
(2006) 03 OHC CK 0058
In the Orissa High Court
Case No : Writ Petition (C) No. 4416 of 2002

Dr. Raj Kishore Sahu

APPELLANT

Vs

Government of Orissa and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Constitution of India, 1950 — Article 305, 309
Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13, 15
Orissa Government Servants Conduct Rules, 1959 — Rule 3

Citation : (2006) 102 CLT 737 : (2006) 1 OLR 467 Supp

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : S.K. Nanda, S.N. Patnaik, S.K. Dash and S.N. Patnaik, for the Appellant; M.B.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ application has been filed against the judgment and order dated 27.8.2002 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 709 of 2000. While disposing of the O.A., the Tribunal observed that the Enquiry Officer without any supporting evidence gave a finding to exonerate the petitioner from the charges and the Disciplinary Authority disagreeing with the same, imposed punishment without giving any reason for substituting its own findings and punishment. The Tribunal further observed that apparently there was some negligence on the part of the petitioner in ensuring proper post-operative care to the patient and that while going to attend the emergency case he should have made some arrangements for monitoring the condition of the patient. However, the Tribunal while directing to treat the period of suspension as such, quashed the other penalties imposed vide Annexures 7 & 10 therein and upheld by Annexure-1 4 thereof.

2. The brief facts of the case are that the petitioner while serving as a specialist in Anaesthesiology in Capital Hospital, Bhubaneswar was placed under

suspension pending initiation of disciplinary proceedings against him vide order dated 29.7.1993. But later on he was reinstated vide order dated 8.6.1995 pending finalisation of disciplinary proceedings drawn against him. The charge-sheet along with the statement of allegation was served upon him. The charge is quoted as under:

Charges:

Dr. Raj Kishore Sahoo, No. T during his incumbency as Specialist in Anaesthesiology, Capital Hospital, Bhubaneswar, has committed the following lapses leading into the death of a patient named Sri Arun Kumar Mohanty at Capital Hospital, Bhubaneswar at about 9 P.M. on 10.3.93.

i) After the operation of the patient (case of acute appendicitis) was completed at about 8.20 P.M. on 10.3.93 the patient showed the signs of absolute deterioration very shortly and declared dead at about 9 P.M. on the same day.

The tragic incident of a loss of valuable human life clearly shows that Dr. Sahoo, the Ansthesist has made no attempt to take precautionary watch on the patient to monitor the condition of the post operative patient, when he was at the early stages of recovery, lack of professional expertise and on the spot judgment by Dr. Sahoo at the critical minutes and above all this is due to his relative in-experience and want of his exposure in major hospitals.

The aforesaid act on the part of Dr. R.K. Sahoo, No. 1 Spl. in Anaesthesiology, Capital Hospital, Bhubaneswar amounts to lack of his devotion to duty and thus he has failed to discharge his duties properly in contravention of provisions of Rule 3 of the Orissa Govt. Servant's Conduct Rule, 1959.

3. As directed he submitted his written submission denying the charges. Thereafter vide order 20.7.1996 penalties were imposed upon him which were; (i) the suspension period with effect from 29.7.93 to 5.7.95 was treated as such, (ii) stoppage of one annual increment with cumulative effect and (iii) censure.

4. He preferred an appeal which was rejected vide communication dated 27.11.1997. Thereafter he filed O.A. before the Tribunal which was registered as O.A. No. 155 of 1998 against the order of punishment on the ground that the report of the enquiry officer was not furnished to him before imposing of penalties. The Tribunal had allowed the O.A. , and set aside the order of punishment vide its order dated 2.12.1999. It was further directed that the Disciplinary Authority shall furnish a copy of the enquiry report to the petitioner and the petitioner shall submit a representation to the Disciplinary Authority if he so likes within one month and thereafter the Disciplinary Authority would dispose of the same within a period of three months and communicate the decision to him. Thereafter the enquiry report was supplied to the petitioner. The Joint Director of Health Services (Medical) Orissa who was the Enquiry Officer has recommended to exonerate the petitioner from the charges. The enquiry report is reproduced as under:

Report of Enquiry on the charges framed against Dr. H.K. Sahoo, Specialist in Anaesthesiology, Class-II Capital Hospital, Bhubaneswar.

Joint Director of Health Services (Medical) was enquiring officer and Dr. M.D. Nayak, Specialist in Hospital Administration was Marshalling Officer.

Notice was served to Dr. R.K. Sahoo, vide the Directorate letter No. 1499/C dt. 2.6.95 to attend enquiry on 16.6.95 at 3.00 P.M. in Seminar Hall of. Capital Hospital, Bhubaneswar.

The Charges made against Dr. R.K. Sahoo that he has not attended the patient during the post operative period to monitor the condition of the patient, is not true for the following reasons.

Dr. R.K. Sahoo sent the patient on a trolley to the adjacent room of the main O.T. after complete recovery from anesthesia he has Entrusted Dr. Malarkar to keep an eye over the patient who is also trained in Anesthesia. Dr. Malarkar was all along by the side of the patient while writing operation notes as Dr. R.K. Sahoo was engaged in attending another emergency patient in the main O.T.

The patient was sent to the adjacent room on a trolley after complete recovery from Anesthesia and during the deterioration of the patient as reported by Dr. Malarkar the patient was personally attended by Dr. R.K. Sahoo who took all attempts for resuscitation of the deceased. So it is not a fact that the patient was not attended by Dr. R.K. Sahoo at the critical minutes.

As regards his experience and exposure to major in surgery, in important hospitals, I am to say that Dr. Sahoo is in this line since 1987. During his P.G. study's 87 to 88 he has given anesthesia independently major operations in Colleges like Burla and S.C.B.M.C., Cuttack. Since 1991 he was attached to Capital Hospital as Anaesthaist and has tackled many major and complicated cases by giving general Anaesthesia. So, in my opinion the charges framed against Dr. R.K. Sahoo on this context is not justified.

CONCLUSION

The deceased Sri Arun Kumar Mohanty has been attended in time, operation was indicated and has been done successfully in shortest possible time. All efforts have made by the Operating Surgeon and the Anaesthetist to overcome one of the worst complication of General Anesthesia, which usually happens soon after recovery from Anaesthesia. It is, therefore, recommended that Dr. R.K. Sahoo may be exonerated from the charges.

5. It is a fact that the Disciplinary Authority was not in agreement with the enquiry report; but he had not recorded any reason for his disagreement and decided to impose the same punishment which was ordered to be imposed earlier vide order dated 20.7.1996 . The order of punishment dated 10.3.2000 is reproduced as under:

Government of Orissa

Health and Family Welfare Department

ORDER

Dated, Bhubaneswar the 10.3.2000

No.MS-II-IW-10/2000 10782/H. In pursuance of the order dated 2.12.99 of the Hon"ble OAT in OA No. 155/98 and after careful consideration of the representation dt. 4.2.2000 of Dr. Raj Kishore Sahoo, ex-Specialist in Anaesthesiology (Retd.) Govt. have been pleased to decide that the punishment earlier imposed on him vide G.O. No. 30161/H dt. 20.7.96 i.e.

1) The suspension period with effect from. 29.7.93 to 5.7.95 is treated as such

i. Stoppage of one annual increment with cumulative effect,

ii."Censure" holds good and needs no change.

2) His representation dt. 4.2.2000 to exonerate him from the charges is hereby rejected.

6. It is necessary to mention here that the above order was passed on 10.3.2000 but the petitioner was already retired on 30.6.1997 attaining the age of superannuation.

7. Being aggrieved he filed O.A. No. 709 of 2000 before the Tribunal which was disposed of as mentioned above. However, the concluding part of the impugned judgment and order passed by the Tribunal is quoted as under:

In the enquiry report while coming to the conclusion that charges are not proved against the applicant, the I.O., had not discussed the evidence which supported his conclusion. In this one page report he has said that the applicant sent the patient on a trolley to an adjacent room after complete recovery from anaesthetic and asked Dr. Malarkar to keep an eye on him and Dr. Malarkar was all along by the side of the patient. He has stated that it is not a fact that the patient was not attended to by the applicant at a critical stage. There is no indication that Dr. Mallarkar was examined as a witness or even the applicant's statement was recorded during the enquiry. The enquiry report only states that notice was issued to the applicant to attend the enquiry on 16.6.95 in the Seminar Hall of Capital Hospital, Bhubaneswar. But it does not state that the applicant's statement was recorded. While the disciplinary authorities had not recorded the reasons for disagreement with the findings of the Inquiring Officer, the findings of the Inquiring Officer are also not supported by any evidence. But apparently there was some negligence on "the part of the applicant in ensuring proper postoperative care to the patient. While going to attend the emergency case he should have made some arrangements for monitoring the condition of the patient. Hence it is directed that the period of suspension shall be treated as such but other penalties imposed vide Annexure-7 and 10 and upheld by Annexure 1 4, are quashed.

The original application is disposed of. No costs.

8. Being aggrieved by the impugned judgment and order of the Tribunal, the petitioner has filed the instant writ application. The points for determination before this Court are that once the order of punishment dated 20.7.1996 was quashed by the Tribunal "vide order dated 2.12.1999 in O.A. No. 155 of 1998 and the petitioner was already superannuated by that time on 30.6.1997 whether the punishment of stoppage of one annual increment with cumulative effect and censure could have been awarded to the petitioner vide impugned order dated 10.3.2000. Further whether the impugned order of punishment was not bad in law which was passed without recording any reason of disagreement with the punishing authority in his enquiry report and whether the Tribunal could have substituted its own finding in place of the finding of the enquiry officer and could have decided as to what would be the proper punishment to be imposed upon the petitioner.

9. Before proceeding further, it is necessary to mention that the services of the petitioner were governed by the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 (hereinafter referred to "as" CCA Rules") which were made in exercise of the powers conferred by the proviso to Article 305 of the Constitution of India by the Governor of Orissa. Clauses 10(i)(b) and 10(ii) of Rule 15 inter alia provide that the Disciplinary Authority would give the brief reason for disagreement with the report of the enquiry officer .

The relevant portion of that rule is quoted as under:

10(i)(b) On receipt of the representation referred to in Sub-clause (a) the Disciplinary Authority having regard to the findings on the charges is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed, he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons for disagreement, if any, with the findings of the inquiring officer and give him notice by Registered post or otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed penalty.

Provided that in every case in which it is necessary to consult the Commission under the provision of the Constitution of India and the Orissa Public Service Commission (Limitation of Functions) Regulation, 1989 the record of Inquiry together with a copy of the notice given under Sub-clause (a) and the representation if any, received within the specified time in response to such notice shall be forwarded by the Disciplinary Authority to the Commission for its advice."

"10(ii) The orders passed by the Disciplinary Authority shall be communicated to the Government servant, who shall also -be supplied with a copy of the report of inquiring authority and where the Disciplinary Authority is not the enquiring authority, a statement of its findings together with brief reasons for

disagreement, if any, with the findings of the inquiring authority, as well as a copy of the advice of the Commission, where, the Commission had been consulted, and brief statement of reasons for non acceptance of the advice of the Commission, if the Disciplinary Authority has not accepted such advice.

10. The C.C.A. Rules are the statutory rules and departure from the same would definitely be an illegality .

11. Apart from the statutory provision, is the common law that according to the principle of natural justice an employee should at least know the tentative reasons for disagreement with the report of the enquiry officer before inflicting punishment upon him so that he may be able to make a representation to satisfy the punishing authority by way of his explanation to the tentative reasons which are formed by the punishing authority to its mind .

12. In the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, the Apex Court held that:

it was open to the Disciplinary Authority either to agree. with the findings recorded by the enquiring 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 findings 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 officers 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.

13. Similar view has been expressed by the apex Court in the cases reported in

State of Assam and Another Vs. Bimal Kumar Pandit, ; Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, ; Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, , Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, & Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others,

14. In view of the above facts and circumstances, we are of the firm view that the impugned punishment, imposed upon the petitioner disagreeing with the report of the enquiry officer without recording reasons, vitiates the impugned order of punishment being bad in law.

15. Next question is that once the Tribunal had come to the conclusion that no reason was recorded for the disagreement with the report of the enquiry officer and the petitioner was not given any opportunity to make representation on such disagreement, the Tribunal should have quashed the impugned punishment order instead of holding that there was apparently some negligence on the part of the applicant in ensuring post operative care to the patient. However, the Tribunal modified the order of punishment to the effect that only the period of suspension shall be treated as such and also quashed the other penalties.

16. We have perused the charges as well as the statement of allegation against the petitioner and found that no evidence was shown in support of the charges relying upon the charge-sheet. Therefore, the charge-sheet itself was not based on any evidence or document. In fact the statement of witnesses were recorded without giving particulars thereafter to the delinquent in advance and asking him whether he desires to cross-examine them or not. This has also not been done and therefore, the observation of the Tribunal in the impugned order that there was no communication that Dr. Malarkar was examined as a witness even evidence of a witness recorded was not relevant and the findings of the enquiry officer being not supported by any evidence are irrelevant. The findings recorded by the Tribunal that there was no negligence on the part of the applicant was also not within its competence as the Tribunal could not have functioned as a decision making authority over the report of the enquiry officer.

17. In view of the above mentioned facts and circumstances, the writ application is allowed. The impugned judgment and order passed by the Tribunal as well as the impugned punishment inflicted upon the petitioner are quashed. Consequently the petitioner shall be entitled to get all consequential benefits including the salary for the period of suspension as the same shall be treated as to be spent on duty.

18. Since the petitioner is a retired person being superannuated on 30.6.1997, we feel that it would not be proper at this stage to direct the enquiry officer to proceed with the enquiry afresh.

No order as to costs. It goes without saying that the opposite parties shall make compliance of this order within a month from the date of receipt of this order. Requisites for communication of the order shall be filed within a week.

Pradip Mohanty, J.

19. I agree.