

(1973) 06 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 781 of 1971

Bairagi Charan Bisoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 309
Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 — Rule 8, 9
Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13

Citation : (1973) 39 CLT 820

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik and S.K. Biswal, for the Appellant; A.G. and Standing Counsel (Transport), for the Respondent

Judgement

B.K. Ray, J.—There has been analogous hearing of these two petitions as the points involved are common to both. This judgment therefore will govern both the cases.

2. .The Petitioner in O.J.C. No. 781 of 1971 was the Superintendent and the Petitioner in O.J.C. No. 782 of 1971 was a Gr. I assistant in the office of the State Transport Authority under the Govt. of Orissa. While the Petitioners were working as such, there was an allegation against them and some others that they misconducted themselves by misrepresenting that truck No. ORC. 5111 belonging to Smt. Urmila Devi, was below 25, 000 lbs. laden weight; whereas, actually according to the registration certificate produced before them, the truck had a laden weight of 26, 680 lbs. with a view to allow Smt. Urmila Devi in procuring a permit to ply the truck in all motorable roads in the district which gave her pecuniary benefit which she could not have otherwise got to the detriment of the public properties and damage to the public roads. On the aforesaid allegations a charge was framed against the Petitioners and some others and an enquiry was commenced against them by the Member, Administrative Tribunal, Orissa in case No. A T-10/66.

3. The defence of the Petitioners as well as other co-delinquents was the same, and so, there was a common enquiry against all. In the enquiry, the Administrative Tribunal found the Petitioners guilty and recommended stoppage of one increment with cumulative effect and of promotion for five years of each of the Petitioners (vide Annexure-2). The Deputy Commissioner (Transport), Orissa, Cuttack passed the final order of punishment (Annexure-4) in terms of the recommendations of the Tribunal. Both the Petitioners thereafter filed these two petitions under Articles 226 and 227 of the Constitution at India for a declaration that the order of punishment passed against them was illegal, inoperative and without jurisdiction and for other appropriate reliefs.

4. The opposite parties in both the cases in their counter, while denying all the allegations of fact made in the two writ petitions, have asserted that the impugned order is legal and valid.

5. At the time of hearing, Mr. P. Palit, learned Counsel for Petitioners raised the following contentions viz. (a) the final order of punishment (Annexure-4) being one under Rule 9 of the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 and there being no guide line in the same Rules about the nature of the punishment to be recommended by the Administrative Tribunal, Rules 8 and 9 of the said Rules are violative of Article 14 of the Constitution of India ;(b) impugned punishment is directly violative and in excess of Rule 13(iii) of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 and (c) the findings of the Administrative Tribunal relating to the charge are based on no legal evidence.

6. So far as the first point raised by Mr. Palit it is concerned, it is not disputed that the Administrative Tribunal is a recommending authority and is not the final authority in imposing punishment. The Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 are a set of Rules framed by the Governor of Orissa in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. These Rules elaborately deal with different types of punishments that can be imposed on Government servants. The constitutionality of these Rules is not challenged by Mr. Palit. These Rules provide sufficient guide line for different punishments to be inflicted. Such being the position, it has to be held assuming that the Administrative Tribunal Rules do not provide any guide line, the authority inflicting punishment has to be guided by the provisions of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. In this view, therefore, we do not find any merit in the contention raised by Mr. Palit.

7. Coming to the second point urged by the Petitioners, reliance is placed on Rule 13(iii) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. According to Mr. Palit, the above rule enumerates different punishments to be inflicted on a Government servant for good and sufficient reasons. In Rule 13(iii), the punishment indicated is withholding of increments or withholding of promotion. What Mr. Palit wants to say is that it is open to the punishing authority to punish a Government servant either by withholding increment or

withholding promotion and the punishing authority is not competent to punish the Government servant in both the ways simultaneously on any particular occasion. We do not think that such a contention is tenable. The opening word of the Rules read thus:

The following penalties may for good and sufficient reasons and as hereinafter provided be imposed on a Government servant.

These words indicate that it is open to a punishing authority to impose any one or more of the penalties enumerated in the Rules. In our view, there is no bar for the punishing authority to impose two of the penalties enumerated in the Rules simultaneously. The punishment of withholding of increment is not an alternative for punishment of withholding of promotion. Instead of repeating in another item the punishment of withholding of promotion, both the punishments, viz. withholding of increment and withholding of promotion have been placed under one entry. This disposes of the second point raised by Mr. Palit.

8. Regarding the third point, it is necessary to state the law before entering into its merit. The High Court in a proceeding under Article 226 of the Constitution of India is not a Court of appeal over the decision of a departmental authority holding departmental enquiry against a public servant. It is only concerned to see whether the authority holding the enquiry is competent to do it, whether the procedure prescribed has been followed and whether the rules of natural justice have been violated. Where there is some evidence which the authority holding the enquiry has accepted and which evidence may reasonably support the conclusions arrived at by the authority, it is not the function of this Court to review the findings and arrive at a different conclusion. Where the inquiring authority has disabled itself by considerations extraneous to the evidence or where the authority has been influenced by irrelevant considerations or where the conclusion reached by the authority is so arbitrary and capricious that no reasonable person would have arrived at that conclusion, there would be justification for this Court to interfere. Where a tribunal having jurisdiction to decide a matter arrives at a finding of fact, such a finding is not open to be challenged in a petition under Article 226 of the Constitution of India unless the said finding is shown to be wholly unwarranted by evidence. The findings of fact reached by a tribunal as a result of appreciation of evidence cannot be reopened in writ proceedings. Where a finding of fact arrived at by a tribunal is based on no evidence that would be regarded as an error of law which can be corrected by this Court by issuing an appropriate writ. Keeping in view this position of law, Mr. Palit's last contention has to be examined. It may be stated in this connection that strict rules of evidence as laid down in the Indian Evidence Act Even if not applicable to a proceeding before the Administrative Tribunal, the Member of the tribunal must not disregard the crucial rules of evidence founded upon fundamental principles of natural justice and public policy. It is on account of this Mr. Palit contends that the tribunal is not entitled to indulge in conjectures and surmises and base its findings on them. In other words, what Mr. Palit wants to

say is that the findings arrived at by the tribunal are not supported by any evidence, but are based on conjectures and surmises which are not legal evidence. Although the soundness of this proposition advanced by Mr. Palit is not open to doubt, we are afraid, we cannot agree with him when he says that the findings of the tribunal against the Petitioners are only based on conjectures and surmises and on no evidence at all. It may be mentioned once again that the charge against the Petitioners is that they misconducted themselves by wilfully misrepresenting that the truck No. ORC-5111 was below 25,000 lbs. Laden weight when according to the registration certificate produced it had a laden weight of 26,000 lbs. with a view to allow the owner of the truck in procuring a permit to ply the truck in all motorable roads in the district which gave the owner pecuniary benefit which the owner could not have got to the detriment of public properties and damage to public roads. The evidence led in this case before the Tribunal discloses that it was decided in a meeting of the S.T.A. on 14-3-1964 that public carriers having R.L.W. higher than 25, 000 lbs. should not be allowed to ply on any motorable road, except on State highways and National highways. There is no dispute that the Petitioners were servants under the S.T.A. at that time. It appears from the evidence that one Urmila Devi made an application for a temporary permit for three months for her vehicle O.R.C. 5111 mentioning therein that R.L.W. of her vehicle was 33,600 lbs This application was received on 10-2-1964 and after due scrutiny a temporary permit was granted to her on 17-2-1964, i.e. before the aforesaid decision of the S.T.A. dated 14-3-1964. Thereafter, as disclosed from the evidence, Smt. Urmila Devi again applied for a permanent permit for all motorable roads for her same vehicle falsely mentioning in her application that the laden weight of her vehicle was approximately 24, 820 lbs Thereafter, notice was issued for production of R.C.I.C. and F.C. by 30-4-1964 and the order-sheet of the case reveals that the said papers were received in the office by post and were verified by Petitioner Sri P.K. Misra who made a note that the vehicle had R.L.W. of 24, 880 lbs Next day, the Petitioner Sri R.C. Bisoi again verified the documents and endorsed the note of Petitioner P.K. Misra whereafter Sri G.C. Parija as Secretary remarked that the documents were valid and permanent permit be issued to the vehicle for all motorable roads. It was on this recommendation a permanent permit was issued to the vehicle in question. The main defence of the Petitioners is that a certified copy of R.C. mentioning that the laden weight of the vehicle to be 24,880 lbs. Had actually been produced and this figure having tallied with the figure mentioned in the application, the Petitioners remarked in the note-sheet that the documents were valid. Evidence has been led by the Petitioners to show that certified copies mentioning wrong laden weight for different vehicles are issued by the police office. On the basis of this evidence, it is contended by the Petitioners that it was incumbent on the department to prove if certified copy of R.C. had been issued by the police office in respect of the vehicle in question, and if so, what was the laden weight mentioned therein. It is further contended that the department should have at least examined the owner of the vehicle or her agent in support of its case against the Petitioners. Since the department did not take any step to

produce evidence to the effect that no certified copy of R.C. for the vehicle in question had been issued by the police and did not examine the, owner of the vehicle or her agent, the Petitioners could not have been found guilty. The original certificate produced before the tribunal shows that the laden weight of the vehicle was more than 25,000 lbs the order-sheet of the case written in the hand of the Petitioners does not show that certified copies of documents verified by them were only produced and not their originals. Hence, in our view, there is no force in the contention of the Petitioners that they verified only the certified copies and not the originals. As according to us, the original certificates had been produced for verification by the Petitioners, the latter deliberately gave false reports by saying that they were valid, even assuming for the moment that the Petitioners were not aware of the S.T.A.'s decision dated 14-3-1964. Even without knowing the said decision of the S.T.A. it was still incumbent on the Petitioners to say at the time of verification that the weight as given in the certificates did not tally with the weight as given in the application. By not doing that the Petitioners definitely misconducted themselves in their official duties. The order-sheet showing that the original were produced is a very important piece of material evidence relied upon by the tribunal. If on the basis of this evidence the tribunal said that the Petitioners misconducted themselves when they said after comparing the original certificates with the application that the documents were valid, we cannot find any fault with the tribunal and it cannot be said that such a finding is without any legal evidence. Regarding Mr. Palit's contention that it was for the department to examine either Smt. Urmila Devi or her agent in support of the charge, we cannot accept the same, because there being sufficient materials before the tribunal to come to a finding that the charge against the Petitioners was established, no duty was cast on the department to examine either Smt. Urmila Devi or her agent. Mr. Palit thereafter has taken us through other items of evidence led before the tribunal and on the basis of such evidence argues that those items of evidence do not justify the conclusion of the tribunal. It is needless for us to say whether the conclusions of the tribunal actually flow or not from these items of evidence to which our attention has been drawn. Law as pointed out earlier is well settled that inadequacy or insufficiency of evidence is no ground to set aside the findings of the tribunal. When there is some acceptable evidence, and as we have already held that such evidence does not exist, we refrain from making any observation with regard to the other items of evidence to which our attention has been drawn, because these items of evidence do not at least contradict the other evidence relied upon by the tribunal for coming to its findings. After careful examination of the entire evidence on record, we are also satisfied that the tribunal had enough materials before it to come to a finding that the Petitioners were aware of the decision of the S.T.A. dated 14-3-1964 by the time they dealt with the application of Smt. Urmila Devi for grant of a permanent permit. Consequently, the last contention of Mr. Palit that the findings of the tribunal to the effect that the Petitioners are guilty of the charge is not supported by any evidence fails.

9. In the result, the petitions are dismissed having no merit. In the circumstances, however, we do not make any order for costs.

R.N. Misra, J.

10. I agree.