

(2011) 03 DEL CK 0461

In the Delhi High Court

Case No : Regular Second Appeal No. 34 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Shri Sushil Kumar

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11

Central Reserve Police Force Rules, 1955 — Rule 27, 27(7)

Citation : (2011) 03 DEL CK 0461

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Anjana Gosain, for the Appellant; Nepal Singh, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 06.08.2005 which had reversed the findings of the trial Judge dated 20.07.1998. Vide judgment and decree dated 20.07.1998, the suit filed by the Plaintiff Sushil Kumar seeking a declaration and mandatory injunction to the effect that his termination of service vide order dated 31.10.1988 be declared null and void had been dismissed. The impugned judgment had reversed this finding. The suit of the Plaintiff stood decreed.

2. The Plaintiff had joined the service of the Central Reserve Police Force (CRPF) as a Head-constable in 1969. At the relevant time i.e. on the date of the alleged offence, he was a Sub-Inspector. The charge leveled against him was that while serving as a Sub-Inspector between 12.01.1984 to 14.03.1984 he had committed serious negligence of his duties; he had left his duty for a volley ball match on 14.03.1984 without his personal weapon (stengun) which attributed in snatching away of fire arms by the extremists and casualties of CRPF and civilians; he had failed to exercise control and supervision in the said capacity and deliberately did not accompany his section as a member of force to control the heavy crowd in a sensitive area; his act was a show of cowardice violating

the provisions of Section 11 of the CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955. On 16.06.1987, the Defendant department initiated an enquiry against the Plaintiff. On 22.07.1987, the Plaintiff refuted the charges leveled against him. It was stated that copies of statements of six persons who had deposed against him had not been furnished. The Enquiry Officer submitted his report. Penalty of dismissal was awarded vide order of the Disciplinary Authority dated 31.10.1988. The appeal filed against the order of the Disciplinary Authority was rejected on 04.04.1989; revision was also dismissed. Present suit was accordingly filed. Contention of the Plaintiff was that there has been a violation of the principles of natural justice inasmuch as admittedly the report of the Enquiry Officer had not been furnished to him; there was no explanation for the delay in the initiating enquiry; incident was of the year 1984; enquiry had been initiated after a gap of three years i.e. in the year 1987 which gap remained unexplained; legal assistance i.e. assistance of an Advocate had not been furnished to the Plaintiff; a show cause notice prior to the imposition of penalty had also not been given; the Enquiry Officer was also the Presenting Officer; bias of the Enquiry Officer was writ large. Punishment imposed was very severe. For all the foretasted reasons, the order of Disciplinary Authority is liable to be set aside.

3. In the written statement, the defence was that there has been no violation of natural justice; enquiry had been conducted as per rules and regulations of the CRPF. The Plaintiff had committed acts of serious negligence in the discharge of his duties when he left for the venue of the volley ball match without his personal weapon (stengun) which attributed in snatching away of fire arms by the extremists and the resultant casualties of the CRPF personnel and civilians. There is no provision for advancing legal assistance to CRPF personnel who are facing enquiry; rules do not permit it.

4. Trial court had framed seven issues. Oral and documentary evidence was led. Trial court was of the view that the civil court is not an appellate authority and cannot sit over and above the orders of the Disciplinary Authority unless the departmental enquiry is vitiated; the enquiry proceedings had complied with the rules and regulations applicable; there had been no violation of natural justice; suit of the Plaintiff was dismissed.

5. The impugned judgment had reversed this finding. Report of the Enquiry Officer had not been furnished to the Plaintiff; in view of the judgment of the Apex Court reported in AIR 1999 SC 471 Union of India and Ors. v. Mohd. Ramzan Khan non-supply of the report of the Enquiry Officer to a delinquent amounted to a violation of natural justice. Enquiry was vitiated. Deletion of Rule 27 (7) of the CRPF Rules, 1955 also did not come to the aid of the department. Delay in institution of the enquiry i.e. a delay of 3- 4 years was also unexplained. On this count also, it was held that the enquiry is vitiated. Dismissal of the Plaintiff was accordingly set aside. Decree of declaration was granted in favour of the Plaintiff who was declared to be in continuation of service from the date of his termination; decree of mandatory injunction was also passed in his favour of

the Plaintiff directing the Defendants to reinstate him with all consequential benefits. This judgment is now impugned before this Court.

6. This is a second appeal. Although formal order of admission was not passed but on 10.08.2010 the two substantial questions of law had been formulated. They read as under:

1. Whether the reliance by the first appellate court in its impugned judgment dated 06.08.2005 on the proposition reported in Union of India and others Vs. Mohd. Ramzan Khan, was a misappropriation of law, if so, its effect?

2. Whether the impugned judgment dated 06.08.2005 holding that the delay of more than three years in initiating disciplinary enquiry against the delinquent official vitiated the enquiry, if so, its effect?

Another following additional substantial question of law had been formulated on 17.03.2011:

Whether the findings in the impugned judgment is perverse and if so its effect?

7. It has been urged that the impugned judgment suffers from an illegality in view of the fact that the ratio of judgment of Mohd. Ramzan Khan (Supra) has not been correctly appreciated. It is pointed that a five bench judgment of the Apex Court reported in 1993 XII AISLJ (3) Managing Director, ECIL, Hyderabad v. B. Karunakar had in fact set the controversy at rest as to from which date the judgment of Mohd. Ramzan Khan (Supra) would be made applicable. It had been held that it would have a prospective operation only and would not apply retrospectively. This judgment of the constitution bench was delivered on 01.10.1993 upholding the ratio of Mohd. Ramzan Khan (Supra) wherein it was held that a delinquent has a right to receive the Enquiry report; it is necessary for an effective defence; however the ratio of Mohd. Ramzan Khan would have a prospective operation; it would be applicable to orders of punishment passed after 20.11.1990; this law would not be applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in the court after that date. For the same proposition, reliance has also been placed upon a division Bench judgment of this Court in W.P.(C) No. 2646/1990 decided on 30.07.2010 in the case of Arun Kumar Nigam v. DIG Genl. Central Industrial Security Force and Ors.

8. There is no dispute to this proposition. Admittedly the enquiry in this case had been initiated and completed much prior to the passing of the judgment in Mohd. Ramzan Khan; the Disciplinary Authority had awarded the punishment to the delinquent on 31.10.1988; there is also no dispute that the CRPF Rules did not postulate the giving of an enquiry report to the delinquent. In these circumstances, non-furnishing of the enquiry report to the Plaintiff was not a violation of the rules of natural justice.

9. Substantial question of law No. 1 is answered accordingly.

10. Learned Counsel for the Appellant has next submitted that the impugned judgment also suffers from an infirmity in holding that there has been a delay; delay has been explained. It is pointed out that under orders of this Court, an additional affidavit had been filed by the Appellant which is on record. Each and every day's delay has been explained in the said affidavit which is only an expansion of the averments of the written statement. Reliance has been placed upon 1995 (1) SCSLJ 233 State of Punjab and Ors. v. Chaman Lal Goyal to support a submission that even a delay of 5-7 years had stood condoned. The instant is also one such case where the delay is liable to be condoned.

11. Arguments have been countered. It is pointed out that Chaman Lal Goyal (Supra) has no application; it is distinct on its facts; in that case there was a delay in serving the charge-sheet whereas in the present case the delay is in initiating the enquiry. It is further pointed out that the report of the Enquiry Officer suffers from perversity as admittedly the service of a legal assistant had also not been given to the delinquent which action is violative of natural justice; further the Enquiry Officer was also the Presenting Officer which is a clear example of the bias of the Enquiry Officer qua the delinquent; show cause notice was also not served upon the delinquent before the penalty of dismissal had been imposed upon him.

12. This Court has now to address itself on substantial questions of law and the additional substantial question of law. The affidavit of the Appellant has been perused. Incident is dated 14.03.1984. Enquiry has been initiated on 16.06.1987. Delay as explained in the affidavit is for the reason that the State Government had initiated an enquiry against the delinquent and the department was advised not to proceed in the matter of a departmental enquiry till the tendency of the state enquiry. This is by and large the reason for delay. These notings/advice have not been filed. These are all procedural details and do not in any manner make out a sufficient cause for explaining the delay of more than three years in initiating the enquiry against the Plaintiff. In 1980 (1) SLR Guj 324 Mohanbhai Dungarbhai Parmar v. Y.B. Zala and Ors. where the departmental proceedings had been initiated against a constable who had remained unauthorizedly absent after a delay of 1-2 years, the Gujrat High Court had come down heavily on the department and held that such an unexplainable delay of 1-2 years would constitute a denial of reasonable opportunity to the delinquent to defend himself; no person can have a computer like memory to maintain a day to day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a prevision. Nor can be expected to adduce evidence to establish his innocence for after inordinate delay; this delay was found to be valid being violative of principle of natural justice.

13. Admittedly in this case, the incident had occurred on 14.03.1984; this incident was well within the knowledge of the department on that day itself; no promptitude was shown to initiate the enquiry; department was not diligent; the

explanation furnished in the written statement and in the affidavit filed before this Court is neither reasonable nor justified. It is also not in dispute that after the date of incident on which date the Plaintiff was serving as a Sub-Inspector, he was subsequently promoted to the rank of Inspector w.e.f. 24.03.1986. Even up to this date, no such fault was found in the conduct and behavior of the Plaintiff; promotion was a reward to the Plaintiff; there was nothing adverse against him at this time. The initiation of enquiry one year later after his promotion i.e. in 1987 appears to be unreasonable; delay of more than 3- 4 years after the date of incident in initiating this enquiry is not explained. The judgment of Chaman Lal Goyal is distinct; in that case there was a delay of 5- 6 years in serving the charge-sheet which in the peculiar facts of the said case was held to be justified.

14. The impugned judgment has rightly held that the principles of natural justice had been violated. Doctrine of natural justice which has been incorporated in a catena of judgments is not an empty formality. It has to be adhered to in true letter and spirit. These are principles which are necessary for a just and fair decision making; whatever is unjust and not fair is opposed to this principle.

15. Admittedly the Plaintiff had also been denied an opportunity of a legal assistant. This was also taken as a ground of appeal in the first appeal. In Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, where the Respondent who was pitted against two legally trained persons and he was asked to defend himself in person and assistance of a legally trained person was denied to him; it was held to be a one-sided enquiry which was violative of rules of natural justice. In the present case, also admittedly the assistance of a legal personnel had been denied to the Plaintiff; the Enquiry Officer who was also the Presenting Officer was an I.P.S. Officer of the rank of Deputy Inspector General Police.

16. It is also not in dispute that the Enquiry Officer was also the Presenting Officer. For this reason, the Plaintiff had suffered bias. In Ridge v. Baldwin AIR (1963) (HL) 66 Lord Hudson had carved out the following three features of natural justice:

- (i) The right to be heard by an unbiased Tribunal,
- (ii) The right to have notice of charges of misconduct,
- (iii) The right to be heard in answer to that charge.

17. The Enquiry Officer was nothing short of an interested person; it has to be borne in mind that justice must not merely be done but must be seen to be done as well. The undisputed fact that the Enquiry Officer was also the Presenting Officer spells bias.

18. Admittedly the show cause notice had also not been given to the Plaintiff before the penalty was imposed upon him by the Disciplinary Authority; this was denial of a fair hearing. Prejudice had been contended by the Plaintiff all along and this grievance appears to be substantiated. Examining this last submission

on the touch stone of prejudice, there appears to be a violation of nature justice.

19. The order of the Enquiry Officer suffers from a perversity. The impugned judgment had correctly noted all these facts and decreed the suit of the Plaintiff entitling him to a decree of declaration and mandatory injunction as granted in his favour. This finding suffers from no infirmity. Substantial questions of law and additional substantial question of law are answered accordingly.

20. There is no merit in the appeal. Dismissed.