

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21732 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE

MR. VIJAY MANOHAR SAHAI

Sd/-

and

HONOURABLE MR.JUSTICE R.P.DHOLARIA

Sd/-

| | | |
|-----------|---|------------|
| 1. | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4. | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | NO |
| 5. | Whether it is to be circulated to the Civil Judge ? | NO |

JAGDISH SINGH RATHORE S/O. (LATE) KAPTAN SINGH....Petitioner
Versus

UNION OF INDIA THR'DY.INSPECTOR GENERAL OF & 5....Respondents

Appearance :

MR PUNIT B JUNEJA, ADVOCATE for the Petitioner.

MR DEVANG VYAS, ADVOCATE for the Respondent Nos.1 to 4.

RULE SERVED for the Respondent No.5.

RULE UNSERVED for the Respondent No.6.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

MR. VIJAY MANOHAR SAHAI

and

HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 17/10/2014
ORAL JUDGMENT
(PER : HONOURABLE THE ACTING CHIEF JUSTICE
MR. VIJAY MANOHAR SAHAI)

1. We have heard Mr. Punit B. Juneja, learned counsel appearing for the petitioner and Mr. Devang Vyas, learned Assistant Solicitor General of India appearing for respondent Nos.1 to 4.

2. The short point involved in this writ petition is that if the Enquiry Officer has been changed by the Disciplinary Authority, whether the report submitted by the Enquiry Officer could be considered by the Disciplinary Authority and on the basis of the said Enquiry Officer, punishment order could be passed against the petitioner.

3. The brief facts are that initially, the petitioner was appointed as Lower Division Clerk on 22.10.1969 in the Central Reserve Police Force (for short 'CRPF') and he was numbered as 691501598. The petitioner was promoted from time to time. By order dated 19.4.1988, he was appointed as Head Clerk / Inspector and was posted at 47th Battalion, CRPF, Jalandhar.

3.1. The petitioner was suspended on 4.11.1989. A charge-sheet dated 12.12.1989 was submitted to him levelling six charges. However, the suspension of the petitioner was revoked by order dated 5.4.1990 on the representation of the petitioner. Another charge-sheet dated 23.1.1990 was served on the petitioner whereby two charges were withdrawn and the petitioner was charged with four charges mentioned in the earlier charge-sheet.

3.2. By order dated 23.1.1990, Shri C.J.M Albert, Assistant

Commandant, 47th Battalion was appointed as Enquiry Officer. The moment the petitioner came to know about appointment of Shri C.J.M Albert as Enquiry Officer, he made representation dated 2.2.1990 through proper channel and requested that the Enquiry Officer be changed as Shri C.J.M Albert was having harassing attitude towards the petitioner and several representations were made by the petitioner against him to the DIG (P), CRPF, New Delhi. Therefore, the petitioner apprehended that no fair inquiry will be held by the Enquiry Officer.

3.3. The request of the petitioner was accepted for change of Enquiry Officer by the Disciplinary Authority, namely, DIG (P) CRPF, New Delhi on 4.4.1990 wherein the following order was passed :-

“OFFICE ORDER

Ref. This office order No.33/90 issued vide o/o even number dated 23.1.90.

2. Whereas an enquiry under Section 11(1) of CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955, is being held against No.691501598 Insp. (H/Clk) J.S. Rathore of 47 Bn, CRPF.

3. Whereas Shri C.J.M Albert, Asstt. Comdt. Of 47 Bn was appointed as Enquiry Officer of the defendant to enquiry into the charges against No.691501598 Insp. (Hd. Clk) J.S. Rathore of 47 Bn vide this office o/o of even number dated 23.1.90.

4. And Whereas Shri C.J.M Albert, Asstt. Comdt.

Of 47 Bn, after having heard and recorded part of evidence, it is necessary to appoint another officer as Enquiry Authority / Officer to enquire into the charges against No.691501598 Insp. (H/Clk) J.S. Rathore of 47 Bn, CRPF.

5. Now, therefore, the undersigned in exercise of powers conferred by said Rules, hereby appoints Shri P. K. Menon, Addl. DIGP, GC, CRPF, Gandhinagar as Inquiry Authority to enquire into the charges framed against No.691501598 Insp. (H/Clk) J.S. Rathore of 47 Bn in place of inquiring authority Shri C.J.M. Albert, A/Comdt. 47 Bn."

3.4. It appears that inspite of the change of the Enquiry Officer, Shri C.J.M Albert has submitted his enquiry report on the same day i.e. 4.4.1990 on the basis of which the Disciplinary Authority passed an order dated 26.4.1990 imposing penalty of reduction upon the petitioner to the post of Sub. Inspector (Clerk) for a period of one year without cumulative effect with effect from the date of receipt of the order.

3.5. The Disciplinary Authority did not consider the fact that though they have changed the Enquiry Officer by order dated 4.4.1990, on the same day, the Enquiry Report submitted by the earlier Enquiry Officer could not be accepted and even if the earlier Enquiry Officer has submitted any report, it was not worth placing any reliance as the new Enquiry Officer was supposed to inquire into the matter afresh as according to the representation of the petitioner, the Enquiry Officer Shri C.J.M. Albert was bias against him.

3.6. Thereafter, the petitioner challenged the order of punishment imposed by the Disciplinary Authority on 26.4.1990 by filing an appeal before the Inspector General of Police, CRPF, New Delhi who in his order dated 1.11.1991 in paragraph 4, has mentioned that the petitioner has requested for change of Enquiry Officer, but no decision was conveyed to him and later on, the appointment of the Enquiry Officer was cancelled. He further goes on to show that the petitioner's request for change of Enquiry Officer was not found to be valid and his request was not conceded by DIGP, New Delhi. He was informed about the decision in person. He has further recorded a finding that the DIG, New Delhi decided to change the Enquiry Officer on 4.4.1990 and on the same day, report of Enquiry Officer was received and since the Disciplinary Enquiry was to be completed early, the DIG, New Delhi passed orders on the report of the earlier Enquiry Officer without considering the fact that he has already been changed by him on the ground that no prejudice would be suffered to the petitioner. The IGP, New Delhi dismissed the appeal of the petitioner.

3.7. Being aggrieved by the orders dated 26.4.1990 of the Disciplinary Authority and the order dated 1.11.1991 of the IGP, New Delhi, the petitioner preferred Revision Application before the Directorate General, CRPF, New Delhi which revision came to be rejected by order dated 7.9.1994.

3.8. Thereafter, the petitioner also made representation to the Home Department which also came to be rejected by order dated 27-28.1.2000.

4. Hence, by way of the present writ petition, the

petitioner has challenged the order dated 26.4.1990 of the Disciplinary Authority, order dated 1.11.1991 of the Appellate Authority, order dated 7.9.1994 of the Revisional Authority and the order dated 27-28.1.2000 passed by the Home Department.

5. It is not disputed by the respondents that the Enquiry Officer had been changed. Once the Enquiry Officer was changed by the Disciplinary Authority himself, it was not open to him to rely on the report submitted by the earlier Enquiry Officer who has been changed by him and take disciplinary action against the petitioner on the basis of such Enquiry Report. The Enquiry Report submitted by the earlier Enquiry Officer Shri C.J.M. Albert, in our opinion, could not be considered and the punishment order passed on the basis of it is vitiated and is liable to be set aside. In our opinion, the action taken by the Disciplinary Authority on the basis of a report submitted by the earlier Enquiry Officer was nothing but exercise of arbitrary powers by him. Since the order passed by the Disciplinary Authority is to be set aside, as a natural consequence, the orders passed by the Appellate Authority, Revisional Authority as well as Deputy Secretary (Home), Government of India, are also liable to be set aside.

6. In the result, this writ petition succeeds and is allowed. The order dated 26.4.1990 of the Disciplinary Authority, order dated 1.11.1991 of the Appellate Authority, order dated 7.9.1994 of the Revisional Authority and the order dated 27-28.1.2000 passed by the Deputy Secretary (Home), Government of India are set aside. By passage of time, the petitioner has retired. Hence, the respondents are directed to recalculate the retiral benefits of the petitioner and to fix the pension of the petitioner and the same shall be paid to the petitioner, including the difference in pension

amount and salary which was to be received by the petitioner, within a period of four months from the date of copy of this order is produced before the concerned respondents. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Direct service is permitted.

Sd/-
(V.M.SAHAI, ACJ.)

Sd/-
(R.P.DHOLARIA, J.)

Savariya