

# SUPREME COURT OF INDIA

Sanjay Kumar Singh

Vs.

Union of India & Ors.

C.A.No.4888 of 2005

(Mukundakam Sharma and Anil R.Dave,JJ.,)

06.09.2011

## JUDGMENT

**Dr.Mukundakam Sharma,J.,**

1. By this common judgment and order we propose to dispose of all the four appeals which are interconnected as the issues and the facts arising for our consideration are similar. They were heard together and, therefore, a common judgment and order is also passed.

2. These appeals are filed by the appellants being aggrieved by the judgment and order dated 10.12.2003 passed by the Gauhati High Court whereby the Division Bench of the High Court dismissed the writ appeals of the appellants and thereby confirmed the judgment and order dated 16.8.02 passed by the learned single Judge dismissing all the writ petitions filed by the appellants holding that the appellants were given all reasonable opportunity to defend themselves and, therefore, there was no merit in those writ petitions.

3. The brief facts leading to the filing of the present appeals are that on 13th March, 1999 the appellants and few others of the Central Reserve Police Force [for short "CRPF"] while serving under 60 Battalion stationed at Haflong were detailed to go in two vehicles, one as escort and other a water tanker for bringing water from Retezole Jatinga water point. Sanjay Kumar Singh, the driver, Jai Shankar Sharma and K.N. Paswan were in the water tanker and they were provided with an escort vehicle which was driven by Jawahar Lal and the other occupants in the said escort vehicle were Head Constable Emmanuel Herenz; L. Nk. Harendra Chowdhury; L. Nk. Jaswant Singh; Constable U.K.S. Gurung and Constable P.S. Madhvi. While the water tanker with the escort party following was on its way to the said water point, the militants ambushed the vehicles and started firing indiscriminately as a result of which five CRPF personnel in the escort vehicle were killed, namely, Driver Jawahar Lal; L. Nk. Harendra Chowdhury; L. Nk. Jaswant Singh; Constable U.K.S. Gurung and Constable P.S. Madhvi. The appellants were the four who survived the ambush.

4. Head Constable Emmanuel Herenz is the only survivor of the escort vehicle who jumped out of the escort vehicle when the ambush took place leaving behind the wireless set given to

him in the truck itself. It has also come on record that when the militants opened fire L. Nk. Jai Shankar Sharma sitting in the water tanker thought that there was a tyre burst. In order to look at it he got out of the water tanker when he came to realize that it is actually an attack by the militants. In the meantime, the driver Sanjay Kumar Singh stopped for a while and thereafter drove away the tanker but L. Nk. Jai Shankar Sharma could not despite his best efforts re-board the vehicle. It has also come in evidence that the driver of the tanker took the vehicle to the Haringajab Police Station, which was 15 kilometers away from the scene of occurrence, and from there he had allegedly informed his Unit about the incident.

5. When search parties reached the spot they found Head Constable Emmanuel Herenz hiding whereas L/Nk Jai Shankar Sharma who had also got down and had run away from the place of occurrence was found out from his hiding place which was under a gorge. On the same day the Deputy Commandant, 60 Battalion lodged a First Information Report with the officer-in-charge, Haflong Police Station and on 16.03.1999 all the appellants were suspended from service pending departmental proceedings against them. The appellants were thereafter issued a chargesheet with the allegations that while the appellants were deputed to function as escort party to the water tanker, they committed disobedience of orders, committed gross misconduct and displayed cowardice in execution of their duties and in their capacity as members of CRPF. The two articles of charges framed against them read as follows: -

"Article-I:-

".... Out of the two vehicles (Regn. No. DIG 3390 water truck (3/5 ton) and Regn. No. DL-IG 7976 escort vehicle) deputed with escort party was attacked by the militants by laying ambush. The above personnel instead of properly retaliating to the five of militants in said ambush ran away as well as hiding themselves in safe places by leaving the other escort party personnel trapped in the ambush and as a result of which five personnel namely, L/Nk. Harendra Chaudhary, L/Nk. Yaswant Singh, Ct. P.S. Madhvi, Ct. U. K.S. Gurung and Ct./Dvr. Jawahar Lal of the escort party belonging to this Unit were killed in the ambush on 13.3.1999 and their weapons and one wireless set were taken away by the militants. Their Act of running away from the place of occurrence which leads to their cowardice act in execution of duty in said incident of ambush instead of retaliating to the fire of militants to injure or kill them for safety of force personnel and arms ammunition and equipment is prejudicial, to good order and discipline of the Force."

Article-II:-

"... .That during the aforesaid period and functioning in aforesaid Unit..... They did not follow the orders/instructions issued to them as escort party Comdr. which were to be followed by them in case of any attack etc., by militants on escort party and vehicles of which they were the Commander. They also failed to keep proper command and control on their party personnel effectively by timely retaliating the fire of the militants during the ambush..... As such..... disobeyed the orders issued to

them in their capacity of commander of the party respectively and neglected in execution of their duties which is prejudicial to be good order and discipline of the Force."''

6. The departmental inquiry was thereafter initiated in terms of Rule 26 of the Central Reserve Police Force Rules, 1955 [for short "the Rules"]. On completion of the inquiry a report was submitted by the Inquiry Officer finding the appellants guilty of the charges framed but so far as L. Nk. Jai Shankar Sharma is concerned, the Inquiry Officer although found one of the charges proved but found the other charge only partially proved. After the submission of the said report to the disciplinary authority, viz., the Commandant and perusal thereof, the disciplinary authority passed the order of dismissal from service by order dated 13/15.1.2000.

7. Being aggrieved by the aforesaid order of dismissal passed against them the appellants preferred statutory appeals before the appellate authority, viz., the Deputy Inspector General of Police, CRPF. The said appeals were however dismissed, as against which the writ petitions were filed in the Gauhati High Court which were heard by the learned single Judge and he dismissed the writ petitions.

8. The appellants still aggrieved filed writ appeals before the High Court which were also dismissed in the aforesaid terms. Consequently, the present appeals were preferred on which we heard the learned counsel appearing for the parties.

9. Counsel appearing for the appellants submitted that there was violation of the principles of natural justice in the departmental proceedings as the appellants were not given the list of witnesses and that some witnesses were examined who were not even cited as witnesses in the said list. It was also submitted that no Defence Assistant was provided to the appellants for assisting them in the departmental proceeding. It was further submitted that although the Inquiry Officer found one of the charges only partially proved as against L/Nk Jai Shankar Sharma, however, the disciplinary authority without showing any reason for disagreement held the said charge as also wholly proved. It was also submitted that the charges were not read over to the appellants in terms of the mandatory Rule being Rule 27(c). One of the submissions on behalf of Sanjay Kumar Singh was that he was not granted any arms and ammunition and, therefore, the finding that he had violated the standing orders is wrong and illegal.

10. Counsel appearing for the respondents however took us through the entire records to support his submission that there was no violation of the principles of natural justice at all. He also submitted that no prejudice is caused to the appellants in the entire departmental proceedings in which reasonable opportunity was granted to the appellants at every stage and, therefore, the allegations are without any basis. He drew our attention extensively to the inquiry report submitted by the Inquiry Officer to support his contention that the appellants were provided with all opportunities to defend themselves. He also submitted that the punishments given to the appellants were commensurate with the offences alleged against them.

11. In order to appreciate the contentions put forth by the counsel appearing for the parties we have perused the records. A perusal of inquiry report would indicate that Inquiry Officer in his report apart from referring to the other materials on record also referred to the statements of the appellants. It has come on record that Sanjay Kumar Singh was driving the water tanker when he heard a sound.

12. L/Nk Jai Shankar Sharma thought that there was a tyre burst and, therefore, he got down but immediately after getting down he came to realize that there is an attack by the militants. Constable K.N. Paswan told Sanjay Kumar Singh that there was an ambush and when Sanjay Kumar Singh found that the escort vehicle was not coming, he continued to drive the water tanker for 15 Kms without even waiting for L/Nk Jai Shankar Sharma to reboard the vehicle and went to Haringajab Police Station from where he allegedly informed his Unit.

13. The statement of L/Nk Jai Shankar Sharma is to the effect that after getting down from the vehicle he retaliated the fire which was actually directionless and he ran after his vehicle but could not catch it as the vehicle moved forward. Therefore, he hid himself in a gorge and came out of his hiding place after 1-11/ hour when Shri S.S. Gohar came with a party from the battalion headquarter. L/Nk Jai Shankar Sharma also stated in his statement that although he was provided with 40 rounds but he could fire only 14 rounds during the said attack.

14. Head Constable Emmanuel Herenz, one of the appellants, also gave a statement that at the time of the attack; he jumped and took shelter in a banana grove. He admitted that he left his wireless set in the vehicle and that it was not in the vehicle when he came back.

15. Our attention was also drawn to the handbook of the CRPF which makes it mandatory for each of the constables to carry arms whenever they go out in a militancy infested area. Sanjay Kumar Singh although was a driver, he was also a constable and, therefore, he was bound by the aforesaid instructions issued. It is alleged that he did not follow the said instructions and, therefore, there was dereliction of duty and also misconduct on his part.

16. It appears that the driver of the escort vehicle, who was also killed, also did not carry any weapon with him and nor did Sanjay Kumar Singh, although, he was required to carry weapon with him. His only defence is that although others were provided with arms and ammunition in the Unit itself, he was not given any arms and ammunition. A CRPF personnel is expected to be properly armed in a militancy infested area so as to enable him to face all eventuality and the said arms are required to be collected while going to any place, according to command.

17. Sanjay Kumar Singh would have been justified in taking up a plea of the aforesaid nature if despite his asking for arms and ammunition was not provided any such arms and ammunition from the Unit. However, Sanjay Kumar Singh has not been able to prove that he had gone to the Unit where arms and ammunition are kept for taking it with him and also that he had in fact asked for it. There is nothing on record to show that Sanjay Kumar Singh had

exactly complied and followed the prescribed procedure and requested for giving him the arms as he was going out of the Unit. The aforesaid defence which is sought to be taken appears to be baseless.

18. So far the issue with regard to violation of the principles of natural justice in conducting the departmental inquiry is concerned, the aforesaid submission is made on the ground that the chargesheet was not read out and issued in accordance with the provisions of Rule 27(c) of the Rules. On going through the records we find that the chargesheet was issued to the appellants on 11th August, 1999 whereas the trial started only on 20.09.1999. Therefore, it was issued much before seven days as required to be done prior to holding of the trial.

19. So far the question of reading out the chargesheet is concerned, it appears that the chargesheet was read out when the trial commenced on 20th September, 1999 and the first witness HC Bahadur Singh was examined on 21.09.1999 whereas, the second witness was examined on 25.09.1999 and the next witness was examined on 29.9.1999. As the chargesheet was sent to the appellants on 11th August, 1999, therefore, they were fully aware of the contents of the chargesheet. So far as the issue with regard to the reading out of the chargesheet is concerned, the same could be read out only when the trial begins in order to find out whether the appellants plead guilty to the charges or not and immediately thereafter the trial commences. We do not see any prejudice caused to the appellants because one of the witnesses was examined in the trial before expiry of forty eight hours, particularly in view of the fact that the appellants were made aware of the contents of the charges much prior.

20. In our considered opinion, no prejudice is caused to the appellants for not giving 48 hours after reading out the charges to them. Only one witness was examined within that 48 hours period whereas the next two witnesses were examined beyond the 48 hours period. The appellants have not been able to show any prejudice caused to them due to examining of Bahadur Singh on 21.09.1999.

21. It was also submitted that no Defence Assistant was provided to the appellants as required under the provisions of the Rules. It is true that a Defence Assistant is to be provided by the authority to assist the delinquent officer in conducting the inquiry but in the present case the records disclose that the appellants were asked as to whether they would require any Defence Assistant for their aid and assistance. Each one of them has specifically stated in the inquiry proceedings itself that they do not need any Defence Assistant. They have in fact cross-examined the witnesses themselves, for which opportunity was granted to them.

22. So far as the contention of the Counsel appearing for the appellants that some of the witnesses whose names were not mentioned in the list of witnesses were examined is concerned, we find that a list of witnesses was also supplied to the appellants along with the chargesheet issued to them. Therefore, the appellants were fully aware as to who were the persons who are going to be examined in the proceeding. There were of course two witnesses who were not specifically named in the list of witnesses but when we refer to the list of witnesses the same makes it clear and prove that in that list it has categorically been

mentioned that there could be any other witness, other than those who are cited specifically in the list.

23. We may here refer to the decision of this Court in *Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar & Ors. reported in*<sup>1</sup> wherein this Court has held that unless and until it is shown that prejudice has been caused it cannot be said that the inquiry proceeding is vitiated or that there is any violation of principles of natural justice. To the same effect is the decision of this Court in the case of *Union of India & Ors. v. Alok Kumar reported in*<sup>2</sup>

24. So far as the departmental proceedings are concerned it is for the departmental authorities to conduct an inquiry in accordance with the prescribed Rules. The role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record.

25. In the present case two Benches of the High Court after looking into the records have found that there is no violation of the principles of natural justice and that the charges have been established against all the appellants and that the punishment awarded is not disproportionate to the offences alleged. After the said findings have been recorded by the learned Single Judge and the Division Bench, there is hardly any scope for this Court to substitute its findings and come to a different conclusion, by re- appreciating the evidence. The findings recorded by the Benches of the High Court are concurrent findings and the same cannot be interfered with lightly.

26. In our considered opinion, to re-appreciate the evidence and to come to a different finding would be beyond the scope of Article 136 of the Constitution of India. Therefore, we hold that the judgment and order passed by the High Court suffers from no infirmity.

27. Accordingly, the appeals have no merit and are dismissed but without any order as to costs.

Judgment Referred.

<sup>1</sup>(1993) 4 SCC 0727

<sup>2</sup>(2010) 5 SCC 0349