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Poonam Chopra Vs Union of India (UOI) and Another

Court: Delhi High Court

Date of Decision: Dec. 20, 2002

Acts Referred: Central Industrial Security Force Rules, 1969 â€" Rule 31, 34
Constitution of India, 1950 â€" Article 311, 311(2)

Citation: (2003) 102 DLT 804 : (2003) 67 DRJ 35 : (2003) 1 SLJ 212

Hon'ble Judges: C.K. Mahajan, J; B.A. Khan, J

Bench: Division Bench

Advocate: Sarabjit Sharma and R. Veena, for the Appellant; Abrahim N.A., for the Respondent

Final Decision: Allowed

Judgement

Khan, J.
Petitioner, an Arjuna award holder and an Inspector in the CISF, was dismissed from service by order dated 16.4.1998 for her

alleged unauthorised absence of 138 days. She has filed this petition for setting aside this order and for her reinstatement in service with

consequential benefits.

2. Petitioner was first appointed as Head Constable in sports quota in the CISF on 24.4.1992 and posted at Bhilai. She was then attached to the

Head Quarters at Delhi for participation in major Judo competitions. She was promoted as Sub-Inspector and later as Inspector on 15.9.1996 for

her remarkable performance in the Judo competitions and for earning gold, silver and bronze medals for the Force. She says that she was not

required to attend to any of the duties or trainings attached to the Force but was left free to train in the judo to perform well and earn medals for

the Force. This coupled with her other achievements aroused jealousy of some of her colleagues leading to registration of a false case against her at

the instance her rival competitor Yashpal Solanki of the Punjab Police. She was also framed in one more case on the complaint of her friend''s

father. All this had disturbed her mentally due to which she could not join the coaching camp at Patiala in time which was used as a pretext to

charge her of unauthorised absence and to ease her out of service. She complains that the enquiry held against her was sham and illegal as no

charge-sheet was served on her and as she was not afforded any reasonable opportunity of setting up her defense. Nor was she allowed to cross-

examine any witness. She was also not supplied the report of the Enquiry Officer along with proposed punishment to be imposed on her. On the

contrary, respondents had conducted the whole exercise in a hush-hush manner and given her some report on 13.4.1998 and had obtained her so

called reply to it on 15.4.1998 and had passed the order removing her from service next day on 16.4.1998.

3. Respondents have denied all the allegations leveled by petitioner. According to them, on her return from Paris in 1997, she was directed by

movement order dated 8.9.1997 to report at NIS, Patiala for coaching/practice from 15.10.1997 but she failed to report and absented herself

from duty unauthorisedly. Several call up notices were sent to her home address vide telegrams dated 27.10.1997, 29.10.1997 and 6.11.1997 but

in vain. Finally, a charge-sheet under Rule 34 of CISF Rules was sent on her home address which was returned unserved. She was then placed

under suspension by order dated 14.2.1998 and was served the charge-sheet on 7.2.1998 to which she replied. A departmental inquiry was later

conducted against her in which she participated and presented her defense and cross-examined the witnesses. The Enquiry Officer, however, held

the charges proved against her and submitted his findings on which the disciplinary authority felt satisfied and ordered her removal from service. It

is submitted that enquiry was conducted in conformity with the procedure prescribed by the relevant Rules. The report of the Enquiry Officer was

also supplied to her and her reply sought and it was upon which that the disciplinary authority finally decided to remove her from service. It is

denied that the action taken against her was arbitrary or discriminatory or vocative of principles of natural justice.

4. Petitioner''s counsel Mr. Sharma contended that petitioner was denied a reasonable opportunity of being heard in respect of charges leveled

against her contrary to the mandate of Article 311(2) of the Constitution and removed in a hush-hush manner disregarding the laurels she had

earned for respondents. He catalogued petitioner''s achievements at the international level leading to the Arjuna Award being conferred on her and

alleged that respondents had cut short her service by contravening the procedure established by law and more so, Rule 34 of the relevant Rules.

So much so that even charge-sheet was not served on her much less affording her a chance of submitting her defense to the charges. Some report

purported to be of Enquiry Officer was supplied to her on 13.4.1998 and some reply obtained from on 15.4.1998 on the assurance that she

would be reinstated but she was ordered to be removed the next day without affording her any reasonable opportunity of being heard. The order

of the Authority also suffered from non-application of mind in the circumstances. He wholly relied on two Supreme Court judgments in Union of

India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., to show that even though 42nd

amendment had dispensed with the show-cause notice at second stage, but petitioner was still entitled to be afforded a reasonable opportunity of

being heard against the charge leveled against her under Article 311.

The all important question that arises in this conspectus is whether petitioner was denied reasonable opportunity of being heard and removed from

service in violation of the mandate of Article 311 and Rule 34 of the Rules. It also remained to be seen whether she was also required to be

informed about the proposed punishment along with the Enquiry Officer''s report if it was supposed to have been supplied to her and whether the

impugned order of removal which was passed three days after the alleged supply of inquiry report could be said to be suffering from non-

application of mind.

5. It is no more rest integra that under Article 311(2), a defendant employee was to be given a reasonable opportunity of being heard in respect of

the charges against him/her. This encompasses that he/she must have a clear notice of the charge and must be afforded a reasonable opportunity to

offer him/her Explanation and to participate in the inquiry by cross-examining the witnesses and leading defense evidence, if any. The report of the

Enquiry Officer must be supplied to him/her with or without the proposed punishment in respect of which he/she must have a reasonable

opportunity to represent to ward off the punishment and to prove his/her innocence.

6. All this is borne by most of the service rules and in the present case also, Rule 34 of CISF Rules supplement this and prescribed procedure for

holding of an enquiry and for passing an order imposing any of the major penalties prescribed in Rule 31. It proceeds on expected lines to lay

down that disciplinary authority shall frame definite charge on the basis of allegations on which inquiry is proposed to be held which along with the

statement of allegations which shall be communicated in writing to the delinquent who shall be required to submit a written statement of his defense

and also to state whether he would desire to be heard in person. He shall also be permitted to inspect and take extracts from the official record to

prepare his defense. He shall also be entitled to cross-examine the witnesses in support of the charges and to give evidence in person and to

produce defense witnesses. The Inquiry Officer shall then prepare a report recording his its findings on each charge together with the reasons

which shall be considered by the disciplinary authority for imposing the punishment.

7. This Rule further provides that it shall not be necessary for the disciplinary authority to give the delinquent any opportunity of making

representation on the penalty proposed which is in accordance with the 42nd Amendment. But this stands resolved by now that though this

amendment had taken away the right of making representation by the delinquent employee at the second stage, it had not otherwise affected the

applicability of the rules of natural justice or the reasonable opportunity of being heard to be granted to him a departmental inquiry. The

controversy was laid at rest by the Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, laying down:-

While by law application of natural justice could be totally ruled out or truncated, nothing has been done by the 42nd amendment which could be

taken as keeping natural justice out of the proceedings and the applicability of the rules of natural justice to such an inquiry is not affected by the

42nd amendment. Therefore, supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to

be inflicted would be within the rules of natural justice and the delinquent would, Therefore, be entitled to the supply of a copy thereof. The Forty-

Second Amendment has not brought about any charge in this position.

8. This position was later affirmed by the Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., thus:-

Although on account of the 42nd Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show

cause against the punishment proposed and, Therefore, to furnish a copy of the Inquiry Officer''s report along with the notice to make

representation against the penalty, whenever the Inquiry Officer is other than the disciplinary authority and the report of the Inquiry Officer holds

the employees guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report

to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules

of natural justice.

9. The question that arises is whether respondents had satisfied the requirement of reasonable opportunity guaranteed under Article 311(2) in the

present case. It does not appear to us so. Because there is nothing to show that even the charge sheet was served on the petitioner along with the

statement of allegations or that she was afforded opportunity to file her statement of defense against the charges. The charge sheet sent to her home

address was admittedly returned unserved. When it was served on her again and whether she was granted time to file statement of defense or

asked to take legal assistance, etc. is not known.

10. The respondents had left much to be desired at the second stage also. According to them, she was supplied the enquiry report which

incidentally did not propose any punishment on 12.4.1998 and whereby she was asked to represent against it within 15 days. They further claim

that she replied to it on 15.4.1998 which was considered by the Disciplinary Authority on the same day leading to passing of her removal order on

the next day (16.4.1998). The hot haste in which the Authority acted is writ large on the face of record. Having been granted 15 days to represent

against the Enquiry Report, it is not understandable how the Authority had received her reply to the report next day and had ordered her removal

on 16.4.1998. The whole exercise leads to the inescapable conclusion that the Disciplinary Authority had denied reasonable opportunity to

petitioner all through in contravention of the mandate of Article 311(2) and Rule 34.

11. The other aspect of the matter is that petitioner had no clue about the proposed punishment as the Enquiry Officer had not recommended one.

Therefore, even if it was accepted that Enquiry report was supplied to her to which she had replied, she had no chance to refute or dispute the

findings in reference to the proposed punishment. This is not to suggest that she was entitled to second show cause notice by the Disciplinary

Authority proposing punishment which was taken away by the 42nd Amendment but she was surely deprived of setting up her defense in respect

of the findings qua the punishment proposed. It can''t be denied that she had a right to seek a lesser or minor punishment in the facts and

circumstances of the case. But when she had no inkling about the proposed punishment, her reply/representation against the inquiry report could

not be said to be effective and on this count also it can''t be said that Disciplinary Authority had satisfied the requirements of reasonable

opportunity.

12. We find support for this in the Supreme Court judgment in the State of Gujarat Vs. R.G. Teredesai and Another, :-

The reasonable opportunity would not be satisfied unless the entire report of the Inquiry Officer including his views in the matter of punishment

were disclosed to the delinquent public servant. The Inquiry Officer is under no obligation or duty to make any recommendations in the matter of

punishment and his function merely is to conduct the inquiry in accordance with law and to submit the records along with findings. But if he has also

made recommendations in the matter of punishment ""that is likely to affect the mind of the punishing authority with regard to penalty or punishment

to be imposed"" it must be disclosed to the delinquent officer. Since such recommendations form part of the record and constitute appropriate

material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while

showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the Inquiry

Officer is to enable the delinquent officer to satisfy the punishment authority that he is innocent of the charges are held to have been proved, the

punishment proposed to be inflicted is unduly severe.

13. We accordingly hold that petitioner was denied reasonable opportunity of being heard in respect of the charge of unauthorised absence leveled

against her and was removed from service in breach of mandate of Article 311(2) and Rule 34 of the relevant Rules. This petition is accordingly

allowed and impugned order dated 16.4.1998 removing petitioner from service is set aside. She is ordered to be reinstated in service forthwith.

The question of her back wages and the regularisation of the disputed period of absence is, however, left to be decided by the Competent

Authority under Rules within four months from receipt of this order.