

(1988) 11 OHC CK 0033

In the Orissa High Court

Case No : Original Jurisdiction Case No. 20 of 1987

Krishna Chandra Pallai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-1988

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3

Constitution of India, 1950 — Article 226

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 46, 46(2), 49

Citation : (1989) 2 OLR 163

Hon'ble Judges : V. Gopalaswamy, J;G.B. Pattnaik, J

Bench : Division Bench

Advocate : R.K. Mohapatra and B. Routray, for the Appellant; Standing Counsel (Central), R. Mohanty and S.B. Nanda, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—The Petitioner who was an employee under the Paradip Port Trust has assailed in this writ application the order of dismiss dated 24-2-1984 passed by opposite Party No. 2 which has been annexed as Annexure-6 as well as the appellate order of opposite Party No. 2 dated 5th July, 1985, confirming the order of dismissal, annexed as Annexure-7.

2. In a regular departmental proceeding, charges were framed against the Petitioner for having contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964 for having committed grave misconduct and failed to maintain absolute integrity between the period 5-2-1981 And 25-4-1981 while he was functioning as Deputy Secretary in Paradip Port Trust by showing undue official favour to one Sri S. Mangaraj by getting inserted the words "Unit 34 and 35 meant for canteen may be a looted to the Applicant Sri S. Mangaraj of payment of arrears" subsequently on 9-4-1981 in the notes dated 6-2-1981 after the approval of the Chairman on 26-3-1981. The statement of imputation of misconduct in support of the article of charge framed against the Petitioner was

appended an Annexure-II to the charge in question. The Petitioner filed his show cause to the charges and also led evidence before the Inquiry Officer. The Inquiry Officer after conclusion of the inquiry in question submitted his report which has been annexed as Annexure-3 where under he found that the charges against the delinquent officer had been proved beyond reasonable doubt. The said report and the materials on which the conclusion of the Inquiry Officer had been based together with the written statement of defence denying the charge filed by the Petitioner were considered by the disciplinary authority, the Chairman, Paradip Port Trust, and the said authority provisionally came to the conclusion that the charges proved merited the penalty of dismissal. He there directed to issue a show-cause notice as to why the preliminary conclusion should not be made absolute requiring the Petitioner to file his show cause within fifteen days from the date of receipt of the order. This order of the disciplinary authority has been annexed as Annexure-4. The Petitioner did file a show-cause within time stipulated under Annexure-4. Finally, the disciplinary authority passed the impugned order of dismissal from service by his order dated 24th of February, 1984, and the said order has been annexed as Annexure-6. The Petitioner carried an appeal to the Central Government but the appeal was dismissed by order dated 5th of July, 1385 as communicated to the Petitioner by letter dated 17th of July, 1385, annexed as Annexure-7. The Petitioner thereupon has approached this Court invoking the jurisdiction under Article 226 of the Constitution assailing the order of dismissal as well as the order of the Appellate authority confirming the same.

3. Mr. Mohapatra, the learned Counsel for the Petitioner, contends that the findings of the Inquiry Officer as well as the conclusion of the disciplinary authority are vitiated on account of non-consideration of the defence evidence and therefore, the order of the disciplinary authority cannot be sustained in law. The learned Counsel further contends that the conclusion of the disciplinary authority on the basis of materials on record cannot be slid to be the conclusion of a reasonable man and consequently, this Court should interfere with the same in exercise of the jurisdiction under Article 226 of the Constitution. So far as the Appellate order of opposite Party No. 1 is concerned, Mr. Mohapatra contends that the said order is a bald one exhibiting non-application of mind and, therefore, cannot be sustained in law.

Mr. Mohanty, the learned Counsel for opposite Party No. 2, on the other hand, contends that the jurisdiction of this Court against the findings of a disciplinary authority in a determinately proceeding is supervisory and not Appellate and unless the finding can be established to be based on no evidence or the finding can be said to be one which could not be passed by any reasonable man, this Court would not be entitled to interfere with the same. He further contends that the Appellate authority having confirmed the conclusion and the findings of the disciplinary authority, non-giving of any reasons for the same would not vitiate the order. The rival contentions require careful examination of the materials on record and also the scope and power of this Court to interfere with the findings of

a disciplinary authority in a departmental proceeding under Article 226 of the Constitution.

4. There cannot be any manner of doubt that the High Court exercises a supervisory jurisdiction while considering the legality of the conclusions arrived at in a departmental proceeding and, therefore, the jurisdiction to interfere accrues when it comes to the conclusion that principle of natural justice have not been adhered to or it comes to the conclusion that the disciplinary authority has reached a conclusion on no evidence or the conclusion is such that no reasonable man could have come to the same conclusion. It can also exercise Jurisdiction and interfere with the conclusion if it is established that the material evidence was not considered or evidence which is not permissible to be considered was considered. Sufficiency of evidence cannot be a ground for interference by the High Court against a finding in a departmental proceeding. This being the parameter, on examining the inquiry report as well as the orders of the disciplinary authority, we are unable to accept the first submission of Mr. Mohapatra, the learned Counsel for the Petitioner and we must hold that there is hardly any scope for interference by this Court with the findings of the Inquiry Officer as affirmed by the disciplinary authority. The original file in the departmental proceeding was also produced before us. The Estate Officer initiated the proposal on 5th of February, 1981 and nowhere in the said proposal the question of allotment of units 34 and 35 has been mentioned. When the matter came to the Deputy Secretary, the present Petitioner he has also dealt with the proposal of the Estate Officer and passed orders on 6-2-1981. The same was approved by the Chairman on 26-3-1981. Thereafter, in the order of the Deputy Secretary dated 6-2-1981 in the file, insertion has been made to the effect "Units 34 and 35 meant for canteen may be allotted to the Applicant Sri S. Mangaraj on payment of arrears" and this insertion is the subject-matter of charge against the Petitioner. The file further indicates that when it reached the office, the office entertained doubt with regard to the allotment of units 34 and 35 since the office thought that it was a subsequent insertion. The Estate Officer in his notes dated 25-4-1981 also dealt with in respect of units 1, 2 and 28 which were in his original proposal, but the Deputy Secretary, who is the Petitioner here, passed orders "issue orders for 1, 2 and 28 as in the draft and also include No. 34 & 35 in favour of Sri Mangaraj as approved by Chairman". The Stenographer of the Deputy Secretary has been examined who has stated that he got the insertion made on the dictation of the Deputy Secretary. A scrutiny of the orders passed by the disciplinary authority as well as the evidence of the Stenographer of the Deputy Secretary unequivocally reveal that the insertion was made at the behest of the Petitioner after the approval of the Chairman on 26-3-1981 in respect of the allotment of units 1, 2 and 28 which was in the original proposal of the Estate Officer. The conclusion of the Inquiry Officer as well as of the disciplinary authority cannot be said to be a conclusion based on no evidence not can it be slid to be a conclusion which no reasonable man would have arrived at. According to Mr. Mohapatra, the evidence of D.W. 6 not having

been considered, the findings are vitiated. We have carefully looked to the records of the case and we are amenable to hold that the evidence of D.W. 6 has not at all been considered. On the other hand the Inquiry Officer as well as the disciplinary authority has clearly mentioned about D.W. 6. That apart, the original file that was produced clearly paints out to the guilt of the Petitioner. In the aforesaid premises, the conclusion of the disciplinary authority affirming the findings of the Inquiry Officer remains unassailable and the first submission of Mr. Mahapatra, the learned Counsel for the Petitioner, must accordingly be rejected.

5. So far as the second submission of the learned Counsel for the Petitioner is concerned, it relates to the order of the appellate authority. A bare perusal of the appellate order, which has been annexed as Annexure-7 to the writ application, clearly shows that it is a bald order without giving any reasons for the same and it is not possible by perusing the said order to come to the conclusion that the Appellate authority has applied his mind to the grounds of appeal as well as to the materials on record. In the case of *Mahadeb Dash v. Life Insurance Corporation of India* ILR 1976 Cutt. 1298, it was observed by a Bench of this Court:

...The Appellate authority under Regulation 46(2) and the Chairman under Regulation 49 are to fully apply their minds to the facts of the case and record conclusions whether the findings were justified and the penalty was proper. To do so, their orders must be speaking orders, otherwise one cannot understand that they observed the mandatory provisions enjoined upon them in Regulations 46 and 49.

In the said case, Regulations 46 and 49 of the Life Insurance Corporation of India (Staff) Regulations, 1960 were being considered by the Court this decision has been followed by a later Bench decision of this Court in the case of *Siba Kumar Misra v. The State of Orissa* represented through the Secretary to the Government of Orissa, Labour, Employment and Housing Department, Bhubaneswar and Ors. 48 (1379) CLT 232. It has been held by their lordships:

Undoubtedly this Court was dealing with disciplinary proceedings and appeals against punishment, but in our view the position in regard to administrative appeals and revisions where rights of parties are involved, is not different. Governmental business perforce has to be carried in an impersonal manner and where rights of a person in the employment of Government are involved, unless orders are objective and conclusions are supported by reasons and there be intrinsic evidence of application of mind by the person charged with the duty to dispose of the matter, arbitrariness is bound to creep in thereby destroying the very foundation of Rule of law. Courts have therefore, often insisted on reasoned orders being rendered even in administrative appeals. When Petitioner had invoked the Appellate jurisdiction of the State Government under a statutory provision, there was no justification for its pendency for ten years and for the ultimate disposal by a bald order exhibiting no application of mind....

The aforesaid observations would apply with full force to the order of Appellate authority in the present case under Annexure-7, since the Appellate order was almost similar to the present one. The view has been reiterated in yet another decision of this Court in the case of Shri Lingaraja Jena v. the State of Orissa and Ors. 54 (1982) CLT 204.

Mr. Mohanty, the learned Counsel for opposite Party No. 2, place reliance on the decision of the Supreme Court in the case of Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, . The Supreme Court no doubt has laid down in the aforesaid case that it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons and it cannot also be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. But while saying so, their lordships have observed that every case has to be adjudged in the light of its own facts and circumstances. Thus, the Supreme Court permits an Appellate order to be brief, but does not permit the Appellate order to be a non-speaking order. Mr. Mohanty then places reliance on the decision of the Supreme Court in the case of Ram Chander Vs. Union of India (UOI) and Others, wherein it has been held by their Lordships that in the absence of a requirement in the statute or the rules there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. We are humble to appreciate as to how this decision goes against the proposition that the Appellate order must be a speaking order.

It is true that where the Appellate authority concurs with the findings of the disciplinary authority while it is not necessary for him to elaborately discuss the materials and to give reasons for the concurrence, but at the same time, the order must be a speaking order. In other words, a bare perusal of the order indicates that the, Appellate authority has applied his mind to the materials on record and the grounds on which the delinquent Government servant assails the conclusion of the disciplinary authority and that the Appellate authority after considering the same has affirmed the conclusions of the disciplinary authority. In our opinion, the decisions relied upon by the learned Counsel Mr. Mohanty do not run contrary to what has been said by the three Bench decisions of this Court, referred to supra. On examining the order of the Appellate authority under Annexure-7, we are satisfied that the said order cannot be said to be a speaking order and, therefore, cannot be sustained in law. While, therefore, we are not in a position to interfere with the order of the disciplinary authority under Annexure-6, we hereby quash the order of the Appellate authority under Annexure-7 on the finding that there has been no proper disposal of the appeal preferred by the Petitioner and would call upon opposite party No. 1 to dispose of the appeal afresh in accordance with law. We would require the Appellate authority to dispose of the appeal afresh within a period of four months from the date of receipt of our order.

Application allowed.

V. Gopalswamy, J.

6. I agree.