

(1997) 08 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 9 of 1996

C. Biakringa

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 12, 29, 29(A)

Constitution of India, 1950 — Article 136, 226

Citation : (1997) 3 GLR 351

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Advocate : C. Lalramzauva, for the Appellant; K.N. Madhusudhanan, for the Respondent

Final Decision : Dismissed

Judgement

H.K.K. Singh , J.—By this application under Article 226 of the Constitution of India, the Petitioner has approached this Court for a direction to the Respondents to treat and declare the Petitioner to be senior to the Respondent No. 4.

2. The Petitioner as well as the Respondent No. 4 are now serving as Sub-Inspector of Excise in the Office of the Commissioner of Excise, Excise and Taxation Department, Government of Mizoram. The Respondent No. 4 is senior to the Petitioner. The Respondent No. 4 was removed from service under order dated 3.11.89 (Annexure-I to the writ petition). And thus, in the seniority list, the name of the Respondent No. 4 does not find place and the name of the Petitioner is at SI. No. 4 (Annexure-II to the writ petition). Subsequently the order of removal from service was set aside by the Governor in exercise of the power under Rule 29 of CSS (CCA) Rules, 1965 and the penalty was modified under order No. A. 41017/1/92-EXC dated Aizawl, the 29th July 1992 (Annexure-III) which is reproduced below:

ORDER

Whereas Pu. C. Lalhmingliana, Sub-Inspector of Excise was removed from Service under Rule 12 of CCS (CCA) Rules, 1965 vide Commissioner of Excise's order No. C. 14013/3/88/COMEX/84 dtd. 30.11.1989 from 1.12.1989.

And whereas the case of Pu.C. Lalhmingliana was revised in terms of Rule 29 of CCS (CCA) Rules, 1965.

Now, on revision of the case in terms of Rule 29 of CCS (CCA) Rules, 1965. the Governor of Mizoram, in exercise of the powers conferred under the said Rules hereby sets aside the order of removal from service and further orders that the pay of Pu. C. Lalhmingliana should be reduced by 2 (two) stages for a period of 2 years with effect from the date of joining on re-instatement into service. It is further ordered that Pu. C. Lalhmingliana will not earn increments of pay during the period of such reduction and that on the expiry of his period, the reduction will have the effect of postponing his future increments of pay.

It is, further directed that the period of suspension till his removal from service shall be treated as period spent on duty only for the purpose of pension and the period from date of removal till he joins duty on re-instatement shall be treated as "dies non" with loss of seniority in service to that extent, but will count towards qualifying service for pension only and the period does not constitute forfeiture of past services. There will be no other financial benefits.

Sd/- K. LALTHLAMUANA Secretary Excise and Taxation Department, Govt. of Mizoram.

3. Subsequently, the Governor by his order dated 28.8.95 (Annexure-V to the writ petition) modified the earlier order at Annexure-III. The order of the Governor at Annexure-V is also reproduced below:

ORDER

In exercise of the powers conferred under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Governor of Mizoram hereby remits the penalty imposed against the said Pu. C. Lalhmingliana vide order No. A.41017/1/92 - EXC dt. 29.7.92 and further orders that the pay of Pu. C. Lalhmingliana should be reduced by 2 (two) stages to a lower stage from Rs. 1820/- p.m. to Rs. 1700/- p.m. in the lime scale of pay of Rs. 1640-60-2600-EB-75-2900/- p.m. for a period of two years with effect from the date of his joining on re-instatement into service i.e. 31.7.92 and he will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay. The period of his removal from service with effect from 30.11.89 till the date of his joining on re-instatement i.e. 31.7.92 shall be treated as a period spent on duty only for the purpose of pension and seniority in his service, he shall be entitled to any financial benefit during that period.

It is further ordered that the period of his suspension with effect from 18.8.88 to 29.11.89 shall be treated as a period spent on duty only for the purpose of

pension and seniority and it will be treated as on duty for all other purpose. The financial benefit will be restricted to the subsistence allowance already sanctioned to him during the period of his suspension.

Sd/- C. NAG Secretary to the Govt. of Mizoram Excise and Taxation Department.

4. Consequently the period of suspension i.e. 18.8.88 to 29.11.89 and the period of his removal from service i.e. from 30.11.89 to 31.7.92 was to be counted for the purpose of seniority also. Thus, the seniority position of the Respondent No. 4 was restored. Thereafter, under Office order dated 19.9.85 the provisional inter-se-seniority list of Sub-Inspectors of Excise was published as in Annexure-VI. The name of the Respondent No. 4 is found at SI. No. 3 and the name of the Petitioner is at SI. No. 4. The Petitioner made representation as at Annexure-VII against the placement of Respondent No. 4 above him in the seniority list but the department issued the final inter-se-seniority list as at Annexure-VII showing the name of the Respondent No. 4 at SI. No. 3 and the name of the Petitioner at SI. No. 4. Hence, the present writ petition.

5. Mr. C. Lalramzauva, the learned Counsel for the Petitioner has submitted that under Rule 29 of the CCS (CCA) Rules, 1965, the Governor has no power of revision against the order passed by the Governor himself under Rule 29 of the CCS (CCA) Rules, 1965. Thus, the impugned order at Annexure-V is bad in law.

6. The learned Assistant Advocate General has submitted that under Rule 29 (A) of the CCS CCA Rules, 1965 the Governor has the power to review his own order and in this case the Governor specifically mentioned that the order dated 29.7.93 (Annexure-III) was modified and thus, the order of the Governor dated 28.8.95 (Annexure-V) was in the exercise of his power of review as conferred under Rule 29 (A) of the CCS (CCA) Rules, 1965. And that the Rule "29" as appearing in the Annexure-V only a misquotation of the Rule.

7. Rule 29 deals with the power of Revision and Rule 29 (A) deals with the power of the review of the Governor.

8. Revision and review are creatures of statute. The procedure to be followed in exercise of power of revision as well as of review are generally prescribed in the statute by which the aforesaid powers of revision and review are given. If the procedures are prescribed in the statute, those procedures are to be followed in the exercise of power conferred by the statute. And generally the power of revision is exercised by the higher authorities against the orders passed by his subordinate authorities, whereas the power of review is exercised by the same authority in respect of its own earlier orders.

9. In our case the order dated 28.8.95 at Annexure-V was passed by the Governor modifying his earlier order dated 29.7.92 (Annexure-III) though the order (sic) Annexure-V mentions "Rule 29" and not Rule 29(A). Here, it is well settled (sic) mere misquotation of the relevant Sections or Rule will not affect the validity (sic) an order if the authority had the power to issue the concerned

order. Thus, I am of the opinion that the word and figure "Rule 29" appearing at Annexure-V will (sic) affect the validity of the power if it is found that the Governor exercises its power of review in this case. For the purpose of proper and better appreciation of the matter, the relevant file was called and the same was produced before the Court of the learned Assistant Advocate General. In the file itself it is noticed that the Respondent No. 4 made a review application dated 7.8.94 under Rule 29 (A) of the CCS (CCA) Rules, 1965 and the file was processed as a case of review of the earlier order of the Governor (Annexure-III). Thus, I have no hesitation in coming to the (sic)civision that the Governor has exercised his power of review as provided under Rule 29(A) of the CCS (CCA) Rules, 1965.

10. Mr. C. Lalramzauva, the learned Counsel for the Petitioner again submitted (sic) the order of the Governor at Annexure-V is not a tenable in law as it is not a reasoned decision. Mr. Lalramzauva further submitted that when the Respondent No. 4 was removed from service the Petitioner's seniority position was upgraded (sic) again even when the order of removal was modified by an order of the Governor revision (Annexure-III) the seniority position of the Petitioner was not disturbed consequent upon the passing of the order on review (Annexure-V) the Petitioner been deprived of his seniority position, thus, according to Mr. Lalramzauva the Petitioner has locus standi to agitate and question the legality of the aforesaid order of the Governor at Annexure-V on the ground that the same is not supported by any reason.

11. In the case of Maharashtra Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Apex Court held as follows:

Para-20 "Unless the rule expressly or by necessary implications excludes recording of reasons, it is implicit that the principles of natural justice or fair play does require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. But the reasons may be precise. In S.N. Mukherjee v. Union of India, the Constitution Bench of this Court surveyed the entire case law in this regard, and we need not burden the judgment to reiterate them once over and at page 614, para 40 it held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. In para 36 on pp. 612-13 it was further held that recording of reasons - excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making, The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. It is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances.

(Underline mine)

Para-21: Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

In our present case the order of review at Annexure-V was passed by administrative authority in exercising its quasi judicial function. Thus, following the above decision of the Supreme Court the reason may also be gathered from the concerned record.

11. As stated earlier, the relevant file was produced before the Court at the time of hearing. A perusal of the file indicates that the Governor applied his mind to the entire facts and circumstances of the case starting from the initiation of the departmental proceeding, order of removal from service and subsequent revision of the order of removal, and, considering the facts and circumstances of the case the Governor passed the order of review. Thus, the submission of the learned Counsel for the Petitioner is without any force inasmuch as that the Petitioner was admittedly junior to the Respondent No. 4 and during the course of the departmental proceeding temporarily for a short period the Petitioner became senior to the Respondent No. 4 but on ultimate conclusion of the departmental proceeding which ended by order dated 28.8.1995 (Annexure-V) the seniority position of the Respondent No. 4 was restored relegating the Petitioner to his original seniority position.

12. In disciplinary proceedings the original inquiry by the disciplinary authority or by an Inquiry Officer, the appellate proceeding against the order passed by the disciplinary authority and consequent proceeding of revision or review provided for by the statute are different stages of the proceedings. The original order get merged to the order passed by the higher or the highest authority as the case may be, in the prescribed hierarchy. In such a proceeding, a third party may not have a right to agitate to the legality of any of the order (s) passed by the concerned authority merely on the ground that at one stage, a sumblance of the right accrued to him temporarily, The meaning of the terms "locus standi" or ""party affected" should not be stretched to such an extent more than necessary and proper in the fact and the circumstances of the case. It is idle to argue that an officer in the junior most grade may have a right to challenge any order passed by the competent authority-cinstating the senior officer in the department

revoking the order of removal from service, on the ground that reinstatement of the senior officer is prejudicial to his (junior) seniority position in the service.

12.1 Thus, considering the facts and circumstances of the case I am of the view that the Petitioner has no locus standi to challenge the impugned order dated 28.8.1995 passed by a competent authority in exercise of the power vested by Rule and in accordance with law.

13. For the aforesaid reason I do not find any merit in the present application. Accordingly, the present writ petition stands dismissed. Considering the facts and circumstances of the case I make no order as to costs.