
(1984) 08 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1188-A of 1977

Bijoy Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-08-1984

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14(11), 14(13), 14(15), 14(17)

Citation : (1984) AWC 408 Supp

Hon'ble Judges : R.M. Sahai, J;J.N. Dubey, J

Bench : Division Bench

Advocate : Swaraj Prakash, for the Appellant; R.H. Zaidi and Ashok Mohiley, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—A short question of law arises in this petition relating to construction of Sub-clause (d) of the Rule 16 of Central Civil Service (Classification, Control and Appeal) Rules, 1965.

2. On 9th June, 1976 a charge sheet was served on petitioner, a plane, tabler informing him that it was proposed to take action against him under Rule 16 of the Central Civil Service (Classification, Control and Appeal) Rules. A statement of imputations of misconduct or mis-behaviour on which action was proposed to be taken was mentioned in the copy enclosed alongwith it. The first charge was that petitioner displayed negligence and inefficiency in his professional duties and thereby submitted a sub-standard, indifferent and poor outturn of the work allotted to him causing delay resulting in extra expenditure required for the completion of the work. The other charge was that the petitioner after having been informed about his short comings instead of improving his outturn and proficiency involved entered into extraneous arguments using objectionable and impolite language levying false and baseless allegations against his senior officers in a manner unbecoming of a Government servant. In support of these

two charges details of inefficiency, earlier poor working, sub standard out turn of work etc. were mentioned. Against charges levelled against petitioner he made representation as required in sub Clause (a) of Rule 16 of the Rules. On 12th July 1976 the competent authority passed the impugned order finding the petitioner guilty of both the charges namely negligence and inefficiency in his professional duties and mis-behaviour unbecoming of a Government servant. This finding of guilt is preceded by following reasoning:

After carefully considering the representation dated 18-6-76 submitted by Sri Bijay Kumar, Planet abler Grade II of No. 25 Party (NWC) Survey of India against the proposed disciplinary action, as communicated to him under this office memo No. C-157/4-A (BK) dated 9-6-76 and taking into account the evidence available on record, I am convinced to conclude that the said Shri Bijay Kumar is found guilty.

Appeal against this order was also dismissed, the communication of which was sent to petitioner.

3. Rule 16 of Central Civil Service (Classification, Control and Appeal) Rules, 1965, reads as under:

16(k) Subject to the provisions of Sub-rule (3) of Rule 15, No. order imposing on a Government servant any of the penalties specified in Clauses (i) to (iv) of Rule 11 shall be made except after

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding a inquiry in the manner laid down in Sub-rules (3) to (23) of Rule 14 in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of enquiry, if any, held under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehavi-our; and

(e) Consulting the commission where such consultation is necessary.

4. As charge sheet with details of imputations were served on petitioner and he was given reasonable opportunity of making representation Clause (a) stood complied. Clauses (b) and (c) were not applicable as disciplinary authority did not held any enquiry. The main thrust of argument, which appears to have substance as well, is founded on failure of the punishing authority to record finding on each imputation of misconduct or misbehaviour. "Finding" has been defined in Blacks Law Dictionary "as a decision upon a question of fact reached as a result of a judicial examination or investigation by a court." What was

required of the competent authority was not only to mention that he has considered the representation but it should appear from the order that he has applied his mind to each charge and the representation filed against it. If such orders are upheld they may result in arbitrariness and would be contrary to spirit of Clause (d). The word "each" used in this clause is significant. The objective of the rule is to have reasoned order passed on consideration of material on record. By virtue of this clause competent authority is obliged to function and discharge his duty as a court namely to reach the result of examination and investigation of facts. The order of guilt has to be preceded not by mention of charges and satisfaction of the authority but by discussion of charges in light of representation made by delinquent.

5. The argument of learned Counsel for Union of India that finding means conclusion cannot be accepted nor he is justified in submitting that as it is mentioned in the order the competent authority considered the representation and other material on record, it should be held sufficient compliance of the Rule. Even in absence of Rule the authority dealing with disciplinary matters is required to give reason. But when the rule is specific and requires reason the authority cannot be permitted to ignore it. The rule had to be observed in spirit and in letter. Accepting argument of learned Counsel would be contrary to motions of justice and fair play. It is intended by this rule that the order must give an idea that the authorities concerned has objectively applied his mind. The assessment of evidence should not be subjective in the mind of the competent authority but it must come on the record itself. As the order passed by punishing authority is not in accordance with Clause (d) of Rule 16 it cannot be maintained,

6. In the result, this petition succeeds and is allowed. The order dated 12th July 1976 passed by the competent authority and its confirmation by appellate authority by order dated 25-10-76 and the rejection of review dated 2nd July 1977 are quashed. It shall, however, be opened to opposite parties to take action against the petitioner in accordance with law. Petitioner shall be entitled to his costs.