# Laxmi Shankar Pandey vs Union Of India And Ors on 19 March, 1991

## Equivalent citations: 1991 AIR 1070, 1991 SCR (1) 894, AIR 1991 SUPREME COURT 1070, 1991 (2) SCC 488, 1991 AIR SCW 918, (1991) 2 JT 43 (SC), 1991 (2) JT 43, 1991 CRILR(SC MAH GUJ) 546, 1991 (2) UJ (SC) 86, (1991) 1 SCR 894 (SC), (1991) IJR 305 (SC), 1991 (1) SCR 894, 1991 (2) UPLBEC 864, (1991) 1 GUJ LH 555, 1991 SCC (L&S) 684, (1991) 62 FACLR 652, (1992) 3 SERVLR 60, (1991) 2 UPLBEC 864, (1991) 16 ATC 524, (1991) 1 CURLR 807

## Author: S.R. Pandian

## Bench: S.R. Pandian

PETITIONER:
LAXMI SHANKAR PANDEY

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT19/03/1991

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
PANDIAN, S.R. (J)

CITATION:
1991 AIR 1070 1991 SCR (1) 894
1991 SCC (2) 488 JT 1990 (2) 43
1991 SCALE (1)491

ACT:
Constitution of India, 1950: Article 32-Scope of Judicial Review-Disputed questions of fact-Examination of.
Service Law: Central Reserve Police Force Act, 1949 : Section 11- Departmental enquiry-Head Constable-Negligent in duty-Escape of undertrial prisoners from custody-Order of dismissal Validity of.
Natural Justice- Principles of Departmental enquiry-Observance/applicability of particular principle/rule-To be decided on the facts and circumstances of each case.

HEADNOTE:

The petitioner, a Head Constable in the Central Reserve Police Force was charge-sheeted for negligence in his duty, resulting in the escape of two undertrial prisoners, who were handed over to him for custody. An enquiry was conducted against the petitioner, but later it was cancelled and a fresh enquiry was commenced on the charges that he allowed a Santry to leave the santry post without arranging proper relief resulting in the escape of 2 undertrial prisoners; that he did not take immediate action to report the matter to the Head Quarters; that he connived the escape of the two undertrial prisoners; that he dug up a tunnel to make it appear that the two undertrial prisoners escaped through the tunnel and that he did not hand over the guard duty roster thus preventing its production as evidence.

Statement of some witnesses and that of the Petitioner were recorded. Only one defence witness was examined. The Enquiry Officer submitted his report recommending disciplinary proceedings against the petitioner. On the basis of the Report , a dismissal order was passed against the petitioner. The petitioner's appeal against the dismissal order was dismissed by the appellate authority. Revision Petition preferred by him also met the same fate.

In the present Writ Petition, challenging the dismissal order, the

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petitioner contended that during the relevant time, there was absolute shortage of personnel, non-supply of torch or candle or kerosene and absence of proper arrangements to keep custody of the undertrial prisoners. It was also contended that all the defence witness cited by him were not examined and that the enquiry was mala fide since the earlier enquiry was dropped and he was exonerated.

The Respondents contended that no prejudice was caused to the petitioner since full opportunity was afforded to him, that the venue of the enquiry was shifted only to avoid unnecessary delay and the petitioner never objected to it during the enquiry. As regards the first enquiry, it was contended that since the same was not completed and later cancelled, fresh enquiry was ordered and it did not mean that the petitioner was exonerated.

Dismissing the Writ Petition, this Court,

HELD: 1. It is necessary to examine the scope of Article 32 of the Constitution in this case. Since the two undertrials were entrusted to the custody of the petitioner and they escaped, the responsibility was entirely on the petitioner. No doubt, he pleaded that the arrangements were inadequate and the two undertrial prisoners took advantage, dug a tunnel through which they managed to escape. The Deputy Superintendent of Police who visited the premises inspected the same and made a report in which he clearly observed that there was certainly some negligence in not

noticing the activities of the undertrial prisoners and therefore an enquiry was necessary. The Enquiry Officer, on the basis of the oral and documentary evidence, concluded that the petitioner committed an offence of neglect of duty and that he did not take immediate action to report the matter to the Circle Officer. The statements of PWs 1, 3, 4, 5, 6, 8 and 9 to show that there was no tunnel at all when they reached the spot on hearing the alarm. It is in the statement of PW 2 that he saw the petitioner digging the tunnel. In view of these clear statements made by the PWs viz. the Constables who were on duty alongwith the petitioner when the two undertrial escaped, the Enquiry Officer was justified in recommending disciplinary action, and no prejudice was caused to the petitioner.[900D-H, 901A-B]

Kavalappara Kottarathil Kochunni Moopil Nayar v. The State of Madras and Ors., [1959] (supp.) 2 SCR 316 and Smt. Ujjam Bai v. State of Uttar Pradesh, [1963]1 SCR 778, referred to.

2. Whether there was non-observance of any of the principles of

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natural justice in a given case and whether the same has resulted in defecting the course of justice, and what principles of natural justice should be applied in a given case depends on the facts and circumstances of that case. In the instance case, the petitioner has failed to prove that the enquiry is vitiated in any manner whatsoever. [902H;903A-B]

Tata Oil Mills Co. Ltd. v. Its Workmen, [1964] 7Scr 555 ; State of Uttar Pradesh v. Om Prakash Gupta, [1969] 3 SCC 775; State Bank of India v. R.K. Jain & Ors., [1972] 1 SCR 755; State of Andhara Pradesh & Ors.v. Chitra Venkata Rao, [1976]1SCR 521; A.K. Kraipak and Ors. v. Union of India and Ors., [1969] 2SCC 262; Capt. Harish Uppal v. Union of India and Ors., [1973] 3 SCC 319 and Khemchand v. Union of India, [1958] SCR 1981, referred to.

[Though the Petitioner's challenge to the dismissal order was negatived by the Court, appreciating the mitigating circumstances such as the petitioner's long service of 20 years in which he was performing his duties diligently and bagging medals therefore, and that no act of negligence or misconduct was attributed to him earlier, the Court observed that if the petitioner marks any representation, the authority concerned may consider the question of awarding a lesser sentence.]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Write Petition No. 974 of 1989.

(Under Article 32 of the Constitution of India). Gobinda Mukhoty, S.K. Bhattacharya and D.K. Garg for the Petitioner.

K. Swamy, R.C. Kaushik (NP) for the Respondents. The Judgement of the Court was delivered by K. JAYACHANDRA REDDY, J. In this write petition the petitioner has challenged the order passed by the Commandant, 11th Battalion C.R.P.F., the 4th respondent, dismissing the petitioner from service. The petitioner was working as a Head -Constable in the Central Reserve Police Force ("CRPF" for short) on the relevant date. He joined as a Constable in the year 1963. He was awarded three medals for performing his duty diligently and in the year 1967 he was given an award of Rs. 500 and a special promotion while fighting in the Nagaland. He also claims to have been awarded some other such cash awards later. He was promoted as Head-Constable later on. In total he has put in 20 years of service. While working as Post Commander of Vijaynagar Post Tirap District, two undertrial prisoners who were Burmese nationals, were handed over on 29.3.83 till further order by the Circle Officer to the custody of the CRPF Vijaynagar Post of which the petitioner was the Post Commander. On the intervening night of 4th and 5th April, 1983 the two Burmese nationals escaped from the custody. It was alleged that the petioner was negligent in his duty and that he did not take immediate action to report the matter to the Circle Officer and that he also connived the escape of the two undertrial prisoners and deliberately dug a tunnel to make it appear that the undertrial prisoners had dug the tunnel and and escaped through the same. On the basis of this incident, a chargesheet was served on 18th August, 1983 on the petitioner and an enquiry was conducted. The Deputy Superintendent of Police was the Enquiry Officer and he recorded the statements of some witnesses who were then posted under the petitioner. That Enquiry was cancelled and a fresh enquiry was commenced. Three charges were framed which are referred to as Articles in the report of the Enquiry Officer. These are as under:

> "Article-I No. 630110316 HC. L.S. Pandey of E. Coy 11 Bn. CRPF while functioning as post Commander of Vijay Nagar post in distt. Tirap (ACP) from 11/3/83 to 18/6/83 and while functioning a Guard Commander of the Guard post Vijay Nagar post in Distt. Tirap (ACP) on 5/4/83 committed an offence of remissness in his capacity as a member of the force U/S 11 )1) of CRPF Act, 1949 in that he allowed No. 800210049 Ct. Md Shamsher Alam to leave the santry post at 0430 hrs without arranging proper relief which resulted in the escape of 2 UTPs from the prisoner cell.

Article-II That during the aforesaid period while functioning as post Commander and guard Commander at Vijay Nagar post, the said No. 630110316 H.C.L.S. Pandey of E Coy 11 Bn, CRPF committed an offence of neglect of duty in his capacity as a member of the force U/S 11 (1) of CRPF Act, 1949 in that he did not take immediate action to report the matter to the Circle Officer of Vijay Nagar and sent Crash Message to Bn Hqrs. When the UTPs were found missing from the UTPs cell at about 0500 hours on 5/4/83.

Article-III That during the aforesaid period while functioning as post/guard Commander of Vijay Nagar post of Distt. Tirap (ACP) the said No. 630110316 HCLS. Pandey of E Coy 11 Bn, CRPF committed an offence of grave misconduct in his capacity as a member of the force U/S 11 (1) of CRPF Act, 1949 in that he connived the escape of two UTPs and deliberately dug the tunnel to make

it appear that the UTPs and deliberately dug the tunnel to make it appear that the UTPs had dug the tunnel and escaped through the tunnel. He did not handover the guard duty roster to next post Commander no. 630040452 HCB Lakara thereby destroying the documents to prevent its production as evidence."

The statements of some of the witnesses were recorded. Thereafter the deliquent's statement also was recorded. The deliquent was again given an opportunity to put forward his plea. He pleaded not guilty and the deliquent was asked to enter his defence by filing a written statement and also produce a list of defence witnesses. He accordingly gave a list of defence witnesses and only one def witness was examined. The Enquiry Officer submitted the report holding that the delinquent connived the escape of the two undertrial prisoners and then deliberately dug the tunnel to make it appear that the undertrail prisoners dug the same and escaped and he accordingly recommended that the disciplinary proceedings should be initiated against the petitoner as well as against another Constable Mohd. Shamsher Alam. On the basis of this report a dismissal order was passed against the petitioner on 30th June, 1984. The petitioner preferred an appeal under Section 28 of the CRPF Rules to the Deputy Inspector General of Police, CRPF, the appellate authority, but the same was dismissed on 23rd October, 1984. A further revision filed by him to the Inspector General of Police, CRPF was also dismissed on 2.5.86. During all these enquiries the plea of the petitioner had been that on 29.3.83, the two undertrail prisoners were entrusted late in the evening and he was not given full strength of 40 Constables and that there were only 11 Constables and it was dark and raining heavily and that neither torches nor candle sticks nor kerosene oil were available. There were also no locks and stationery and there were no proper arrangements of the building where the two undertrial prisoners could be kept in custody and he also sent a message that more persons should be deputed but no steps were taken. With regard to the enquiry, his grievance has been that suddenly area of enquiry was shifted from Khonsa to Logding 50 kms. away and that all the defence witnesses cited by him were not examined. He has also stated that the first enquiry was dropped and he was exonerated and on the whole the enquiry was not fair and not according to the Rules and that the entire proceedings were mala fide in as much as the first enquiry officer dropped the enquiry and exonerated the petitioner from all charges. In this writ petition also the same submissions are put forward.

In the counter-affidavit filed on behalf of the respondents, it is stated that full opportunity was given to the petitioner during the departmental enquiry and that venue of enquiry was shifted from Khonsa to Longding only to avoid unnecessary delay in the enquiry and that the petitoner never objected to the shifting of the place of enquiry. It is also submitted that the petioner was given full opportunity to produce the defence witnesses and notices were also served on them but they did not appear. Regarding the first enquiry it is stated that the same was not completed by the Enquiry Officer. Therefore a fresh enquiry was ordered and that it cannot be said that by cancellation of the first enquiry the petitoner was exonerated. It is further submitted that the petitioner was given full opportunity and that he duly participated in the enquiry and no prejudice whatsoever was caused.

On a careful examination of the affidavit, and the counter-affidavit and the allegations as well as the denials, we are of the opinion that there are a number of disputed questionss of fact. The learned counsel for the petitoner, however, submitted that under Article 32 even disputed questions of fact

can be gone into by this Court. He relied on a judgement of this Court in Kavalappara Kottarathil Kochunni Moopil Nayar v. The State of Madras and Others, [1959]Suppl. 2SCR 316 where it is observed that:

> "Clause (2) of Art. 32 confers power on this Court to issue directions or orders or writs of various kinds referred to therein. This Court may say that many particular writ asked for is or is not appropriate or it may say that the petitioner has not established any fundamental right or any breach thereof and accordingly dismiss the petition. In both cases this Court decides the petition on merits. But we do not countenance the proposition that, on an application under Art. 32, this Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground. If we were to accede to the aforesaid contention of learned counsel, we would be failing in our duty as the custodian and protector of the fundamental rights. We are not unmindful of the fact that the view that this Court is bound to entertain a petition under Art. 32 and to decide the same on merits may encourage litigants to file many petitions under Art. 32 instead of proceeding by way of a suit. But that consideration cannot, by itself, be a cogent reason for denying the fundamental right of a person to approach this Court for the enforcement of his fundamental right which may, prima facie, appear to have been infringed. Further, questions of fact can and very often are dealt with on affidavits."

In support of the same proportion, the learned counsel for the petitioner also relied on the decision of this Court in Smt. Ujjam Bai v. State of Uttar Pradesh, [1963] 1SCR 778.

Having carefully examined the entire records and the submissions made, we do not think that it is necessary to examine the scope of Article 32 in this case. Since the petitioner who has been in service for 20 years has been dismissed, we thought fit even to examine and their statements clearly establish the charges framed against the petitioner. That apart undisputedly the two Burmese national were entrusted to the custody of the petitioner and they escaped and the responsibility entirely lies with the petitioner who was the Post Commander of Vijaynagar Post. No doubt, he pleaded that the arrangements were inadequate and the two undertrial prisoners took advantage, dug a tunnel through which they managed to escape. The Dy. Superintendent of Police who visited the premises inspected the same and made a report and in he said report he clearly observed that there was certainly some negligence on the part of CRPF men for not noticing the activities of the undertrial prisoners and therefore an enquiry was necessary. In the enquiry report the statements of the witnesses namely the Constables who were on duty are referred to in detail and it is held that the petitioner was the Guard Commander till 5.4.83. The Enquiry Officer has also referred to the records in this regard and on the basis of the oral an documentary evidence, he concluded that the petitioner committed an offence of neglect of duty and that he did not take immediate action to report the matter to the Circle Officer. What is more the statements of PWs 1, 3, 4, 5, 6, 8 and 9 go to show that there was no tunnel at all when they reached the spot of hearing the alarm. It is in the statement of PW 2 that he saw the petitioner digging the tunnel. In view of these clear statements made by the Constables who were on duty alongwith the petitioner when the two Burmese nationals

escaped, the Enquiry Office was justified in recommending disciplinary action. Under these circumstances, we see no force in the submission that the enquiry was not properly conducted and that prejudice was caused to the petitioner.

After having perused all the records carefully, we are unable to find any clinching circumstances on the basis of which it can be said that the petitioner was not negligent in discharge of his duties and that he did not commit any act of misconduct. On the other hand we find that the statements of PWs 1, 3, 4, 5, 6, 8 and 9 coupled with that the PW 2 falsify the plea of the petitioner that the undertrial prisoners themselves dug the tunnel and managed to escape.

As already mentioned the learned counsel also submitted that the enquiry is vitiated inasmuch as proper opportunity was not given to the petitioner as all the defence witnesses were not examined and that place of hearing was shifted because of which the witnesses could not be produced and that the cancellation of the first enquiry amounted to exoneration. therefore, according to the learned counsel for the petitioner, the impugned order of dismissal should be quashed as there is clear violation of his fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. In this context he relied on decisions of this Court in Tata Oil Mills Co. Ltd. v. Its Workmen, [1964] 7 SCC 555; State of Uttar Pradesh v. Om Prakash Gupta, [1969] 3 SCC 775; State Bank of India v. R.K. Jain 7 Ors., [1972] 1 SCR 755 and State of Andhra Pradesh & Ors. v. Chitra Venkat Rao, [1976] 1 SCR 521. In all these cases it is laid down that such enquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross-examine the witnesses produced and examined, should be given and that the enquiry should be consistent with the rules of natural justice and in conformity with the statutory rules prescribing the mode of enquiry. We have already referred to the details of enquiry conducted in the instant case and we are unable to say that there was any violation of principles of natural justice. It is, however, urged that in these matters merely following the rules in the procedure established is not enough, but the principles of natural justice must also necessarily be followed. What this Court in a number of cases has been observed is that what particular rule of natural justice should apply to a given case depends to a great extent on the facts and circumstances of the case. Reliance has also been placed on some of the decisions of this Court. In A.K. Kraipak and Others v. Union of India and Others, [1969] 2 SCC 262 it is pointed out that:

> "Para 20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.
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> xx xx xx What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

In Capt. Harsh Appall v. Union of India and Others, [1973] 3 SCC 319 the contention was that before confirming the sentence by the court-material under the Army Act, an opportunity should have been given to the delinquent officer. In respect of this contention is observed that:

> "to insist that the confirming authority should give a hearing to the petitioner before it confirmed the sentence passed by the Court Martial is a contention which cannot be accepted. To accept this contention would mean that all the procedure laid down by the Code of Criminal Procedure should be adopted in respect of the Court Martial, is a contention which cannot be accepted in the face of the very clear indications in the Constitution that the provisions which are applicable to all the civil cases are not applicable to cases of Armed Personnel."

(emphasis supplied) As observed in Khemchand v. Union of India, [1958] SCR 1081 to which there is a reference in some of the decisions cited above all that the courts have to see is whether there was non-observance of any of those principles in a given case and whether the same has resulted in defecting the course ofjustice and that what principles of natural justice should be applied in a given case depends on the facts and circumstances of that case (vide State of Uttar Pradesh v. Om Prakash Gupta, [1969] 3 SCC 775. In our view even applying all these principles the petitioner has failed to prove that the enquiry is vitiated in any manner.

The last submission of the learned counsel is that the punishment of dismissal is wholly disproportionate to the alleged act of misconduct. We are unable to go to the extent of holding that the punishment by way of dismissal is arbitrarily awarded. But there are certain mitigating circumstances. The petitioner joined as a Constable in the year 1963 and he was awarded medals for the performing his duties diligently. He has put in 20 yard of service and no act of negligence or misconduct is attributed to him at any time before during this long service. Under these circumstances if the petitioner makes any representation the concerned authority may consider the question of awarding a lesser sentence. With the above observations the writ petition is dismissed.

G.N. Petition dismissed.