



**J U D G E M E N T**

In this Application, being O.A. No. 351 of 2015, the Applicant has, inter alia, prayed for a direction upon his Disciplinary Authority, namely, Respondent No. 3, i.e. the Inspector General of Police (Headquarters), Government of West Bengal, to supply him the relevant additional and/or documents along with formal charge sheet and to include the police personnel, who are related with the incident and documents, as P.W.'s in the Departmental Proceeding, dated 18-11-2011 against him.

2. The case, in short, is that the Applicant joined as Inspector in charge of Lalgarh P.S. in Paschim Midnapur district on 06-09-2009. According to the Applicant, it was then the most sensitive and vulnerable police station in the Jangalmal area in Paschim Midnapur district as it was completely dominated by the CPI (Maoist) left wing extremist group who had unleashed a reign of terror in the area. As a result, the common people were scared to even come to the police station to give any sort of information. In fact, several people had to leave the village to save their life. To combat the situation, a number of CRPF camps had been set up in that area and a post of Deputy Superintendent of Police was specially created at Lalgarh curb the activities of the extremist groups. In this backdrop, movement of force for any outside duty was to be carried out as per guideline of the Standard operating procedure that included verification of information, mobilization of force, briefing of force, movement plans, probable ambush point etc.

3. It is the Applicant's case that on 07-01-2011, at about 9-30 hours, a telephonic message was received by the on duty officer of Lalgah P.S. from some unknown caller that firing was going on at Netai village for which police force was needed immediately. On receiving the information, the Applicant, after observing the standard operating procedure, arranged for joint force, comprising CRPF and police personnel, and reached Netai village at about 12-15 to 12-30 hours and took all necessary measures to bring the situation under control. He discharged his duties in a fair and impartial manner, in accordance with the standard operating procedure, without waiting for any formal FIR. Despite that, a Departmental Proceeding was drawn up against him and a show cause notice was issued to him by the then Superintendent of Police Paschim Midnapur vide memo dated 10-01-2011. In reply to the show cause notice, he submitted a written explanation dated 10-01-2011 together with a list of fire arms and explosives recovered in course of his operation and seizure.

4. The then DIG, MR also visited Netai village on 07-01-2011 to supervise the incident and thereafter he recorded in the Lalgah P.S. inspection register that there was allegation against the Applicant that he did not move to the place of occurrence promptly despite being informed at 9-30 hours in the morning. The security force reached the spot at 12-30 hours only.

5. Appearing on behalf of the Applicant, Mr. Masud Karim, Learned Counsel, submitted that subsequently the Disciplinary Authority, with ulterior motive, issued a memo with Articles of charge against the Applicant on 25-10-2011. But no formal charge sheet was issued. The charges are vague and

non-specific in nature. On being directed to reply to the charges, the Applicant denied the charges and prayed for an open enquiry. He also requested on several occasions to supply him the relevant documents including preliminary enquiry report, statements of the P.W.s etc. recorded in course of the preliminary enquiry against him, but to no effect.

6. Mr. Karim further submitted that the articles of charge and statement of allegations against the Applicant were issued by annexing some documents that have no relation with the listed witnesses. The documents on which the prosecution has sought to rely to establish their charges were full of erroneous entries and far removed from the charges. Certain crucial documents, such as, G.D. of Lalgarh P.S. from 7-30 hours on the material date were not supplied to the Applicant despite several representations. The Disciplinary Authority, arbitrarily and with a closed mind, refused to supply relevant documents without any cogent reason and thereby violated the basic principle of natural justice.

7. Continuing further, Mr Karim submitted that strangely enough the Respondent Authorities have alleged that the Applicant reached the spot 07-01-2011 at about 12-15 to 12-30 hours despite receiving information at about 7-30 hours on 07-01-2011. On the contrary, the actual position is that the information regarding the incident in question was received at Lalgarh P.S. at about 9-30 hours only on 07-01-2011. In fact, the prosecution side as well as Disciplinary Authority have evidence/documents in the possession to show that the Applicant received information about the incident on 07-01-2011 at about 9-30 hours only. This reveals the mala fide intention of the Disciplinary

Authority and his prejudice and bias against the Applicant. Records will reveal that the Respondent Authorities were well aware of the actual position because the State Government has affirmed before the Hon'ble Calcutta High Court that information regarding the unfortunate incident at Netai was received by the Duty Officer in the Lalgadh P.S. at about 09-30 A.M. Furthermore, the Disciplinary Authority, with a closed mind, did not allow the prayer of the Applicant to include the concerned police/Government personnel in the list of P.W.s and thereby denied him the reasonable opportunity of hearing. This apart, all the prosecution/listed witnesses are private witnesses and have no connection with the listed documents. Moreover, the statements of the P.W.s listed in the statement of allegations were not supplied to the Applicant despite repeated requests. Thus, the Applicant was prevented from knowing the exact nature of the allegations of the individual witnesses against him. This is a gross violation of the principle of natural justice, Mr. Karim pleaded. The mal intent of the Respondents is manifest from the fact that they have chosen to depend solely on third party not connected with the allegation than to produce direct witnesses, with a close mind to hide the truth.

8. As his earlier prayers failed to evoke any response from the authorities, the Applicant submitted one more representation dated 18-08-2014 to the authority concerned bringing out clearly the reasons for which the documents prayed for were required by him for his defense, but to no effect. Mr. Karim contended that the preliminary report is the basis and foundation of the allegations based on which the charges have been drawn up against the Applicant. It is, therefore, imperative that the same is made available to the

Applicant or else the entire departmental proceeding will be vitiated. It is also violative of the principle of fairness and natural justice.

9. Mr. Karim also submitted that the representation of the Applicant dated 18-08-2014 was forwarded by the Enquiry Officer to the Disciplinary Authority. From this it is implicit that he agreed with the points raised by the Applicant regarding the relevance of the documents prayed for by him. Despite that, the Disciplinary Authority refused to supply him the said documents without any cogent reason and thereby not only denied natural justice to the Applicant, but also influenced the Enquiry Officer in the conduct of the enquiry. Consequently, the Enquiry Officer, vide his letter dated 12-09-2014, disposed of the representation of the Applicant by simply refusing his prayer for the documents needed by him for his defense.

10. Continuing further, Mr. Karim stated that being aggrieved, the Applicant preferred a representation to the Revisionary Authority, i.e. Home Secretary, Government of West Bengal for necessary direction upon the concerned authorities to supply him the relevant documents as prayed for, but to no effect. This is unfortunate for unless the prayer of the Applicant for inclusion of the relevant persons in the list of witnesses as well as for supplying him the relevant documents as prayed for is accepted, there will be a gross violation of natural justice. It is, therefore, imperative that the Tribunal may kindly issue necessary direction upon the Respondents in terms of the reliefs prayed for by the Applicant in this application.

11. Reply and rejoinder have been exchanged between the parties. In the reply filed by the Respondents, it has been stressed that despite getting information on 07-01-2011 between 7-30 to 8-00 hours from one Shri Banabehari Roy, resident of Lal Bazar under P.S. Lalgah, village Netai, about the unlawful assembly of gunmen in the house of Rathin Danpat as well as assembly of some villagers protest against compulsory arms training, the Applicant did not rush to the spot immediately for prevention of any untoward incident and for maintenance of public peace and order. On the contrary, he reached the place of occurrence after a long time resulting in killing of 9(nine) innocent villagers and serious injury to 28(twenty eight) of them by the gunmen because of the failure on the part of the police in reaching the spot in time. Accordingly, Departmental Proceeding, being CID, West Bengal unit proceeding No. 06/2011 dated 18-11-2011, was drawn up against the Applicant for his failure to maintain absolute integrity and devotion to duty.

12. Appearing on behalf of the State respondent, Mr. Soumendra Narayan Roy, Learned Counsel, disputed that the charges against the Applicant are vague and non-specific in nature. On the contrary, the charges, he said, have been framed in lucid, simple and easily understandable language indicating clearly the list of witnesses and the documents that will be relied upon to prove the charges. The enquiry has made considerable progress and the Charged Officer, namely, the Applicant, has been given liberty to cross-examine the witnesses.

13. Continuing further, Mr. Roy submitted that it is not fair for a Charged Officer to expect that the defence elements would be narrated while

the charge is framed. Once the examination of P.W.s is over and the defence part starts, the Charged Officer may demand production of any document that he considers necessary. At that time, copies of such documents will be supplied to him as are relied upon during the enquiry. In the present case, however, the Applicant has requested for copies of documents and inclusion of some govt./police officers in the list of witnesses. The Respondents are not bound to accept such request under the rules. The E.O. is the appropriate authority to decide which documents are relevant. The C.O. may only cause to produce such documents as are relied upon during the enquiry. The prayer of the C.O. in this case has been rejected by the Enquiry Officer as well as the Disciplinary Authority adducing reasons for such refusal. As regards the prayer of the Applicant to include some witnesses (Police/Govt. personnel) as P.W.s, it is the discretion of the E.O. to do so, if he deems it necessary. The C.O. may, however, produce these persons as D.W.s when called upon to present his defence. The action of the Respondents is, therefore, in accordance with the established rules and practices and the question of violation of the principle of natural justice, as alleged by the Applicant, has no basis whatsoever. The present application is mala fide and vexatious and as such is liable to be dismissed.

14. Refuting the contentions of the Respondents, the Applicant, in his rejoinder, pointed out that out of 16 P.W.s listed in the charge memo, the name of only one P.W., namely, Banabihari Ray, has been highlighted, but neither the copy of his statement nor the statements of other P.W.s have been supplied to him despite several representations before the E.O. and other concerned authorities. The statements of the P.W.s, whose statements were



recorded during the preliminary enquiry, are essential to defend his cause. The prosecution side has never contended that the documents prayed for by the Applicant are irrelevant or unavailable with them or that these cannot be disclosed on the ground state security. In fact, the Respondents have never explained as to why these relevant documents as prayed for by the Applicant cannot be supplied to him. The refusal on the part of the Respondents to supply these documents to him is a gross violation of the principle of natural justice. It is well settled that a person against whom an action is proposed must be afforded with an opportunity of hearing. Such opportunity must be an effective opportunity and not a mere pretence. Calling upon a charged officer to submit his reply without supplying him the relevant documents cannot be said to be an effective opportunity. Preliminary enquiry, Mr Karim submitted, often constitutes the principal basis of the charge sheet. Therefore, before a person is called upon to submit his reply to the charge sheet against him, he must, on a request made by him in that behalf, be supplied with copies of statements of the witnesses recorded during the preliminary enquiry, particularly if those witnesses are proposed to be examined in course of the departmental enquiry. This principle has been reiterated in Hon'ble Court from time to time and non compliance of it would vitiate the proceeding. In support of his contention, Mr. Karim cited the judgement of the Hon'ble Apex Court in *State of Punjab Vs. Bhagat Ram* (1974 AIR 2335; SCR 1975 (2) 370), *Chandrama Tewari Vs. Union of India* (1987 (Supp) SCC 518); *Kashinath Dikshita Vs. Union of India & Ors.* ((1986) 3 SCC 229), *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) Through Lrs.* ((1982) 2 SCC 376) as well as in *State of U.P. Vs, Shatrughan Lal & Anr* (JT 1998 (6) SC 55) wherein it has

been held that refusal to supply relevant documents amounts to violation of natural justice.

15. Relying on the above, Mr. Karim urged that the reliefs sought for by the Applicant in the instant application are absolutely valid and proper and, therefore, the Tribunal may kindly consider and allow them by issuing appropriate directions upon the Respondents in the interest of fairness and justice.

16. We have heard the rival submissions of both sides and have also perused the records.

17. From the materials on record, it transpires that despite repeated requests from the side of the Applicant, the Respondents have been reluctant to furnish him with the relevant G.D. entries for the date of fateful incident at Netai (namely, 07-01-2011) and the preliminary enquiry report as well as the statements of the witnesses recorded during the preliminary enquiry, including those who have been included in the list of PWs in the departmental proceeding against him. It is only after the intervention of this Tribunal (vide its order dated 04-08-2016, that the Applicant was provided with all the relevant G.D. entries pertaining to the date of occurrence of the incident in question (i.e. 07-01-2011). Earlier the Applicant was provided with G.D. entries for 07-01-2011 starting from 14:30 hrs while the Applicant was insisting on having all the entries on the said date including the entries recorded prior to 14:30 hrs. However, it was not done until the Tribunal specifically directed the Respondents to do so. In fact, the submission on

behalf of the Respondents on this issue before this Tribunal was quite misleading inasmuch as on 17-06-2016, it was submitted by Mr. Roy, Ld. Counsel for the Respondents, that entry in the G.D. Book on 07-01-2011 started from 14:30 hrs. only and, therefore, all the entries of that particular date in the General Diary had already been furnished to the Applicant. But later on 04-08-2016 when the G.D. Book was produced before this Tribunal, it was seen that the first entry on 07-01-2011 was under Sl. No. 228 recorded at 08.00 hrs. In fact, entries having relevance in the instant application started from entry no. 232 which was recorded at 08.35 hrs. Therefore, it is abundantly clear that the submission of Mr. Roy on this score was not factually correct and that entry no. 232 to entry no. 244 dated 07-01-2011 were deliberately held back from the Applicant till this Tribunal directed to the contrary.

18. As regards the preliminary enquiry report, the position is even more intriguing. It is seen from page 66 of this Original Application that the Deputy Inspector General of Police, Presidency Range, vide his letter dated 29-06-2012, had informed the Applicant that copy of the preliminary enquiry report as prayed for by him cannot be supplied to him as the said report is not cited in the statement of allegations. In the light of the said letter dated 29-06-2012, this Tribunal, in its order dated 17-06-2016, observed that “The letter dated 29-06-2012 of the Deputy Inspector General of Police, Presidency Range (Page-66) makes it clear that there was a preliminary enquiry report. That preliminary enquiry was obviously held for initiation of the departmental proceeding.” With the aforementioned observation, the Tribunal directed Mr. S. N. Roy to place the preliminary enquiry report before it for examination

whether it has got nexus with the departmental proceeding initiated against the Applicant or not. On the next date of hearing i.e. on 04-06-2016 also, the Tribunal reiterated its direction. Pursuant to the direction of the Tribunal, Mr. Roy, in fact, submitted before this Tribunal on 01-12-2016, that he has brought the preliminary enquiry report as directed. However, as there was no quorum on that date, the Tribunal advised him to produce the same on the next date. It is indeed a matter of great surprise that all on a sudden, on 10-05-2018, Mr. Roy submitted before this Tribunal that there was no preliminary enquiry report and, therefore, the Respondents are not in a position to produce the same as directed by the Tribunal.

19., Thus the submissions of the State on different dates have been so conflicting that we find it difficult to reconcile them. Their conduct, to say the least, is questionable and it appears to us that they are reluctant to share certain relevant documents with the Applicant in violation of the spirit of a fair and impartial proceeding. We strongly deprecate such action and their apparent effort to mislead the Tribunal and waste its valuable time disrupting the process of speedy justice.

20. In view of the above, having regard to the factual matrix of the present case and the materials on record, and in the light of the we consider it fit and proper to hold that even if there is no formal preliminary enquiry report, if the statements of the PWs listed in the statement of allegations were recorded in course of the preliminary enquiry, then in view of the ratio laid down by the Hon'ble Apex Court in the cases referred to in para 14 above, the Applicant is entitled to receive the same for the purpose of cross-examination.

Accordingly, we direct the Respondents, in particular, Respondent no. 3, namely, the Additional Director General (E) holding additional Charge of Inspector General of Police (Hq), Government of West Bengal, to take steps so that the statements of the PWs listed in the statement of allegations, if recorded in course of the preliminary enquiry, are made available to the Applicant within 4 (four) weeks from the date of communication of this order. The departmental proceeding currently stayed vide order dated 24-06-2015 may be resumed after compliance with this direction

21. Before we conclude, we would like to place on record our displeasure in regard to the conduct of the State Respondents in this case, which, in our opinion, is not only questionable but highly exceptionable. They have made every effort to mislead the Tribunal to make it difficult for us to even ascertain if at all there was a preliminary enquiry report. It was crucial for us to know the correct position in this regard for proper adjudication of the issues before us. But the contradictory and misleading submissions on behalf of the State have frustrated our endeavour, made our task immensely difficult and wasted valuable time of this Tribunal. If indeed there was no preliminary enquiry report, why then the authorities chose to enter into protracted correspondences with the Applicant rejecting his prayer on the ground that the preliminary enquiry report prayed for by the Applicant will not be supplied to him since it is not a part of the documents cited in the statement of allegations against him. If there was no preliminary enquiry report, then how could Mr. Roy, on behalf of the State, submit before this Tribunal on 01-12-2016 that he has brought the preliminary enquiry report, as directed. If there was no preliminary enquiry report, why then the Applicant was not informed accordingly when he

was repeatedly praying for it. In our opinion, the conflicting submissions of the Respondents in this case leaves room for genuine doubt regarding the veracity of their submissions and raises many pertinent questions to be answered. Their conduct, we feel, has been far from satisfactory and does not reflect well on the State. We are, particularly astonished that apparently the Respondents, including Respondent no.3, who is the Disciplinary Authority in this case, were, until recently, not even aware whether there was any preliminary enquiry report or not. We, therefore, wish to place our displeasure on record and also direct that a copy our order be sent by the Learned Registrar to the Chief Secretary, Government of West Bengal for taking appropriate action against the errant officials.

22. The O.A. is disposed of with the above direction. No costs.

**DR. A.K. CHANDA**  
**MEMBER (A)**

**URMITA DATTA (SEN)**  
**MEMBER (J)**

