

(2002) 03 OHC CK 0054
In the Orissa High Court
Case No : C.J.C. No. 7506 of 2001

Jyoti Prakash Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Orissa State Road Transport Corporation (Classification, Recruitment and Conditions of Service) Regulations, 1978 — Regulation 138

Citation : (2002) 03 OHC CK 0054

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Indrajit Ray and G.C. Mohapatra, for the Appellant; A.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—In the writ application Petitioner has made the following prayer:

The Petitioner therefore, most humbly prays that your Lordship may be graciously pleased to admit this writ application and be pleased to issue a rule NISI calling upon the opposite parties to show cause as to why the proceeding drawn up by the Opp. party No. 2 as per Annexure-3 and the proceedings of the enquiry conducted by the Opp. party No. 3 on 14.6.2001 ex parte pursuant to the notice as per Annexure-17 shall not be quashed and if the opposite parties fail to file their show cause or file insufficient cause, your Lordships may be pleased to make the said rule NISI absolute and be pleased to issue a writ of Mandamus or any other suitable writ or direction or order quashing the proceedings drawn up against the Petitioner by the Opp. party No. 2 as per Annexure-3 and the proceedings of the enquiry conducted by the Opp. party No. 3 on 14.6.2001 pursuant to the notice under Annexure-17, And for which act of kindness, the Petitioner as in duty bound, shall ever pray.

2. The uncontroverted factual background which precedes the aforesaid prayer is to the effect that on 26.5.1976 Petitioner was initially appointed as a Store

Superintendent in Orissa State Road Transport Corporation (in short, "OSRTC"). On the basis of promotions by 25.11.1992 he was working as Chief Materials Manager and then as per the Government order he was deputed as Managing Director of Orissa State Commercial Transport Corporation (in short, "OSCTC"). He continued as such till the date of his reversion on 25.1.1995 to the parent department i.e., OSRTC. On 20.9.1995 Petitioner was posted as Deputy General Manager (Technical) in OSRTC. While he was continuing as such in March, 2001 charge as per Annexure-3 was framed on the allegation of various illegalities and irregularities both administrative and financial which according to the said charge is violative of the conduct rules and the inquiry was entrusted to opposite party No. 3 who is the Financial Advisor-cum-Chief Accounts Officer working in OSRTC. The Audit Officer in charge was appointed as the Marshalling Officer.

3. The further contention of the Petitioner which is not admitted by the opposite parties is that the disciplinary proceeding on the basis of the aforesaid charges has been initiated illegally and in violation of the provisions in Orissa State Road Transport Corporation Employees (Classification, Recruitment and Conditions of Service) Regulations, 1978 (in short the Regulation). Opp. parties 2 and 3, on the other hand, have advanced contention regarding no illegality in initiation of the disciplinary proceeding or in its continuance in the manner it is continuing. To avoid repetition further details of the contention of the Petitioner and refusal by the opposite parties is not noted here but they are dealt with item wise in the succeeding paragraphs while deciding the said issues.

4. In challenging the maintainability of the disciplinary proceeding and the conduct of the inquiry by Opp. party No. 3 one of the contentions advanced by this Petitioner is that being not superior to him in rank or cadre Opp. parties No. 3 cannot conduct the inquiry in violation of Clause 140 (Supp.) of the Regulation. It is not disputed at the Bar that Appendix-III of the Regulation provides the classified list of posts and the respective scale of pay. Admittedly, the post of Chief Accounts Officer-cum-Financial Advisor is not a post incorporated therein. It is also not disputed at the Bar and to that effect affidavit and counter affidavit has been filed that according to the revised scale of pay as is prevalent now the delinquent officer (i.e. the Petitioner) and the Enquiry Officer (Opp. party No. 3) are governed by similar scale of pay. In the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, while considering the question of the principle to be followed to determine equivalency of two posts, the Apex Court have propounded that the salary of the post, cannot be the sole but the last criteria to determine the equivalency. In the language of the apex Court:

equivalency of two posts is not judged by the sole of fact of equal pay. While determining the equation of two posts many factors other than "Pay" will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc.

The above being the guidelines to determine equivalency there is nothing on

record or pleaded by the Petitioner to show or suggest that the duty enjoined to the post carried by the Petitioner is same or similar to the responsibilities enjoined with Opp. party No. 3. On the other hand, as noted above, as per Annexure-III of the Regulation the post of Financial Advisor-cum-Chief Accounts Officer is not a classified post even within the category of Class-I post though the post which the Petitioner holds is a classified post. That signifies about the superiority of the post of Opp. party No. 3 in comparison to that of the Petitioner. Apart from that as it appears from Appendix-IV of the Regulation the post of Chief Accounts Officer-cum-Financial Advisor is to be filled up by the Government and therefore he is not an employee employed by any of the authorities mentioned in the Regulation, in view of that prima facie it appears that Opp. party No. 3 is not holding an equivalent post or does not belong to the same cadre along with the Petitioner.

5. Be that as it may, in the case of Pankajesh Vs. Tulsi Gramin Bank and another, keeping in view a similar provision as in Clause 140 (Supp.) of the Regulation relating to the rank of the Enquiry Officer the Apex Court has propounded that:

6. Thus an enquiry, under the Regulation may be delegated, to a person higher in rank than the delinquent officer, in the case of an officer. But in this case we do not find any substantial miscarriage of justice prejudicial to the Petitioner for the reason that though it is always desirable that an officer higher in rank than the delinquent officer should be directed to conduct an enquiry, the enquiry is conducted as a delegate of the disciplinary authority. Therefore, the ultimate decision is to be taken by the disciplinary authority. By mere delegating the enquiry whether the enquiry officer is of the same cadre or of higher grade than that of the Petitioner, it did not cause any material irregularity nor resulted in any injustice to the Petitioner. Under these circumstances, we do not find any illegality warranting interference.

For the sake of discussion even if the contention of the Petitioner shall be accepted that opposite party No. 3 is an officer of the equal rank then also because he is not the disciplinary authority, conduct of inquiry by him ipso facto will not be illegal in view of the above quoted ratio of the apex Court. In this case, no other allegation has been made against Opp. party No. 3 alleging personal bias or vested interest. In view of that also this Court finds no merit in the contention of the Petitioner to debar Opp. party No. 3 to function as the Enquiry Officer.

6. Another ground raised by the Petitioner in challenging the aforesaid disciplinary proceeding is on the basis of the provision in Clause 147 of the Regulation. The said provision reads as follows:

147. Special provisions applicable to employees on Foreign Service-Where the services of an employee to be punished have been lent to an outside Authority, the power to impose any of the penalties specified in Regulation 138 in respect of matters arising during such outside employment, shall lie only with the authority

competent to impose such a penalty on the employee under these Regulations. The borrowing authority shall in such a case complete the inquiry, revert the employee concerned to the service of the Corporation (if it is considered necessary to do so) and forward all the papers of the inquiry for such action as the appropriate authority may consider necessary.

Provided that the borrowing authority shall forthwith inform the Corporation of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding against him, as the case may be.

It is contended by the Petitioner that when the allegation is relating to irregularities and illegalities during his tenure in the office in OSCTC which was the borrowing organisation, therefore, the OSRTC which is the lending authority has no jurisdiction to initiate or continue a disciplinary proceeding, in support of that Petitioner relies on the ratio in the case of T.S. Kannan v. The High Court of Judicature of Tamil Nadu and Anr. 1982 Lab.I.C. 1822. A Division Bench of the Madras High Court being in seisin to consider legality of continuance of a disciplinary proceeding by the borrowing authority i.e., the High Court have held by interpreting relevant rules, which is distinguishable from the above quoted Clause 147 of the Regulation, that the High Court has jurisdiction to conduct the disciplinary proceeding even after reversion of the delinquent officer to his parent department. That ratio is not found applicable because of distinguishable scope of the relevant provisions. The above quoted Clause 147 of the Regulation is meant for an enquiry by the borrowing authority in the event the deputationist is continuing in service under the borrowing authority when disciplinary proceeding is initiated and enquiry undertaken. The provision in the Regulation makes it clear that it is the designated appointing authority who is competent to impose the penalties of different kind as enumerated in Clause 138 of the Regulation. Therefore, an employee on deputation cannot suffer major penalty at the hands of the borrowing authority in view of that provision. On the other hand, even on deputation to foreign service that is outside the OSRTC the Corporation stains the authority to take up the disciplinary matter relating to all its employees relating to breach of any conditions of service or the conduct rules. Under such circumstances, Clause 147 of the Regulation does not create a legal bar or stands on the way of the OSRTC to initiate and continue the disciplinary proceeding against the Petitioner. The contention of the Petitioner in that respect accordingly stands rejected.

8. Petitioner's other contention on merit of the allegations such as vagueness of the charge is found to be premature. In that respect, a detailed discussion at this stage may be adverse to the interest of either of the parties. Therefore, that contention raised by the Petitioner is rejected as premature. Similarly, though Petitioner has canvassed the point of violation of principle of natural justice for non-supply of copies Of relevant documents and particularly the copy of the preliminary inquiry report this Court does not find any merit in that contention for two reasons. In the counter affidavit of the Opp. party Nos. 2 and 3 it has

been specifically stated that the department does not rely on any document, copy of which has not been supplied to the Petitioner or not permitted to be inspected by the Petitioner. In other words, the contention of the opposite parties is that they have provided all opportunities to the Petitioner to go through the documents which are relevant to the individual charges as incorporated in Annexure-3. therefore, till now there is nothing on record to show or suggest that the department had placed reliance on a particular document without granting copy to the Petitioner or permitting inspection of any such documents by him, as the case may be. In that respect, the case of Shri K.N.B. Rao Vs. The Central Administrative Tribunal, Cuttack and others, is found not applicable inasmuch as in the reported case the documents which were basis of proving the misconduct of the delinquent officer were accepted in evidence without proof and without granting copies. As noted above, such a circumstances, as yet, does not exist in the present case. On the other hand, as propounded by the apex Court in the cases of Krishna Chandra Tandon Vs. The Union of India (UOI), and Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), non-supply of copy of documents having no bearing on the charges or which is not relied on by Enquiry Officer to support the charges does not amount to violation of principle of natural justice. In view of the aforesaid position of law and present stage of the Enquiry of the departmental proceeding such argument is rejected being premature.

9. In course of hearing of the writ petition it was brought to the notice of the Court that due to non-participation of the Petitioner the inquiry was proceeding ex parte. Since the Petitioner is at the fag end of his career and may suffer in the event of any adverse order passed by the Enquiry Officer followed by consequential order by the disciplinary authority, therefore, in the interest of justice it is observed that if within a period of ten days from today the Petitioner shall apply in writing to allow him an opportunity to participate in the disciplinary proceeding and to contest on the charges, then the Enquiry Officer shall do well to allow him such opportunity but the inquiry be conducted expeditiously by avoiding liberal adjournment to either of the parties and be disposed of expeditiously.

10. With the aforesaid observation the writ application stands dismissed.