
(2012) 11 GAU CK 0020

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 291 of 2002

Narayan Ch. Dey

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Nov. 23, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 1 GLT 775

Hon'ble Judges: U.B. Saha, J

Bench: Single Bench

Advocate: N. Mazumdar, for the Appellant; A. Nandi, CGC, for the Respondent

Final Decision: Dismissed

Judgement

U.B. Saha, J.

The instant writ petition is filed by the present petitioner, who was dismissed from service by the disciplinary authority, for quashing the order of punishment dated 21.05.2001 issued by the Commandant, CISF Unit KSTPP, Korba, the Disciplinary Authority exercising its power under Rule 29 of the CISF Rules, 1969 imposed the penalty of dismissal from service and (Annexure-I to the writ petition) and also to set aside the order of the appellate authority dated 24.09.2001 (Annexure-K to the writ petition) whereby and whereunder the appellate authority upheld the order of the disciplinary authority and rejected the appeal being devoid of merit, along with other prayers. Heard Mr. N Majumdar, learned counsel for the petitioner as well as Mr. A Nandi, learned CGC appearing for the respondents.

2. The case of the petitioner in brief is that the petitioner entered into service under the Central Industrial Security Force (for short, "CISF") as a Constable in the year 1983 and his first posting was at Madurai and from there he was transferred to Calcutta and then to ONGC Complex, Agartala. While he was serving at Calcutta he was removed from

service by the CISF Authority on 18.04.1991 and the said removal order was challenged before this Court in Civil Rule 253 of 1991 and the said Civil Rule was ultimately allowed setting aside the order of removal and consequent thereto the petitioner was reinstated in service w.e.f. July, 1995 with a rider that the petitioner shall not be entitled to back wages.

3. While the petitioner was serving at Agartala he was transferred to Korba in Madhya Pradesh, at present Chattisgarh by an order of transfer dated 05.12.2000 and in compliance to that order the petitioner joined at Korba on 28.12.2000. On 09.02.2001 while the petitioner was discharging his duties at Korba he was detailed for night duty at Korba Road Over-bridge and when he was on duty it was alleged that the petitioner had beaten up one of his superior officer, namely, Mahavir Singh, Sub-Inspector, CISF and for which he was placed under suspension vide order dated 10th February, 2001 (Annexure-B to the writ petition) and the said suspension order was followed by a formal departmental proceeding dated 26.02.2001 drawn by the Commandant CISF, KSSTPP, Korba Unit, respondent No. 3 on the sole-ground based on the allegation that he had assaulted his superior officer causing injuries on his person. Accordingly, the petitioner was charge sheeted on 26.02.2001 with the following Article of Charges in Appendix-01.

Charge-01

Force number.....834070912 Constable N.C. Dey of CISF Unit KSTPP Korba were detailed on duty in the date 09.10.02-2001 at night shift at road over bridge S.F.O. Railway Gate for security guard to protect the property of N.T.P.C. On the date 09.02.2001 at about 2358 hours duty Officer S.I./Exe. Mahavir Singh Shift-Incharge visited the duty place and after checking him, written alert on duty slip. Thereafter when the S.I./Exe Mahavir Singh were returning, at that time Constable N.C. Dey attacked him unnecessarily and gave blow on back side by lathi without any reason. Once again hit him 3-4 times on the body with his lathi as such sustained injury. In addition to that Constable N.C. Dey by this way threatened to kill S.I./Exe-Mahavir Singh. It is symbol of disobedience of lawful command of superior Officer in his capacity as a member of the Force.

Sd/- Illegible

COMMANDANT

CIST UNIT KSTPP KORBA

4. Upon receipt of the charge sheet the petitioner submitted his written statement in his defence on 08.03.2001 denying the charge made against him. The disciplinary authority, respondent No. 3 being not satisfied with the written statement of the petitioner, appointed one Sri S.J. Dassi, Asst. Commandant, to inquire into the charge. On 15.03.2001 the said inquiring officer issued a notice to the petitioner asking the petitioner to appear before him on 19.03.2001 for holding inquiry in the charge and accordingly the petitioner appeared before him. The inquiring officer accordingly recorded the statement of as many as 10 witnesses including one Medical Officer who allegedly imparted

treatment to the superior officer of the petitioner, Mahavir Singh who was allegedly injured and ultimately, the disciplinary authority considering the report of the inquiring officer dismissed the petitioner from service vide impugned order dated 21.05.2001 (Annexure-I to the writ petition).

5. Being aggrieved by the order of the disciplinary authority the petitioner preferred an appeal before the appellate authority, respondent No. 2, the Deputy Inspector General, Eastern Zone, CISF Head Quarters and the appellate authority ultimately after hearing the parties decided the appeal vide order dated 24.09.2001 whereby and whereunder the appellate authority rejected the appeal of the petitioner upholding the order of dismissal passed by the disciplinary authority. Hence, the writ petition.

6. The respondents submitted their counter affidavit wherein it is stated that this High Court has no territorial jurisdiction to entertain the instant writ petition since all the respondents and their offices are situated in New Delhi, Bihar and Chattisgarh and admittedly the petitioner has been discharged from service at Chattisgarh which is outside the jurisdiction of this Court. It is further stated in the counter affidavit that the petitioner while on "C" Shift patrolling duty from road over bridge to HFO Railway Gate on the intervening night of 9/ 10.2.2001 at CISF Unit, KSTPP, Korba had beaten up SI/Exe Mahavir Singh with a lathi while returning after endorsing his remarks in the duty slip of the petitioner as a result of which the checking officer sustained injuries and for this act of misconduct the petitioner was placed under suspension w.e.f. 10.2.2001 and also dealt with departmentally under Rule-34 of CISF Rules-1969 vide charge Memorandum dated 26.2.2001 affording him opportunity to submit his written representation against the charge memorandum within 15 days by the Disciplinary authority. Accordingly, the petitioner submitted his written reply in defence to the Disciplinary Authority which was found not satisfactory and ultimately, after providing all reasonable opportunities to the petitioner to defend himself, departmental proceeding was initiated and ultimately the petitioner was found guilty.

7. In the counter affidavit, it is also stated that the plea of ignorance of the petitioner is not at all tenable as the petitioner was a trained Constable and had served the organization for more than 18 years and as such was well aware of the CISF Act and Rules. He was also asked to take assistance of one serving member of the Force to defend his case which he himself denied at the time of preliminary hearing. Thus, the plea of the petitioner that he was not provided the assistance of a serving member of the force to defend his case is not correct. It further stated that the petitioner himself denied to take the extract of the documents relevant to the charge.

8. Finally, it is contended in the counter affidavit that the instant writ petition is not maintainable as the petitioner preferred the petition without availing the alternative remedy by way of filing revision petition before the revisional authority as per Rule 49 of CISF Rules, 1969, now under Rule 54 of CISF Rules, 2001.

9. Mr. Majumdar, learned counsel for the petitioner while urging for setting aside the order of the disciplinary authority as well as the appellate authority would contend that sub-rule 3 of Rule 34 permits the delinquent officer to inspect and take extracts of the official records as he requires for the purpose of defending himself subject to the same is not refused by the disciplinary authority, recording the reasons thereof. He further submits that as per sub-rule 5 of Rule 34 of the CISF Rules, 1969 the delinquent officer, i.e. the charged member of the force is also entitled to get the assistance of any other member of the force for defending himself subject to approval of the disciplinary authority and in the instant case the disciplinary authority neither provided the petitioner to inspect and take the extracts of the records as he required, and also did not permit him to take the assistance of any other member of the force to defend his case before the inquiring authority and thus violated the principles of natural justice for which itself the inquiry conducted by the inquiring officer against the present petitioner is to be considered as bad in law and consequent thereto, the impugned order of dismissal (Annexure-I to the writ petition) and the order of the Appellate Authority (Annexure-K to the writ petition) is liable to be set aside and the petitioner is entitled to be reinstated in service with all the financial benefits. In support of his aforesaid contention, he has placed reliance upon the decision of the Apex Court in [Naib Singh Vs. State of Punjab and Others](#), .

10. He also submitted that the punishment imposed by the authority for the alleged misconduct is a dis-proportionate one. Thus, it would be proper for this Court to modify the order of punishment passed by the Disciplinary Authority. In support of his aforesaid contention, he placed reliance upon the decision of the Apex Court in [Union of India and Another Vs. Charanjit S. Gill and Others](#), .

11. Mr. Nandi, learned CGC while countering the submission of Mr. Majumdar submits that there has been no violation of either sub-rule 3 or sub-rule 5 of Rule 34 of the CISF Rules, 1969 as the inquiring officer specifically asked the petitioner as to whether he wants to take assistance of any serving member of the force to present his case and if so he is entitled to give the name in writing with consent letter from the said member of the force but the petitioner himself stated before the inquiring authority that he will himself plead his case and does not want even to take the extract of any relevant documents of the case which have not yet been received by him. In support of his aforesaid contention he placed reliance on the Preliminary Hearing of Departmental Enquiry Report (Annexure-R 1 of the counter affidavit). For better appreciation, the relevant portion of the preliminary hearing of departmental inquiry report of the petitioner is reproduced hereunder:-

PRELIMINARY HEARING OF DEPARTMENTAL ENQUIRY IN RESPECT OF NO.
83407912 CONSTABLE N C DEY OF CISF UNIT KSTPS KORBA,

.....

7. Q: Do you want to take assistance of any serving member of force to present the case on your behalf? If yes give his name in writing with consent letter from him.

Ans.: No, I will plead my case by myself.

8. Q: Do you want to take extract of any relevant document of the case which have not yet been received by you?

Ans.: No, I do not want.

12. He further submits that power of the writ court is very much limited so far the disciplinary proceeding is concerned and writ court does not have the power to re-examine or re-appreciate the evidence laid before the inquiring authority for the simple reason that the writ court cannot convert itself into an appellate court. Under Article 226 of the Constitution of India, a writ court can only interfere with the departmental proceeding when there is any procedural defect or a case of no evidence but in the instant case the petitioner did not raise any question regarding any procedural defect except the alleged violation of sub-rule 3 and sub-rule 5 of Rule 34 of the CISF Rules, 1969.

13. He again submits that every violation of natural justice would not vitiate the disciplinary proceedings unless non-observance of such principles of natural justice caused prejudice to the rights of the accused officer. According to him, in the instant case, the petitioner failed to establish that any such prejudice has been caused to him.

14. He further submits that ignorance of the petitioner regarding the procedure cannot be a ground for quashing the departmental proceeding. He finally submits admittedly the petitioner is in a disciplined force and he has beaten up his superior officer, namely, Mahavir Singh who was examined by the inquiring authority and the inquiring authority also examined the medical officer who has treated injured Mahavir Singh and taking note of the entire evidence found the petitioner guilty and submitted its report before the disciplinary authority and the disciplinary authority in its turn very rightly, after considering all the facts and circumstances and after providing the petitioner every opportunity to defend himself, dismissed him from service by the impugned order and the appellate authority also very rightly rejected the appeal and upheld the order of the disciplinary authority.

15. As the learned counsel for the petitioner has mainly contended that the petitioner-charged officer was deprived of his statutory right due to non-providing of benefit as enshrined in sub-rule 3 and 5 of Rule 34 of the CISF Rules, 1969 it would be proper for this Court to reproduce the aforesaid provision of the CISF Rules, 1969. Accordingly, the same are reproduced hereinunder:-

34. Procedure for imposing major penalties-

.....

.....

(3) The member of the Force shall for the purpose of preparing his defence be permitted to inspect and take extracts from such official records as he may specify provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the disciplinary authority, such records are not relevant for the purpose or it is against the public interest to allow him access hereto

.....

(5) The member of the Force so charged may be permitted by the Inquiring Authority referred to above to present his case with the assistance of any other member of the Force approved by it."

16. Having heard the learned counsel for the parties and upon considering the pleadings and the law reports cited by the counsel, questions that arise for decision are:-

(i) Whether this Court has the jurisdiction to decide the instant writ petition preferred by the petitioner when the disciplinary proceeding was admittedly initiated at Madhya Pradesh, at present Chattisgarh and also the impugned order passed therein?

(ii) Whether the petitioner was denied his rights as prescribed under the provisions of sub-rule 3 and 5 of Rule 34 of the CISF Rules, 1969, and if so, whether such denial itself is a violation of principles of natural justice?

17. In [Rajasthan High Court Advocates Association Vs. Union of India and Others](#), their Lordships discussed about the expression "cause of action" which is as follows:-

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in cause of action.

In the said decision, the Apex Court also said that it has to be left to be determined in each individual case as to where the cause of action arises.

18. In the instant case, it is the admitted position that the petitioner has received the information regarding dismissal of his appeal at Agartala, i.e. within the jurisdiction of this Court and the present petitioner is an employee of the CISF, an organization of the Union of India. It is also settled that if the cause of action is either fully or partly arose in a place

then the suit/lis can be filed in a Court which has the territorial jurisdiction over that place. Thus, this Court has jurisdiction to decide the instant writ petition preferred by the petitioner.

19. It appears from the record that on 08.01.2003 a preliminary objection has been raised by the learned CGC as to the territorial jurisdiction of this Court at the time of motion hearing and the said objection was decided by this Court in favour of the petitioner as the Appellate Authority as Patna after disposing of the appeal communicated the order dated 22.09.2001 from Patna to the personal address of the petitioner at Agartala and against the said order the respondent-Union of India did not prefer any appeal. Thus, this Court cannot re-open the said question.

20. To answer the plea of Mr. Nandi as to whether alternative remedy ipso facto is a bar for approaching the writ court, the answer is no longer res integra in view of the decision of the Apex Court in [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), wherein the Apex Court while considering the jurisdiction of the High Court in entertaining a writ petition in spite of alternative statutory remedy available, noted that:

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

Thus, it can be easily said that alternative remedy always does not debar a person from approaching the writ court if the alternative remedy is not an efficacious one, more so, particularly when an order is passed by a authority without jurisdiction or violating the principles of natural justice. In the instant case, the plea of the petitioner is that he was not provided the benefit of provision of sub-rule 3 and 5 of Rule 34 of the CISF Rules, 1969 wherein he is allowed by the statute to inspect and take extract of the relevant documents and also to take assistance of a member of the force to defend his case. Thus, according to this Court though there is a statutory provision for revision against the statutory order of the appellate authority then also the writ court can entertain a petition under Article 226 considering the fact situation of that case.

21. In Bhagat Ram (supra) the appellant was not provided with a Government servant to defend him and not only that, he also did not get any opportunity to cross-examine the witnesses, whereas the co-delinquent officer was allowed to defend him with the assistance of an officer of his choice. In the judgment of Bhagat Ram (supra) the Apex Court has also stated that "If the Govt. servant decline to avail the opportunity", the

inquiry would proceed. In the instant case, the writ petitioner was not prevented either by the inquiring authority or the disciplinary authority from taking assistance of any serving member of the force or to take the extract of any relevant document of the case which he had not received. Rather, he was asked by the authority concerned as to whether he wants to take assistance of any serving member of the force to present his case and also asked as to whether he wants to take extract of any relevant document of the case which he had not received, but he declined to take assistance of any serving member of the force and the extract of the relevant document, which will be evident from question Nos. 7 and 8 of the preliminary hearing of departmental inquiry. Thus, according to this Court, case of Bhagat Ram (supra) in no way helps the petitioner.

22. In the case of Charanjit S. Gill (supra) the officer who acted as Judge advocate at the trial before the General court martial was admittedly junior to the accused delinquent officer and more so, the fact of that case is totally different than the case in hand. Thus, according to this Court, the decision of Charanjit S. Gill (supra) also in no way helps the petitioner.

23. Now question remains whether the petitioner was denied his right as he is entitled to under sub-rule 3 and 5 of Rule 34 of the CISF Rules, 1969. This Court has gone through Annexure-R1 of the counter affidavit, i.e. the preliminary hearing of the departmental inquiry in respect of the petitioner wherein in Question No. 7 the petitioner was specifically asked by the inquiring authority as to whether he wants to take assistance of any serving member of the force to present the case on his behalf and if so he should provide the name in writing with consent letter from the said member of the force but the petitioner answered the same in negative manner stating inter alia, "No, I will plead my case by myself". And in Question No. 8 the petitioner was asked as to whether he wants to take extract of any relevant document of the case which has not yet been received by him. The said question was also answered by the petitioner in the negative stating inter alia:

No, I do not want.

24. By this time it is settled that mere allegation of violation of principle of natural justice would not be enough. One must establish that prejudice has been caused to him for non-observance of principles of natural justice. From the principles laid down by the Apex Court in the aforementioned decisions it can be said that the principles of natural justice cannot be put into a straightjacket formula and its observance would depend upon the fact situation of each case and thus application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case. Each and every order of the disciplinary proceeding does not require to be quashed merely on the ground of violation of principles of natural justice unless the accused officer can establish that real prejudice has been caused to him. Merely a technical plea of violation of principles of natural justice should not be accepted by the Court of law.

25. In [The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee](#), the Apex Court has noted inter alia:

Natural Justice is [not an] unruly horse, no lucking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamental of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained.

26. In [Dr Umrao Singh Choudhary Vs. State of M.P. and Another](#), the Apex Court held:

that the principles of natural justice do not supplant the law, but supplement the law.

27. In [Syndicate Bank and Others Vs. Venkatesh Gururao Kurati](#), it was held that:

To sustain the allegation of violation of principles of natural justice, one must establish that the prejudice has been caused to him for non-observance of principles of natural justice.

28. In [Aligarh Muslim University and Others Vs. Mansoor Ali Khan](#), the Apex Court considered the judgment in [M.C. Mehta Vs. Union of India \(UOI\) and Others](#), wherein it has been held that an order passed in violation of natural justice need not be set aside in exercise of the writ jurisdiction unless it is shown that non-observance has caused prejudice to the person concerned for the reason that quashing the order may revive another order which itself is illegal or unjustified.

29. The provisions of sub-rule-3 obviously provide an opportunity to the charged member of the force to inspect and take extracts of the official records for the purpose of preparing his defense subject to the permission of the inquiring authority or the disciplinary authority and sub-rule 5 also entitles a charged member of the force to take assistance of any other member of the force to defend his case as permitted by the inquiring authority. But as the petitioner himself declined to inspect and take extracts of the documents as required by him and also wanted to defend his case by pleading himself, it cannot be said that the inquiring authority has denied his right as prescribed under sub-rule 3 and 5 of Rule 34 of the CISF Rules, 1969.

30. The provisions of Rule 34 of the CISF Rules, 1969 are prescribed by the rule making authority to protect the principle of natural justice so far the charged officer is concerned as theory of reasonable opportunity and principle of natural justice have been evolved to uphold the rule of law and to assist an individual to vindicate his just rights. Each and every violation of natural justice would not ipso facto invalidate the disciplinary proceedings initiated against a delinquent officer unless prejudice has been caused to the employee concerned. More so, such prejudice has to be proved also. This Court is of further opinion that even if the petitioner is permitted to inspect and take extracts of the records then also it would in no way change the result of the departmental proceeding, particularly when the case of the respondent is that the petitioner being a member of the

disciplined force has beaten up his superior officer and as result of which he was injured and was also examined as an witness by the inquiring authority.

31. In [Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another](#), , their Lordships of the Apex Court have observed that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands.

32. Now question remains as to whether punishment imposed by the disciplinary authority is proportionate or not? A Division Bench of this Court in the case of [Dharamraj Kumar Singh Vs. Union of India \(UOI\) and Others](#), held that discipline in the force is sine qua non and if the member of such disciplined force becomes indisciplined like the delinquent petitioner, consequence will be nothing but nullification of the force, which is recognized by virtue of its discipline.

33. In the case of [Union of India \(UOI\) and Others Vs. Narain Singh](#), the Apex Court observed that insofar as punishment imposed on the member of a disciplined force is concerned, power of writ court to interfere with such punishment is severely restricted and ought to be rightly exercised. By now it well settled principle of law that judicial review is not against the decision, rather against the decision making process and it is also the duty of the charged employee to maintain the position of trust, honesty and integrity for which he was employed and when the said honesty, integrity and trust in question in a disciplinary proceeding, he cannot expect that the disciplinary authority will not take any action against him.

34. Similarly in [Director General R.P.F. and Others Vs. Ch. Sai Babu](#), the Apex Court has held that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.

35. Considering the above decisions of the Apex Court, this court is of the opinion that discipline in the disciplined force is a sine qua non and that has to be checked so that the discipline in the force can be maintained. In the instant case, as the petitioner failed to make out any case regarding the decision making process, it would not be proper on the part of this Court to take any lenient view regarding the punishment imposed by the disciplinary authority and consequent thereto upheld by the appellate authority particularly, when the petitioner is a member of the disciplined force. More so, the plea of

ignorance of the petitioner regarding the manner in which the disciplinary proceeding was conducted cannot also be a ground as the petitioner was explained regarding the charge as well as evidence in the language in which he understood. More so, the petitioner himself at the time of preliminary hearing declined to take any assistance from any serving member of the force to defend his case and also to take extract of any relevant document which he needs for his defence. Thus, according to this Court, misconduct in such cases has to be dealt with an iron hand. This Court is also of the opinion that the action taken by the authority against the petitioner is permissible in law. The pleaded case of the petitioner did not present any special feature warranting any interference with the impugned order passed by the disciplinary authority as well as the appellate authority, as impugned herein, by this Court exercising its limited power of judicial review, particularly when admittedly this Court is not sitting on appeal. In view of the above, the instant writ petition is dismissed being devoid of merit. No order as to costs.