Gauhati High Court
Barad Kesar Bhai vs Union Of India (Uoi) And Ors. on 2 February, 2005
Equivalent citations: (2005) 2 GLR 260
Author: R Gogoi
Bench: R Gogoi
JUDGMENT Ranjan Gogoi, J.

1. An order dated 1.2.1997 dismissing the writ petitioner from service has been assailed by means of the present writ application. A subsequent order dated 13.11.1997 dismissing the appeal filed by the writ petitioner against aforesaid the order dated 1.2.1997 has also been put to challenge herein.

2. The relevant facts of the case may briefly be noticed at this stage. The petitioner joined service as a Constable in the Border Security Force sometime in the year 1994. In the year 1996 he was posted at Panbari in the district of Dhubri of the State of Assam. The petitioner was granted leave on medical ground for a period of 40 days with effect from 9.9.1996 to 18.10.1996. During the period of the aforesaid leave, the petitioner had gone to his native place in the State of Gujarat. On the expiry of his leave, the petitioner did not join service and therefore the concerned authority had issued a letter dated 30.10.1996 requiring the petitioner to report back to duty within 5 days. Though the aforesaid letter dated 30.10.96 was received by the petitioner, he did not join duties as directed and instead, as it now appears, he had sent an undated letter requesting for extension of his leave on medical ground. The aforesaid undated letter of the petitioner was received by the authority on 12.11.1996, whereafter a communication dated 16.11.1996 was issued to the petitioner communicating the decision of the authority to reject the petitioner's prayer for extension of leave and directing him to report to the Battalion Headquarters. In the communication dated 16.11.96 it was, however, mentioned that, after the petitioner reports to the Battalion Headquarters he will be at liberty to produce the relevant documents in support of his illness, whereafter his request for further leave could be considered.

The petitioner did not respond to the said letter and thereafter the authority instituted a Court of Enquiry to determine the circumstances in which the petitioner was over-staying, on the expiry of his leave, with effect from 18.10.1996. In the said Court of Enquiry, several witnesses were examined whereafter a report was submitted recommending that the petitioner be declared a deserter and disciplinary action as per the Border Security Force Act and the Rules be taken against him. On receipt of the report of enquiry as aforesaid, the Commandant of the Battalion by an order dated 15.12.1996 while agreeing with the findings and recommendation of the Court of Enquiry, declared the petitioner as a deserter. Thereafter, by a separate communication dated 15/16th December, 1996, the Commandant of the Battalion informed the petitioner that on consideration of the reports relating to the absence of the petitioner from duty, the Commandant was satisfied that the trial of the petitioner by a Security Force Court is impracticable and that the Commandant is of the opinion that further retention of the petitioner in service is not desirable. The petitioner was also informed that the Commandant was tentatively of the opinion that the petitioner should be dismissed from service. Accordingly, by the letter dated 15/16th December, 1996, the petitioner was asked to show cause against the proposed penalty within 30 days. The aforesaid letter/show cause notice dated 15/16th December, 1996 was sent to the petitioner by registered post.

According to the petitioner, the letter/show cause notice dated 15/16th December, 1996 was not received by him and that on 25/26.2.1997 the petitioner had reported to the Battalion Headquarters and it is only thereafter that he could come to know that he has been dismissed from service. The petitioner has further averred and stated in the writ petition filed that though he was verbally informed of the order of dismissal passed against him, he was not served with a copy of the dismissal order and that though the petitioner tried to meet the Commandant of the Battalion he was not allowed to do so. The petitioner has further averred that while he was in the Battalion Headquarters he was prevailed upon to sign a dictated letter wherein the petitioner was forced to admit that he had not re-joined duties and that he had overstayed his leave and that as he was dismissed, the discharge certificate may be issued to him. The petitioner has further averred that it is in these circumstances that he had to return to his native place and it is only in the last part of the month of March 1997 that the order of dismissal dated 1.2.1997 was received by him.

3. On the aforesaid facts, primarily contending that the petitioner was denied a reasonable opportunity of defending himself, the instant recourse of the writ remedy has been made as against the order of dismissal, which has been subsequently upheld by the Appellate Authority under the provisions of the Border Security Force Act, 1968.

4. I have heard Sri R.L. Yadav, learned counsel appearing for the petitioner and Mr. S. Dasgupta, learned Additional C.G.S.C., appearing for the respondents. I have considered the pleadings advanced by the respective parties as well as the records in original produced by the learned Additional C.G.S.C.

5. The argument advanced on behalf of the petitioner raises a single issue, which needs to be answered by the Court. The said issue is whether the opportunity required to be afforded to a delinquent employee under the provisions of the Act and the Rules before imposing punishment by way of a disciplinary measure was allowed to the petitioner in the present case.

6. Under the provisions contained in Section 19 of the Border Security Force Act, absence without leave is an offence for which a Security Force Court can try the offender and punishment, as prescribed may be awarded. Under the provisions of the Act, in a given situation, a person guilty of commission of any of the enumerated offences instead of being tried by a Security Force Court may be proceeded by way of a departmental action and punishment as may be authorised can be imposed after following the provisions laid down by the relevant Rules applicable in this regard. In the present case, the show cause notice dated 15/16th December, 1996, containing the recitals as noticed earlier, appears to have been issued in exercise of powers under Rule 22 of the Rules framed, and, therefore, the procedure adopted is in consonance with the provisions of the Act and the Rules. The only question, therefore, that would require adjudication at the hands of the Court is whether the opportunity contemplated by Rule 22(2) that has been ostensively conferred by issuing the show cause notice dated 15/16th December, 1996, was, in reality afforded to the petitioner in view of the affirmation and denial made by the rival parties with regard to the service of the letter/show cause notice dated 15/16th December, 1996.

7. A perusal of the show cause notice dated 15/16th December, 1996 would go to show that it was sent to the petitioner by registered post at his home address in Gujarat. The acknowledgement of receipt of the said communication is not available in the record. However, if a letter/ communication is sent by registered post, the normal presumption is that the same has been duly received. The receipt of the earlier letters dated 30.10.96 and 16.11.96, details of which have been noticed above, by the petitioner at his home address, is one significant fact which this Court must take note of in deciding the issue in question. The receipt of the aforesaid show cause notice dated 15/16th December, 1996 was acknowledged by the petitioner in a communication, dated 25.2.1997 which has been annexed as Annexure-II to the respondents' affidavit. The stand taken by the petitioner is that he was made to sign the aforesaid communication under duress and compulsion. Whether the aforesaid stand is a mere assertion or a claim made or whether the same is a correct reflection of what had happened must necessarily be judged by the steps taken by the petitioner immediately after the alleged incident. In this regard what must be noticed is that the petitioner had submitted a detailed memorandum of appeal against his dismissal, to the appellate authority, on 7.4.1997 and in the said memo of appeal the petitioner had not even referred to the alleged incident in which he was made to sign/execute the document in question as asserted in the writ petition filed. If the writ petitioner had executed/signed the document enclosed as Annexure-II to the respondents' affidavit, in the circumstances now alleged it is only natural that the said incident would have found a reference in his appeal memo filed before the appellate authority. The failure of the petitioner to act in the above manner being inconsistent with the conduct of a prudent man leads this Court to hold that in the totality of the facts as noticed above it will be more reasonable to conclude that the petitioner had correctly admitted the receipt of the show cause notice dated 15/16th December, 1996 in his written communication as noticed above. No defence having been set up by the petitioner, the subsequent action of the disciplinary authority can hardly be faulted.

8. The alternative argument advanced on behalf of the petitioner, i.e., the proportionality of the punishment imposed is an aspect, which need not detain the Court. What punishment should be imposed following a satisfaction reached by the employer that the delinquent is guilty of the charges framed is essentially the prerogative of the employer. Judicial interference in such cases will be severely limited and can arise only if the moral conscience of the Court is shocked by imposition of a punishment, which is glaringly excessive on the very face of it. In the instant case, the petitioner, as a member of the disciplined force, had over-stayed the leave granted to him and the conduct displayed by the petitioner abundantly discloses a very causal attitude in rejoining his duties upon expiry of the leave granted. In such a situation, the decision of the disciplinary authority that the punishment of dismissal is called for, leaves little room for judicial interference on the ground that the punishment imposed is grossly excessive or disproportionate.

9. In view of the above discussion, the plea of denial of opportunity ; violation of the principles of natural justice and the consequential invalidation of the impugned dismissal order will necessarily have to fall through. The writ petition will have to be held to be without any merit or substance. Accordingly, the same is dismissed. However, in the totality of the facts and circumstances of the case, I make no order as to costs.