

(1997) 03 GAU CK 0009

Gauhati High Court

Case No: Civil Rule No"s. 3523, 3524 and 3525 of 1994

Sub-Inspector Lokh Raj Rana and
Others

APPELLANT

Vs

Inspector General of Police and
Others

RESPONDENT

Date of Decision: March 6, 1997

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14, 27
- Constitution of India, 1950 - Article 14
- Police Act, 1861 - Section 7

Citation: (1997) 2 GLR 457

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: B.K. Sarma, P.K. Tewari and D.S. Bhattacharjee, for the Appellant; R.P. Sarma, G.A.A.P., for the Respondent

Judgement

J.N. Sarma, J.

These three Civil rules raise the common question of law and facts and as such as agreed to by the learned Counsel of both sides, they are taken up for hearing together.

2. I have heard Mr. B.K. Sarma, learned Counsel for Petitioners in all civil rules and Mr. R.P. Sarma, learned Counsel for Respondents.

3. The brief facts are as follows:

The Petitioners herein are Police personnels and they are now working in Arunachal Pradesh Police. On 8.3.91 an incident of bank robbery took place at about 12.30 hrs. at the Itanagar Branch of State Bank of India. The robbers took away a sum of Rs. 26,50,000/- from the bank. Thereafter, the Petitioners were placed under suspension

and a disciplinary proceeding initiated as against each of them. The proceeding was initiated under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules 1965 (hereinafter called as "rules") and Section 7 of the Police Act. The charges against the officer in CR 3523/94 is available at page 28 and that is quoted below:

Article -I: That SI L.R. Rana (u/s) of 1st APAP BN, Itanagar while posted at Police Station, Itanagar and present at PS on 8.3.91 during the time of bank dacoity at SBI Itanagar Branch failed to mobilise the available PS staff and to take effective steps to take any action to prevent the commission of the (sic) intercept and capture the dacoits and as a result of which the dacoits could not be intercepted. He did not take any steps at PS for firing upon the dacoits and capturing them. He rushed out of the PS without arms knowing well that a dacoity is in progress. This act on the part of SI L.R. Rana as a senior SI next to OC, present at the time of information of dacoity was communicated and was received, amount to lack of Supervision and dereliction of duty.

Article-O: State of imputation of dereliction of duty in support of article of charge framed against SI LR Rana (u/s) of 1st APAP BN, Itanagar.

Article-I on 8.3.91 at 1228 hrs. one telephone information about commission of bank dacoity in SBI Itanagar Branch was received by SI L.R. Rana at Itanagar Police Station while LR Rana was posted at Police Station Itanagar. On receipt of the information SI S. Regon, the then OC and Inspr. C.B. Chetri the then CI (P) Itanagar rushed separately towards the SBI Itanagar. SI L.R. Rana as a senior SI next to OC present in the PS did not mobilise the available PS staff for taking effective steps to prevent the commission of the dacoity and capture the dacoits. He did not take any steps to coordinate with Ors. and utilise the armed sentry of the PS present on duty, for firing upon the dacoits and capturing them. He rushed out of the PS towards scene of crime without any arms knowing well that a dacoity is in progress. Thus the charge.

4. The charges in CR No. 3524/94 is available at page 26 and that is quoted below:

Article I: That SI S. Regon (u/s) of 1st APAP Bn, Itanagar while functioning as officer-in-charge of Police Station, Itanagar and present at Police Station, Itanagar on 8.3.91 during the time of bank dacoity at SBI Itanagar Branch failed to mobilise the available PS staff and to take effective steps to prevent the commission of the dacoity and capture the dacoits as a result of which the dacoits could not be intercepted, and captured. Even though he was armed with Weapon at the scene of crime, he could not fire upon the desperados. He got frightened and ran for his own safety. This act on the part of SI S. Regon as OC of the Police Station. Itanagar amounts to lack of supervision, cowardice in performance of his duty and dereliction of duty.

Annexure II: State of imputation of dereliction of duty in support of article of charge framed against SI S. Regon (u/s) 1st APAP BN, Itanagar.

Article-I: On 8.3.91 at 1228 hrs. one telephone information was received by SI L.R. Rana at Police Station, Itanagar about commission of dacoity at SBI Itanagar Branch and SI S Regon the then OC PS Itanagar immediately informed about it by SI L.R. Rana. But SI S. Regon did not mobilise the available PS staff for preventing the commission of the dacoity, interception and capture the dacoits. On receipt of the information, he rushed to the place of occurrence alone with a revolver. As he rushed out separately there was no chance left for coordination at that point of time. He also did not leave any instruction behind regarding detailing the staff present in the police station on various duties and there was, therefore, (sic) of commotion at the police station and nobody know what was required to be done. Thus the dacoits were able to carry out the dacoity and flee away without any resistance from police. Even though the SI S. Regon was armed and present at the scene of crime at the time of commission of the dacoity he could not fire back as a reply to the firings from the dacoits. He got frightened and ran for his own safety. Thus the charge.

5. The charge against officer in CR 3525/94 is available at pages 25-26 and that is quoted belows:

Article I: That Inspi C.B. Chetri (u/s) of 1st APAP Bn Itanagar while functioning as CI (P) Itanagar and present at Police Station, Itanagar on 8.3.91 during the time of bank dacoity of SBI Itanagar Branch failed to take imitative, organise, coordinate the take prompt action to capture the dacoits and as a result of which the dacoits got ample time to flee away without any resistance from police after committing the dacoity. He also failed to devise a system which could ensure availability of (sic) for taking out arms and ammunitions for use at any given point of time round the clock. He rushed out of the police station towards the scene of crime without arms knowing that a dacoity is in progress. This act on the part of Insp. C.B. Chetri as a supervising officer amounts to lack of supervision and dereliction of duty.

Annexure-II: Statement of imputation of dereliction of duty in support of article of charge framed against Inspector C.B. Chetri (u/s) of 1st APAP BN Itanagar.

Article-I: on 8.3.91 at 1228 hrs. one telephone information was received by SI L.R. Rana at Police Station, Itanagar about commission of dacoity of SBI, Itanagar Branch. Inspector CB Chetri the then CI (P) Itanagar was present at the Police station and he was immediately informed about it by SI L.R. Rana Sufficient staff including the officer-in-charge were present in the police station, but Inspector CB Chetri as a supervising Officer present in the Police Station, did not evolve any timely plan to prevent and trap the dacoits immediately. As a result of which the dacoits got ample time to carry out the dacoity and flee away without any resistance from police party of Itanagar Police Station. On receipt of the information he rushed out of Police Station separately without arms knowing well that firing is in progress. As he rushed

out separately there was no chance left for coordination at that point of time. As such the effectiveness of the police force at the police station was divided and his individual effort/initiative yielded nothing. He also failed to devise a system which could ensure availability of the key of the PS Kote for taking out arms and ammunition for use at any given point of time round the clock. Thus the charge.

6. Thereafter, written statement was filed by all these three office (sic) the charges. There was a common enquiry report by Shri S.N. Sriva(sic) SP (HQ) and he submitted his report on 10.12.91 Against Inspector C.B. Chetri (the Petitioner in CR 3525/94) the findings are as follows:

(a) Even though Inspr. C.B. Chetri had (sic)ed to racepat the statement of P.W. 1 the available evidence shows that there was loss of coordination in between the officers. Inspr. Chetri being the seniormost officer present at PS alongwith other 2 SIs should have ensured the separate sphere of work among him and the 2 SL and also among other police personnel present.

(b) To conclude, Inps. C.B. Chetri should have ensured that system exists, but his lapse is some what diluted by the fact that the duty was of supervisory nature which is also exercised by many senior officer subject to the nature and extract of their supervision.

7. The findings as against SI S. Regon is as follows:

Now examining the reaction of SI Ragon in the proceedings two paras, it is quite natural for a person in such a situation to behave. Had he fired at the desperados and killed or wounded some, it would certainly be an act of breavery. But such action is rare and not too common. Hence the charge that the SI got frightened and ran for his safety could not be proved.

To conclude SI S. Ragon failed to mobilise the available PS staff to (sic) him to the scene of crime. To this extent his action amounts to dereliction of duty. The other charges against SI S. Ragon could not be proved.

8. The findings as against SI, L.R. Rana is as follows:

(a) By evaluating the merits of his arguments it is concluded that SI LR Rana did not utilise the armed sentry on duty at PS for firing upon the dacoits and capturing them. Hence the second components of charge as mentioned above is proved.

(b) The third component of charge is that he rushed out of the police station without knowing well that a dacoity is in progress. The SI has himself admitted in the defence statement that he rushed back to the police station to collect arms and ammunition. However, the SI was not aware that the dacoity was in progress. Hence the charge is proved to the extent that the SI rushed out of the police station without arms.

9. The disciplinary authority considered die report and passed the following order:

The pay of Inspr. C.B. Chetri is reduced by 5 stages from Rs. 2300/- to Rs. 2000/- in the time scale of pay. Further he will not earn increment of pay during the period of reduction. The period of suspension will not be treated as a period spent on duty.

10. Same was the punishment given to SI S. Ragon. The punishment (sic) L.R. Rana was reduction of pay by 3 stages and other things are same.

11. There were appeals and the appeals were disposed. Thereafter, three different civil rules were filed by the Petitioners and they were disposed of by an order dated 28.6.93 with certain direction to the authority. On remand, from this Court, the disciplinary authority did not pass independent order and reiterated the earlier orders passed by the disciplinary authority. Thereafter an appeal was filed and this appeal was dismissed. Hence this writ application.

12. Mr. B.K. Sharma, learned Counsel for the Petitioners makes the following submissions:

i) That in a disciplinary proceeding, the writ Court will not reappreciate the evidence on record and/or sit on appeal over the evidence on record, but at the same time, the writ Court should interfere in such a matter, if the findings arrived at by the authority are perverse and based on no evidence.

ii) that the allegations against the Petitioners cannot constitute misconduct and as such the entire disciplinary proceeding is liable to be set aside and quashed.

iii) The order passed by the disciplinary authority after remand from this Court was not an independent exercise of mind, but was only mere repetition of the earlier order and as such not sustainable and liable to be set aside and quashed.

iv) The appellate order is also not a speaking order and does not conform to the requirement enjoined under the provisions of C.C.S. (C.C.A.) Rules i. e. Rule 27.

v) The earlier orders passed by the disciplinary authority and the appellate authority cannot hold the field in view of the orders of this Court in 3 civil rules mentioned earlier.

13. Let us take the points in seriatim as urged by Mr. Sarma, Counsel for Petitioners. The findings arrived at by enquiry officer against each of the Petitioners have been quoted above and a bare perusal of the finding will show they are mere surmises and conjecture. The findings arrived at must be the findings as against the charges levelled and it cannot be inference and presumptive of the enquiry officer. No doubt the authority can form an (sic) a finding but the finding must be based on material and it must satisfy the test of reasonableness. The High Court can examine the record not with a view to make out (sic) a new case, but only to see whether there was some evidence of the primary facts relied on by the disciplinary authority (See 1978 SC1078) (Nanda Kishor v. State of Bihar).

14. Coming to the submission made by Mr. Sarma, learned Counsel by order dated 5.10.93 the disciplinary authority inter-alia passed the following order:

I find there is no reason to differ with the opinion and order of the then Inspector General of Police imposing the penalty on Insp. C.S. Cheri, SILR Rana and SLS. Regan vide Order No PHQ (R) (sic) which (sic).

15. This shows that the discipline(sic)ary authority did not apply (sic) after the matter was sent back to (sic) the purpose of passing (sic) it was inpleanced by the earlier order passed by the (sic) alone, the order dtd. 5.10.93 is liable to be (sic) aside and quashed. Further the present appeal which was filed, the appellate authority passed the following order:

Whereas I have come to the conclusion that the quantum of punishment awarded to S/Shri C.B. Chetri, SI S. Regan and Sub-Inspector L.R. Rana vide order No. PHQ (R) DP dtd. 19.2.92 by the disciplinary authority is commensurate with the charges levelled against the officials keeping in view the circumstances, nature of offence and other mitigated factors brought on the file.

16. In this order reference has been made to the order dated 19.2.92 which no longer holds the field, but there is a separate order by the disciplinary authority and even that was not mentioned by the appellate authority. So, this order of the appellate authority appears to be a mechanical one and on this ground also, the order of the appellate authority is liable to be set aside and quashed. The appellate authority did not deal with the order passed on 5.10.93 which was impugned before in the appeal. It appears that both the disciplinary authority as well as the appellate authority have formed their opinion on the basis of the earlier order of the disciplinary authority dated 19.2.92 which no longer holds the field, in view of the order passed by the appellate authority earlier and the order passed by this Court in these 3 civil rules mentioned earlier.

17. The next question is that whether the charges levelled as against the Petitioner to be deemed to be misconduct in the eye of law. The law on this point as enunciated by the apex Court in the case reported in [Union of India \(UOI\) and Others Vs. J. Ahmed](#), misconduct means misconduct arising from ill motive acts negligence, errors of judgment, or innocent mistakes do not constitute such misconduct. Misconduct must be inconsistent with due and faithful discharge of his (sic) in service. If a person fails to attain the highest standard of efficiency in (sic) performance duty in such a case an interference of negligence would not constitute misconduct nor it can be said to be lack of devotion to duty. Carelessness it is to constitute misconduct must be such that it was within the power and competence of the person to avoid it.

18. In the background of this particular case, can it be said that there was such gross lack of carelessness on the part of these 3 Petitioners that it can be constitute a misconduct? The degree of prudence, reaction and action and also behavioural

approach differ from man to man. The measuring rod or the yardstick which must be applied in determining such a case is what is expected from a normal being. It is the further case that the Petitioners as will be evident from Ann-B to the writ application in CR 3523/94 that Anr. police officer, who recovered a sum of Rs. 57,000/- was awarded a cash reward of Rs. 500/- but on the other hand, it is claimed that SI L.R. Rana was instrumental in recovering a sum of Rs. 26,40,000/- but he was imposed with punishment. It, of course, cannot be said that this claim was established to attract Article 14 of the Constitution. It is further found that there are other superior officers involved in the enquiry, but no action was taken on them but those 3 Petitioners were picked up and punishment was meted out to them.

19. This being the position. I find that there were irregularities in imposing the punishment to these Petitioners and accordingly all these civil rules are allowed and the punishment imposed on them are quashed. I leave it to the authority whether they would proceed afresh with the matter. Also I leave it to the authority whether the Petitioners shall be given the backwages etc. in accordance with law.

20. This disposes of all these civil rules.