(2009) 06 OHC CK 0010

In the Orissa High Court

Dhirendra Kumar Hota APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 03-06-2009

Acts Referred:

Citation : (2009) 2 OLR 593

Hon'ble Judges : A. Pattanayak, Member

Bench : Single Bench

Judgement

A. Pattanayak, Member (A)

1. The facts of the case are that the applicant who is a Senior assistant was charged vide Departmental proceeding No. OE-A-II-94/-02/19450/R dtd. 17.4.02, (Annexure-4), order with disobedience of Govt. Order, negligence of duty and temporary misappropriation of Government money for having received Rs. 30,000/-sanctioned vide Annexure-1 & 2, for expenses in connection with suit No. 10 and 11 of 1968 - State of Orissa v. State of A.P. in the Hon''ble Apex Court and not accounting for the said money in time and depositing the same on a later date as indicated in the charge. Thereafter, as per order No. OE(A) II-94/02 47500/R dated 21.09.02 (Annexure-7), the disciplinary authority appointed the Inquiry Officer and Marshalling Officer though the applicant had prayed for further time for replying to the charge. Thereafter, an additional charge unconnected with the principal charge was issued vide No. OE(A)Il-94/02-23355/R on 8.5.02. Subsequently, inquiry report relating to the principal charge was submitted at Annexure-9 on 25.10.02 and at Annexure-9/l on 25.10.02 with reference to the additional charge. Show-cause notice dtd. 1.10.04. issued to the applicant at Annexure-10 for both the main charge and the additional charge without discussing details of the findings. Thereafter, punishment was imposed on him as per Annexure-12, vide Order No. OE(A)-II 73/04 37012/R dtd. 12.9.05 without discussing the points raised in his reply to the show-cause notice. Appeal against the punishment was filed at Annexure-13 which hat been disposed of with a cryptic order at Annexure-14 vide Office Order

No. OE(A)-ll-73/06 19591 /R dtd. 24.5.06. He filed a revision petition which was also disposed of at Annexure-16 vide Office Order No. OE(A)ll,04/07-23735 dtd 22.8.07 without speaking orders. It is also alleged that though the applicant was appointed by the Home Department, such punishment imposed by the Principal Secretary, Revenue Department, has not been approved by the Home Department. Hence, the applicant prays that punishment orders at Annexure-12, orders dated 24.5.06 of the appellate authority at annexure-14 and orders dated 22.8.07 of the Revision authority at Annexure-16 be quashed and all service benefits along with monetary and consequential benefits allowed.

2. In the counter filed on 20.12.08, it has been stated that the Inquiring Officer was appointed as the charged officer i.e. the applicant, delayed submission of his reply to the charge. It has also been submitted that a copy of the inquiry report and reasons as to why the disciplinary authority differed with the findings were duly made over to him, but he did not submit a timely reply. It has also been stated that the Secretary of the concerned department being the appointing and disciplinary authority for the applicant, there has been no irregularity in the punishment being imposed by the Principal Secretary, Revenue, after due inquiry, for temporary misappropriation of funds as the applicant did not adhere to govt. rules regarding return of advances.

3. Heard both parties. Learned Counsel for the applicant impugns the inquiry report, punishment order, appeal order and the revision order on the following grounds:

i. It is submitted at Annexure-ll i.e. reply to the 2nd show-cause notice that, though the applicant received the aforesaid amount, that amount was made over to one Sri Karunakar Sahu, Ex-Under Secretary, who was in charge of the party. Moreover, as the defence counsel refused to receive part payment, the amount could not be utilized immediately.

ii. Inquiring Officer was appointed without receipt of the reply to the charge indicating prejudice on the part of the respondents. It is also alleged that only the principal charge at Annexure-4 was served on the applicant without service of the additional charge dtd. 8.5.02 which is unconnected to the principal charge.

iii. It is alleged that the inquiry was not thorough as no statement of witnesses was recorded and no exhibit taken on record. Copies of statements of witnesses or exhibits were also not furnished to the applicant. Even Sri Karunakar Sahu, ex-Under Secretary, who was in charge of the party, has not been examined,. Hence, both the inquiry reports at Annexure-9 and Annexure-9/1 are perfunctory.

iv. It is also alleged that copies of the inquiry report were not served on the applicant before issue of 2nd show-cause notice or imposing punishment as required under Rule 15(10) of the OCS(CCA) Rules, 1962 and as per the decision of the Hon''ble Apex Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, and M.D., E.C.I.L. v. Karunakar AIR 1994 S.C. 1076.

v. It is also alleged that though the disciplinary authority differed with the recommendations about punishment in the inquiry report detailed reasons for differing with the inquiry report have not been furnished to him.

vi. it is also argued that the appeal order is not in accordance with Rule 29 of the O.C.S.(CCA) Rules 1962 and the appeal and revision orders are cryptic and non speaking orders issued without reference to points raised in the appeal and the Revision petitions.

vii. It is also argued that as the applicant was appointed by the Home Department, the Principal Secretary, Home Department, should have either imposed or atleast approved the punishment order as appointing and disciplinary authority and instead of the Principal Secretary, Revenue Department, issuing some punishment Orders.

Considering the aforesaid facts, the aforesaid impugned orders should be struck down and the applicant allowed consequential benefits.

4. Heard the learned standing counsel. He submits that as per Annexure-A to the counter, detailed reasons for differing with the findings of the Inquiring Officer have been stated. Apparently, a copy of the same has not been acknowledged by the applicant. It is also pointed out by him that as per Para-4 and Para-7 of the counter, a copy of the inquiry report has been duly made over to the applicant before imposing the punishment. He also submits that the Secretary of the concerned department is competent to impose punishment as the appointing authority. It is also submitted that admittedly the applicant had retained the amount beyond the period permissible as per Rules. However, it is apparent that the relevant rules in the matter have not been followed and the inquiry has been conducted in a casual manner in that detailed statements have not been recorded or exhibits cited taken on record by in the Enquiring Officer.

5. After hearing both the parties as it was necessary to examine the departmental proceeding file relating to the proceedings against the delinquent, the learned standing counsel was directed on 28.4.2009 to produce the same.

6. The relevant proceeding file vide Revenue & D.M.OE/A Branch file No. OE(A)-ll-73/2008 "Disciplinary proceedings against Shri Dhirendra Kumar Hota, Sr. Asst., Revenue Deptt.", was produced accordingly on 21.5.09 by the learned standing counsel. On perusal of the said file, it is apparent that copies of two reports of the Inquiring Officer along with show cause notice have been sent to the applicant vide letter No. 9260/TC dtd. 22.2.03 have been served on the same day as per Page.42/C of the aforesaid file, though no acknowledgement is available. Similarly, the applicant was acknowledged the 2nd show cause notice along with brief reasons for disagreement with the Inquiring Officer were sent to him vide Memo No. 38769/R/OE(A)ll.78/04 dtd. 1.10.04. In letter dated 11.10.04 at Page.48/C of the aforesaid file, the applicant has asked for extra time without raising any issue regarding non-receipt of any document as now alleged by his counsel in his arguments:

7. Considering the arguments and other records it is apparent that:

(i) No reference has been made to handing, over funds to ex-Under Secretary Sri Karunakar Sahu during inquiry. The applicant was at liberty to request for examination of Sri Karunakar Sahu as a defence witness during inquiry which he has chosen not to do for reasons best known to him.

(ii) As the applicant delayed submission of his reply to the charge, the disciplinary authority was compelled to appoint the Inquiring Officer and the Marshalling Officer for considering the inquiry. Additional charge vide No. OE(A)ll-94/02 23355/R dtd. 8,5.02 has been acknowledged by the delinquent on 8.5.02 as per Page 31/C of the aforesaid file.

(iii) Admittedly no statements of witnesses have been recorded nor any exhibits taken on record, Hence, inquiry reports at Annexure-9 and 9/1 appear to be perfunctory, particularly as important witnesses have not been examined.

(iv) Copies of inquiry report of the Inquiring Officer have been sent to the charged officer as per letter No. 9260/R dtd. 22.2.03 and served on him on the same day. Copies of reason for differing with Inquiring Officer have been duly sent to the charged officer vide Memo No. 38769/R/OE(A)-1178/04 dated 1.10.04.

(v) Admittedly orders on appeal at Annexure-14 and Revision orders at Annexure-16 are cryptic. However, detailed reasons for rejection of the appeal have been recorded at note sheet pages 45/n to 53/n of the aforesaid file and detailed reasons for rejection of the Review Petition noted from note sheet Page-55/n to note sheet page 75/n of the aforesaid file.

8. Considering the aforesaid factors, it is apparent that though due procedures have been followed, the inquiry reports at Annexure-9 and 9/1 are perfunctory as statements of witnesses have not been recorded nor exhibits taken op record. The inquiring reports are mere narrations and will not enough to stand judicial scrutiny.

9. Hence, the inquiry report at Annexure-9 and 9/1 are quashed. Consequently, punishment orders at Annexure-12, orders of Appellate Authority at Annexure-14 and the orders of the Revision Authority at Annexure-16 are also quashed. The authorities are, however, at liberty to continue the inquiry from the stage of recording of statements of witnesses in accordance with existing rules if they so desire. Consequential benefits may be allowed to the applicant as per rules for the period till resumption of inquiry in view of the above orders quashing the inquiry reports, punishment order, appellate orders and revision orders.

10. With this the O.A. is disposed of.

