

(2013) 03 DEL CK 0247**Delhi High Court****Case No:** Writ Petition (C) No. 6312 of 2011

Babu Khan APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision: March 21, 2013**Citation:** (2013) 2 ILR Delhi 1546**Hon'ble Judges:** J.R. Midha, J; Gita Mittal, J**Bench:** Division Bench**Advocate:** Rajat Aneja and Mr. Ishaan Chhaya, for the Appellant; R.V. Sinha and Mr. R.N. Singh, for the Respondent**Final Decision:** Allowed

Judgement

Gita Mittal, J.

The petitioner assails the disciplinary proceedings conducted against him pursuant to the chargesheet dated 30th September, 2009; inquiry report dated 6th February, 2010 and; the order dated 10th August, 2010 of the disciplinary authority agreeing with the recommendations of the inquiry officer and holding that the petitioner was guilty of the charge and imposing the penalty of compulsory retirement upon him. The writ petitioner also assails the order dated 28th September, 2010 passed by the DIG, Railway Protection Special Force whereby the petitioner's appeal was dismissed, as well as order dated 18th March, 2010 passed by the Senior Commanding Officer dismissing the revision petition filed by the petitioner. The undisputed facts giving rise to the present writ petition are briefly stated hereafter.

2. The petitioner was appointed on the 27th of September 1996 as a Constable in the Railway Protection Special Force ("RPSF" for brevity) and was posted at different places thereafter. The petitioner has claimed that he was suffering from behavioural disorder and had applied for transfer on recommendation of doctors. Yet he was transferred to different places in Orissa, Maharashtra, Punjab, etc. The petitioner was also treated over this period at various Railway hospitals.

On the 14th of September 2009, the petitioner was sent to the 6th Battalion Dayabasti to undertake the punishment of extra fatigue duty.

3. Our attention has been drawn by Mr. Rajat Aneja, learned counsel for the petitioner to the Medical Board Report of the examination of the petitioner dated 25th August, 2008 conducted by the Institute of Human Behaviour and Allied Sciences which opines as follows:-

MEDICAL BOARD REPORT OF PATIENT BABU KHAN (CRF#2006-05-9796)

The patient was taken up for medical board on 23-05-2007. The board opines the patient suffers from paranoid schizophrenia. However he is asymptomatic currently and is fit to join duty without arms. He is also advised to continue treatment on OPD basis.

No other medical record or opinion is forthcoming on record.

4. With regard to an alleged incident with the Adjutant of the battalion, charges were framed against the petitioner vide chargesheet dated 30th September, 2009 which was served upon the petitioner on 4th October, 2009 directing him to appear before the inquiry officer on the 5th of October 2009. Learned counsel for the petitioner has vehemently complained that the service of the chargesheet on the eve of the inquiry proceedings was in violation of Rule 153.5 of the RPF Rules, 1987 which mandates that the chargesheet should be served at least 72 hours before the commencement of the inquiry. It is urged that the petitioner was deprived of an adequate opportunity of taking steps for his defence in the inquiry proceedings.

5. A challenge is laid to the proceedings conducted by the inquiry officer. It is pointed out that despite the aforesaid confirmed medical condition of the writ petitioner and his mental health, the respondents proceeded post haste with the inquiry proceedings and six witnesses were examined in support of the charges. The petitioner was not given any opportunity to engage the services of the defending officer.

6. We may at this stage also notice the mandate of Rule 153.5 of the RPF Rules which reads as follows:-

153.5 The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the enquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer.

7. The requirement of the Rule is salutary and mandatory. The same has been provided to enable a charged person to a fair opportunity to prepare his defence.

8. In the instant case, on 4th October, 2009, the communication was served upon the petitioner enclosing the allegations against the petitioner as well as the chargesheet. By the same communication, the petitioner was informed of the commencement of the inquiry proceedings on the 5th of October 2009 thus giving the petitioner not even twenty hours to prepare his defence. This was not only in violation of the well settled principles of natural justice but of the specific requirements of the provision of Rule 153.5 of the RPF Rules which goes to the root of exercise of jurisdiction by the respondents. The same is an illegality which would vitiate the conduct of the disciplinary proceedings against the petitioner.

9. The petitioner made applications dated 15th October, 2009 and 16th November, 2009 informing the respondents in writing that on account of his medical condition, he was unable to conduct his defence and that he may be permitted to engage the services of a counsel. There is nothing on record to show that these applications were even considered.

10. Even otherwise, it is trite that in the disciplinary proceedings it is the duty of the disciplinary authority to ensure that adequate opportunity is given to the charged official to conduct his defence and that the same would include an opportunity to engage the defence officer.

11. Given the facts and circumstances of the instant case, especially the mental condition of the petitioner, we find it difficult to believe that the petitioner was conscious that he had a right to seek the assistance of a defence officer. In all fairness as well as to ensure compliance of the principles of natural justice, it was for the respondents to ensure that the petitioner was made aware of his rights as well as procedural safeguards. The same was essential to ensure that the petitioner had an adequate opportunity to defend the charges made against him. Failure to ensure such opportunity also vitiates the proceedings conducted against the petitioner.

12. The petitioner has placed before us the entire record of evidence recorded by the respondents. Against the examination-in-chief of six witnesses, the inquiry officer has merely noted that the party charged declined to cross-examine the prosecution witnesses. The respondents have pointed out nothing to show that the petitioner was in a position or able to conduct the cross-examination. Given his communications dated 15th October, 2009 and 16th November, 2009, it is apparent as to why the petitioner would have so stated. Given the finding recorded in the medical opinion dated the 25th of August, 2008, no medical evidence is placed before us to support that the petitioner was mentally and medically fit at the time of the enquiry.

13. In view of the above discussion, we are of the view that the inquiry proceedings were conducted in violation of the well settled requirements of administrative law jurisdiction as well as violation of the principles of natural justice. The petitioner has been deprived of a fair and adequate opportunity to defend himself.

14. In this background, the recommendation dated 6th February, 2010 of the inquiry officer as well as the orders dated 10th August, 2010 passed by the Disciplinary Authority finding the petitioner guilty of the charge; 28th September, 2010 of the Appellate Authority and the order dated 18th March, 2011 of the Revisional Authority are not sustainable in law.

15. The learned counsel for the respondents has placed before us a pronouncement of the Supreme Court reported at Chairman, LIC of India and Others Vs. A. Masilamani, wherein a challenge similar to the instant case was raised and accepted by the Court. Learned counsel for the respondents has drawn our attention to the following directions made by the Supreme Court after considering the entire law on the subject matter:-

12. The instant case requires to be considered in the light of the aforesaid settled legal propositions.

12.1...The matter is remitted to the disciplinary authority to enable it to take a fresh decision, taking into consideration the gravity of the charges involved, as with respect to whether it may still be required to hold a de novo enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet.

12.2 xxx xxx xxx

12.3 In the event the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, it may proceed accordingly and conclude the said enquiry, most expeditiously.

Following the above, we direct as follows:-

(i) The recommendation dated 6th February, 2010 of the inquiry officer as well as the orders dated 10th August, 2010 passed by the Disciplinary Authority; 28th September, 2010 of the Appellate Authority and the order dated 18th March, 2011 of the Revisional Authority are hereby set aside and quashed.

(ii) In view of the above, the petitioner shall be reinstated in service. However, the petitioner shall not be entitled to any backwages.

(iii) The matter is remitted to the disciplinary authority to take a fresh view in the matter and make appropriate directions taking into consideration all circumstances including the medical status of the petitioner; nature of charges involved as well as the period which is lapsed since issuance of the charge sheet. The disciplinary authority shall thereupon take a decision whether it still requires to hold a de novo enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet.

(iv) In the event the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, the authority shall ensure that the principle of law and natural justice are strictly complied with.

(v) Given the findings of the medical examination which we have noticed hereinbefore, it shall be open for the disciplinary authority to direct appropriate medical examination.

(vi) In view of the time which has elapsed, the disciplinary authority shall proceed expeditiously in the matter.

This writ petition is allowed in the above terms.