

Kripesh Chandra Roy Vs. Union of India (Uoi) and ors.

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Court : Guwahati

Decided On : Dec-05-2006

Judge : Hrishikesh Roy, J.

Appellant : Kripesh Chandra Roy

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. P. Majumder

Advocate for Pet/Ap. : Mr. Das

Disposition : Petition allowed

Judgement :

H. Roy, J.

1. The writ petitioner who was a Constable in the Central Reserve Police Force (CRPF) has filed the present petition challenging the finding dated 22.03.1999 of the Inquiry officer. The Inquiry officer found the petitioner and two others guilty of the charge pertaining to allegations of running away from their post and leaving their weapons behind, when another Constable Surendra Yadav started firing heavily and indiscriminately from his SLR Butt No. 281 around the camp and the further allegation that the petitioner and others did not take any action or initiative to prevent the said Constable Surendra Yadav from firing and did not overpower

him to avert the untoward incident of killing of their Platoon Commander SI N.N. Pandey. On the basis of the said allegation, the petitioner and two others were charged as having acted with cowardice and fleeing instead of tackling the situation with bravery and determination and ensuring protection of their Platoon Commander.

The petitioner also challenged the punishment order dated 19.04.1999 whereby he has been compulsorily retired from service with effect from 19.04.1999. The order of the appellate authority dated 17.10.1999 rejecting the appeal of the petitioner and confirming the punishment imposed, has also been challenged.

This Court has heard Mr. B. Das, teamed sr. counsel assisted by Mr. N. Majumder, Mr. D. Chakraborty and Ms. S. Das, learned Counsels for the petitioner. Also heard Mr. P.K. Biswas, learned Assistant SG along with Mr. P. Majumder, learned Counsel for the respondent-Union of India.

Learned Counsel for the petitioner has argued that the inquiry proceeding which led to the finding of guilt dated 22.03.1999 against the petitioner is liable to be interfered with by this Court inasmuch as the said proceeding is vitiated, on account of disability on the part of the petitioner and other two Constables in putting forward an effective defence and not being provided with a reasonable opportunity to defend the charges. Submissions that the proceedings were conducted in such environment and in such manner that it would amount to denial of fair and reasonable opportunity for the petitioner in the matter of participation in the disciplinary proceeding have also been made.

The second contention raised by Mr. Das, learned Counsel for the petitioner is that the punishment of compulsory retirement imposed is also unjustified considering the fact that lesser punishment for four other Constables involved in the incident have been awarded by the disciplinary authority.

Appearing for the C.R.P.F., Mr. Biswas has, on the other hand, argued that fullest opportunity to the delinquent to defend the charges have been given and there has been no breach of the required procedure, warranting interference of this Court with the impugned findings and decisions. Mr. Biswas has also drawn attention of

the Court to the fact that there has been differentiation in the punishment imposed in so far as the Constables who were assigned guard duty and were inflicted with punishment of compulsory retirement vis-a-vis the punishment of stoppage of two increments awarded for 4 personnel of the CRPF, who were not posted with guard duty and were assigned with escort duty only. Mr. Biswas has also produced before the Court the proceedings of the inquiry report leading to the finding of guilt against the petitioner, to enable this Court to examine for itself, the fairness of the proceedings conducted.

Learned Counsel for the petitioner has cited two decisions reported in AIR 1982 (Lt. Col. Prithipal Singh Bedi v. Union of India and Ors.) and : AIR 2000 SC3425 (Union of India v. Charanjit S. Gill) to make submissions that members of the Armed Forces are also entitled to liberal spirit and protections guaranteed by the Constitution and there is a requirement in Court martial proceedings to follow the norms of fairness, justness and reasonableness. The further submission made with reference to the aforesaid two decisions is that the Court in exercise of its writ power, while examining the cases of Armed Forces personnel faced with disciplinary proceedings must examine the proceeding in light of the procedural safeguard provided by the Constitution.

Two other decisions reported in AIR 1983 454 (Bhagat Ram v. State of Himachal Pradesh) and : 1986 CriLJ1084 (Sukh Das v. Union Territory of Arunachal Pradesh) have also been cited to say that in a disciplinary proceeding, the delinquent must be aware of availability of defence assistance and such assistance when asked for must be provided to a delinquent in course of inquiry and if information is not furnished to a delinquent that defence assistant is available and can be provided, the inquiry is vitiated, justifying interference by the Court.

Rebutting the aforesaid arguments advanced on behalf of the petitioner, Mr. Biswas has, on the other hand, drawn attention to the Supreme Court decision in : (2006)ILLJ 1004 SC (Hombe Gowda Educational Trust v. State of Karnataka) and also the decision in 2006 AIR SCW 460 (L.K. Verma v. H.M.T. Ltd.) to submit that in a matters of indiscipline particularly in the Armed Forces, the Court should not

take a lenient view in the matter. Further submission has been advanced with reference to the reported decision in : AIR 1997 SC2696 (State of Punjab v. Bakshish Singh) to argue that Civil Court should not substitute its own view in matter of punishment particularly in the case of a Constable who is a part of a disciplined Force and is subjected to disciplinary proceeding. Another decision reported in : (2004)6SCC325 (Vice Chairman, Kendriya Vidyalaya Sangathan v. Girdharilal Yadav) has been cited to stress the point that the principles of natural justice cannot be stretched too far and present one is not a case, where there has been any breach of the principles of natural justice as fullest opportunity has been provided to the delinquent Constable.

2. From the ratio of the aforesaid decision, it can be gathered that the allegation of breach of the principle of natural justice has to be examined with reference to the facts of each case. Whether the required procedural fairness has been maintained in conduct of the disciplinary proceeding has also to be examined with specific reference, to the proceedings conducted in a given case. The Court must also not be unmindful of the fact that the proceeding in the present case is against a Constable of a CRPF who is a member of a disciplined Force where discipline is a matter of paramount importance.

3. The challenge-in the present case is based primarily on denial of a fair and reasonable opportunity to the petitioner to defend the charges made against him. Therefore, it would be necessary to examine the disciplinary proceedings to satisfy oneself as to whether the procedure adopted, afforded a fair and reasonable opportunity to the petitioner to defend the charges or whether the procedure is vitiated to such an extent, that interference of this Court is called for.

4. On examination of the proceedings which have been made available for perusal, it appears that the writ petitioner has been proceeded against in the very same proceeding along with two other Constables, namely, Radha Mohan Singh and Abdul Motin who were also given the punishment of compulsory retirement from service. It appears that the inquiry proceedings were conducted by the inquiry officer Mr. Chetram Kulhar. The report dated 22.3.99 of the inquiry officer reveals that the recording of guilt by all the 3 charged Constables were made on the basis

of statements purportedly given by all the 3 Constables. It appears from the proceeding that the said plea of guilt has been recorded by the Inquiry officer with reference to a question addressed to them and response of all 3 delinquent Constables have been recorded together. However, this Court need not detain itself on this aspect as adverse finding has not been recorded by the Inquiry officer on the plea of guilt and the Inquiry officer had proceeded to conduct a full inquiry and examine the witnesses produced in support of the charge. The Inquiry officer also examined the 3 delinquent Constables in course of the said inquiry.

If one now examines the statement given by Constable Chandra Moli Singh, Constable Adhirath Das and Constable Biswajit Bannerjee, it can be seen that the said 3 Constables who were introduced during the proceeding to support the charges, have indicated that the writ petitioner along with 2 other Constables were detailed for guard duty and that 'their arms and ammunitions were with them in their charpoi'. The recording of 3 purportedly separate statements of the said 3 witnesses indicate that there is absolute uniformity in their response to the question asked and each of them identically stated that the petitioners and the 2 other Constables were on guard duty and were issued with arms and ammunitions, and 'their arms and ammunitions were with them in the charpoi.' It is not, however, stated that the arms and ammunitions issued, were on the person of the petitioner at the time when the incident occurred. It has also been recorded that all the 3 accused uniformly have declined to cross-examine these 3 witnesses produced to prove- the charges made.

Now if one examines the recorded statement of all the 3 charged Constables including the petitioner, it appears that the responses of all the 3 charged Constables are absolutely uniform and mechanical. Recording of such mechanical and uniform responses from witnesses is suggestive of the fact that there may not have been a free environment where the charged constables and the witnesses could give their responses truthfully and without inhibition.

Let us now examine the statement of the writ petitioner in response to question No. 9 which may be extracted herein below:

Q.9- Do you admit that it was cowardice manner to run away from the camp left behind your Arm/Amn and pl. comdr. on the mercy of berserk Ct. Surender Yadav ?

It is seen, from the response of the writ petitioner to question No. 9 that he claimed that at the relevant time, he was working, in the garden and that his rifle was in the house, meaning thereby that the arms and ammunitions were not on his person at the time when the incident occurred.

From the above statement of the writ petitioner which is not inconsistent with the statements of the 3 PWs, it can be seen that the arms and ammunitions which have been issued to the writ petitioner, were not on his person at the time when the incident occurred, but were away from him either on the charpoi, if one is to go by the statement of the 3 witnesses or in the house if one is to accept the statement of the charged Constable. Yet only because evidence have been led to show that the writ petitioner along with 2 other Constables on guard duty were issued with arms and ammunitions, without a further finding that these arms and ammunitions were actually on the person of the writ petitioner, the charge of cowardice in the face of an indiscriminate assault by one Surender Yadav who was firing indiscriminately at everyone in sight and whose firing led to the death of SI N.N. Pandey, is levelled and found to be established by the Inquiry officer.

The examination by the Court in a matter of a disciplinary proceeding would naturally be only to see whether the procedure adopted was fair and reasonable and whether a reasonable opportunity was available for the charged person to defend the charges levelled against him. In the present case, the responses of the witnesses produced were absolutely parrot like and mechanical. It gives an impression that irrespective of the actual deposition, uniform responses to suit the findings have been recorded. The fact that the charged Constables pleaded guilty as well as declined an opportunity to cross-examine the witnesses introduced to prove the charges, indicate that the proceedings were not in a free environment and were conducted in a manner where the charged Constables were prejudiced from freely participating in the proceeding. The delinquents were obviously awed or overwhelmed by the presence of a superior officer who was conducting the

inquiry proceeding and fair opportunity was denied to them.

5. At this stage, it would be appropriate to take note of the submissions made by Mr. Biswas that there is no requirement of providing legal assistants to persons facing disciplinary proceeding under the CRPF Act and the Rules, unlike what is provided for in Section 303 and 304 Cr.PC and just because legal assistance has not been provided, such omission ought not to persuade this Court to hold the proceeding to be vitiated.

This Court while examining the proceeding as indicated above has found that no fair and reasonable opportunity have been provided to the charged Constable. Such a finding of the Court is not reached on the basis of the fact that legal assistance has not been provided but on scrutiny of the proceedings as a whole, which has led this Court to conclude that fair and reasonable opportunity as envisaged by law have not been provided in the inquiry wherein guilt finding has been recorded by the Inquiry officer.

Considered in light of the above discussion, this Court holds that the said finding dated 22.03.1999 is liable to be interfered with and accordingly, the said finding is set aside. Consequently, the impugned order of punishment dated 19.04.1999 whereby the writ petitioner has been compulsorily retired from service as well as the order dated 17.10.1999 whereby the appeal filed by the petitioner has been rejected are also set aside. Accordingly, all consequential benefits be given to the writ petitioner in view of interference by this Court with the inquiry finding dated 22.03.1999, punishment dated 19.04.1999 and the rejection dated 17.10.1999 of the appeal, preferred by the writ petitioner.

In view of the above, the writ petition is allowed. No cost.

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