
(2009) 07 OHC CK 0010

In the Orissa High Court

Case No : Writ Petition (C) No's. 13248 and 13957 of 2007

Jayanta Kumar Bakshi

APPELLANT

Vs

Principal Secretary to Government, Excise Department and
Others
 State of Orissa and Another Vs Jayanta
Kumar Bakshi

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Constitution of India, 1950 — Article 309
Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12(1),
13, 15, 15(1), 15(10)

Citation : (2009) 108 CLT 584 : (2009) 2 ILR (Ori) 434 : (2009) 2 OLR 968
Supp : (2010) 4 SLR 475

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S.C. Parija, J

Bench : Division Bench

Judgement

I.M. Quddusi, A.C.J.

1. These two writ petitions arise out of the same set of facts and hence they are taken up together for disposal. While W.P.(C) No. 13248 of 2007 has been filed by Sri Jayanta Kumar Bakshi challenging the order dated 21.09.2007, passed by the Orissa Administrative Tribunal, Bhubaneswar, in O.A. No. 986 of 2006, State of Orissa and another have filed W.P.(C) No. 13957 of 2007, assailing the order dated 16.05.2007 passed by the Orissa Administrative Tribunal, Bhubaneswar, in O.A. No. 383 of 2007.

2. The brief facts of the case are that the Petitioner (Jayanta Kumar Bakshi) in W.P.(C) No. 13248 of 2007, while working as Inspector of Excise, E.I. & E.B. (Central Division) and stationed at Bhubaneswar, was placed under suspension on 10.04.2001, in contemplation of a disciplinary proceeding, as provided under Rule 12(1) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 ("CCA Rules" for short). Subsequently a proceeding was drawn up and charge was framed against the Petitioner vide Proceeding No. 415 dated 01.06.2001, which was passed solely on the basis of the alleged statement of an

accused in Mancheswar P.S. case No. 32 dated 15.02.2001, and the confessional statement of the accused made before the police during investigation, alleging that the accused used to give Rs. 1,200/-per. month to the Petitioner. The Petitioner was accordingly charged for dereliction of duty and gross misconduct in accepting the illegal gratification by misusing his official position for personal gain.

3. The Petitioner (Jayanta Kumar Bakshi) submitted his explanation, denying the charges. The Disciplinary Authority i.e. Excise Commissioner, Orissa, appointed the Deputy Commissioner of Excise (Central Division), Cuttack, as the Enquiry Officer to enquire into the charges and the Superintendent of Excise, Khurda, was nominated as the Marshalling Officer.

4. The Enquiring Officer conducted the enquiry and after conclusion of the same, he gave his enquiry report on 05.02.2002, based on the materials on record (Annexure-4), wherein it was found that the department has not been able to prove the charge against the Petitioner (delinquent officer) and under such circumstance, the charge failed and therefore, the Petitioner should be exonerated from the charge. The charge for which the Petitioner was placed under suspension having failed, the Enquiry Officer recommended that the period of suspension be treated as duty.

5. On receipt of the enquiry report, the Disciplinary Authority, i.e., Commissioner of Excise, Orissa, vide his letter dated 02.12.2002 (Annexure-5) intimated the State Government in the Excise Department that he agreed with the findings of the Enquiring Officer.

6. In spite of the Petitioner being exonerated of the charge by the Enquiring Officer and the Disciplinary Authority accepting the findings given in the enquiring report, the Petitioner continued to remain under suspension. Being aggrieved, the Petitioner moved the Orissa Administrative Tribunal, Bhubaneswar, in O.A. No. 986 of 2006, for quashing the order of suspension and for his reinstatement with full service benefits from the date of suspension till the date of his reinstatement.

7. While the matter stood thus, another proceeding was initiated against the Petitioner (Jayant Kumar Bakshi) vide Proceeding No. 319, dated 7.6.2006 for similar charges of dereliction of duty, gross misconduct, criminality and loss of integrity. The memorandum of charges was served on the Petitioner on 14.12.2006.

8. After a lapse of about five years, the Disciplinary Authority i.e. Commissioner of Excise, Orissa, vide office order dated 15.01.2007 (Annexure-6), passed the following orders:

After going through the enquiry report submitted by the enquiring officer, the disciplinary authority, the Excise Commissioner of Orissa does not agree with the conclusion of the enquiring officer and pleased to order-The E.D.C. (CD), Cuttack

to re-enquire the proceeding No. 415 dated 1.6.01 along with the additional proceeding No. 339 dated 7.6.06 drawn up against the D.O. in pursuance of Sub-rule 4 of the Rule-15 of the O.C.S. (CC & A) Rules, 1962. The extract of the order of the disciplinary authority is enclosed herewith.

9. Being aggrieved by the aforesaid office order of the Disciplinary Authority directing re-enquiry of Proceeding No. 415, dated 01.06.2001, the Petitioner filed O.A. No. 383 of 2007 before the Orissa Administrative Tribunal, Bhubaneswar, who after hearing the parties, vide its order dated 16.05.2007 disposed of the same with the following orders:

The observation of the disciplinary authority do not point out any material irregularity per se to have occurred in the report of the inquiring officer. So it is rightly pointed out by the learned Counsel for the applicant that the statutory rules cannot be bypassed by the departmental guidelines. Further even going by the rulings of the courts the grounds on which such re-enquiry can be done do not appear to be present in the instant case.

Accordingly setting aside of the first enquiry does not appear to be justified and we do not find any reason to sent it back for re-inquiry in the manner done in this case and as indicated in Annexure-6. While so, the D.P. 339 dated 1.6.2001 based on a set of additional charges altogether being a different case must be allowed to go on its own course. So there is necessity for modification of Annexure-6 thereby authorizing the inquiring officer to proceed with the new departmental proceeding No. 339 dated 7.6.2006 and dropping the earlier departmental proceeding No. 415 dated 1.6.2001. The impugned order as at Annexure-6 stands modified to the extent as indicated above.

10. The State Government being aggrieved by the aforesaid order of the Tribunal dated 16.05.2007 passed in O.A. No. 383 of 2007 has filed writ petition, i.e., W.P. (C) No. 13957 of 2007.

11. The earlier application of the Petitioner (O.A. No. 986 of 2006) was disposed of by the Tribunal by its order dated 21.09.2007, rejecting the Petitioner's prayer for quashing of the order of suspension and granting him leave to file representation. Against this order of the Tribunal, the Petitioner (Jayant Kumar Bakshi) has filed the writ petition, i.e., W.P.(C) No. 13248 of 2007.

12. The question which falls for determination is whether the Disciplinary Authority, while disagreeing with the findings of the Enquiring Officer and not accepting the enquiry report in a disciplinary proceeding, can order for re-enquiry, without assigning any reasons and opportunity of hearing to the delinquent officer, under the provisions of C.C.A. Rules.

13. From the facts detailed above, it is seen that the enquiry into the charges framed in the departmental proceeding vide Proceeding No. 415 had been concluded and the additional proceeding vide Proceeding No. 339, dated 7.6.2006 was based on a set of additional charges and was not the subject

matter of enquiry, in which the Enquiring Officer had submitted the report exonerating the Petitioner (delinquent officer) from all charges. Admittedly, disciplinary action against the Petitioner has been initiated under the CCA Rules. Rule 15 of the CCA Rules provides the procedure for imposing penalty, Sub-rule (6) of Rule 15 provides the procedure to be followed by the inquiring authority while holding the inquiry and the materials to be considered with regard to the charges under inquiry. Sub-rule (7) provides that the inquiring authority at the conclusion of the inquiry, shall prepare a report of inquiry regarding its findings on each of the charges together with reasons thereof. The inquiring authority may recommend the punishment to be inflicted when the charges are established on the basis of the findings. Sub-rule (8) provides that the record of inquiry shall include:

- (i) the charges framed against the Government servant and the statement of allegations furnished to him under Sub-rule (2);
- (ii) his written statement of defence, if any;
- (iii) the oral evidence taken in the course of inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry;
- (vi) a report setting out the findings on each charge and the reasons therefore; and
- (vii) the recommendations of the inquiring authority, if any, regarding the punishment to be inflicted.

Sub-rule (9) of Rule 15 of the CCA Rules provides that the disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record his findings on each charge. Sub-rule (10)(i)(a)&(b) of Rule 15 of the CCA Rules, which is relevant for adjudication of present dispute, reads as follows:

(10)(i)(a). If the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish to the delinquent Government servant a copy of the report of the inquiring officer and give him notice by registered post or otherwise calling upon him to submit within a period of fifteen days such representation as he may wish to make against findings of the Inquiring Authority.

(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 a 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.

14. On a perusal of the order of the Disciplinary Authority dated 15.01.2007, as quoted above, it is seen that no reason for disagreement with the findings of the Enquiring Officer has been recorded by the Disciplinary Authority, while directing re-enquiry into the charges. Further, no opportunity of hearing has been afforded to the Petitioner (delinquent officer) by the Disciplinary Authority, while recording its disagreement with the conclusion of the Enquiring Officer.

15. A three Judge Bench of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , relying upon its earlier decision, has held as under:

It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the findings of the disciplinary authority.

The Supreme Court in the said case further held as follows:

When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitable that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilty, imposes punishment on the officer, in our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.

16. In the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, , the

Apex Court held as under:

xxx xxx 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 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 officer 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, may 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 been recorded".

17. The Supreme Court, after considering the contrary view expressed in three other decisions, proceeded to hold as follows:

In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings,

xxx xxx xxx 18. This Court in the case of Dr. Raj Kishore Sahu Vs. Government of Orissa and Others, , while considering the provisions of Rule 15 of the CCA Rules, placed reliance on the decision of the Supreme Court in Yoginath D. Bagde's case (supra) and came to hold as follows:

Apart from the statutory provision, it 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.

19. In a recent decision of this Court in *Rushi Guman Singh Vs. State of Orissa and Others*, , while relying upon the principles of law as noted above, has reiterated that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, at that stage, an opportunity of hearing to the delinquent is to be given so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper.

20. In the instant case, the Disciplinary Authority after a lapse of about five years, has decided to disagree with the findings of the Enquiry Officer and has remitted the matter again to the Enquiry Officer for re-enquiry which implies that the enquiry report and proceedings have been set aside. The Tribunal has found that there is no material irregularity per se in the enquiry report and has held that there is nothing in the CCA Rules which empowers the Disciplinary Authority to direct re-enquiry. We are of the considered view that the Disciplinary Authority in the circumstances, when there is no procedural irregularity in the enquiry proceeding and in absence of any provision in the CCA Rules, cannot direct for re-enquiry. In the instant case, the Disciplinary Authority has not recorded any procedural irregularity committed by the Enquiring Officer in the conduct of the enquiry. Once the evidence was adduced and documents were filed in the enquiry proceeding, in support of the pleadings of the parties, the Disciplinary Authority has no jurisdiction to direct for de-novo enquiry. It was open for the Disciplinary Authority either to agree or disagree with the findings recorded in the enquiry report and it was incumbent upon the Disciplinary Authority to give opportunity of hearing to the Petitioner (delinquent officer), if the said authority desired to differ with the favourable finding recorded by the Enquiring Officer. Directing for conduct of re-enquiry would amount to recording of fresh evidence and ignoring the earlier evidence, which would not be proper and justified, as by this way the Disciplinary Authority cannot be provided with a chance to fill up the lacunae in the garb of recording fresh evidence.

21. With regard to the writ petition i.e. W.P.(C) No. 13248 of 2007, it is seen that the Petitioner is continuing under suspension since 2001. However, disciplinary proceeding in respect of the Proceeding No. 339 dated 7.6.2006 being a different case, the same was permitted by the Tribunal to continue. We are also of the same view that the disciplinary proceeding in Proceeding No. 339 dated 07.06.2006 may continue but the same should be completed within a reasonable time. Therefore, we dispose of the writ petition i.e. W.P.(C) No. 13248 of 2007 with a direction that the disciplinary proceedings in D.P. No. 339 shall be

completed as early as possible but not later than a period of three months from the date of production of a certified copy of this order, subject to co-operation of the delinquent officer in the proceeding and in case the proceedings are not completed within the time specified despite co-operation of the delinquent officer, the Petitioner (Jayant Kumar Bakshi) shall be reinstated in service, which shall be subject to the final outcome of the disciplinary proceeding in Proceeding No. 339, dated 7.6.2006.

22. In view of the above, we uphold the impugned order passed by the Tribunal in O.A. No. 383 of 2007. In the result, W.P.(C) No. 13957 of 2007 is dismissed and W.P.(C) No. 13248 of 2007 is disposed of with the above directions.