
(1996) 11 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 3558 of 1989

Hari Singh Gour

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 15(4)

Citation : (1997) 2 MPJR 74 : (1997) 2 MPLJ 531

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : V.S. Shrotri, for the Appellant; Manindra Shrivastava, for the Respondent

Judgement

D.M. Dharmadhikari, J.

By this petition under Article 226 of the Constitution of India, the Petitioner assails the order dated 11-1-1985 passed by the District Judge, Raigarh removing him from service as a Lower Division Clerk employed in the District Court, Raigarh.

The Petitioner was proceeded against by four separate charge-sheets containing imputations of misconduct on allegations inter alia of dereliction of his duties and making attempts to obtain illegal gratifications from the litigants. The charges included non-maintenance of cause-lists, non-issuance of records to the process section and failure to properly maintain the records. The most serious charges were of demanding illegal gratification from the litigants coming to the Court for taking dates in their cases.

The enquiry was conducted in accordance with the provisions of M. P. Civil Service (Classification Control and Appeal) Rules, 1966 (hereinafter referred to as "the Rules"). The Chief Judicial Magistrate was appointed as the enquiry officer. After holding the enquiry he submitted his report to the District Judge

who acted as the disciplinary authority. In accordance with the unamended provisions of Rule 15(4) of the Rules, as it existed then, the copy of the enquiry report was furnished to the Petitioner and a show cause notice was given to him proposing penalty of removal from service. The Petitioner submitted his reply to separate show cause notices received by him in the four enquiries.

The disciplinary authority by a common order passed in the four enquiries, after recording his agreement with the conclusions of the enquiry officer, imposed the punishment on the Petitioner of his removal from service.

Shri v. S. Shrotri, learned Counsel appearing for the Petitioner has taken this Court through the record of the enquiries to show nature of the charges, the findings of the enquiring authority and the conclusion drawn by the disciplinary authority. It is submitted that the charges were concerning trivial violation of procedural rules and they did not amount to any serious misconduct. Attempt was also made to demonstrate that there is no evidence worth reliance to hold the Petitioner guilty of the charge of demanding illegal gratification from the litigants. It is submitted that the witnesses in their statements did not implicate the Petitioner at all.

After going through the record of the enquiry and the relevant part of the statements of witnesses, this Court finds no scope for it to go into the correctness of the findings recorded in the enquiry. The Presiding Judge under whom the Petitioner worked had made a report about the misdeeds of the Petitioner in his day-to-day working. The persons who had complained against him for accepting illegal gratification also entered the witness box and supported their complaints made earlier in writing. The evidence of these witnesses was appreciated and partly relied by the enquiring and disciplinary authority. It is not open to this Court while exercising powers of judicial review to go into the sufficiency or insufficiency of the evidence on record. There is admissible evidence on record on which the charges can be held to have been proved.

The learned Counsel for the Petitioner then highlighted some procedural flaws in the enquiry and assailed the conclusion of guilt of the Petitioner reached by the disciplinary authority. It has been argued strenuously and with great force that the impugned order imposing punishment is prima facie bad for non-recording of reasons in coming to the conclusion of guilt of the Petitioner. The provisions contained in Rule 15 unamended and after amendment are as under:

Action on the inquiry report. - (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 of rule 14 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on

record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.

(4) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Clauses (v) to (ix) of rule 10 should be imposed on the Government servant, it shall -

(a) Furnish to the Government Servant a copy of the report of the inquiry held by it and its findings on each articles of charge or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 14;

(ii) (a) In every case in which it is necessary to consult the Commission,

the record of the inquiry, together with a copy of the notice given under Clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b) the disciplinary authority shall after considering the representation, if any, made by the Government servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the Government servant and make such order as it may deem fit;

(iii) Where it is not necessary to consult the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given by him under Clause (i) and determine what penalty if any, should be imposed on him and make such order as it may deem fit.

The relevant portion of Rule 15, as amended reads thus:

Action on the inquiry report -

(1).....

(2).....

(3) If the disciplinary authority having regards to its finding on all or any of the articles of charge is of the opinion that any of the penalties in The words "clauses (i) and (iv) of" omitted vide Notification No. C-6-5-83-3-1 dated 23rd July, 1984. Published in M. P. Rajpatra, Part IV (Ga) dated 3-8-1984 p. 87 (.....) Rule 10 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty Inserted vide Notification F. No. C-6-4-83-3-1 dated 16th December, 1983. Published in M.P. Rajpatra Part IV (Ga) dated 13-1-1984 Page 1 (but in doing so it shall record reasons in writing):

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) Sub-rule (4) omitted vide Notification No. C-6-5-83-3-1 dated 23rd July 1984. Published in M.P. Rajpatra, Part IV-(Ga) dated 3-8-1984 p. 87 (.....)

* * * * *

It is submitted that Sub-rule (3) of Rule 15 expressly lays down requirement of recording reasons in writing by the disciplinary authority in support to its findings. In the absence of recording of reasons, it is urged, the impugned order is liable to be quashed being in violation of the provisions of Sub-rule (3) of Rule 15 and against the principles of natural justice. The argument advanced is that the impugned order of punishment does not disclose due application of mind by the disciplinary authority to the nature of the charges, findings reached by the enquiry officer and the question of quantum of punishment. It is submitted that because of non-application of mind by the disciplinary authority the Petitioner has been visited with extreme penalty of removal from service merely on proof of minor lapses committed by him in discharge of his duties. In support of his argument that recording of reasons for the punishment imposed by the disciplinary authority is mandatory, reliance is placed on S.N. Mukherjee Vs. Union of India, , Nand Kishore Prasad Vs. State of Bihar and Others, and A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., .

Taking up the first legal submission made on behalf of the Petitioner, the reply submitted on behalf of the Respondents by learned Counsel Shri Manindra Shrivastava, be also considered. It is pointed out that in the instant case, when the enquiry was completed by the enquiring authority, unamended Sub-rule (4) of Rule 15, which was in existence then, required supply of copy of enquiry report to the delinquent servant with notice to him to show cause against the proposed punishment. The said Sub-rule (4) of Rule 15 containing the above

requirement, however, came to be deleted by notification dated 23-7-1984 published in Rajpatra dated 3-8-1984. Under Sub-rule (4) of Rule 15 as it existed then, a second show cause notice in all the four cases was issued with copy of the enquiry report to the Petitioner on 4-6-1984. It is submitted that Sub-rule (23) of Rule 14 necessitates the enquiring authority to mention in the report the articles of charge, the defence of the Government servant, and an assessment of the evidence in respect of each articles of charge. It is submitted that in a case where the enquiring authority has made assessment of the evidence for recording findings on each charge, the requirement of stating reasons is fully satisfied by the disciplinary authority expressing in the final order that he agrees with the findings or conclusions drawn by the enquiring authority. On the above facts, it is submitted that the disciplinary authority having expressly stated in the final order of imposing punishment that he agreed with the findings of enquiring authority, the requirement of recording reasons contained in Sub-rule (3) of Rule 15 has been fully complied with. The alternative submission made on behalf of the Respondents is that if this Court comes to the conclusion that the punishment was otherwise warranted on the basis of the evidence on record and the conclusions drawn on that basis by the enquiring authority, this Court should not set aside the whole action of the disciplinary authority merely for its omission to record reasons. It is also submitted on behalf of the Respondents that by non-recording of reasons by disciplinary authority, no serious prejudice has been caused to the Petitioner and it is not open to the Petitioner to challenge the proceedings on the said ground. For the said proposition, reliance is placed on *Managing Director, ECIL, Hyderabad v. S. Karunakar*, (1983) 4 SCC 727, *State Bank of Patiala and others Vs. S.K. Sharma*, *State of Orissa Vs. Bidyabhushan Mohapatra*, and *State Bank of India v. S. S. Koshal*, 1994 Supp. 2 SCC 469.

In the course of argument, divergent views were expressed by the learned Counsel for the parties on the interpretation to be placed on amended Sub-rule (3) of Rule 15 and the nature and stage of enquiry at which the reasons are required to be recorded. On behalf of the Petitioner it was contended that the requirement of recording reasons under Sub-rule (3) is both with regard to the findings or conclusions reached by the disciplinary authority as also the quantum of penalty. On behalf of the Respondents, however, it is sought to be urged that Sub-rule (3) of Rule 15 is attracted only when disciplinary authority agrees with the findings of enquiring authority and the requirement of recording of reasons is only with regard to quantum of punishment.

The language of Sub-rule (3) of Rule 15 be noticed:

(3) If the disciplinary authority having regard to its finding on all or any of the articles of charge is of the opinion that of the penalties specified in (****) Rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing.

Portion mentioned above was omitted by notification dated 23rd July 1984

published in M. P. Rajpatra Dated 3-8-1984. This omission was simultaneously made with the omission of the entire Sub-rule (4) of Rule 15 which required furnishing of copy of enquiry report to the delinquent and giving him a second show cause notice on the quantum of punishment. Apparently, omission of the bracketed part in sub- rule (3) and total deletion of Sub-rule (4) have been made consequent to the constitutional amendment of Article 311 of the Constitution where under the requirement of issuance of second notice on proposed penalty was dispensed with.

In Sub-rule (3) of Rule 15, the requirement of recording reasons in writing by the disciplinary authority was inserted by notification dated 16th December, 1983 published in M. P. Rajpatra dated 13-1-1984. In the instant case when the second show cause notice was given, Rule 15(3) as it stood after amendment introduced on 23-7-1984 and Sub-rule (4) of Rule 15 were not in existence. The disciplinary authority, therefore, furnished a copy of the report to the delinquent and in the second notice expressly stated that he has agreed with the findings and conclusions of the enquiry officer. By the time when the impugned final order was made, Sub-rule (4) of Rule 15 had been omitted but Sub-rule (3) containing requirement of recording reasons existed. In the case of S. N. Mukherjee (supra), no doubt, it has been held that quasi judicial authorities must state reasons for their decision as a requirement of rule of natural justice. It has, however, been said that the requirement regarding reasons may differ from case to case depending upon the nature of the power exercised and the nature of the proceedings. In the instant case, the second show cause notice based on the enquiry report was given to the Petitioner in accordance with unamended Sub-rule (4) of Rule 15 as it existed then. In the second show cause notice the disciplinary authority has clearly recorded that it has agreed with the findings and conclusions of the enquiring authority and has tentatively decided to impose the extreme penalty of removal from service on the Petitioner. By the time it had made the final order, Sub-rule (4) of Rule 15 had been deleted. In such circumstances, his recording merely in the order that he agreed with the findings of the enquiry officer should be deemed to be compliance of the provisions requiring recording of reasons. See - the following observations in para 15 of the decision in State of Madras Vs. A.R. Srinivasan, :

In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the tribunal which may be in favour of the delinquent

officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

The reasons for the action were contained in the enquiry report which was furnished to the Petitioner in accordance with unamended Sub-rule (4) of Rule 15. Sub-rule (23) of Rule 14 requires the enquiring authority to give the total assessment of evidence and findings on each article of charge. The enquiry report coupled with the second show cause notice and the order passed by the disciplinary authority contained full reasons which were duly disclosed to the Petitioner before taking the impugned action. The argument, therefore, cannot be accepted that there has been a non-compliance of the requirement of recording reasons as laid down in Sub-rule (3) of Rule 15.

The other alternative submission made on Rule 15(3) by the learned Counsel for the Respondent also deserves to be accepted. Merely because there is stated to be some flaw in the passing of the impugned order, as it does not record full reasons for the action, the whole action cannot be deemed to be vitiated and liable to be quashed for that reason alone. The decisions in the case of B. Karunakar and S. K. Sharma (supra) of the Supreme Court fully support the above argument. See also the following observations in "An Introduction to Administrative Law" Second Edition, by Peter Cane, at page 189:

According to the present law, if a body is under a statutory duty to give reasons for its decisions then reasons must be given and those reasons must satisfy a minimum standard of clarity and explanatory force and must deal with all the substantial points which have been raised. However, a decision will be quashed on account of inadequacy of reasons only if the applicant can convince the Court that the gap in the reasons raises a substantial doubt as to whether there was a flaw in the decision which would justify quashing it on some other ground than failure to give reasons. In other words, failure to give adequate reasons, in and of itself, does not invalidate a decision.

The second ground urged is that although four separate disciplinary proceedings were taken under separate four charge-sheets, yet common order of punishment has been passed resulting in imposing disproportionate and extreme punishment of removal from service on the Petitioner. This argument has also no force. Two of the charges of trying to get illegal gratification by the Petitioner from the litigants have also been held proved. The learned Counsel for the Respondents is

right in submitting that even if the action is liable to be sustained on one of the charges found proved this Court should not invalidate the action merely because instead of passing separate orders of punishment in four cases a common order was passed. See - the following observations in the case of Bidyabhushan (supra):

... If the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the finding but not all it appears that there had been violation of the rules of natural justice.

Lastly, it is urged that even the appellate order passed by the High Court is unreasoned and the whole action is liable to be set aside because the order of disciplinary authority was also unreasoned. As has been held above, the order of disciplinary authority cannot be held to be an unreasoned order. The order in appeal is of affirmance. The reasons for the action were contained in the enquiry report which were accepted by the disciplinary authority in its final order. The appellate authority in affirming the action of the disciplinary authority was not duty bound in law to separately record its reasons. See - S.N. Mukherjee's case (supra).

For all the above reasons, the petition is hereby dismissed, but without any order as to costs. The security deposit, if any, shall be refunded to the Petitioner.