

(2010) 01 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (C) No's. 384 and 529 of 2007

Director, Survey of India and Another

APPELLANT

Vs

Subrata Kumar Sen and Others

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 23
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 1, 2, 226, 3

Citation : (2011) 5 GLR 726 : (2010) 3 GLT 817

Hon'ble Judges : H. Baruah, J; Amitava Roy, J

Bench : Division Bench

Advocate : Hasibur Rahman, P.K. Roy, S.K. Chakraborty, A. Chakraborty and M. Dutta, for the Appellant; M.S. Das, for the Respondent

Judgement

Amitava Roy, J.—Both these petitions witness a challenge to the judgment and order dated 22.09.06, passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati, (for short, hereafter referred to as "the Tribunal"), rendered in Original Application No. 76/2005. For convenience the writ Petitioner in W.P.(C) No. 529/07 would be hereafter referred to as the Petitioner and the writ Petitioner in W.P.(C) No. 384/07 as the Respondent.

2. Both these petitions have been heard analogously and are being hereby disposed of by this common determination.

3. We have heard Mr. P.K. Roy, learned Counsel for the Petitioner in W.P.(C) No. 529/07 and Ms. Das learned Central Government Counsel, appearing for the Petitioner in W.P.(C) No. 384/07.

4. Briefly stated the facts leading to the institution of the original application before the learned Tribunal are that the Petitioner, while serving as Surveyor and posted in No. 29 Party (NEC), was served with a memorandum of charges dated 13.07.01, containing the following:

Article-I

That Shri S.K. Sen, Surveyor while posted in No. 29 Party (NEC) during the field season 1996-97 was assigned field duty in Arunachal Pradesh. He was appointed as Assistant Camp Officer in Camp No. 1 to assist Shri U.N. Mishra the then Deputy Superintending Surveyor and the Camp Officer of the said Camp.

Shri S.K. Sen while performing the duties of Assistant Camp Officer in the said camp gave instructions to 8 verifiers of his camp to show 8 porters on their muster rolls against the authorised strength of 4 porters by adding names of 4 fictitious porters which caused financial irregularities in the said camp.

Thus by his above act the said Shri S.K. Sen, Surveyor exhibited conduct unbecoming of a Government servant thereby violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri S.K. Sen, Surveyor while performing the duties of Assistant Camp Officer in the Camp No. 1 of No. 29 Party (NEC) during field season 1996-97 gave an offer of financial gain of Rs. 1500/- to all 8 verifiers for inclusion of 4 extra fictitious porters in their muster rolls.

Thus by his above act the said Shri S.K. Sen. Surveyor exhibited conduct unbecoming of a Government Servant thereby violated Rule 3(1)(i) and (iii) of CCS (Conduct) Rules. 1964.

Article-III

The said Shri S.K. Sen, Surveyor who was appointed Assistant Camp Officer in the field Camp of No. 29 Party (NEC) during the field season 1996-97, while engaged in fieldwork had misappropriated Government money amounting to Rs. 30/- (Rupees thirty only) by raising inflated amount towards repair of vehicle.

By his above action, Shri S.K. Sen, Surveyor failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant thereby violating Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

5. The Memorandum of Charges, inter alia, disclosed that an enquiry was proposed to be held in accordance with Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rule, 1965, (hereafter, for short, also referred as "Rules"), as the same constituted misconduct, warranting disciplinary action against him. The Petitioner was thereby required, amongst others, to submit his written statement of defence. The Memorandum of Charges further clarified that the enquiry would be held only in respect of the articles of charges not admitted by the Petitioner. The Petitioner, accordingly, submitted his written statement on 03.08.01 following which the enquiry was conducted as claimed by the Respondent authorities in terms of the Rules.

6. The materials on record disclose that prior to the institution of the

departmental proceeding as above, a preliminary enquiry had been held, in course of which, amongst others, the statement of the Petitioner was also recorded. In the disciplinary proceeding several witnesses on the part of the disciplinary authority were examined.

7. The version of the Petitioner was also recorded, and eventually, the enquiry officer submitted his report before the Central Vigilance Commission (hereinafter for short, referred to as "the Commission"), on 24.06.03 with the following findings:

Article I: Proved

Article II: Not Proved

Article III: Not Proved.

8. After examining the Inquiry Officer's report and other materials on record the disciplinary authority, namely, Director, Meghalaya and Arunachal Pradesh, GDC, Survey of India, by his order dated 31.03.04 imposed the penalty of compulsory retirement on the Petitioner being in full agreement with the findings of the Enquiry Officer and in accordance with the advice of the Commission.

9. As the statutory appeal filed by the Petitioner under Rule 23 of the Rules was dismissed by the departmental authority, he approached the Central Administrative Tribunal with OA No. 76/2005. The learned Tribunal vide its judgment and order dated 22.09.2006, directed his reinstatement imposing a lesser punishment of "lowering three increments with no pay during the absented period" but regularizing the said period notionally by adjusting with available leave, if any, for pensionary benefits. Whereas the Petitioner is aggrieved by the imposition of the modified penalty, the Respondent is discontented with the interference with the order of compulsory retirement.

10. Mr. Roy, has submitted that the Petitioner having in clear terms, denied the charges levelled against him at all relevant points of time, the conclusion that he had admitted the charge No. 1, in his written statement is unfounded on facts and therefore the findings of the Enquiry Officer vis-a-vis the said head of imputation is perverse. On the same analogy the decision of the disciplinary authority in imposing the penalty of compulsory retirement from service is also untenable in law. The learned Counsel has argued that as on the same premise the learned Tribunal has imposed the modified penalty on the Petitioner, the same ought to be interfered with.

11. According to Mr. Roy, a bare reading of the written statement filed by the Petitioner though would reveal the engagement of four extra porters vis-a-vis the works under the camp in which he had been engaged as Assistant Camp Officer, the same per se does not establish any admission on his part of any omission or commission to constitute misconduct and that therefore, the penalty imposed by the disciplinary authority and the decision to impose lesser punishment by the learned tribunal against charge No. 1 is visibly flawed in law and on facts. In

support of his arguments Mr. Roy has placed reliance on the decision of the Apex Court in Jagadish Prasad Saxena, Appellant v. The State of Madhya Bharat (now Madhya Pradesh), Respondent AIR 1961 SC 1070.

12. As against this Ms. Das has emphatically urged with reference to the records that the facts and circumstances of the case do not call for any interference of the impugned order by this Court in exercise of the powers conferred under Article 226 of the Constitution of India. She has urged that on a consideration of the materials on record the learned Tribunal ought not to have interfered with the penalty of compulsory retirement. Ms. Das has maintained that only the disciplinary proceeding had been conducted in conformity with the Rules, as the materials collected in course of the investigation sufficiently proved the charge, the penalty of compulsory retirement was justified. To reinforce her arguments, the learned Standing counsel has placed reliance on the decision of the Apex Court in State Bank of India and Others Vs. Samarendra Kishore Endow and Another,

13. In course of the arguments it has been submitted at the Bar that the Respondent authorities have not questioned the validity or otherwise of the Enquiry Officer's findings visa-vis Articles II and III of Charge. This essentially would signify that the not of the present debate is Article I of the Charge levelled against the Petitioner. A plain reading of the report of the Enquiry Officer demonstrates that Articles II and III of the charge against the Petitioner could not be proved. Vis-a-vis Article of Charge No. 1. it is apparent from the narration therein that the Petitioner's delinquency is based solely on the perception that he had admitted his guilt in his written statement dated 03.08.81 which the enquiry officer has accepted as sufficient to prove the same. Though the Enquiry Officer in his report had referred to the evidence of the other witnesses as well as the statement of the Petitioner in course of the disciplinary proceedings, the ultimate conclusion has been founded on his comprehended admission in his written statement dated 03.08.81.

14. Having regard to the fact that the Respondent authorities had relied on the findings of the Enquiry Officer so as to affirm that Article No. I of the charge had been proved against the Petitioner, it would be expedient to refer to the enquiry report. This Court has to undertake this exercise in view of the plea raised on behalf of the Petitioner that the conclusion of the Enquiry Officer based on his purported admission is not supported by materials on record and is thus perverse.

15. A plain reading of the representation/written statement of the Petitioner in answer to the charges reveal that he at the relevant point of time was the Assistant Camp Officer. Camp No. 1, No. 29 Party (NEC).

16. According to him, the recruitment of extra hands of porters had been on the instruction of the higher authorities next in order to the Assistant Camp Officer. The Petitioner has averred that he being subordinate to both the other officers, the engagement had to be made in terms of the orders of the superior officers.

17. We have perused the same as well as the evidence adduced by the witnesses of the disciplinary authority more particularly that of Sri R.K. Meena, Surveyor Officer-in-Charge and Sri U.N. Mishra, Superintendent Surveyor, Officer-in-Charge (the then Camp Officer) the Superior Officers of the Petitioner. In reply to the queries made to these witnesses in the course of disciplinary proceedings they have stated that the extra porters had been appointed by the Petitioner, on the basis of their verbal instructions.

18. The statements of these witnesses therefore obviously lend support to the Petitioner's stand in his representation/written statement to the charges. It is noticeable from the statement of Mr. R.K. Mishra, Officer-in-charge, that he was himself not competent to engage extra porter without the specific approval of the Director of the establishment.

19. The statements of the Officer-in-Charge and the Camp Officer when read in conjunction with the written statement of the petitioner, we are of the unhesitant opinion that he could not be, in the facts and circumstances of this case, be attributed any conscious act of omission or commission with any motive collateral motive in the matter of appointments of the extra porters so as to hold him guilty of any misconduct comprehended under the Rules. The materials on record including his written statement also do not establish any admission of any charge by him.

20. The Enquiry Officer and the disciplinary authority in our opinion misread the evidence on record and the Petitioner's written statement in this regard. The learned tribunal also fell in the same error.

21. That the averments made in the petitioner's written statement dated 03.08.01 can not be construed to be his admission of Article No. I of the charge finds support from the decision of the Apex Court in Jagdish Saxena (supra), wherein their Lordships emphasised upon unambiguous, categorical and unqualified acceptance by a delinquent Officer of a imputation against him to hold him decisively guilty thereof. The conclusion of admission of the Petitioner recorded by the Enquiry Officer and the disciplinary authority thus cannot be sustained on the same measure. The decision of the learned Tribunal also cannot be upheld when judged from this perspective.

22. On a totality of the considerations, the judgment dated 22.09.09 passed by the learned Central Administrative Tribunal, Gauhati Bench, Guwahati, is hereby set aside. As the interference has been made on the ground that the charge against the Petitioner has not been proved, W.P.(C) No. 384/07 is rejected and W.P.(C) No. 529/07 is allowed. The Petitioner would be entitled to all consequential services benefits. No costs.