(2003) 09 GAU CK 0028

Gauhati High Court

Case No: Writ Petition (C) No. 879 of 2000

Prasanta Bordoloi		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 24, 2003

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 15(2)

Citation: (2004) 1 GLR 181 : (2003) 3 GLT 433

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: M.K. Chowdhury and C. Goswami, for the Appellant; A.K. Sharma, Addl. CGSG, for the Respondent

Judgement

I.A. Ansari, J.

With the help of the present writ application, the petitioner, who as a Lance Nayak in 60th Battalion, CRPF (Central Reserve Police Force) stands dismissed from service following a disciplinary proceeding drawn against him, has approached this Court seeking issuance of appropriate writ/writs setting aside and quashing the penalty of dismissal from service imposed on him.

2. In a nutshell, the fact leading to the present writ application may be stated as follows:

(i) While the petitioner was serving as Lance Nayak in 60th Battalion, CRPF, he was served with a memorandum, dated 8.4.1999 (Annexure B to the writ petition), whereby he was informed that a disciplinary proceeding stood drawn against him on article of charges enclosed therewith and he was also directed to show cause, if any, against the charge so levelled against him. There were altogether two charges framed against the petitioner. The charges read as follows :

Article - I

No. 850831018 LNK P. Bordoloi and No. 941240958 CT S.C. Das of B/ 60 Bn CRPF, while functioning as LNK/CT on 28.9.1998, have committed an act of disobedience of orders u/s 11(1) of CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1965 in that they left camp in civies without any information/permission from competent authority.

Article - II

The No. 850831018 LNK P. Bordoloi and No. 941240958 CT S.C. Das of B/60 Bn CRPF, while functioning as LNK/CT respectively on 28.9.1998, have committed misconduct u/s 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules, 1955, in that they left the camp in civies and thereafter entered into house of Sri Sorim Dey (MAC) of Maisomgaon under PS. Baithalangso and misbehaved with him as well as with his family members.

(ii) The petitioner submitted his reply to the notice of show cause aforementioned. Thereafter, an Inquiring Authority, appointed by the disciplinary authority, held the enquiry in respect of the charges framed against the petitioner and submitted his enquiry report to the disciplinary authority. The findings of the Inquiring Authority were that both the charges framed against the petitioner stood partially proved. The petitioner was served with a copy of the enquiry report and on receipt thereof, he submitted his representation to the disciplinary authority concerned. The disciplinary authority, then, vide his order, dated 30.9.1999 (Annexure L to the writ petition) considered the enquiry report as well as other materials on record and recorded his finding that article No. 1 of the charge stood fully proved and so far as Article No. II of the charge was concerned, the same was partially proved. However, though the disciplinary authority, namely, Commandant, 60 Bn, CRPF, disagreed with the finding of the Enquiring authority in respect of Article No. 1 of the charges, no opportunity was given to the petitioner to show cause or hearing as to why the Article I of the charges shall not be taken to have been proved. In consequence of the findings finally arrived at by the disciplinary authority, as indicated hereinbefore, the penalty of dismissal from service was imposed by the impugned order, dated 30.9.1999, aforementioned. The petitioner preferred a statutory appeal, which was also turned down. The petitioner has, now approached this Court seeking reliefs as mentioned hereinabove.

3. I have perused the materials on record. I have heard Mr. M.K. Choudhury, learned counsel for the petitioner and Mr. A.K. Sharma, learned Additional CGSC, appearing on behalf of the respondents.

4. There is no dispute before me that the disciplinary proceeding in the present case was drawn up against the petitioner under the provisions of Central Civil Service (Classification, Control and Appeal) Rules, 1965.

5. Though a number of reliefs have been sought for in the writ petition, the only grievance that has been expressed before this Court, at the time of hearing, on

behalf the petitioner, is that the enquiry report, in question, was in favour of the petitioner and hence, when the disciplinary authority thought it fit to disagree with the findings of the Inquiring Authority in respect of article No. I of the charge, the reasons for such disagreement should have been make known to the petitioner and the petitioner ought to have been given opportunity of showing cause and hearing against the reasons, which the disciplinary authority considered sufficient for holding the charge, in question, as wholly proved. Since no such opportunity, as pointed out on behalf of the petitioner, was, admittedly, accorded to the petitioner, it is contended, on behalf of the petitioner, that the impugned order, dated 30.9.1999, passed by the disciplinary authority disagreeing with the findings of the Inquiring Authority as well as the penalty of dismissal from service imposed on the petitioner are not sustainable in law. In support of his submission, reliance has been placed by Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and State Bank of India and Others Vs. K.P. Narayanan Kutty,

6. Reacting to the above submission made on behalf of the petitioner. Mr. Sharma has pointed out that Rule 15(2) of the CCS(CCA) Rules, 1965, merely requires that the disciplinary authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement. In the face of these provisions, it is contended, on behalf of the respondents, that no opportunity of showing cause and/or hearing is required to be given to the delinquent before the order assigning reasons for such disagreement is passed by the disciplinary authority.

7. It is, no doubt, true that Rule 15(2) lays down that the disciplinary authority shall, if it disagreed with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

8. It is also true that in Rule 15(2), it has not been specifically mentioned that opportunity shall be given to a delinquent to show cause and/or hearing as to why the findings of the Inquiring Authority be not disagreed with. The question, therefore, is as to whether a condition to accord opportunity of showing cause and/or hearing, as contended on behalf of the petitioner, is at all necessary and in the absence of any such specific provisions made in Rule 15(2), whether such a condition is required to be read into the provisions of Rule 15(2)? The answer to this question fully lies in the following observation made by the Apex Court in Kunj Behari Mishra (supra) :

"17. If the Enquiry Officer had given an adverse finding, as per the Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the Enquiry Officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is

not completed till the disciplinary authority had recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Enquiry Officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an Enquiry Officer or by the disciplinary authority, itself. When the enquiry is conducted by the Enquiry Officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. When the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the Enquiry Officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the Enquiry Officer, they are deprived of representing to the disciplinary authority before that authority differs with the Enquiry Officer''s report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges and recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

(emphasis is supplied)

9. From a bare reading of what has been laid down in Kunj Behari Mishra (supra), it is abundantly clear that when an enquiry report is in favour of a delinquent, but the disciplinary authority proposes to differ with such conclusion, then, the disciplinary authority must give opportunity to showing cause and hearing to the delinquent concerned, for, in the absence of such opportunity, the delinquent would stand condemned unheard and the principles of natural justice would thereby stand defeated. This apart, whenever the disciplinary authority disagrees with the enquiry report on any article of charge, then, before recording its own findings on such a charge, it must record its tentative reasons for such disagreement and give to the delinquent an opportunity of being heard. Coupled with this, since the requirement of hearing in such circumstances is essential for meeting the principles of natural justice, such a provision must be read into the rule, which deals with the powers of the disciplinary authority to agree to or disagree from the report of the inquiring authority. Viewed from this angle, such a requirement of giving opportunity of showing cause and hearing to the delinquent must be read into the provisions of Rule 15(2).

10. Even in the case of K.P. Narayanan Kutty (supra), the Apex Court has held to the effect that the requirement of opportunity of hearing to the person proceeded against is a requirement of the principles of natural justice and must be read into the relevant rules, if the disciplinary authority finds reasons to differ from the conclusions recorded by the inquiring authority. This position of law becomes amply clear from the following observations made in K.P. Narayanan Kutty (supra) :

"6. It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of India v. Viashwa Mohan. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned cause of Vishwa Mohan is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph, this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in Punjab National Bank case extracted above, when it is clearly stated that the principle of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case)

and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

(emphasis is added)

11. It is also of immense importance to note that in a case of present nature, it is immaterial whether or not any prejudice is shown to have been actually caused to a delinquent on account of omission to give him opportunity of hearing by the disciplinary authority.

12. What, thus, crystallises from the above discussion is that if the disciplinary authority is of the view that there are reasons for disagreeing with he findings recorded in the enquiry report, which is favourable to the person proceeded against, the disciplinary authority must record its tentative reasons for such disagreement and give to the delinquent an opportunity of making representation against such tentative reasons and also an opportunity of hearing to the delinquent before the adverse finding is finally arrived at by the disciplinary authority. If no such opportunity is given, the same will amount to the denial of the principles of natural justice and such an omission will make the order recording adverse finding against the delinquent bad in law and the penalty imposed, on the basis of such finding will not be sustainable in law irrespective of the fact whether such a denial has caused any prejudice to the delinquent or to. This apart, even if the relevant rules do not make provisions for giving opportunity, as indicated hereinbefore, such a requirement must be read into the rules.

13. In the present case, since the disciplinary authority did not, admittedly, give any notice to show cause and/or hearing to the petitioner before passing the impugned order in the manner as indicated hereinbefore, the impugned order is bad in law. Such an order will, if allowed to stand good on record, cause serious miscarriage of justice.

14. I may, however, pause, at this stage, to point out that in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the Apex Court has clarified that when a Court or Tribunal set aside the order of punishment, the proper relief to be granted would be to direct reinstatement of the delinquent with liberty given to the authority concerned to proceed with the enquiry by placing the employee under suspension and continuing with the enquiry. In other words, the reinstatement in service of the delinquent shall be for the purpose of enabling the authority concerned to proceed with the enquiry by keeping, if necessary, the employee under suspension.

15. In the result and or the reasons discussed above, this writ petition partly succeeds. The impugned order, dated 30.9.1999 (Annexure - L to the writ petition) passed by the disciplinary authority as well as the order, dated 11.1.2000 (Annexure

- O to the writ petition), passed by the appellate authority are hereby set aside and quashed. The petitioner shall accordingly stand reinstated in service, but the respondent No. 4, namely, Commandant, 60th Battalion, CRPF, Nagaon, i.e., the disciplinary authority shall remain at liberty to keep the petitioner under suspension. If it so deems fit and proper, and dispose of the disciplinary proceeding after according opportunity of showing cause and hearing to the petitioner in the manner as indicated hereinabove. So far as the payment of back wages etc. of the petitioner is concerned, the same shall be subject to the ultimate decision that may be arrived at by the disciplinary authority.

16. With the above observations and directions, this writ petition shall stand disposed of.

17. No order as to costs.