

(2006) 03 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 6646 of 2003

Binoy Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-03-2006

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3(1)
All India Services (Discipline and Appeal) Rules, 1969 — Rule 24, 24A, 28, 28
Constitution of India, 1950 — Article 226

Citation : (2006) 1 GLT 695

Hon'ble Judges : B.S. Reddy, C.J.; Anima Hazarika, J

Bench : Division Bench

Advocate : G.K. Bhattacharyya, Z. Kamar, P. Sarmah and D. Goswami, for the Appellant; D.C. Chakraborty and B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Reddy, C.J.—This writ petition filed under Article 226 of the Constitution of India is directed against the order dated 05.09.2002 made in O.A. No. 167/02 on the file of Central Administrative Tribunal, Guwahati Bench.

2. The question that falls for our consideration is whether the order passed by the Central Administrative Tribunal suffers from any error apparent on the face of records requiring interference in exercise of our certiorari jurisdiction. Relevant facts, which are in brief, may have to be noticed.

3. The Petitioner is a senior IPS officer of 1988 batch and he belongs to the Assam Meghalaya Cadre. That a Departmental Proceeding was initiated against the Petitioner. Vide proceedings dated 03.07.1995 two charges were framed against the Petitioner, namely-

Charge No. 1: That while Shri B.K. Mishra, IPS (U/S) was posted as Commdt. 2nd A.P. Bn. Makum, he committed sexual assault on Smti Bharati Saikia (Bey) w/o his orderly Constable Kamal Singh Bey on the night of 6.12.94 in a room of

his official residence at Makum during the absence of Constable Kamal Singh Bey. The incident has been described in Annexure-II.

The above act on the part of Shri B.K. Mishra, IPS (U/S) involving the wife of one of his own force personnel, is unbecoming of a member of IPS to which he belong. Shri B.K. Mishra, IPS (U/S), therefore, contravened Rule 3(1) of All India Services (Conduct) Rules, 1968. He is therefore, charged accordingly.

Charge No. 2: That while Shri B.K. Mishra, (U/S) was posted as Commdt. 2nd A.P. Bn., three Bn. Personnel of 2nd A.P. Bn. were sent under his instruction to his house at Bombay for doing private work. The incident has been described in annexure-II. Shri B.K. Mishra, IPS utilized the services of Govt. personnel for doing private work whereby he failed to maintain absolute integrity, devotion to duty and a conduct unbecoming of an officer of All India Service. Shri B.K. Mishra is, as required under Rule 3(1) (ibid) Shri B.K. Mishra, IPS (U/S) is, therefore, charged accordingly.

ANNEXURE-II

Statement of Imputation of Misconduct in support of the Charges Framed Against Shri B.K. Mishra, IPS (U/S)

That while Shri B.K. Mishra, IPS was posted as the Commdt. 2nd A.P. Bn., Makum following incidents took place.

Incident No. 1 Constable Kamal Singh Bey of 2nd A.P. Bn., Makum was posted as orderly Constable to Shri B.K. Mishra, IPS (U/S) then Commdt. A.P. Bn. Makum herein after called the Charge Officer, Constable Kamal Singh Bey was staying with his wife Smt. Bharati Saikia in an annex house in the compound of the official residence occupied by the charged officer. The charged officer permitted his orderly Constable Kamal Singh Bey to be detailed for dak duty occasionally. On 5.12.94, Constable Kamal Singh Bey detained for dak duty in Sonitpur District. Taking advantage of the absence of Constable Kamal Singh Bey, next night, the Charged officer entered into the place where Smt Bharati Saikia (Bey) w/o Constable Kamal Singh (Bey) was alone and managed to take Saikia (Bey) with him into his (charged officer's) room and commit sexual assault on her. At about 10.30 P.M. on the same night, Const. Kamal Singh Bey chanced to return to his living place from Sonitpur. He did not find his wife at home but her bed was ready with mosquito curtain down and tucked in Kamal Singh Bey searched for his wife and during search he entered the residence of the charged officer through the lavatory. Kamal Singh Bey could listen to his wife's weeping voice. Then he pushed the door open and found the charged officer in a compromising position with his wife. The TV was on but light was off. Constable Kamal Singh Bey gave three blows successfully to the charged officer. Constable Kamal Singh Bey rescued wife and took her to their house.

On 13.12.94, the charged officer ordered that Constable Kamal Singh Bey and his wife should be sent to Diphu on the day by a Battalion truck which was going

to Guwahati to collect medical stores., The reason was as given by the charged officer Constable Kamal Singh Bey was creating nuisance in the business premises. Accordingly the order was carried out.

The above act on the part of the charged officer is unbecoming of a member of All India Service as he is and it amounts to a violation of Rule 3(1) of the All India Services (Conduct) Rules, 1968.

Incident No. 2: On 27.1.95 Honorary Lance Naik Golap Baruah, Hony, Lance Naik Ramjit Mala Const. Someswar Dihingia all of 2nd A.R. Bn., Makum left for detachment bgr. Delhi for misc. duties on Railway passage warrant with instructions to report to Incharge detachment Bgr. The charged officer instructed them to go to Bombay by train from Delhi to do Bore work in his house at Bombay. The charged officer paid the railway fare for journey from Delhi to Bombay and back. The aforesaid personnel of the Bn. went to house of the charged officer at Bombay as per instructions and returned to detachment bgr. Delhi on 17.3.95. They were allowed to leave detachment bgr. On 19.3.95 PM on passage warrant. They reached Bn bgr. On 23.3.95. The charged officer provided as a guide to locate his house at Bombay, a sketch map to the aforesaid 3 personnel.

The charged officer by the above act misused his official position for private work thereby violating Rule 3(1) of the All India Services (Conduct) Rules, 1968.

4. A Departmental proceeding was drawn up against the Petitioner herein and an Inquiry Officer was appointed to make inquiry into the charges. Surprisingly, by order dated 01.06.1999 the disciplinary proceeding was dropped. The order reads as under:

Read: The Departmental proceeding drawn up against Shri B.K. Mishra, IPS vide this Deptt. Memorandum No. HMA(IPS) 145/115 dated 3.7.95 and his written statement of defence dated November, 1995 and other relevant records in this regard.

and

Also read the report of the Inquiring Officer.

Order: After careful consideration of report of the Inquiring Officer and other relevant documents, the Governor of Assam is pleased to drop the proceedings against Shri B.K. Mishra, IPS. Shri B.K. Mishra is, however, cautioned to be careful in future in respect of deploying personnel of the forces.

5. The order does not say as to whether charges framed against the Petitioner were held proved or not. The order merely reads, on careful consideration of the report of the Inquiring Officer and other relevant documents, the Government has chosen to drop the proceeding. By a subsequent order dated 08.07.99 the period of suspension from 19.05.95 to 27.08.95 in respect of the Petitioner was directed to be regularized by treating the period as on duty for all purposes.

6. Be that as it may, the Government of Assam vide order dated 04.05.2002 reviewed its earlier order dated 01.06.1999 only after the National Human Rights Commission has expressed its anguish about the manner of framing of charges and disposal of the Departmental Proceeding drawn up against the Petitioner. The National Human Rights Commission advised the Government to review its order dated 01.06.99. The review order reads "After careful examination of the Inquiry Report submitted by C.I.D., charges framed, other relevant documents and observations of the National Human Rights Commission, the Governor of Assam is pleased to review the case and start de-novo inquiry into the charges by invoking powers conferred on the State Govt. under Rule 24 of AIS (D and A) Rule, 1969 read with Rule 28 of the same Rule. Accordingly, the order No. HMA (IPS) 145/Pt.II/173 dated 1.6.99 in the Departmental Proceeding case against Shri B.K. Mishra, IPS stands reviewed."

7. The said order dated 04.05.2002 has been challenged by the Petitioner in O.A. No. 167/2002 before the Central Administrative Tribunal, Guwahati Bench. The learned Tribunal after an elaborate consideration of the matter vide judgment and order dated 05.09.2002 declined to grant any relief to the Petitioner on the ground that the order of review has been passed by the State Government on basis of the opinion expressed by the National Human Rights Commission, which is a high powered Constitutional Body. This writ petition is directed against the said order passed by the Central Administrative Tribunal dismissing the O.A. No. 157/2002 preferred by the Petitioner.

8. The Petitioner has raised a number of grounds in the writ petition challenging the impugned order passed by the Tribunal.

9. Shri G.K. Bhattacharyya, learned Senior Counsel appearing for the Petitioner, inter alia, submitted that the impinged order of the Central Administrative Tribunal suffers from incurable infirmities and deserves to be set aside by this Court in exercise of its certiorari jurisdiction. The learned Senior Counsel mainly contended that the impugned order of review passed by the Government on 04.5.2002 is ultra vires. The Government has no power to review or revise its own order after a period of one year of passing of the original order, which may provide cause of action for exercise of revisional power. The suo motu power exercised by the Government of Assam is hopelessly time barred. It is also contended that the Government is vested with no power to review its own order since power under Rule 24A is with the Central Government and not the State Government.

10. It is a very peculiar case in which the Central Government made a "short submission" stating that Central Government does not intend to file any separate reply in the matter since none of the instructions/rules administered by the Central Government has been challenged. The State Government having filed counter affidavit did not produce record and the learned Government Advocate States that in absence of record he is not in a position to argue the matter. However, since the State has already filed its affidavit-in-opposition, we may

usefully refer the same to the averments made in the affidavit filed in opposition. Obviously, there is something more than meets the eye.

11. In the affidavit filed in opposition, it is stated in clear and categorical terms that the case was reopened and order was issued vide Government order dated 04.05.2002 ordering de-novo enquiry as the NHRC in its proceeding dated 11.1.2002 had expressed anguish over the order of the State Government in disposing the Departmental Proceeding. Accordingly, Departmental Proceeding was drawn up and the Petitioner was asked to show cause vide No. HMA(IPS) 145/Pt. II/186 dated 31.5.2002. But the Petitioner did not respond the matter and filed an appeal petition in the Hon"ble CAT being O.A. No. 167/02." After dismissal of the O.A. No. 167/02 by the Central Administrative Tribunal vide order dated 05.09.2002, the Petitioner was reminded to submit his written statement in reply to the show cause notice. The Petitioner instead of submitting his reply requested the Government to furnish some documents which has no relevance whatsoever to the departmental proceeding since almost all the documents have already been furnished to the Petitioner in connection with the Departmental Proceeding. It is further stated that the writ petition filed by the Petitioner after a period of one year of the order passed by the Central Administrative Tribunal is hopelessly time barred. It is also stated that "The Petitioner is an indisciplined litigant type of officer. Being not satisfied with the work he has been prematurely repatriated from Central Deputation in NCRB, New Delhi.... Petitioner should have joined the parent cadre within the prescribed joining time and reportedly he had reported to the DGP to arrange his posting, but the Petitioner has not reported for joining till date. Instead, the Petitioner had submitted earned leave petition for 60 (sixty) days on 6.6.2003. The said leave period is already over and there is no information from the Petitioner. Further, the officer has not been maintaining a good relation with his wife and therefore his wife had also submitted a complaint against him to the NHRC and the NHRC has referred the case to the State Government for inquiry and now the matter is under examination." It is further stated that "the Departmental Proceeding initiated was dropped, but the officer was cautioned to be careful in future. The Government did not take any drastic action against him with an expectation that a budding career would be reformed, but his activities narrated above showed clearly against expectation."

12. Be that as it may, the Government even before passing the order dated 04.05.2002, put the Petitioner on notice requiring his explanation as to why the order dated 01.06.1999 dropping the Departmental Proceeding against him should not be reopened for the purpose of making a de-novo inquiry. The Petitioner admittedly did not file any reply whatsoever to the said show cause notice. The Petitioner as well could have raised his objections, which were raised by him on the earlier occasion as well as in the proceedings before the Central Administrative Tribunal. In our considered opinion the Petitioner is not entitled to arise any dispute as regards the validity of the order dated 04.05.2002 since he did not respond and raised any objection to the proposed revision of the order

dated 01.06.1999 whereunder the Departmental Proceeding initiated against him was dropped.

13. We also find substantial merit in the objection raised by the Respondent State in its counter affidavit that this writ petition deserves dismissal on the ground of laches. There is no explanation forthcoming from the Petitioner as to why he did not challenge the order passed by the Central Administrative Tribunal, if he was so aggrieved by it, within a reasonable time. No explanation as such is forthcoming and whatever explanations offered is not acceptable to us. This conduct of the Petitioner disentitles him for grant of any relief.

14. It is, however, contended before us that the State Government could not have revised its own order after a long lapse of more than three years to have a fresh look into the matter. We find no merit in the submission. In our considered opinion, Rule 24 of the All India Services (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the Rules") cannot be read in isolation and should be read with Rule 28 of the Rules, which confers power upon the authority concerned to condone the delay if good and sufficient cause is shown and accordingly extend time specified. If Rule 24 is to read along with Rule 28, it becomes clear that specification of one year period within which revisional jurisdiction may have to be exercised is not mandatory. That period can always be extended by the State or the Central Government for good and sufficient reasons. In cases of exercise of suo motu jurisdiction by the State Government, the period of one year prescribed may not be strictly applicable.

15. Facts narrated above, suggest that the entire matter involving the Petitioner leading to initiation of departmental inquiry and further orders dropping the proceedings of the Departmental inquiry about which the National Human Rights Commission made observations with advise to the State Government to take appropriate decision in the matter is required to be viewed from a proper perspective. The delay, if any, on the part of the State Government in initiating appropriate action to revise its own order cannot be held to be fatal. The State Government is admittedly clothed with power to condone the delay, if any, in the matter of filing of revision petition by the aggrieved individuals and if so, there is no reason as to why the same power cannot be exercised in order to initiate suo motu proceedings in appropriate cases even after the prescribed period of one year. The prescribed period of one year in Rule 24 is not required to be rigidly complied with, particularly, in cases where revisional power is sought to be exercised suo motu by the Government. We accordingly hold that Rule 24 is directory in its nature and the period prescribed can always be relaxed for good and cogent reasons. The case in hand is one where the State Government for good and cogent reasons and in view of the subsequent developments due to intervention of the National Human Rights Commission has exercised its suo motu revisional power to revise its own earlier order. The question what order ultimately the Disciplinary authority may have to pass is a different matter altogether, but the decision proposing to revise its earlier order itself does not

suffer from any jurisdictional problems. At any rate, the Petitioner did not raise his little finger when he was put on notice by the State Government requiring his explanation as to why its earlier order dropping the Disciplinary Proceeding should not be revised. The Petitioner shall be deemed to have accepted the proposal.

16. Viewed from any angle, we find no merit in any of the contentions of the Petitioner and in this writ petition. The writ petition shall accordingly stand dismissed without any order as to costs.

17. Observations, if any made in this order, shall have no bearing whatsoever upon the merits of the Departmental Inquiry and the same may have to be completed in accordance with law. The State Government, however, is directed to complete the Disciplinary Proceeding initiated against the Petitioner within a period of 6(six) months from the date of receipt of this order.