
(2003) 01 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 23 of 2002

C. Lawihmingthanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 04-01-2003

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(1)

Citation : (2004) 1 GLR 203 : (2003) 2 GLT 160

Hon'ble Judges : P.P. Naolekar, C.J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, Helen Dawngliani and R. Lalduhawmi, for the Appellant; N. Sailo, G.A., for the Respondent

Judgement

P.P. Naolekar, C.J.—The relevant facts necessary for adjudication of the issues involved in this case are, that the petitioner was temporary appointed as officiating LDC in the scale of pay of Rs. 260-400 p.m. vide order dated 15.4.1978. The petitioner was absorbed in regular vacancy of LDC with effect from 5.5.1978 and thereafter, he was confirmed against a permanent post of LDC with effect from 1.5.1982 vide order dated 11.3.1983. The petitioner was put under suspension in contemplation of the departmental enquiry vide order dated 18.2.1986. The petitioner was served with a charge sheet on 14.5.1986 wherein the petitioner was charged for absenting himself from duty without taking prior permission and that he had failed to maintain the account in respect of sale proceed properly and had misappropriated a sum of Rs. 3,84,862 being supply of sale proceed Biate Group Centre, and lastly, while functioning as LDC he had spent Rs. 7000 being supply of sale proceed of Biate Group Centre for other purposes.

2. The Respondent No. 3, the Deputy Commissioner, Aizawl had appointed Sri Lalsawta, District Civil Supply Officer, Aizawl as Enquiry Officer. On 14.5.1986, the petitioner submitted written statement of defence wherein he had specifically denied the charges made against him Sri Lalsawta could to complete the enquiry

against the petitioner and in his place Smt. Zohmingthangi, EAC, was appointed as Enquiry Officer to enquire into the charges framed against the petitioner. She also could not complete the enquiry and in her place, Sri Haokhomang Haokip, ADC(P) was again appointed as third Enquiry Officer to enquire into the charges framed against the petitioner vide order dated 28.4.1989. Side by side, with the Departmental enquiry, a Criminal case was also instituted against the petitioner by filling an FIR dated 29.7.1986 at Aizawl Police Station. The said criminal case was registered as GR No. 416/86 u/s 403 IPC. The Criminal case was in regard to the three charges except the charge of absence from duty without taking prior permission and the Criminal Court has acquitted the petitioner from all the charges, as it was found that the accused petitioner committed no offence punishable u/s 409 IPC. No appeal was filed by the respondents challenging the acquittal.

3. The third Enquiry Officer Sh. Haokhomang Haokip, ADC(P), after completing the departmental enquiry had submitted his enquiry report to the Respondent No. 3 who was the disciplinary authority. The enquiry report so submitted by him was not accepted by the disciplinary authority and the disciplinary authority in exercise of the powers conferred under Sub-rule (2) of Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to the "Rules, 1965") had appointed another Enquiry Officer Shri Tlanglianruma, ADC vide order dated 27.3.1999. It is admitted in the return filed by the respondent State that on receipt of the enquiry report from Shri Haokhomang Haokip, the disciplinary authority found the enquiry proceeding to be incomplete, as a result another Enquiry Officer, namely, Tlanglianruma, EAC was appointed as new Enquiry Officer, in terms of Rule 1965. Shri Tlanglianruma, the fourth Enquiry Officer, had finally concluded the proceedings of the departmental enquiry and submitted his report to the disciplinary authority sometime in the year 1992. After receipt of the enquiry report, the Respondent No. 4, Commissioner of Rural Development, Mizoram, Aizawl has passed an order of removal of the petitioner from service on 19.5.92 under Rule 17(1) of the Rule 1965. This order is under challenge in this writ petition. It is an admitted fact that neither the Enquiry Officer nor the disciplinary authority had furnished copy of the enquiry report to the petitioner.

4. When the Court had asked the learned Additional Advocate General to deliver a copy of the enquiry report to the petitioner, he had stated at the Bar that he is unable to do so because the file of the enquiry proceeding was lost and, therefore, the State is not in a position to supply copy of the enquiry report to the petitioner.

5. It is submitted by the learned counsel appearing for the petitioner that the petitioner has a right to receive a copy of the report of Enquiry Officer, and it being an essential part of a reasonable opportunity, forms part of the principles of natural justice, inasmuch as, when the findings are recorded by the Enquiry Officer the enquiry report is an important material before the disciplinary authority to be considered by the disciplinary authority, and, therefore, he has a

right to make submission in regard to the enquiry report submitted by the Enquiry Officer and failure to do so vitiated the enquiry proceedings.

6. Similar question came for consideration before a Constitution Bench of the Supreme Court and the Hon'ble Chief Justice Venkatchalia, as he then was, speaking for the Bench stated that when the Enquiry Officer has submitted the enquiry report to the disciplinary authority, the delinquent officer has a right to receive a copy of the enquiry report before the disciplinary authority arrive at the conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him and that right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry report, before the disciplinary authority take a decision on the charges, is denial of reasonable opportunity to the employee to prove his innocence and is in breach of the principles of natural justice. The Court has also considered the procedure to be adopted by the Court where the enquiry report is not given to the delinquent employee before the order of punishment is imposed, in paragraph 31 of the judgment, and laid down the procedure as under :

"31. 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 employees 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 prejudice 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. The Court should avoid resorting to short cuts. Since it is the Courts/ Tribunals which will apply to their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment".

7. In view of the directions issued by the Supreme Court, this Court has asked the Additional Advocate General to supply the copy of the enquiry report to the petitioner to which he has expressed his inability for the reasons stated hereinabove. Under this circumstances, it is clear that the delinquent employee, the petitioner cannot be supplied copy of the enquiry report nor he was given the enquiry report prior to the delinquent employee was punished by the disciplinary authority by imposing the punishment of removal from service. The petitioner has been denied his right to defend himself against the charges levelled against him, it tantamounts to denial of reasonable opportunity to the petitioner to prove

his innocence and is in breach of the principles of natural justice.

8. The counsel for the petitioner Mr. AR Malhotra has argued that order passed by the authority on 27.3.1990 remitting the case for fourth enquiry to the Enquiry Officer Sri Tlanglianruma exercising powers under Rule 14(2) of the Rules 1965 is invalid as the Rule does not contemplate exercise of such power. The power at best could have been exercised under Rule 15(1) of the Rules 1965 and that too for remitting the case to the third Enquiry Officer Sri Haokhomang Haokip and not else. The remittance of the enquiry to Sri Tlanglianruma is without jurisdiction and authority and thus the enquiry report, if any, submitted by Sri Tlanglianruma and consequent action and order passed removing the petitioner from service by the disciplinary authority is illegal and vitiated the enquiry proceedings.

9. To better understand the submissions made by the counsel for the petitioner it is necessary to consider Rule 14(2) and Rule 15(1) of the Rules 1965, which reads :

"14. (2) Whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the public servants (inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

15. (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions or "Rule 14, as far as may be".

10. It is an admitted fact by the respondents State that the disciplinary authority having not been satisfied with the report of Enquiry Officer Shri Haokhomang Haokip remitted the case back to Sri Tlanglianruma to conduct enquiry and place report before him. The question is whether the enquiry on remand should have been entrusted to Sri Haokhomang Haokip who had conducted the previous inquiry or it could be legally handed over to Sri Tlanglianruma.

11. Rule 14(2) authorises the disciplinary authority to direct enquiry if he is of the opinion that the prima facie case is made out against the Government Officer for enquiry on the imputation of misconduct or misbehaviour. The enquiry may be conducted by him or by any other officer authorised under the rules to hold inquiry. This rule specifies only initiation of the enquiry that is commencement of enquiry as directed by the disciplinary authority. This rule does not contemplate situation, after the enquiry is completed and the report is submitted by the Enquiry Officer. Rule 14(2) applies to initiate the enquiry by the disciplinary authority either by himself or by some other officer and has nothing to do with the remittances of the inquiry once the enquiry is completed, and is reopened. The exercise of power of remand by authority under Rule 14(2) is not within the

frame work of statute, rules or regulation applicable. Thus the order passed by the Deputy Commissioner remitting the matter under Rule 14(2) was not correct, not being within the powers conferred under Rule 14(2) of the Rules 1965. But the remittance of enquiry under this Rule would only be irregularity and not illegality if the power vests with the disciplinary authority to remit the matter for further or de novo enquiry under the Rules 1965.

12. It is submitted by the learned counsel appearing for the petitioner that the disciplinary authority could not have appointed for fourth Enquiry Officer exercising powers under Rule 15(1) of the Rules 1965. When the third Enquiry Officer has submitted his enquiry report, the power could have been exercised under Rule 15(1) and in that case the remittance of the case should have been made to the same officer and not to another officer who has not conducted the previous enquiry. It is an admitted fact that the third Enquiry Officer has submitted his report after conducting enquiry to the disciplinary authority and the disciplinary authority having not agreed with it and finding it to be incomplete directed appointment of another Enquiry Officer, namely Sri Tlangianruma under Rule 14(2) of the Rules 1965.

13. Rule 15(1) authorises disciplinary authority on recorded reasons to remit the case to the Enquiry Officer for further enquiry and report. The remittance of the enquiry normally should be made over to the Officer who has conducted previous inquiry but that is not mandatory and the enquiry may be remitted to be held by other than the officer who held the enquiry. If the Rule is interpreted to mean enquiry by same authority on remittance it would cause great difficulties when the officer is retired or transferred or not available for some reasons on account of non-availability of the same officer, and on that count, Rule cannot be made in-operative in my opinion, the rule should read as remittance of enquiry to some other officer, more so, when the Enquiry Officer can be changed during the course of enquiry why not at the time when the enquiry is remitted for further enquiry or de novo enquiry.

14. In the facts of the case, Rule 14(2) has no application under Rule 14(2), if the authority is of the opinion that there is a ground for enquiry into the truth of misconduct or misbehaviour against the Government servant, the Enquiry Officer can be appointed. The power under Sub-rule (2) of Rule 14 is that the appointment of the Enquiry Officer to begin with the enquiry proceedings which does not vest the power to appoint an Enquiry Officer under Clause (2) of Rule 14 when the enquiry was completed and the report is submitted by the Enquiry Officer. After completion of the enquiry if the disciplinary authority is not satisfied with the reasons given by the Enquiry Officer for some reason he can remand the case to the Enquiry Officer for further enquiry and report. The Enquiry Officer shall thereupon proceed to hold further enquiry according to the provisions of Rule 14, the appointment of the Enquiry Officer would be in exercise of the power under the Rule 15(1) after enquiry is completed. A reasonable interpretation of the Rule 15(1) would be that when the disciplinary authority is

not satisfied with the enquiry report submitted before him and desires to hold further enquiry or de novo enquiry in accordance with the provisions of Rule 14, further enquiry can be entrusted to same authority who has conducted previous enquiry or to any other authority competent to do so.

15. It is submitted by the learned Additional Advocate General for the respondents-State that if the enquiry is found to be defective and order of punishment is set aside, the State may be permitted to hold fresh or denovo enquiry against the petitioner. Reliance has been placed on two decisions of the Supreme Court in *Union of India and Others Vs. P. Thayagarajan*, and *Anand Narain Shukla Vs. State of Madhya Pradesh*, On the other hand, learned counsel for the petitioner has placed reliance on the decision rendered by the Constitution Bench of the Supreme Court in the matter of *K.R. Deb v. The Collector of Central Excise, Shillong*, reported in (1971) 1 SLR and has submitted that there could not be any direction for holding denovo enquiry. In paragraph 11 of *K.R. Deb v. The Collector of Central Excise* (supra) the Supreme Court-held as under:

"11. It seems to us that Rule 15 on the face of it, really provides for one inquiry, but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reasons, the disciplinary authority may ask the Enquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Enquiry Officer or Officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9".

16. The true effect of the directions given by the Supreme Court is being explained in the matter of *Union of India and Ors. v. P. Thayagrajan* (supra) wherein it is said :

"A carerul reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the Enquiry Officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relief upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore, we are of the view that

Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature."

17. Thus according to the Supreme Court, the distinction has to be drawn between cases where the disciplinary authority set aside the enquiry as the procedure adopted by the Enquiry Officer was contrary to the relevant rule and effect the rights of the parties and in a case where the enquiry was set aside as the report submitted by the Enquiry Officer does not appeal to him. If the enquiry is set aside by the disciplinary authority on the ground that the report does not appeal to him, afresh and de novo enquiry cannot be directed whereas, if the enquiry is set aside on the ground that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and effect the right of the parties the de novo enquiry can be directed. In the matter of Anand Narain Shukla v. State of Madhya Pradesh (supra) it is being said when the first enquiry is vitiated owing to a technical defect a fresh enquiry, on the same old charges can be held on merit that is to say a de novo enquiry can be directed.

18. As a result of the aforesaid discussions, the order of removal of the petitioner from service issued vide order dated 19.5.1992 is set aside and the respondents are directed to reinstate the petitioner in service. He shall be entitled to all back wages after adjusting the amount paid to him during the period of suspension and all other consequential service benefits. However, it is opened for the State-Respondents to conduct a fresh enquiry on the same charges against the petitioner, if it is so deemed fit and proper. While doing so the State-Respondents shall keep in mind the acquittal of the petitioner from the criminal charges by the competent Court.