Bhaba Kalita Vs Union of India (UOI) and Others

Court: Gauhati High Court

Date of Decision: July 17, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2004) 1 GLR 137

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: K.N. Choudhury, S. Chauhan and R.S. Chauhan, for the Appellant; Doley, Addl. C.G.S.G., for the Respondent

Judgement

Ranjan Gogoi, J.
The Writ Petitioner, who has been dismissed from service after an enquiry into the charges levelled against him, has

instituted the present proceedings challenging the aforesaid order of dismissal. An order of the appellate authority confirming the dismissal order

passed by the disciplinary authority, is another aspect of the challenge in the present proceeding.

2. A memorandum of charges was brought against the petitioner on 25.10.2000 alleging that on 29.8.2000 at about 21.30 hours, the writ

petitioner under the influence of alcohol had assaulted two other constables of the C.I.S.F. in which organisation the petitioner was working. It was

alleged that as a result of the aforesaid assault, the two other constables were injured and hospitalised. The writ petitioner was charged with

indiscipline/misbehaviour in respect of the aforesaid incident and was asked to show cause as to why he should not be punished. The writ

petitioner showed cause and the authority not being satisfied, decided to have an enquiry. An enquiry Officer was appointed and as it now

appears, in course of the enquiry, as many as 11 witnesses were examined in support of the charges. Besides, a large number of documents were

also brought on record in support of the charges. The writ petitioner/delinquent examined two defence witnesses in his favour and at the conclusion

of the enquiry, for the reasons cited, the enquiry officer submitted a report dated 20.1.2001 holding the charges against the writ petitioner to be

proved. The disciplinary authority concurred with the findings of the enquiry officer and by his order dated 6.4.2001 imposed the punishment of

removal from service on the writ petitioner. The appeal filed by the writ petitioner against the punishment imposed was dismissed by an order of

the appellate authority dated 18.7.2001. It is in the aforesaid facts that the instant writ petition has been filed calling into question the actions and

orders of the authority in imposing on the writ petitioner the punishment of removal from service.

3. I have heard. Mr. K.N. Chouhdury, learned senior counsel for the writ petitioner and Mr. Doloi, learned Additional C.G.S.C. appearing on

behalf of the respondents. The counter affidavit filed by the respondents as well as the records in original as produced, have been duly perused.

4. The arguments advanced on behalf of the writ petitioner would go to show that the primary thrust of the challenge made is to the effect that the

report of enquiry, which has been accepted and which has formed the basis for the impugned action, is perverse, being opposed to the weight of

materials on record and no punishment ought to have been imposed on the writ petitioner on the basis of the findings recorded in course of the

enquiry. Specifically, the learned counsel for the petitioner has argued that P.W.-10 examined in support of the charges, in his deposition before

the enquiry officer, has testified that the writ petitioner delinquent was engaged in a fight with one of the persons injured, which would go to show

that there was mutual assault between the writ petitioner and the persons, who allegedly suffered injuries. The findings of the enquiry officer that the

petitioner was in an intoxicated condition, it is argued, is not borne out by the materials on record. That apart, it has been contended by the learned

counsel for the writ petitioner that the evidence of the defence witnesses, who were examined in the case and who supported the writ petitioner,

have been ignored by the enquiry officer while coming to his impugned findings. The learned counsel for the petitioner by relying on a judgment of

the Apex Court in the case of Kuldip Singh v. Commissioner of Police and Ors., reported in Kuldeep Singh Vs. The Commissioner of Police and

Others, has contended that as no cogent ground has been assigned for ignoring the evidence of the defence witnesses, the enquiry report as a

whole stands vitiated, the automatic consequence of which would be to render the punishment null and void. Alternatively, it has been argued by

the Mr. Chauhdhury that even if this Court is inclined to hold that the report of the enquiry officer is valid, the materials disclosed by the said report

would go to show that there was a mutual exchange/fight between the writ petitioner and the persons who allegedly suffered injury and the writ

petitioner himself was hospitalised on account of the injuries suffered by him in the course of such fight. If the writ petitioner is to be blamed, the

persons, who allegedly suffered injuries are to be euqally blamed and in that view of the matter, the punishment of removal from service is

disproportionate warranting interference of this Court.

5. The arguments advanced on behalf of the writ petitioner have been registered by the learned Additional C.G.S.C. It has been argued on behalf

of the respondents that the materials on record amply demonstrate that the writ petitioner had committed the acts of indiscipline and misbehaviour,

as alleged, which ought not to be tolerated in a disciplined force like the C.I.S.F. where the writ petitioner was employed. The writ petitioner is a

habitual offender and had been punished on two other earlier occasions, contends the learned C.G.S.C. who further contends that the repeated

commission of various acts of indiscipline and misbhaviour rendered the petitioner unfit for retention in service. Learned counsel by placing reliance

on a judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Narain Singh, has argued that in so far as the punishment

imposed on members of a disciplined force is concerned, the powers of the writ Court to interfere with such punishment is severely restricted and

ought not to be lightly exercised. Learned counsel for the respondents has also relied on two other judgments of the Apex Court in the cases of

Union of India v. Corporal A.K. Bakshi and another and Union of India and others Vs. Corporal A.K. Bakshi and another, and State Bank of

India and Others Vs. Samarendra Kishore Endow and Another, respectively, in support of the submissions advanced.

6. The arguments advanced by the learned counsel for the rival parties have received due consideration of this Court.

7. I have duly perused the report of the Enquiry Officer, which is fairly elaborate one. The Enquiry Officer after setting out the gist of the evidence

of all the witnesses examined in the proceeding before him had proceeded to record the salient facts found by him in the proceedings of the

enquiry. The evidence of the witnesses examined in support of the charge, the summary of which has been recited by the Enquiry Officer in his

report, would go to show that what has been testified by the said witnessesd is that the delinquent had indulged in unruly conduct and had assaulted

his colleagues injuring them in the process and further that at the time of the occurrence, there was some amount of smell of alcohol coming from

the writ petitioner/delinquent.

8. While the oral evidence as well as the medical report, produced by the learned C.G.S.C. at the time of oral argument, are suggestive, if not

conclusive of the fact that the writ petitioner, at the time of occurrence, was under the influence of liquor, what cannot be overlooked is that some

of the departmental witnesses have testified that there was a mutual exchange/fight between the two groups involved. That the writ petitioner was

injured and was hospitalised is an admitted fact. The evidence of the defence witnesses assumes particular importance in the light of the above

facts. Both the defence witnesses have clearly testified that one of the injured persons, i.e., P.C. Tomer had assaulted the writ petitioner with a lathi

while another Atma Prakash was holding the writ petitioner. Yet the defence evidence was discarded and the reasons for discarding such evidence

is that the two defence witnesses had also been punished in connection with the same incident. Punishment imposed in respect of the incident

would not necessarily erode the evidentiary value of the statements made by the defence witnesses which has to be tested and evaluated for its

intrinsic worth, a course that was not adopted. A perusal of the statements made by the defence witnesses does show that there is nothing in the

said statements recorded by the Enquiry Officer, which would make the same incredible or unworthy of acceptance.

9. Ordinarily, the normal course that is to follow upon a conclusion reached by the court that the defence witnesses have been wrongly ignored is

to record a finding that the report of enquiry is unreliable if not perverse. But in the facts of the present case, this court is not inclined to come to

any such finding, inasmuch as, the picture that emerges from a consideration of the evidence adduced by both the sides is that a distinct and

positive role of being engaged in a physical fight can be attributed to the writ petitioner. But what cannot be overlooked is the participation of at

least one of the injured persons in the said incident and the person so participating in the incident cannot be said to be free from any blame. If the

writ petitioner is blameworthy, so are the persons who suffered injuries at the hands of the writ petitioner. The position that the Court is confronted

with on the materials available on record is that it is not the writ petitioner alone who was responsible for the incident, the other two persons, who

suffered injury were also responsible; the writ petitioner was injured and hospitalised as the other two persons due to the incident in question. Yet

there is nothing to indicate that the injured have been subjected to any proceeding or action as the writ petitioner.

10. The argument made by the learned CGSC that the writ petitioner is a habitual offender need not detain the Court; there was no charge to that

effect. While considering the charge of being under the influence of liquor, it must be noticed that the writ petitioner was not charged for being

under the influence of liquor during duty hours. Admittedly the petitioner was not on duty at the time when the incident has occurred. This is not to

be understood that the conduct of the petitioner should be condoned; but all such facts must go into the determination of the quantum of

punishment that should be imposed. The law laid down by the Apex Court in the case of Narain Singh (supra) is an authority for the proposition

that in interfering with punishment imposed on members of the disciplined forces, the writ Court should be slow and circumspect. No expressed

prohibition is contained nor was, perhaps, intended in matters of such inference. It is the satisfaction of the Court in the last resort, which is material

and having regard to the facts stated also and the conclusions reached, I am of the view that ends of justice would be met if the question of

punishment is reconsidered by the authority in the light of what has been recorded in the present judgment and order. Undoubtedly, it is the

authority of the C.S.I.F. who would be the best judge to decide on the quantum of punishment that should now be imposed on the writ petitioner,

having regard to the necessity of maintaining decorum and discipline in the force. Therefore, while interfering with the punishment imposed, the

matter is remitted to the authority below to impose such other punishment as may be considered appropriate.

11. Consequently and in view of the discussion above, this writ petition is partly allowed to the extent indicated.