
(2005) 02 GAU CK 0089
In the Gauhati High Court
Case No : Writ Petition (C) No. 240 of 2003

Bhajan Chandra Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 16
Constitution of India, 1950 — Article 311(2)

Citation : (2005) 2 GLT 260

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : A.K. Bhowmik and S. Ghosh, for the Appellant; S. Deb and S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The Petitioner was an Upper Division Clerk (UDC) in the office of the Forest Department who faced a departmental proceeding under the CCS (CCA) Rules, 1965 on the charge of abusing and misbehaving with one Chandan Kumar Nandi, Typist in the office of the Inquiring authority on 10.3.2000 where he went to collect a document under instruction of the Divisional Forest Officer (DFO), Working Plan Division No. II with whom he was attached. He challenged the proceeding in W.P. (C) No. 11 of 2003 which was disposed of on 11.6.03 with direction to complete the proceeding within a period of 45 days from the date of the order with a further stipulation that if the proceeding was not completed within a period of 45 days for reasons not attributable to any conduct of the Petitioner, the said writ petition would be survived. The proceeding was concluded within that period by issuing a final order on 25.7.03 imposing a penalty of withholding of one increment for a period of two years without cumulative effect. A copy of the enquiry report dated 25.7.03 along with the order of penalty passed on the same date were served upon him on 1.8.03. In this writ petition, the Petitioner has challenged the enquiry report and the order of penalty and prayed for quashing the same with a further direction to revive

W.P. (C) No. 11 of 2003.

2. The grievance of the Petitioner is that by judgment dated 13.3.01 in the Civil Rule No. 394/94, this Court directed for completion of the disciplinary proceeding against the Petitioner within a period of four months and on conclusion of the disciplinary proceeding if he stands exonerated the authority would consider his case for promotion to the rank of Accountant/O.S. and if found suitable necessary order of promotion should be passed with effect from the date when his juniors were promoted with all consequential benefits and this exercise should be completed within a period of 45 days from the date of completion of the disciplinary proceeding. The proceedings which were the subject matter of the said Civil Rule had ended favourably exonerating him from the charges, but the Respondents did not promote him and thus, wilfully violated the aforesaid directions. This prompted him to file a contempt petition being Cont. Case (C) No. 30/02 which was disposed of on 11.6.03 with a direction that on the completion of the departmental proceeding which is the subject matter of W.P. (C) No. 11 of 2003 and depending on the outcome of the said proceeding, the directions contained in the order dated 13.3.01 of Civil Rule No. 394 of 1994 should be implemented within a period of 15 days from the date of completion of the said proceeding. But the proceeding having been gone against him imposing a penalty of withholding of one increment the aforesaid directions to consider his promotion were not implemented depriving him of the benefit of promotion and this has happened due to the impugned order which is illegal and void as it was passed without supplying him a copy of the enquiry report before passing of the final order denying thereby the right to defend and to natural justice.

3. The Respondents raised to dispute about the factual position as adumbrated by the Petitioner but continued that by non-furnish-ing of copy of the enquiry report before passing of the final order of penalty, no prejudice was caused to him as the penalty was a minor one and for imposing a minor penalty, the authority could resort to the short-cut procedure under Rule 16 of the CCS (CCA) Rules instead of Rule 14 there of and such short-cut enquiry does not provide for supply of copy of the enquiry report.

4. The short questions this Court is called upon to decide in the above premises are (I) whether it is mandatory on the part of the disciplinary authority to supply a copy of the enquiry report to the Petitioner even if the penalty proposed is a minor one; (II) whether non-furnishing a copy of the enquiry report amounted to denial of reasonable opportunity and violation of natural justice causing prejudice to the Petitioner; (IE) Whether the entire proceeding has been vitiated only for non-furnishing of the enquiry report.

5. I have heard Mr. A.K. Bhowmik, learned Sr. counsel assisted by Mr. S. Ghosh, learned advocate for the Petitioner and Mr. S. Deb, learned Sr. counsel assisted by Mr. S. Chakraborty, learned advocate for the Respondents.

6. Mr. Bhowmik canvassed his grounds of attack mainly and only on non-

furnishing of the enquiry report to the Petitioner which, according to him, has vitiated the entire proceeding. Admittedly, the enquiry report was dated 25.7.03 and on the same date the disciplinary authority passed the order imposing penalty of withholding of one increment and copies of both were supplied to the Petitioner only on 1.8.03 which is a flagrant violation of the law laid down by the Apex Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, As the very purpose of supplying a copy of the enquiry report is to give reasonable opportunity to the delinquent to defend against the findings contained in the report, it is the supply of a copy to the Petitioner after passing of the final order amounted to no supply meaning thereby no reasonable opportunity to the Petitioner. In the aforementioned case, the ratio laid down by the Supreme Court in para 25 is that the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the enquiry, namely, before disciplinary authority takes into consideration the findings in the report. This right is distinct from the right to show cause against the penalty imposed. The first right is the right to prove innocence while the second right is to plead for either no penalty or lesser penalty. Though the second right has been taken away by the 42nd Amendment, the first right to represent against the findings in the enquiry report still survives and denial of such right violates natural justice.

7. Mr. Deb, on the other hand, made a fairly robust argument that in a case of minor penalty, furnishing of a copy of the report is not mandatory and that in the instant case, a copy was furnished after the final order which certainly provided an opportunity to the Petitioner to represent before the Court how he was prejudiced for non-receipt of the report before the final order. In support of his contention, he also relied on the same judgment of the Supreme Court in *Managing Director, ECIL's case (supra)* which set at rest many important controversies relating to furnishing of enquiry report after analyzing the ratio decided by it in *Union of India and others Vs. Mohd. Ramzan Khan*, While dealing with the basic question whether report of the enquiry is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise and the punishment, if any, to be awarded to him, the Apex Court discussed and decided the incidental questions. A careful appreciation of the decisions and observations of the Supreme Court shows that unless prejudice is caused, the non-furnishing of a copy of the report cannot be said to have vitiated the proceeding in anyway.

8. Situated thus, the question raised in this case is found to have been squarely covered by the aforesaid decision of the Apex Court relied upon by both the parties. As regards the question whether furnishing of a copy of the report to the Petitioner is mandatory even in a case of minor penalty, the Supreme Court appears to have answered it in the affirmative. In para 30 of the aforementioned case, the Supreme Court held:

Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

This decision removes all doubts that whether the penalty was a major or minor the delinquent employee has a right to receive the enquiry officer's report. As regards the time of furnishing the same, it can be gainsaid that this must be furnished well before the disciplinary authority considers the enquiry report and passes final order. On this issue, the Supreme Court observed in the same case:

Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right.

This observation brings home the point that the copy of the report must be furnished beforehand as otherwise the employee cannot be in a position to defend himself effectively as he would not know in advance whether the report is in his favour or against him. In the instant case, the copy of the report was furnished only after the final order was passed by the disciplinary authority and both the orders of penalty as well as the copy of the report were furnished to him on 1.8.2000. There is, therefore, no doubt that reasonable opportunity to defend himself effectively was denied to the Petitioner in the case in hand. But the next question is what shall be the effect on the order of punishment if the report of the enquiry is not furnished to the employee and what relief should be granted to him. This question has also been answered by the Supreme Court in para 30(v) in *Managing Director, ECIL's case* (supra) which is quoted below:

The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on a count of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It

amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

The Apex Court thus, was of the view that in some cases, non-furnishing of the report may prejudice gravely while in other cases, it may make no difference to the ultimate punishment awarded to the employee. Thus, in a case if no different consequence would follow even after furnishing of the report, the penalty imposed without furnishing the same is unassailable. In para 31 of the aforementioned judgment the Supreme Court, however directed:

Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.

9. The aforesaid ratio which holds the field and was reiterated in later decisions of the Apex Court leaves no doubt that despite the violation of the mandatory provision of furnishing a copy of the enquiry report, the entire proceeding shall not be vitiated in all cases. In *Krishan Lal Vs. State of Jammu & Kashmir*, the Supreme Court held:

According to us, therefore, the legal and proper order to be passed in the present case also despite a mandatory provision having been violated, is to require the employer to furnish a copy of the proceeding and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudiced the Appellant/Petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper.

Again, in *State of U.P. Vs. Harendra Arora and Another*, the Supreme Court observed in para 12 as quoted below:

Thus, from the case of *ECIL* it would be plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein.

10. In the case in hand admittedly, the Petitioner received the copy of the enquiry report along with the order of penalty. When asked how non-furnishing of the enquiry report before the final order was passed caused prejudice to the Petitioner, Mr. Bhowmik submitted that in the case of minor penalty, prejudice need not be shown but to be inferred from the record. In other words, if no prejudice is shown, major penalty will stand but minor penalty will not survive. Further analysis of this submission will be that even if the Petitioner does not show or fails to show what prejudice has been caused by non-furnishing of the report, it has to be inferred that prejudice has been caused and, therefore, the minor penalty must not be allowed to stand. There is no whisper in the entire writ petition as to how the Petitioner has been prejudiced and what difference could have been in the outcome of the proceeding if copy of the report was furnished to him. Though at no stage, prejudice has been pleaded, it is incumbent on this Court to examine whether any prejudice has been caused by non-furnishing of the enquiry report and whether any difference could be made in the final outcome of the proceeding if the copy of the report was made available to the Petitioner.

11. As I have discussed above, the Petitioner faced several disciplinary proceedings on several charges of misconduct, the last being the present one in which he has suffered the penalty of withholding of one increment without cumulative effect. Though for such a minor penalty, a summary procedure under Rule 16 could be resorted to, the disciplinary authority made a detailed enquiry under Rule 14 of the CCS (CCA) Rules appointing an enquiry officer who was a Conservator of Forest and a member of the Indian Forest Service. It appears from the record that before formal enquiry by the enquiry officer Sri H.P. Das, DFO, Working Plan Division II submitted a report of the incident which was the subject matter of the proceeding and according to that report the Petitioner went to the office of the Inquiring authority for collection of a document. When the Typist Chandan Kumar Nandi refused to handover the letter without permission of the higher authority, the Petitioner abused him and threatened him of consequences. However, in order to bring home the charge of his misbehaviour and misconduct the enquiry officer examined 6 witnesses and took into evidence 13 documents produced by the presenting officer. The Petitioner, on the other hand, examined 9 witnesses and 16 documents in order to defend him. After a thread bare discussion, the Inquiring authority framed the charge against the Petitioner. He has not, however, proposed any penalty except the finding that the charge has been established. The disciplinary authority being the Principal Chief Conservator of Forest (PCCF) accepted the report of the Inquiring authority on 25.7.03 (Annexure-4), the concluded part of which reads as under:

I have carefully examined the enquiry report submitted by the Inquiring authority. It appears from the report that the charge has been proved beyond doubt. The said Shri Bhajan Ch. Debnath, UDC, A.O. was given reasonable opportunity to defend the case. The charges brought out in the charge sheet are very serious in nature. A Government servant is required to maintain decency in

his official conduct but there has been serious violation on the part of the A.O. I do not find any reason to disagree with the report of the Inquiring authority. Now, therefore, I the disciplinary authority, in view of the seriousness of the misconduct and after careful consideration of all aspects of the case award the penalty of withholding one increment in his time scale of pay for a period of 2 (two) years without cumulative effect and such withholding of increment shall take effect from the date of increment falling due to him after the date of issue of this order.

12. The enquiry report and the order of penalty together laid emphasis on the official discipline which have become the casualty in the hands of unruly and indisciplined employees. It needs to be emphasized that if the Government employees are not well disciplined, the confidence of the public is bound to be eroded. Except non supply of the copy of the enquiry report there is no grievance in the writ petition about denial of reasonable opportunity during the entire proceeding. Though the disciplinary authority observed that the misconduct was of serious nature, which remains unassailed by the Petitioner, the penalty imposed is only a minor one, more so as it has no cumulative effect. I am, therefore, of the firm view that in the given facts and circumstances of this case, furnishing of the enquiry report would have made no difference to the ultimate punishment given and, therefore, it is not a fit case to interfere with.

13. For the foregoing reasons, this writ petition is found to have no merit and is consequently dismissed. No cost.