission from the competent authority. On 7.8.88, on a search being made, it was learnt that he was apprehended by the civil police on the night of 6.8.87 and was under custody of the Jorabat Police Station. He was taken into custody by the civil police on the charge of molesting a lady, a relative of forest department employee, under the influence of intoxication. He was got released on bail. The area where he was arrested had been declared out of bound by the unit personnel of the Battalion. He took up quarrel with the civilians outside the Gate No. 2 of the campus and sustained multiple grievous injuries on his body.

2. The learned Single Judge, not only quashed the termination order, Annexure C to the writ petition, but directed the respondentsappellants to reinstate him in

service within one month from the date of the order. Hence this appeal.

3. Learned Standing Counsel for the Union of India, Mr. RP Kakati contended that the impugned judgment is based on two grounds, namely, that the petitioner was not provided any legal assistance, thus denying him a valuable right, the other ground as noted by the learned Single Judge in paragraph 5 of the impugned judgment, relates to nonfurnishing of a copy of the enquiry report to the delinquent which has been regarded as an important point violating the law laid down by the Supreme Court. Following the judgment as reported in AIR 1991 SC 471 (Union of India & others vs. Md. Ramzan Khan), the learned Single Judge held that this was yet another ground on which the writ petitioner was entitled to get relief. Learned Standing Counsel appearing for the appellant Union of India submitted that so far as the second ground is concerned it was not available in the writ petitioner's case. The judgment itself abundantly makes it clear that it would be prospective in effect and would have no retrospective effect to the departmental/disciplinary cases decided prior to the delivery of the judgment, and for sound reasons as given by the Supreme Court. Ramzan's case has been considered by the Supreme Court in the Managing Director, ECIL, Hyderabad vs. B. Karunakar, etc AIR 1994 SC 1074, and the same view has been reiterated by the learned Single Judge in the following words :

"Another important point is regarding violation of the law laid down by the Apex Court, as well as this Court, inasmuch as the enquiry report was not furnished before awarding the punishment (see AIR 1991 SC 471 and (1988) 2 GLR NOC 10). This is another ground on which the petitioner is entitled to get relief."

The reliance placed by the learned Single Judge (AIR 1991 SC 471 and (1988) 2 GLR NOC 10) is of no avail.

4. Coming to the first ground, namely, providing legal assistance, learned counsel contended that Rule 27 of the CRPF Rules do not contemplate providing any such legal aid or assistance, it is an admitted position that the delinquent Constable had pleaded guilty to the charges. As has been held by the learned Single Judge he should have been provided legal assistance before being called upon to plead guilty or not guilty to the charge. Placing reliance of Bhagat Ram vs. State of Himachal Pradesh, AIR 1983 SC 454, learned counsel appearing for the respondent strenuously urged that such legal aid, a valuable right of the delinquent has been denied to the delinquent writ petitioner. It is significant to note that there is not even a whisper in the long drawn petition rendering into several pages and paragraphs 43, about the denial of this valuable right or making it a ground of attack. But we are not going by strict rules of pleadings, nor on the strict interpretation of rules governing disciplinary enquiry, as one of the contentions raised was that the departmental rules did not provide for such legal aid or assistance, even in absence of such a provision, legal aid or assistance should be extended and made available to a delinquent, if he asked for it. It is not the respondent's case that he asked for legal assistance and it was denied to him. Counsel for the appellant, Union of India has placed before us

the minutes of the departmental proceedings and its day to day progress. At no stage did the respondent ask for any legal assistance. Bhagat Ram (supra), heavily relied upon by the respondents turns on its own facts as pointed out by the M Supreme Court in the subsequent judgment as reported in (1989) 2 SCC 177. The question of providing legal aid came for consideration by the Supreme Court in *The Board of Trustees of the Port of Bombay vs. Dilipkumar Raghevendranath Nadkarni & others*, AIR 1983 SC 109. Bhagat Ram (supra) was a case of joint enquiry, the disciplinary authority was represented by a Presenting Officer, delinquent was represented by an officer of his choice, while the other delinquent, a Grade IV was not even asked as to whether he also wanted to be represented by a Govt. servant. In such circumstances, the Supreme Court held:

"The principle deducible from the provision contained in subrule (5) of Rule 15 upon its true construction is that where the department is presented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly, where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the enquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and as in the present case, a superior officer, co delinquent, is also represented by an officer of his choice to defend him, the absence of any one to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the enquiry."

This has been followed in subsequent judgments as reported in (1991) 2 SCC 283; (1991) Suppl (1) SCC 690; (1987) 4 SCC 328; (1985) Suppl SCC 137 and (1983) (2) suppl SCC 442.

5. The delinquent Constable is a matriculate, as stated by the respondent counsel. He pleaded guilty to the charge. It is not his case that it was under some misconception of law or facts that he pleaded guilty to the charges and above all, despite his having pleaded guilty to the charge, the Enquiry Officer proceeded to record evidence, instead of acting (on the delinquent's) plea of guilty. All the witnesses have been cross examined by him, so much so, he has adduced the defence evidences by examining two defence witnesses. In face of this factual position, it cannot be said that there was violation of principles of natural justice. Learned counsel appearing for the respondent pointed out that the complain preferred on a charge of molestation against the delinquent was withdrawn. This withdrawal of complaint or charge, would be attributable to various factors, as has been indicated by the Supreme Court in *Bharwada Bhoginbhai Hirjibhai vs. State of Gujrat*, AIR 1983 SC 753. Natural justice is not

a capsule formula of universal application, nor is it capable of any static or process definition. But it does cast a duty to act fairly, as has been held by the Supreme Court in *OP Gupta vs. Union of India*, AIR 1987 SC 2257 and *SN Mukherjee vs. Union of India*, AIR 1990 SC 1984. The object underlying the rules of natural justice being to prevent miscarriage of justice and secure fair play in action, applying this principle, it can not be said that in passing the termination order, the authorities violated the rules of natural justice.

6. In view of the foregoing discussion, this appeal deserves to be allowed, it is accordingly allowed, the impugned judgment dated 3.6.93 passed in Civil Rule No. 1878 of 1988 is set aside. The order of termination passed against the writ petitioner respondents, is maintained. The connected appeal for backwages, preferred by the writ petitioner, needless to add, also stands dismissed.