

(1989) 09 OHC CK 0055
In the Orissa High Court
Case No : O.J.C. No. 2803 of 1987

Kamlesh Kumar Niranjana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 15, 15(3), 16
Constitution of India, 1950 — Article 226

Citation : (1990) 69 CLT 623

Hon'ble Judges : D.P. Mohapatra, J;A. Pasayat, J

Bench : Division Bench

Advocate : M.R. Panda, G.R. Naik and P.K. Panda, for the Appellant; A.B. Misra, Standing Counsel (Central), for the Respondent

Judgement

A. Pasayat, J.—Petitioner by this application under Article 226 of the Constitution of India, 1950, has assailed the order of punishment imposed on him in a disciplinary proceeding by application of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules") read with the provisions of the Central Industrial Security Force Act. 1968 (hereinafter referred to as "the Act") and the Rules framed thereunder. An order of reversion stated to be consequential has also been assailed.

2. A detailed examination of the factual controversies is not warranted in the facts of this case as the basic dispute that needs adjudication is as to whether the proceeding initiated was in accordance with law and/or whether the impugned order of punishment (Annexure - 4) pursuant to the disciplinary proceeding (Annexure -2) confirmed in appeal vide Annexure - 10, and the order of reversion (Annexure - 8) are sustainable. A proceeding under Rule 16 of the Rules was initiated against the Petitioner, who was working as Assistant Commandant of Central Industrial Security Force at the relevant time on the ground of misconduct and misbehaviour. A statement of imputation of such misconduct and misbehaviour on which punitive action was proposed was served

on the Petitioner and he was required to submit representation against the proposal. The statement of imputation inter alia contained the allegation that a law and order problem was created because of his failure to appropriately handle a situation, which tarnished the image of the Force and showed the lack of responsibility on his part, misconduct, dereliction of duty and also conduct unbecoming of an officer of his status. The Petitioner submitted his reply and prayed that an inquiry should be conducted to find out the actual state of affairs, He also prayed for supply of certain information and details. By order as contained in Annexure- 4, it was held that the explanation of the Petitioner was not satisfactory and there was enough material on record to show that the Petitioner failed to deal with the situation properly and because of such failure the situation turned into a law and order problem and tarnished the image of the Force. Accordingly, the penalty of withholding increment for three years without cumulative effect was imposed. The Petitioner filed an appeal under Rule 24 wherein his grounds of repudiation of the allegations were reiterated and it was also pointed out that certain materials gathered behind his back were prejudicially utilised against him. It was also submitted that the Petitioner's specific prayer for an inquiry had not been considered at all and therefore, the order of penalty as imposed was not sustainable and tenable in law. The said appeal to the President of India was rejected after consultation with and on advice of the Union Public Service Commission (hereinafter referred to as "the UPSC") by order as contained in Annexure - 10.

3. The Petitioner has averred that because of pendency of the disciplinary proceeding in which ultimately the order of penalty as aforestated was imposed, he was reverted from the post of Assistant Commandant to that of Inspector. The order of reversion (Annexure - 8) has been assailed as aforestated.

Mr. M.R. Panda, learned Counsel for the Petitioner, has challenged, the order imposing penalty as upheld in appeal and the order of reversion mainly on the following grounds.

(1) There has been violation of Rule 16(I)(b). According to him, the disciplinary authority is conferred with the discretion to decide as to whether an inquiry in the manner as laid down in Sub-rule (3) to (23) of Rule 14 is warranted or not. Rule 16(I)(b) provides that in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary, he is to direct an inquiry in that regard. On the contrary if the disciplinary authority is of the opinion that an inquiry is not necessary he shall so direct. The discretion is to be judicially exercised and reasons are to be recorded as to any such inquiry is not directed by the disciplinary authority. Reliance is placed on two decisions of the Jammu and Kashmir High Court reported in 1980 (2) S.L.R. 633 : State of Jammu and Kashmir v. Mohd. Amin Makhdoomi and 1980 (3) S.L.R. 520 : Mansa Ram v. General Manager Tele-Communication J and K Circle, Srinagar and Ors. in support of the contention.

(i) The instructions of the Government of India in the Ministry of Home Affairs,

Department of Personnel and A.R. (O.M.) No. 134/1/81/ADV-I, dated 13-7-1981 clearly lay down the obligation to apply mind and to record reasons while dealing with matters relating to disciplinary proceeding and also while dealing with the appeals in such cases. The directions contained in the Government of India in the Department of Personnel and Training, O.M. No. 11012/18/85-Est. (A) dated 28-10-1985, are to similar effect. In this Instruction it was indicated that where a delinquent Government servant has asked for inspection of certain documents or prayed for cross-examination of prosecution witnesses, the disciplinary authority should apply its mind to such request and should not turn down the request solely on the ground that an inquiry is not mandatory.

(iii) The authorities have utilised materials collected behind the back of the Petitioner. In spite of specific prayers they have not indicated the details ;thereby violating the principles of natural justice.

4. Mr. A.B. Misra, the learned Standing Counsel appearing for the opposite parties, however, submitted that an inquiry is not mandatory requirement in a case involving minor penalty and therefore, the authorities having considered that no inquiry was necessary have disposed of the matter strictly in accordance with law and the Petitioner's contentions do not merit consideration.

5. Having heard the learned Counsel for the parties, we feel that reference to the relevant rules is necessary. For the purpose of adjudication of this case, the rules relevant are rules 11, 14 and 16 of the Rules. The relevant provisions thereof are extracted below.

11. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely-

Minor Penalties

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iv) withholding of increments of pay;

Major Penalties-

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further

directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from Government service which shall ordinarily be a disqualification for future employment under the Government. Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing any other penalty may be imposed.

...

14. (1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1830), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

...

16. (1) Subject to the provisions of Sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after:

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in Sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.

(1A) Notwithstanding anything contained in Clause (b) of Sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in Sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include:

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commissioner, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.

The procedure for imposing penalties is laid down in rules 14 and 16. While the former deals with major penalties, the latter deals with minor penalties. Since undisputedly the penalty imposed in the present case is minor penalty, the relevant rule is Rule 16. The expression penalties has been defined in Rule 11. A reading of rules 14 and 16 makes it clear that the penalties detailed in Clauses (i) to (iv) of Rule 11 are minor penalties while the rest detailed in the said rule are major penalties. Rule 16(1) lays down that action thereunder can be taken after information to the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which such action is contemplated. It further provides for giving an opportunity to make representation against the proposal. Discretion is vested on the disciplinary authority to hold an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14; where the said authority is of the opinion that such an inquiry is necessary. Sub-rule (1A) of Rule 16 provides that notwithstanding anything contained in Clause (b) of Sub-rule (1), in a case where the amount of pension payable to the Government servant is likely to be affected adversely by withholding of increments of pay or where withholding increments of pay have been directed for a period exceeding three years or with cumulative effect for

any period, an inquiry under sub-rules (3) to (23) of Rule 14 is to be undertaken. Undisputedly, the case under consideration is not one under sub rule (1-A) of Rule 16. The pivot of challenge is that the decision as to whether an inquiry is warranted or not has to be arrived at by judicious application of mind. It is not an empty formality and when a delinquent Government servant is placed in an disadvantageous situation by dispensing with such an inquiry, it is imperative that there has to be application of judicial mind before the decision is taken. Strong reliance as aforesaid is placed on the decision of the Jammu and Kashmir High. Court in the cases of Mohd. Amin Makhdoomi (supra) and Mama Ram (supra). We shall presently refer to these two cases. In Mansa Ram's case the provisions of rules 14 and 16 of the Rules were under consideration. The following portion of the judgment is relevant.

Adverting to Clause (b), learned Counsel submitted and, I think, rightly so, that there can be no manner of doubt that where a minor punishment is sought to be imposed, the procedure of holding an enquiry need not be followed, unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is barred or that it is entirely subject to the pleasure of the disciplinary authority. The clause speaks of the opinion that such enquiry is necessary implying that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is or is not necessary. In the absence of such finding, an order imposing the penalty would be invalid and of no legal consequence unless, of course, it can show that the omission has not resulted in any material prejudice to the employee. For, cases are conceivable where without the requisite opinion being there, Clause (b) has been substantially complied with.

In the present case, the S.T.T. has nowhere found whether an enquiry was called for or not. The Deputy Director too has missed this point. No material has been placed on record to show that the omission has caused no material prejudice to the Petitioner. Applying the test laid down above, the orders passed by S.S.T. and Dy. Director Posts and Telegraphs are clearly invalid and of no legal effect.

Similarly in the other case, the Court expressed its conclusions in the following words:

The controversy does not, however, end here. The real question to be considered is where charge- sheet has been served on a delinquent officer and he has made his representation but the disciplinary authority does not think it fit to act on such representation and orders an enquiry into the charges, then, whether, the enquiry report should be made known to such officer and he should be granted an opportunity to make representation against it. Rule 35 does not provide for an enquiry into the charges. But there is nothing to prevent the disciplinary authority from ordering such an enquiry in appropriate cases. Where such an enquiry is ordered and the disciplinary authority decides to act on the enquiry report, the requirement of the rule is that the delinquent officer should be served

with a copy of the report and given an opportunity to make his representation against it. For, the enquiry report shall be the only material on which the disciplinary authority would base its judgment for imposing a penalty on the delinquent officer and when the rule provides for a representation, such a representation should necessarily be directed against the enquiry report. The requirements of the rule would not be satisfied merely because the delinquent officer had been given an opportunity to make his representation against the charge sheet. Such a representation loses its meaning and utility after the enquiry has been ordered into the charges. The only effective representation that the delinquent officer can make would be that against the enquiry report....

We are in agreement with the view expressed in the aforesaid two cases to the extent that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and the available materials, and indicate as to whether an inquiry is warranted or not. Whether a detailed reasoning is necessary or not would depend on the facts and circumstances of each case and it cannot be universally laid down that in all cases a detailed reasoning is necessary. But it would be in the interest of fairplay, justice and equity that the disciplinary authority addresses itself to the moot question as to whether an inquiry is warranted or not. At our direction the records relating to the disciplinary proceeding were produced. On perusal thereof, we find that this aspect has not been considered at any time by the disciplinary authority. There is no material to show that it considered this aspect in its proper perspective. The stand taken by the opposite parties as apparent from the counter affidavit tiled and from the submission of Mr. Misra before us, is to the effect that the disciplinary authority came to the conclusion that holding an inquiry was not warranted and therefore, the final order was passed. It was submitted that it was a matter of discretion of the disciplinary authority to decide as to whether an inquiry was warranted or not; and no reasons were to be given. As reasoned by the Jammu and Kashmir High Court, which has our concurrence, notwithstanding such discretion being vested on the disciplinary authority, the decision to hold an inquiry or not has to be the outcome of application of judicial mind and consideration of all relevant factors. As indicated above, the records do not show that the disciplinary authority had at all considered this aspect. By merely averring that it was the discretion and therefore, not subject to judicial scrutiny is not a correct approach and does not have any sanction in law. The Petitioner is, therefore, to succeed on this score alone. The matter has to be decided by the disciplinary authority afresh, after considering, and dealing with the specific prayer of the Petitioner to hold an inquiry.

6. It is an established position in law that materials collected behind the back of a person are not to be utilised without giving him a reasonable opportunity of making submission in that regard. The authorities have denied that they have utilised any such material. However, if the authorities propose to utilise any material which has any bearing on the disciplinary proceeding and the details of which have not been supplied to the Petitioner, they shall furnish these to the

Petitioner before utilisation thereof in the proceeding.

7. So far as the challenge to reversion is concerned, we find that the authorities have controverted the submission that reversion was out come of the disciplinary proceeding. Since no specific material has been placed before us, we do not express any final opinion in the matter. If the disciplinary proceeding had any role to play with the reversion, certainly the authorities would reconsider the matter keeping in view the ultimate result of the disciplinary proceeding.

8. In the result, the orders contained in Annexures-4 and 10 are quashed and the matter is remitted back to the disciplinary authority for re-consideration of the matter keeping in view our observations made above. There shall be no order as to costs.

D.P. Mohapatra, J.

I agree.

Ordered accordingly.