

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 19.05.2011*

+ **R.S.A.No. 249/2008 & CM Nos.17703/2008 & 17705/2008**

UNION OF INDIA & OTHERS Appellant

Through: Mr. S.P. Sharma &
Mr. Ashwani Bhardwaj,
Advocates.

Versus

SHRI K. GOPALAN Respondent

Through: Mr.Ajit Nain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 20.05.2008 which had reversed the finding of the trial Judge dated 10.01.2007. Vide judgment and decree dated 10.01.2007, the suit filed by the plaintiff K. Gopalan seeking a declaration (to the effect that his termination from service vide order dated 14.10.1987 be declared null and void) had been dismissed. The impugned

judgment had reversed this finding; suit of the plaintiff was decreed.

2 The plaintiff was working as a constable in the CRPF Mahila Battalion. He was given duty of vehicle No. MHY-841 for conveyance of higher officials. On 28.02.1986, he was directed to reach Jharodakalan, CRPF Camp carrying Inspector R.P. Pandey, S.K. Khanna and one steno for overnight and to bring them back on the next date. When he dropped Inspector Pandey near his quarter on 01.03.1986 he was asked by him to bring back the vehicle again which he did so. On his way back to the camp he met one Sh. Kunjuman at Najafgarh (brother of Ex. CRPF person); on his request he gave him a lift in the vehicle; vehicle met with a serious accident and the civilian travelling with him died. Vehicle was damaged; loss was assessed at ₹56,057/-; his promotion to the rank of Lance Naik was withheld. Inquiry dated 04.04.1987 was held against him; he was dismissed w.e.f. 10.10.1987. The appeal preferred against the said order was accepted; his dismissal order was set aside on 29.04.1988; further inquiry was held; he was held guilty vide order dated 12.05.1989. The appeal against the said order was dismissed on 14.08.1989. Review petition was dismissed on 19.12.1989. Present suit was accordingly filed

seeking a prayer that his dismissal order is illegal, perverse and against the principles of natural justice.

3 In the written statement, the defence of the Department was that the defendant was guilty of the charges levelled against him; punishment was imposed in terms of the rules of the Department; there was no violation of natural justice.

4 On the pleadings of the parties, the following four issues were framed:-

1. Whether the plaintiff is entitled to relief of declaration vide order No.P.VIII-2/87-EC-II dt. 14.10.1987 of commandant-88(M) BN.CRPF, New Delhi as null and void? OPP
2. Whether the plaintiff is entitled for reinstatement of service with full back wages and continuity of service? OPP
3. Whether the suit is maintainable in its present form in this court in lieu of the submissions made in the W.S. by the defendants? OPD
4. Relief.

5 Oral and documentary evidence was led. The trial Judge was of the view that the rules of natural justice have been complied with. The order of the Disciplinary Authority confirming the report of Enquiry Officer called for no interference. Suit stood dismissed.

6 In appeal, this finding was reversed.

7 This is a second appeal. It has been admitted and on 09.11.2010 the following substantial question of law was formulated:-

“Whether the finding in the impugned judgment dated 20.5.2008 holding that the order of the Appellate Authority (Director General, C.R.P.F, CGO Complex) dated 29.4.1988 setting aside the penalty imposed upon the respondent coupled with remitting the case back to the Disciplinary Authority is against the mandate of the Rules i.e. Rule 27 of the CCS Rules and Rule 28 of the C.R.P.F Rules and is a perverse finding? If so, its effect?”

8 On behalf of the appellant, it has been urged that the impugned judgment decreeing the suit of the plaintiff is illegal and perverse. It had wrongly interpreted the provisions of Rule 27 of the CCS Rules; the appellate authority was well within its powers to remand the case back to the disciplinary authority while setting aside the order of dismissal; in fact without setting aside the order; the question of remand would not arise. To support this proposition, reliance has been placed upon AIR 1992 SC 1535 Union of India Vs. Khazan Singh. It is pointed out that the non-supply of the Enquiry Report has not prejudiced the case of the respondent; what the plaintiff had demanded was the report of the first inquiry which had admittedly been set aside; the plaintiff had failed to show that he had affected any prejudice for the non-supply of this report and to support his submission, reliance has been placed upon (2008) 9 SCC 31 Haryana Financial Corporation And another Vs. Kailash Chandra Ahuja; it is pointed out where prejudice has neither been pleaded nor proved; the non-supply of

the inquiry report would not automatically be a ground to set aside the inquiry proceedings.

9 Arguments have been rebutted. It is pointed out that the impugned judgment calls for no interference. It has correctly appreciated the provisions of Rule 27 of the CCS Rules.

10 The perusal of the record shows that the impugned judgment had set aside the order of the trial court on three counts. The first was the non-supply of the inquiry report. Vide letter dated 22.05.1989, the plaintiff had addressed a letter to the Commandant seeking a copy of the inquiry report; it was stated therein that he was served with the copy of his dismissal order dated 12.05.1989 but the earlier inquiry report submitted by S. Ranalingam is his entitlement. Present suit was filed on 10.04.1991. In the entire plaint, there is not a whisper as to what prejudice the plaintiff has suffered for non-supply of this report i.e. the inquiry conducted by S. Ranalingam; this inquiry had admittedly been set aside and the matter has been remitted back for a fresh inquiry. In judgment of Haryan Financial Corporation the Supreme Court has held as follows:-

“21. From the ratio laid down in B. Karunakar, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer's report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the

breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective. It is for the delinquent-employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.”

11 It is thus clear that non-supply of the inquiry report would not ipso-facto result in the proceedings be declared null and void and the order of punishment as non-est. The delinquent employee has nowhere of the plaint pleaded any prejudice resulting in miscarriage of justice for non-supply of this report. The judgment relied upon by learned counsel for the respondent reported in 1991 (1) SLR Union of India & others Vs. Mohd. Ramzan Khan is distinct on facts; the ratio of that judgment is inapplicable. The inquiry conducted by S. Ranalingam has admittedly been set aside. The impugned judgment deciding this issue in favour of the respondent is not sustainable.

12 The second ground on which the impugned judgment had returned a finding in favour of the respondent was on the interpretation of CCS Rule 27. The impugned judgment had noted clause 2 of Rule 27 and confined itself there. Clause 3 of Rule 27 had in not been adverted to. Rule 27 (3) reads as follows:-

“27. Consideration of appeal.-

(1)xxxxxxxxxxxxxxxx

(2)xxxxxxxxxxxxxxxx

(3) In an appeal against any other order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

13 Sub-clause 3 of Rule 27 thus gave wide and ample powers to the Appellate Authority while setting aside the impugned order to make such order as it may deem just and equitable. It was thus within the domain of the Appellate Authority to set aside the order of dismissal of the appellant and to remit the matter back to the inquiry officer for a fresh conduct of the inquiry. The impugned judgment holding otherwise is a finding which calls for an interference.

14 In the judgment of Khazan Singh (Supra) Rule 25 of the Delhi Police (Punishment and Appeal) Rules 1980 had been considered and Rule 25 (1)(e) or (f) which was worded similarly was held to have given sufficient powers to the appellate authority to pass any order in the interest of justice. In this context, it had noted therein as under:-

“6. We have heard learned Counsel for the parties. Rule 25(1)(e) read with Rule 25(1)(f) of the rules gives very wide powers to the Appellate Authority. It has the power to remit the case to the disciplinary authority for further inquiry and pass such other orders as it may consider proper or deem fit in the

circumstances of the case.”

15 The last ground on which the impugned judgment had found favour with the respondent was that the order of remand dated 29.04.1988 had specifically directed the department to reinstate the appellant and he had been directed to join duties but this order has not been complied with. Relevant would it be to reproduce the extract of this order; it reads as under:-

“I, therefore, set aside the dismissal order dated 14.10.1987 passed by commandant-88 (M) Bn. CRPF and remand the case back to the disciplinary authority with the direction that orders in this case should be passed by the disciplinary authority afresh after recording additional evidence or relevant witnesses including defence witnesses, if any. The appellant is accordingly reinstated and is directed to join duties within a week from the date of receipt of this order and also to appear before the Enquiry Officer as and when instructed. He is warned that in case he does not appear before the Enquiry Officer, the enquiry will be held against him ex-parte.”

16 Vide this order the Appellate Authority had set aside the dismissal order and remanded the matter back to the Enquiry Officer to carry out the inquiry afresh (after giving opportunity to adduce evidence); in the same breath, the appellant had been directed to be reinstated in service. Admittedly this order of the Appellate Authority had not been complied with; the plaintiff had not been permitted to join service; however this non-supply by

itself does not in any manner become a ground to vitiate the inquiry. Prayer in the plaint is relevant. The prayer is that order of the Commandant dated 12.05.1989 dismissing the plaintiff from service be declared null and void; with a the further prayer that he be reinstated in service with full back wages. This prayer proceeds on the assumption that the plaintiff has not been reinstated; the order of the Appellate Authority even presuming was not complied with, would not become a ground to recall the order of dismissal of the appellant. Even otherwise, the order dated 29.04.1988 while remanding the matter back to the inquiry officer had directed that the inquiry be conducted afresh and the parties be permitted to adduce fresh evidence. The plaintiff on 12.05.1989 stood dismissed from service again. It is this order which is the subject matter of challenge before this Court. As already noted, non-compliance with the directions of the Appellate Authority dated 29.04.1988 does not in any manner make out a ground in favour of the plaintiff for the quashing of this dismissal order.

17 In view of the aforementioned discussion, the impugned judgment suffers from an illegality. The findings are perverse. They are liable to be set aside. Appeal is allowed.

18 Substantial question of law is answered in favour of the
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appellant and against the respondent. Suit of the plaintiff stands dismissed.

MAY 19, 2011

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INDERMEET KAUR, J.