

(2010) 03 DEL CK 0212
In the Delhi High Court
Case No : Writ Petition (C) 6342 of 2007

Birbal Mahey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36(21)
Constitution of India, 1950 — Article 226, 309

Citation : (2010) 03 DEL CK 0212

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : H.S. Dahiya, for the Appellant; Maneesha Dhir and Geeta Sharma, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India to challenge the charge memorandum issued to him by letter No. 3752 dated 18.08.2004; the order of punishment contained in order No. 4369 dated 25.10.2005 issued by the Deputy Inspector General of Police, Department of Space, CISF withholding one increment for one year, which will not have effect of postponing future increments of pay; the appellate order passed by the IG, Southern Sector dated 13.02.2006 and the revisional order passed by the Director General on 10.10.2006, whereby his departmental appeal and revision were also rejected and the aforesaid minor penalty was confirmed.

2. The petitioner, who is serving as Inspector in the Central Industrial Security Force (CISF), was issued a charge sheet vide memorandum dated 18.08.2004, wherein three Articles of Charge were framed against him. These Articles of Charge read as follows:

Article of charge-I

An act of gross indiscipline, misconduct and disobedience of lawful orders of superiors on the part of No. 882210035 Insp/Exe Birbal Mahey of CISF Unit PTPP

Parichha in that on 1.3.2004 while he was posted at CISF Unit NFL Bathinda he refused to conduct the Preliminary Enquiry on the incident in which Constable Dharminder Singh made an attempt to assault Insp/Exe Sewa Ram of CISF Unit NFL Bathinda on 01.03.2004 at about 1120 hrs under the influence of liquor. Hence the charge.

Article of charge-II

An act of gross indiscipline, misconduct and disobedience of lawful orders of superiors on the part of No. 882210035 Insp/Exe Birbal Mahey of CISF Unit PTPP Parichha in that while he was posted at CISF Unit NFL Bathinda he deliberately avoided service of suspension order No. (452) dated 1.3.2004 and attachment order No. (502) dated 4.3.2004 to Constable Dharminder Singh of CISF Unit NFL Bathinda. Hence the charge.

Article of charge-III

An act of gross indiscipline, misconduct and disobedience of lawful orders of superiors on the part of No. 882210035 Insp/Exe Birbal Mahey of CISF Unit PTPP Parichha in that while he was posted at CISF Unit NFL Bathinda on 2.3.2004 he refused to carry out the orders of Unit Commander to repair/replace the LPG Gas Pipe of the unit mess. Hence the charge.

3. The petitioner denied these charges. A departmental enquiry followed. The enquiry officer exonerated the petitioner of all the charges. The Disciplinary Authority before whom the enquiry report was placed, thereafter issued an order dated 14.07.2005. By this order, it was communicated by the Disciplinary Authority that he agreed with the findings of the enquiry officer in relation to the 2nd and 3rd Articles of Charge, as aforesaid. However, the finding of the enquiry officer exonerating the petitioner of Article of Charge No. 1 was not agreed to. The Disciplinary Authority set out its reasons for not agreeing with the findings of the enquiry officer in regard to Article of Charge No. 1. In paragraph 3 of this order, the Disciplinary Authority stated as follows:

3. In view of the above, I hold you guilty of Article of Charge-I. If you wish to submit your representation, if any, against this communication, you may do so within 15 days from the date of receipt.

4. In response to the aforesaid order, the petitioner gave his detailed representation dated 09.08.2005. The Disciplinary Authority, thereafter, passed the impugned order dated 25.10.2005 imposing the aforesaid minor penalty on the petitioner. As aforesaid, his departmental appeal and revision have also been rejected.

5. The petitioner has challenged the impugned orders on various grounds. It is contended that there is absolutely no evidence to support any of the charges including Charge No. 1, on the basis of which he has been penalized. He further submits that his various submissions made in his representation dated 09.08.2005 before the Disciplinary Authority were not considered, while passing

the impugned order dated 25.10.2005.

6. We have heard learned Counsel for the parties, and in our view, the impugned orders cannot be sustained for the simple reason that while issuing the disagreement note dated 14.07.2005, the Disciplinary Authority had evidently already made up his mind with regard to the guilt of the petitioner on the first Article of Charge. This is evident from paragraph 3 of the said order, which has been reproduced herein above.

7. Learned Counsel for the respondent submits that it is only the language used in the order dated 14.07.2005 which was inappropriate. She submits that, in fact, the Disciplinary Authority did give the petitioner an opportunity to represent in the matter and even afforded a personal hearing to him. It was only thereafter, that the impugned order dated 25.10.2005 imposing minor penalty was passed.

8. We cannot accept the aforesaid submission of the learned Counsel for the respondents. We may refer to two decisions of the Supreme Court in this regard. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Supreme Court held as follows:

18. Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

(Emphasis supplied)

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry

officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

(Emphasis supplied)

9. The second decision relevant in the subject is Yoginath D. Bagde Vs. State of Maharashtra and Another, wherein it held as follows:

28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

(Emphasis supplied)

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34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

(Emphasis supplied)

10. Reliance placed by the learned Counsel for the respondent on the decisions in *State of Rajasthan Vs. M.C. Saxena*, *State Bank of India v. S. S. Koshal* and *High Court of Judicature The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S. Patil and Another*, , in our view, is misplaced. The decisions in *State of Rajasthan v. M.C. Saxena* (supra) and *State Bank of India, Bhopal v. S.S. Koshal* (supra) already stand expressly overruled in *Punjab National Bank v. Kunj Behari Misra* (supra). It is unfortunate that they have been cited before us. So far as the last decision cited by learned Counsel for the respondent is concerned, the same does not deal with the issue at hand.

11. In *High Court of Judicature at Bombay v. Sashikant S. Patil and Anr.* (supra), the respondent judicial officer was exonerated by the inquiry officer of the charges leveled against him. Thereafter, the respondent was visited with the penalty of compulsory retirement by the Governor on the recommendation of the High Court. On the judicial side, when the said penalty was challenged by the respondent, a Division Bench of the Bombay High Court quashed the penalty primarily on the ground that the Disciplinary Committee of the High Court had not put forward adequate reasons for differing with the findings of the enquiry officer. The Supreme Court held that the approach of the Division Bench of the High Court was erroneous in as much as, the Division Bench had acted as if it was hearing an appeal against the order of the administrative/Disciplinary Committee of the High Court. The Supreme Court reiterated the scope of the proceedings under Article 226 of the Constitution of India while scrutinizing the validity of disciplinary proceedings.

12. From a reading of the judgment, it is clear that the Disciplinary Committee of the High Court had first issued a show cause notice to the respondent and thereafter held the charges to be proved against him. That is not the position in the present case. As noticed above, the Disciplinary Authority while disagreeing with the findings of the enquiry officer gave his conclusive finding holding the petitioner guilty of the first Article of Charge.

13. The decisions relied upon by the petitioner lay down the legal position that in case the Disciplinary Authority disagrees with the findings of the enquiry officer, it must communicate its tentative opinion for such disagreement to the

delinquent employee and grant him a right to represent and to meet the reasons that the Disciplinary Authority has conveyed for his tentative opinion. It is only after considering the representation, if any, and the personal hearing, if any, granted to the delinquent, that the Disciplinary Authority is expected to arrive at his conclusive finding one way or another. However, a perusal of the disagreement note shows that the Disciplinary Authority had, in fact, held the petitioner guilty of Charge No. 1 even before the said note was issued to the petitioner. It is, therefore, clear to us that the procedure adopted by the Disciplinary Authority of requiring the petitioner to submit his representation and to grant him a hearing was an empty formality.

14. Reliance placed by the learned Counsel for the respondent on Rule 36(21), of the CISF Rules, 2001 in our view, is of no avail. The said Rule merely empowers the Disciplinary Authority to disagree with the findings of the enquiry officer. However, even under the said Rule the Disciplinary Authority is required to record its reasons for such disagreement, and to record its own findings on such charge if the evidence on record is sufficient for the purpose. He is also required to forward a copy of the enquiry report together with the reasons for disagreement, if any, and the record of his own findings on the Articles of Charge to the enrolled members of the force, who is then permitted to submit a written representation to the Disciplinary Authority. The said Rule does not permit the Disciplinary Authority to arrive at its conclusive finding on the guilt of the enrolled members of the force before granting an opportunity to represent to him. As held by the Supreme Court in *Punjab National Bank v. Kunj Behari Misra* (supra) and *Yoginath D. Bagde v. State of Maharashtra and Anr.* (supra), principles of natural justice in the form of granting an opportunity to the delinquent has to be read into the Rules.

15. We also do not find any merit in the submission of the respondents that the petitioner was, as a matter of fact, given the right to submit his representation and was also granted personal hearing before imposing the penalty upon him, and therefore, there was no illegality in the issuance of the order dated 14.07.2005. The Supreme Court rejected a similar argument advanced before it in *Yoginath D. Bagde v. State of Maharashtra and Anr.* (supra). We may reproduce paragraphs 38 and 39 from the said decision, which read as follows:

36. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the respondent has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the enquiry officer but the reasons for which the Disciplinary Committee had not agreed with

those findings, were communicated to the appellant to whom a notice was also issued to show-cause why he be not dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the enquiry officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.

37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the enquiry officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

16. We are conscious that in *Yoginath D. Bagde v. State of Maharashtra and Anr.* (supra), the notice had been issued to grant an opportunity to the petitioner to show cause against the penalty proposed to be imposed by the respondent, whereas, in the present case the order dated 14.07.2005 was issued to convey the reasons for disagreement with the findings of the enquiry officer in respect of the first Article of Charge, i.e. before the passing of the impugned order dated 25.10.2005 by the Disciplinary Authority. However, in our view, this difference is not material since in the present case as well, the Disciplinary Authority has made up his mind with regard to the guilt of the petitioner even before passing the said order dated 14.07.2005. The Disciplinary Authority while issuing the order dated 14.07.2005 consciously used the words to the effect "In view of the above, I hold you guilty of Article of Charge-I". In our view, the aforesaid observation is clear and categorical, and there is no ambiguity about what the Disciplinary Authority desired to convey when he used the aforesaid language.

George Bernard Shaw has said "Words are only postage stamps delivering the object for you to unwrap."

Plutarch stated that "In words are seen the state of mind and character and disposition of the speaker."

17. In our view, there is no warrant for us to ignore the express words used by the Disciplinary Authority in the order dated 14.07.2005 and to accept the oral explanation of the respondents. The Disciplinary Authority who issued the order dated 14.07.2005 is not a subordinate or clerical employee. He is holding the rank of a Deputy Inspector General and there is no reason for us not to attribute to him the knowledge of English language. He can safely be assumed to be conscious of the words used by him in his said order and to have used the said words while being aware of their meaning and purport.

18. In Commissioner of Police, Bombay Vs. Gordhandas Bhanji, the Supreme Court, speaking through Bose, J. observed:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

19. These observations were relied upon by the Supreme Court in its decision on Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The Supreme Court held:

8. ...when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out....

20. The respondents are, therefore, precluded from explaining the purport of the order dated 14.07.2005 to mean something different than what it expressly states.

21. We, therefore, reject the explanation of the learned Counsel for the respondent that the use of the aforesaid language is inadvertent or that the present case is merely a case of unhappy drafting.

22. For the aforesaid reasons, we quash the impugned orders passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority. However, the respondents are at liberty to look into the matter afresh from the stage of fresh consideration of the enquiry report by the Disciplinary Authority. We make it clear that we have not gone into any other issue raised by the petitioner and it shall be open to the petitioner to raise all his pleas at an appropriate stage, in case the respondents proceed against him any further in the matter. We also make it clear that nothing herein contained is an expression of opinion on the merits of the petitioner's defence in the disciplinary proceedings. The petition is allowed to the aforesaid extent.