
(2011) 11 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : LPA SW No. 169 of 2011 and CMP No's. 199 of 2011 and 235 of 2011

Union of India and Others

APPELLANT

Vs

Shakuntla Singh

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 4 JKJ 48

Hon'ble Judges : Virender Singh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Judgement

Virender Singh, J.—On consideration, admitted and on consensus, taken on board for its final disposal.

2. Union of India and others (for short 'appellants'), being aggrieved of the judgment of learned Single Judge dated 19.05.2011 rendered in SWP

No. S-650/2005, have preferred the instant Letters Patent Appeal.

3. It needs to be mentioned here that Ram Prakash Singh (the writ petitioner) died during the pendency of the main petition, as such, his wife Smt.

Shakuntla Singh and two daughters namely Reshmi Singh and Ruchi Singh, respondents herein, were brought on record as his legal

representatives. However, hereinafter the deceased shall be referred to as 'petitioner'. Since widow Shakuntla Singh, was appearing in person

before us on each and every date, we requested Mr. D.C. Raina, learned Sr. Advocate, to assist this Court as Amicus Curiae for her.

4. Petitioner was appointed in Central Reserve Police Force (CRPF) on 04.11.1986. He was posted at different places. In April, 1999, he was

posted as Inspector in Recruitment Training Centre (RTC) CRPF at Humhama, J&K Srinagar from where he was transferred to 32 BN vide

order bearing Signal No. T-IX-1/01-EC-1 dated 17.05.2001 passed by Deputy Inspector General (Personnel) RTC Force CRPF. Feeling

aggrieved of the said order of transfer, he filed a writ petition bearing SWP No. 725/2001, which came to be disposed of on 28.05.2001,

providing that the petitioner would file a representation before the competent authority within one week's time and the appellants would consider

the same within two weeks thereafter. Consequently, he filed a representation before the competent authority, but was not allowed to perform his

duty in RTC (IV) CRPF at Humhama Srinagar, from where he stood transferred to 32 BN. Ultimately, he was dismissed from service on the

ground of unauthorized absence vide order No. P. VIII-2/2002-Estt.3 dated 18.03.2004 issued by DIGP, CRPF, Hyderabad-05, appellant No.

3 herein, aggrieved thereof, he filed SWP No. S-650/2005, taking various pleas for assailing the said order of his dismissal, but his preliminary

grievance was that the order of dismissal has been passed at his back without affording him sufficient opportunity to defend his case.

5. The stand taken by the appellants before the Writ Court was that the petitioner remained absent from duty and did not report despite repeated

instructions issued by the appellants. It was further their case that before passing of the order dated 28.05.2001 in SWP/No. 725/2001, the

petitioner already stood relieved from RTC (IV) CRPF Humhama on 24.05.2001 for reporting at 32 BN. His representation dated 04.06.2001

addressed to Director General, CRPF, New Delhi against his transfer to 32 BN was, thus, turned down being devoid of any merit. With regard to

prolonged unauthorized absence of the petitioner, departmental inquiry was initiated against him and he was asked to appear before the Inquiry

Officer, for which, ample opportunities were also provided to him. Despite that he did not appear before the Inquiry Officer, as such, the order of

dismissal has been passed after conducting full-fledged inquiry.

6. Since the petitioner died during the pendency of the main writ petition, his widow (respondent No. 1) filed rejoinder to the counter filed by the

appellants reiterating that her husband came to be punished without any reason, much less justifiable one.

7. The learned Single Judge allowed the writ petition holding that no proper inquiry has been conducted in this case before dismissing the petitioner

as he was not provided, any opportunity to present his case, as such, quashed the order of dismissal directing the appellants to pass fresh orders

after complying with the rules.

8. While entertaining the instant appeal, the appellants were directed to settle the terminal benefits payable to the deceased employee, payable to

the dependents-legal representatives under rules, pursuant thereto, a compliance report was filed disclosing therein that whatever amount was

payable to the deceased employee has already been paid. However, the pensionary benefits were not payable as he was dismissed from service.

Since this Court was not convinced with the compliance report, the appellants were further directed to produce the personal file of the deceased

employee and also a detailed statement to the effect as to what would have been payable to the deceased employee, had he not been dismissed

from service. Considering the plight of the widow of the deceased, appellants were also directed to deposit an amount of Rs. 5,000/- with

Registrar Judicial of this Court in order to pay the said amount to the widow to defray her personal expenses as she has to come from Uttar

Pradesh (Banaras).

9. Pursuant to our direction, Mr. P. S. Chandel has placed on record an affidavit of Mr. N. K. Yadav, presently posted as DIG CRPF Group

Centre, Bantalab, Jammu stating therein that from the service record of individual deceased, it reveals that the terminal benefits in the shape of

GISF/P amounting to Rs. 8,428/- and GPF-F/P amounting to Rs. 71,269/- has been liquidated in favour of the deceased before his death. A final

payment of Rs. 8,242/- as Risk Prima Fund was also released in favour of the deceased on 31.12.2004. In terms of the said affidavit, GPF of Rs.

71,269/- was paid to the individual deceased from year 1987 to 2004. However, vide order dated 23.11.2005, in GPF A/c No. 152155 where

Rs. 80,242/- was lying, an amount of Rs. 8,973/- was recovered from the above account to adjust overpaid allowances, Transfer TA/DA, HCA,

SDA etc., and the remaining amount of Rs. 71,269/- was paid to the individual. The affidavit further revealed that the deceased had withdrew Rs.

90,000/- in March, 1999 and a sum of Rs. 1,64,000/- in May, 2003. It is further stated in the 1 said affidavit that under Group Insurance Scheme

(GIS) an amount of Rs. 8,428/- has also been issued in favour of respondent No.

1, wife of the deceased employee. Otherwise also, whatever was the entitlement of the deceased employee under the G.I.S. has also been paid to him under the rules taking his case as absent from duty from May, 2001.

10. Annexure-F annexed with the affidavit, is Pension Calculation Chart disclosing the amount payable to the deceased employee, had he not been dismissed from service. While calculating the pension amount, natural death of the employee in October, 2007 has been taken into account. The said pension calculation is prepared by Accounts Officer, Group Centre, CRPF, Hyderabad and duly attested by Asstt. Commandant, GC CRPF.

11. Heard Mr. Chandel, learned counsel appearing for the appellants and Mr. Raina, learned Sr. Advocate assisted by Ms Pooja Raina, Advocate. Perused the Writ Court record and the complete enquiry file of the delinquent deceased produced by Mr. Chandel.

12. At the very outset, Mr. Chandel submitted before us that while quashing the order of dismissal, the learned Single Judge has left it open for the appellants to hold a fresh enquiry against the delinquent employee, who, in fact, had expired during the pendency of the writ petition only.

Therefore, no fresh enquiry can be held in this case at all. On this flaw only, the judgment impugned deserves to be set aside.

13. Mr. Chandel further contended that before the writ petitioner got an order in his favour in the earlier writ petition (SWP No. 725/2001), challenging the order of transfer to 32 BN, in which, vide order dated 28.05.2001 the learned Writ Court directed the petitioner to file representation against the said order of transfer within a stipulated period, he was already relieved on 24.05.2001 and, therefore, there was no occasion to allow him to perform his duty in RTC (IV) CRPF at Humhama Srinagar. However, his representation was ultimately rejected on 25.06.2001.

14. Learned counsel further contended that after the petitioner remained absent without any proper permission from the competent authority and failed to report to 32 BN CRPF, DIG CRPF Hyderabad ordered for conducting departmental inquiry on 07.05.2002, in which, he was afforded ample opportunity to appear before the inquiry officer by issuing notices from time to time, but when he failed to comply with the same, the

departmental inquiry was conducted in his absence and thereafter, the complete inquiry report was forwarded to the petitioner by DIG CRPF

Hyderabad vide letter No. P.VIII-2/2002-Estt.3 dated 10.02.2004 by affording him fifteen days' to make the representation. It is thereafter only

the final dismissal order was passed on 18.03.2004. Against the dismissal order, an appeal was also filed by him to IGP CRPF praying for setting

aside the said order, but the same stood dismissed by the appellate authority.

15. According to the learned counsel, the learned Single Judge has fallen in error by forming an opinion that the notices issued during the inquiry

proceedings were not served to the individual as there is no communication on the file to show that these notices had ever reached the petitioner

for the reason that all the notices have come back with the report that the petitioner was not available. This finding returned by the learned Single

Judge, according to the learned counsel, is against the record whereas, this fact alone has weighed with the learned Single Judge for setting aside

the order of dismissal holding that the proceedings have been conducted by the inquiry officer in ex parte. Contrary to it, inquiry file speaks volume

of the fact that at each and every stage, the petitioner was duly informed by the inquiry officer to join the inquiry proceedings, but for one reason or

the other he had been avoiding to appear. This material fact changes the entire complexion of the case, the learned counsel so contended.

16. Mr. Chandel has drawn our attention to certain notices sent to the petitioner and available on inquiry file and the response thereto sent by the

petitioner, and on the strength of the aforesaid submissions, submits that the order of dismissal cannot be said to be faulty on any count, as such,

the judgment impugned deserves to be set aside upholding the order of dismissal slapped upon the petitioner. In that eventuality nothing shall be

due to the deceased employee as the entire amount due to him under any head was either released when he was alive or after his death, to his wife

(respondent No. 1).

17. Per contra, Mr. Raina learned Sr. Advocate submitted that the case now developed by the appellants is altogether different from the one set

up before the learned Writ Court. Mr. Raina further contended that even otherwise it is borne out from the record available with this Court that no

opportunity, much less reasonable opportunity was afforded to the petitioner to

present his case and the entire enquiry was just an eyewash, as such, the order of dismissal was rightly quashed by the learned Single Judge.

18. Mr. Raina lastly submitted that may be the order of learned Single Judge giving liberty to the appellants to pass fresh orders after complying

with the rules against the petitioner cannot sustain as he died during the pendency of the main writ petition only and to that extent the impugned

judgment may be disturbed, but in its totality, the complexion of the case would not change for the reason that if ultimately this Court finds that the

order of dismissal slapped upon the petitioner is not sustainable, in that eventuality the legal representatives/dependents of the deceased employee

can be compensated by releasing monetary benefits in terms of the Pension Calculation Chart (Annexure-F) placed on record alongwith affidavit of

Mr. N. K. Yadav, DIG CRPF pursuant to the direction of this Court. However, the present case calls for imposing some exemplary costs also

upon the appellants for dragging the widow of the deceased who has been fighting out this case after the death of her husband and is appearing

almost on each and every date. She hails from another State (Uttar Pradesh).

19. It appears that while setting aside the order of dismissal, it skipped the notice of learned Single Judge that the petitioner died during the

pendency of the main writ petition only, as such, liberty was granted to the appellants to hold fresh inquiry against him as per rules. The operative

part of the judgment to that extent, in any case cannot sustain. This is, otherwise, the conceded position before us.

20. The only issue now arises for our consideration is, whether the order of dismissal slapped upon the petitioner is sustainable? Whatever

monetary benefits, which ultimately would flow towards the legal representatives/dependents would be dependent upon the finding to be returned

on that count only.

21. However, with regard to pensionary benefits, a complete Pension Calculation Chart (Annexure-F) is before us as tendered by Mr. N. K.

Yadav, DIG CRPF alongwith his affidavit. This relates to the amount, which would fall due towards the deceased employee, had he not been

dismissed from service and Mr. Raina has also accepted this calculation. He also does not dispute the terminal benefits already released in favour

of the petitioner during his life time or after his death, to his widow.

22. We find from the impugned judgment that while quashing the order of dismissal, the learned Single Judge has held that the case of the appellants was that, despite repeated notices, the petitioner did not appear before the inquiry officer, whereas from the record, one finds that the notices were issued but there is no communication on the file to show that those notices ever reached the petitioner and all those notices came back with the report that the petitioner was not available. Mr. Chandel questioned this finding submitting that it is against the record. It appears to us that proper assistance was not rendered to the learned Writ Court by either side while taking through the inquiry file of the delinquent and this, prima facie, is the reason that correct factual aspect has not surfaced in the impugned judgment. Undoubtedly, this can be a sole ground for remitting the case back to the learned Writ Court. But in our considered view, this would cause further delay in disposing of the main matter. The original inquiry file is before us and we can also make an attempt to have a re-look at it to dig out in what manner the inquiry was conducted against the petitioner so as to term it as a fair inquiry or an unfair one. This, in turn, would avoid miscarriage of justice to either side. Mr. Chandel also agreed to it.

23. Inquiry file available to us is mostly in vernacular (Hindi version) except certain orders passed by the competent authority, which are in English language. It runs into 102 pages. What we find from the inquiry file is that in the month of June, 2002, one Shri S.D. Tripathi, A/Comdt., 32 BN was appointed as inquiry officer. This order was passed by one Sh. K. Nagaraj (IPS) DIG CRPF Hyderabad on 26.06.2002. A copy of the said order was also sent to one Sh. Sangram Singh, A/Comdt., who was in possession of all the documents of the Unit. However, there is a letter sent by the petitioner to said Sangram Singh dated 14.06.2002 responding to a notice dated 07.06.2002 received by him directing him to appear on 24.06.2002 at a particular time. In this, the petitioner explained his position on the facts of the case. A complete address was also given by the petitioner for further correspondence. This shows that before appointing the Enquiry Officer on 26.06.2002, a notice was sent to the petitioner to appear on 24.06.2002 for recording his statement. This fact cannot be brushed aside.

24. Enquiry file further reveals that on 02.07.2002 another notice was sent to the petitioner for appearing before him on 18.07.2002 for

preliminary hearing of the charges framed against him. The said notice was responded to by him on 17.07.2002. Through this communication, he

wanted to inform the inquiry officer that although he had received the said notice, yet was unable to appear on 18.07.2002 as directed as he was

not made aware of the exact place where he had to report. He further disclosed that he had already sent his reply to Sh. Sangram Singh,

A/Comdt., who was in possession of all the documents. A request was also made in his response that the entire papers be collected from aforesaid

Sh. Sangram Singh and no ex-parte proceedings be initiated against him. He also explained to the inquiry officer about the financial crisis being

faced by him.

25. It is also borne out from record that after the copy of the charges was sent to the petitioner, to which also he responded, a specific request was

made by him that he may be given expenses for reaching the place of inquiry. What we find is that all such type of communications continued upto

year ending 2003.

26. On a specific query put to Mr. Chandel, whether the request of the petitioner was ever acceded to with regard to bearing the expenses for

securing his presence for the purpose of joining inquiry which was being held at Tripura and that the petitioner had to come from State U.P., Mr.

Chandel submits that no such document is available on the inquiry file. He, however, submits that under CRPF Rules, there is no such provisions

for meeting the expenses of the delinquent official.

27. It appears to us that a fair inquiry has not been conducted in this case at all in which it can be said that the petitioner was afforded an

opportunity to participate. May be the observation made by learned Single Judge to the effect that there is no communication available on the file

to show that the notices sent to the petitioner had ever reached him, does not appear to be factually correct, but the fact of the matter is that he has

not been afforded participation much less an effective participation to defend his case as he had been requesting through his communications for

making necessary arrangement enabling him to join the inquiry proceedings, depicting his financial condition.

28. It is, otherwise, the case of the appellants themselves that after the petitioner was relieved w.e.f. 24.05.2001 afternoon, he was paid salary of

May, 2001 only. This is what is said in para 6 of the grounds of appeal. The inquiry started somewhere in July, 2002. One can make out that

within a span of one year, whatever little amount the petitioner was having with him, he must have spent in running the house where he had to look

after his wife and two daughters, who are before us as his legal representatives. Had the prescribed authority taken some pain to accede to the

request of the petitioner so as to make the required arrangements, pecuniary and otherwise, enabling him to participate in the inquiry proceedings,

yet he had not appeared before the inquiry officer, there would have been no scope for showing any indulgence by us.

29. In case Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , their Lordships in para 31 observed as under:-

31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights,

in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the

employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive

Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his

service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous

corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso

to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under

Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision of payment of subsistence allowance

made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra

v. Chandrabhan Tale struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an

employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v. Presiding Officer and it was held in that case that if

an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Das Shrivastava v. State of M.P.*

(Emphasis supplied)

30. Testing the present case on its own facts, following the ratio of the aforesaid judgment, it can be safely concluded that the inquiry proceedings initiated against the petitioner was undoubtedly one sided proceedings. In other words, it was not a fair inquiry at all in its true sense. It is, otherwise, in violation of principles of natural justice. Therefore, it cannot stand the test of judicial scrutiny.

31. Even otherwise also, the order of dismissal slapped upon the petitioner by DIG BSF on the basis of enquiry report submitted before him and the order passed by IGP CRPF rejecting the appeal of the petitioner, have been passed just in a most casual manner without dealing with main issue as if it was a sheer formality. We do not appreciate that also.

32. After churning the entire case once again, we are of the considered view that the order of dismissal dated 18.03.2004 slapped upon the petitioner deserves to be quashed, as such, rightly quashed by the learned Single Judge. We, thus, uphold the said view.

33. Since the petitioner is already dead and no fresh inquiry can be initiated against him in the present set of circumstances, in order to keep equitable balance, the only relief which would now flow, is the monetary benefits to the dependents of the deceased as calculated by the appellants themselves in Annexure-F (Pension Calculation Chart) while taking into account as if the petitioner was not dismissed from service. This is upto the stage of his death i.e. October, 2007. Mr. Raina has also accepted this proposal. Accordingly, we order the release of the said amount.

34. As an upshot of the aforesaid discussion, the net result is that the instant appeal stands dismissed being devoid of any merit in it. The appellants are directed to release the entire amount as depicted in Annexure-F (Pension Calculation Chart) in favour of respondent No. 1, the widow of the

deceased, within two months from today. Any delay in it shall call for a stern action.

35. However, keeping in view the totality of facts and circumstances, especially that the appellants are not able to initiate fresh inquiry, may be on

account of natural death of the petitioner, we are of the view that the present appeal does not call for imposing any costs upon the appellants, as

asked for by Mr. Raina, learned Sr. Advocate.

36. File(s) produced by Mr. Chandel shall be returned to him.

37. The fee of the Amicus Curiae is fixed at Rs. 5,000/- .