

Mohan Chandran and anr. Vs. Union of India (Uoi) and ors.

Mohan Chandran and anr. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/504757

Court : Madhya Pradesh

Decided On : Jul-05-1985

Reported in : (1986)ILLJ485MP; 1985MPLJ572

Judge : V.D. Gyani, J.

Appellant : Mohan Chandran and anr.

Respondent : Union of India (Uoi) and ors.

Judgement :

ORDER

V.D. Gyani, J.

1. The petitioners were serving as Head Constables in the Signal Battalion of the Central Reserve Police Force with headquarters at Neemuch. During the period dated 24th June, 1979 to 25th June 1979, there was an agitation amongst the Members of the force and the petitioners were arrested in connection with the said agitation along with three others, as they were suspected of having participated in a strike. A criminal complaint No. 2/79 against petitioner No. 1 and No. 5/79 against petitioner No. 2 were filed by Sri C.L. Sharma, the Deputy Superintendent of Police before the respondent No. 2 who under Section 16 of the C.R.P.F. Act is empowered and acts as Chief Judicial Magistrate. A complaint is filed as Annexurc-1 to the petition. By order Annexure-A, the petitioners were acquitted by the respondent No. 2, as the complaints filed against them were withdrawn by the

complainant with permission of the Court. It was on withdrawal of the criminal prosecution that a memorandum, Annexure-B, in the nature of a charge-sheet was issued against the petitioners by the respondent No. 2 as Commandant who also acted as Chief Judicial Magistrate. On 17th October, 1979, the respondent No. 2 appointed one Shri Savariappa as an Enquiry Officer to conduct a joint enquiry against the petitioners and the relevant order dated 17th October, 1979 is filed as Annexure-C to the petition. By Annexure-D. which is dated 22nd October, 1979 the petitioners applied for a copy of the approval, said to have been granted for holding such a joint enquiry. It was applied by them on 2nd November, 1979 by letter, Annexure-E. The approval itself is filed as Annexure-F to the petition which is a message.

2. The petitioners denied the charges levelled against them and also pray for permission to avail the services of an Advocate, the Enquiry Officer happened to be a graduate and an Assistant Commandant. It also stated in their application, Annexure-G-1 that the Department had availed of services of a Presenting Officer who also happened to be a graduate. However, by reply dated 2nd November, 1979, the respondent No. 2 informed the petitioners that no Presenting Officer had been appointed in the case and the assistance of a legal practitioner could not be permitted as the C.R.P. Rules did not provide for such an assistance. The enquiry lasted for 25-days. Thereafter, on the basis of the report of the Enquiry Officer, a show-cause notice, proposing dismissal from service was issued against the petitioner. The Enquiry Report along with the show-cause notice is filed as Annexure-M and the reply to the show-cause notice is filed as Annexure N-I and N-2. The respondent No. 2 passed the final order on 18th January, 1980 dismissing the petitioners from service. On an appeal being preferred by the petitioner, the same also stood rejected vide order dated 18th March, 1980 as Annexure Q-2. Even the revisions preferred by the petitioners were also dismissed by the Inspector-General of Police, Sector-3, New Delhi i by his order dated 12th May, 1985 as Annexure, S-1 and S-2. The petitioner even preferred mercy petitions which also met with the same fate. The relevant order is filed as Annexure U-1 and U-2 dated 30th August, 1980. Having availed of the procedural remedies and failed in their bid, the petitioners have now approached this Court by this petition, challenging the order of dismissal from service as passed by

respondent No. 2 and confirmed by No. 3 and 5 in appeal and revision respectively. They also seek a direction for their reinstatement in service with full back-wages and other benefits. The respondents do not dispute the essential facts as stated above. The dispute which is raised by the petitioners is with regard to the legal effect of the order passed by the respondent No. 2 as Chief Judicial Magistrate on withdrawal of the complaint by Shri C.L. Sharma, Dy. S.P. Signal Group Centre, Neemuch.

3. It is their contention that as the petitioners were not tried for the alleged offences and not acquitted on trial of the charges but acquitted under Section 257 Cr.P.C, they cannot claim a clean and clear acquittal in their favour.

4. Shri P.K. Saxena learned Counsel appearing to the petitioner has raised the following points:

(a) That a joint enquiry, was not permissible in absence of a valid sanction thereof.

(b) That after the petitioners having been prosecuted and acquitted, in absence of a valid order as contemplated by Rule 27(ccc) of the Rule framed under Section 18 of the C.R.P.F. Act, the enquiry as a whole is vitiated. The Enquiry Officer Savariappa, who was cited as a witness, at the criminal trial could and should not have been appointed as an Enquiry Officer as it violates principles of natural justice.

(c) The petitioners were refused the services of a legal practitioner, which again violated principles of natural justice vitiating the enquiry held against them as it amounted to a denial of reasonable opportunity.

(d) That the final order Annexure-O, and the other orders, are not indicative of any application of mind by the Authorities concerned. They are, therefore, liable to be set-aside.

(e) That there has been discrimination even in the matter of imposing punishment in as much as others charged with similar misconduct have already been taken into service with a minor punishment, and in view of the Supreme Court's judgment as reported in ShankarDas v. Union of India and Anr. 1985-II L.L.J. 184

the petitioners at any rate, without prejudice to other submissions are also entitled to the same relief.

5. Shri Neema on the other hand has raised a preliminary objection that the petition is not maintainable under Article 227 of the Constitution of India and has invited my attention to Clause 4 thereof. It is submitted that as the orders have been passed by authorities appointed under the C.R.P.F. Act, the same cannot be challenged under Article 227 of the Constitution of India. Apart from this preliminary objection, the learned Counsel submits that there has been a valid sanction for holding a joint enquiry against the petitioners even after the withdrawal of the complaint, it is contended by him that in a force which is expected to be disciplined, the nature of the misconduct indulged in by the petitioners is grave and serious and calls for the punishment imposed on them, which should not be interfered in this petition.

6. Taking the objection raised by the respondent, Union of India about the maintainability of this petition under Article 227, suffice it to say that the objection raised is not well-founded. Firstly the petition, is not under Article 227(4) and secondly the contention advanced is belied by the respondent's own record. The fact that the Disciplinary Enquiry was required to be conducted in accordance with the Central Civil Services Rules 1965, as can be seen from paragraph 12 of the return, goes to belie the contention raised by the respondent that the members of the C.R.P.F. are armed personnel.

7. Learned counsel, has relied upon : 1981 CriLJ407 in this connection, the case is materially different and has no application on the facts of the present case. In this case Akhilesh Prasad v. Union Territory of Mizoram AIR 1981 SC 1806 was considered under Section 197(2) of the Code of Criminal Procedure and it was in that connection that the Supreme Court came to the conclusion that the C.R.P.F. is a part of the army forces of the Union but Article 227(4) which reads as follows:

Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Article 227(4) envisages a power only in case of Court or Tribunal constituted by or under any law relating to the armed forces. The learned Counsel failed to point out any such fact which would attract Sub-clause (4) of Article 227 of the Constitution. On the other hand, the Supreme Court has in fact entertained a petition by the Union of India, in almost identical situations where an Armed Personnel was dismissed from service. Although the question considered was only relating to the vires of Article 14 framed under Section 191(2)(a) of the Armed Act but it goes to show that under Article 226, a petition is maintainable. In the instant case as per respondents own showing the services of the members of the Central Reserve Police Force are governed by the Central Civil Services Rules, 1964, which apart from paragraph 12 of the return, is also found to be relied upon in Annexure-B. Annexure-B paragraph 4 which is the memorandum of charges, even the articles of charges Annexure-II to the memorandum. Annexure-B also contains a reference to Rule 7(2) of the C.C.S. Conduct Rules, 1964. Similarly, Annexure-M which is the final report by the Enquiry Officer, also enumerates the alleged violations under the Central Civil Service Conduct Rules. 1964. With this volume of material on record, it is futile to content that in view of Article 227(4), the petition is not maintainable. To say the least, the contention is ill-conceived and ill-founded and deserves to be rejected.

8. Now coming to the grounds raised by the learned Counsel for the petitioner, Shri Saxena the first ground relates to a valid sanction, before considering the sanction, it is worthwhile to recapitulate the fact that it was the petitioners who had applied for a copy of the same vide Annexure-D as no joint enquiry, particularly after criminal prosecution was feasible under the rules and the copy supplied to the petitioners is placed on record as Annexure-F which is a message either Telegraphic or Wireless. It reads as follows:

MESSAGE & FORM P-VII-10/79-III (Adm) 13/x U/C(.) REF YR LETTER PA-4/79-NMH C(VOL) DTD 28/9(.) PERMITTED TO CONDUCT JOINT DEPARTMENTAL ENQUIRY.

The learned Counsel appearing for the petitioner submits that Rule 27(d) framed under Section 18 of the C.R.P.F. Act and Rule 27(ccc), have not been complied

with while according sanction, Annexure-F. The learned Counsel for the respondents has tried to supplement the same by filing documents, Annexures A-2 and A-3 dated 13th October, 1979. Reading Annexure-F along with these two documents, it cannot be said that a valid sanction has in fact been accorded for holding a Departmental Enquiry as contemplated by Rule 27(ccc). The subject of Section 8(3) is 'recent agitation in joining Departmental Enquiry' and the rule referred to in paragraph 3 of the document, Annexure, A-3 filed by the respondents is Rule 27(d)(1). It does not even contain a remote reference to Rule 27(ccc). Although Annexure-2 is a request for according sanction under Rule(ccc) but when there is a specific reference to this Rule, and the sanction, Annexure-3 does not contain a reference to the said Rule. It is not safe to infer that such sanction as required by Rule 27(ccc) was granted.

9. It is a settled law when proceedings are to be instituted on the basis of a sanction, whether under an Act or under any rule, the sanction must ex facie bear the stamp of validity and it should appear from the sanction order itself that all the necessary and relevant facts have been considered by the Sanctioning Authority before according sanction, Annexure-F, a wireless or telegraphic message is too cryptic to indicate any such application of mind and Annexure-A/3 filed by the respondent, also suffers from the same vice. Although paragraph 3 makes a reference that under provisions of Rule 27(d)(1) of C.R.P.F. Rules, 1955 a joint enquiry is permissible and the Inspector General is competent to accord sanction, all that is to be found on the document Annexure, A-3 is the endorsement 'approved' made by the I.G.P. Such an approval, is no substitute for a valid sanction as required by Rule 27(d)(1) and 27(ccc) of the Rules. An approval of a draft sanction cannot be said to be a valid sanction. A mechanical approach, to such a serious act required to be performed under statutory rules, is hardly commendable.

10. Rule 27(ccc) reads as follows:

When a member of the armed force has been tried and acquitted by a Criminal Court, he shall not be punished departmentally under this Rule on the same charges or the similar charges upon the evidence cited in the criminal case,

whether actually led or not except with the prior sanction of the Inspector-General.

Learned counsel for the respondents has contended that in view of the fact that the petitioners were not actually tried and acquitted, this Rule is not, therefore, attracted. There is no dispute about the fact that the petitioners were in fact prosecuted by the Dy. S.P. and the facts are essentially similar. The list of witnesses being the same, the dispute which is raised is with regard to the fact that the complaint itself was withdrawn and the acquittal, was under Section 257 of the Code of Criminal Procedure. The submission cannot be up-held.

11. It is not contemplated by Rule 27(ccc) that there should be a full dressed trial. The Rule itself provides 'upon the evidence cited in the criminal case,' whether actually led or not. Now in the instant case, evidence was cited but not led and the criminal case was withdrawn. On any view of the matter, the Rule envisages even such a situation where the acquittal has resulted for non-adducing of evidence and after all withdrawal though technically it may have a different connotation for the purposes of the Code of Criminal Procedure but in its essence. It is nothing but not adducing evidence, though cited. The net effect so far as the petitioners' service career is that though they were charged for similar acts, no evidence was adduced, the case was withdrawn against them which led to an acquittal. In such a situation, a valid sanction under this rule was a condition precedent for institution of a Departmental Enquiry against the petitioners as no material has been placed by the respondents to show that such a valid sanction had in fact been accorded, the Department Enquiry held against the petitioner is found to be one without a valid sanction. Learned Counsel for the respondents had laid emphasis on the word 'tried', occurring in this rule, the trial of a criminal prosecution begins no sooner a complaint is laid before a Magistrate who takes cognizance, and in furtherance thereof takes further steps in the case. It is not necessarily confined to the actual adducing of evidence. 'Trial' of a criminal case is a wider term envisaging stages and situations other than actual recording of evidence. The argument advanced cannot, therefore, be accepted.

12. Considering the question of joint enquiry, Rule 27(d)(1) contemplates application of mind and a serious consideration by the Higher Authority in the force

and merely endorsing the draft sanction, with the term approved is also not a meaningful compliance of Rule 27(d)(1). Thus, in this view of the matter, the disciplinary enquiry conducted against the petitioner is held to be vitiated for want of a valid sanction for holding an enquiry under Rule 27(d)(1) and for a valid sanction for institution of disciplinary proceedings after criminal trial as envisaged and contemplated by Rule 27(ccc).

13. The other submission made by Shri Saxena is about the fact that a witness Shri F. Savariappa, Assistant Commandant, was appointed as an Enquiry Officer, which is grossly violative of the principles of natural justice.

14. Counsel for the respondent submits that there has been no violation of either principles of natural justice or any rules governing the Departmental Enquiry.

15. A perusal of Annexure, A-1, complaint under Section 170 Cr.P.C. filed in the Court of Shri J. Choudhary First Class Judicial Magistrate as Assistant Commandant CR.P.F. Neemuch. Towards the end of paragraph 7 thereof, the name of Shri F. Savariappa appears at serial No. 9 and it is under the heading 'the following will substantiate the charge'. If a person who is a witness to an agitation, and who is called upon to substantiate a charge were to be entrusted to the task of holding a Departmental Enquiry, whose final report has been accepted word to word by the Disciplinary Authority for imposing penalty, it is nothing short of a travesty of principles of natural justice, and natural justice, as propounded by the Supreme Court is nothing but fair play in action. It is an off short of the principle that justice should not merely be done but must also be seen to be done. Naturally, when witness to an occurrence assumes the role of an Enquiry Officer, fair play in action is lacking in such a case. The contention raised by the learned Counsel for the petitioners has much force and deserves to be accepted. To say that rules have not been violated, is a misnomer. Principles of natural justice, dictate that a disciplinary enquiry must always be fair and the fairness would appear from the record. In the instant case, the fact that an Assistant Commandant who was to substantiate the criminal charge, against the petitioners, when entrusted with the task of holding an enquiry, it is not safe to presume that he is unbiased.

16. Shri Saxena has urged yet another point which also relates to the principles of natural justice inasmuch as the petitioners were denied the assistance of an Advocate on the ground that neither the CR.P.F. Rules permit for such an assistance, learned Counsel for the respondents submitted that this point has not been raised by the petitioners in their appeal and revisions preferred by them but it is not disputed that the petitioners had infact moved an application Annexure C-1 and G-2 on 22nd October, 1979 at the very initial stage, the refusal of such assistance, has infact resulted in a serious prejudice to the petitioners and also a denial of a reasonable opportunity of defending themselves against the charges levelled against them. The Supreme Court had occasion to consider such a situation in a case Board of Trustees, Port of Bombay v. D.R. Nadkarni 1983-I L.L.J-M. The judgment, is highly instructive on the point involved and is relied upon for holding that the refusal in this case of availing the services of a Lawyer, has resulted in denial of a reasonable opportunity of defending against the charges, to which the petitioners were entitled.

17. The last submission made by the learned Counsel is discrimination even in the matter of punishment. When members of a disciplined Police Force, either go on strike or agitate on some reason or other, as in this case, the only distinction which is sought to be made by the respondent that in cases of those members of the Force... should have been reinstated, there was no Departmental Enquiry held against them and the Appellate Authority directed their reinstatement, the fact that they were dismissed from service, without holding a Departmental Enquiry is itself indicative of the seriousness and gravity of the charges levelled against them which impel the Authorities to dispense with a formal enquiry. The petitioners case in this view stands on a lesser footing inasmuch as there was a formal enquiry, and on the basis of such an enquiry the petitioners were dismissed from service. Thus, those who were dismissed from service could be reinstated, by the Appellate Authority. There appears to be absolutely no justification for discriminating against the petitioners whose case, on the basis of the facts placed appeared to be considerably and comparatively lesser in seriousness and gravity, there could be no discrimination, against them even in the matter of punishment. See Supreme Court Cases (Vol. 4, 1983) Sengara Singh v. State of Punjab 1984-I L.L.J. 161.

18. For the foregoing reasons this petition deserves to succeed. It is accordingly allowed with costs. Counsel fee Rs. 250 if certified. The petitioners are directed to be reinstated in service with all ancillary and consequential benefits thereof. Security amount may be refunded to the petitioner after verification.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com