
(2009) 07 MAD CK 0356
In the Madras High Court
Case No : Writ Petition No. 16262 of 2008

M.A. Rahim

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36(3), 37, 37(1)

Citation : (2009) 6 MLJ 263 : (2009) 7 SLR 641

Hon'ble Judges : T.S. Sivagnanam, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : T.N. Sugesh, for the Appellant; K. Ramakrishna Reddy, S.C.G.S.C., for the Respondent

Judgement

Elipe Dharma Rao, J.—Aggrieved by the imposition of penalty without holding an enquiry into the charges framed against him, the petitioner has filed this writ petition.

2. Facts, in brief, are that the petitioner, who is a Constable in the services of Central Industrial Security Force Unit (CISFU) at CPCL Manali, was served with a showcause notice dated 15-2-2007 issued by the fifth respondent. The allegation in the said showcause notice was that the petitioner, while on duty, failed to stop the criminals from entering the plant by scaling over the compound wall. Petitioner submitted a reply denying the allegation. Petitioner did not stop with sending a reply to the showcause notice but had also sent representations to the higher officials alleging victimization. A charge-memo dated 20-6-2008 contained two charges was served on the petitioner. The petitioner submitted his explanations to the said charge-memo. A final order dated 24-7-2007, however, came to be passed by the fifth respondent, imposing the punishment of payment of fine equivalent to two days' pay. Aggrieved by the imposition of penalty, the petitioner filed an appeal before the fourth respondent, which was rejected by the order dated 30-8-2008. The revision petition submitted to the third respondent was also rejected by order dated 26-11-2007. Aggrieved, the

petitioner is before us.

3. Learned Counsel for the petitioner assailed the impugned order of punishment on various grounds inter alia contending that the penalty, even though minor, without holding an enquiry into the charges is violation of principles of natural justice. Learned Counsel submitted that even though the petitioner had sought for an enquiry into the matter, no enquiry was conducted and the disciplinary authority, on receipt of the explanation to the showcause notice, straight away passed the order imposing punishment. This is contrary to and in violation of Rule 37 of the CISF Rules, 2001. In support of his contention, learned Counsel cited certain decisions of this Court, which we will advert to at later part of this order. It was also argued that the representations sent by the petitioner to higher authorities complaining victimization irked the disciplinary authority to initiate disciplinary proceedings and, therefore, the very initiation of disciplinary proceedings is tainted with mala fides. Learned Counsel further submitted that even on the merit of the allegations levelled against the petitioner, there is no substance in it to sustain the same.

4. Mr. K. Ramakrishna Reddy, learned Senior Central Government Standing Counsel submitted that since the charges levelled against the petitioner were minor in nature and the fifth respondent, on receipt of the representation from the petitioner, considered the same and imposed the minor penalty of payment of fine. Inviting our attention to Rule 37, learned Counsel vehemently argued holding of an inquiry in terms of Rule 37 is at the desire of the disciplinary authority. The gravity of the charges, in the facts and circumstances of the case, do not warrant holding of a regular departmental enquiry. Learned Counsel, however, refuted the allegation that since the petitioner had made representation to the higher authorities alleging victimization, the penalty came to be imposed. It was further submitted that finding no reason to interfere with the penalty imposed, the appellate authority and the revisional authority, rejected the appeal and the revision preferred by the petitioner.

5. The short point for determination is whether, in the facts and circumstances of the case, the imposition of penalty without holding an enquiry into the charges framed, more particularly when the delinquent made a specific request for conduct of an enquiry, is sustainable in law.

6. We will now advert to the relevant rule. Rule 37 of the CISF Rules speaks about procedure for imposing minor penalties. A bare reading of Rule 37 makes it clear that no order imposing minor penalties shall be made except after giving the delinquent a reasonable opportunity of making such representation as he wishes to make against the proposal; holding an inquiry, if the disciplinary authority so desires; taking the representation, if any, submitted by the delinquent and the record of inquiry, if any, held into consideration and recording the findings on each imputation of misconduct or misbehaviour. Laying emphasis on the expression "if the disciplinary authority so desires" found in Clause (b) of Rule 37, it was vehemently argued on behalf of the respondents that holding of

an inquiry is at the discretion of the disciplinary authority and it is not mandatory in all the cases and if it is satisfied that such discretion was exercised in fair and proper, no interference is called for. It may be so that Rule 37(b) confers a discretion on the disciplinary authority to hold an enquiry at his desire. The point in issue is whether the disciplinary authority is justified in not holding an enquiry when the delinquent himself makes a specific request therefor. Clause (b) of Rule 37 though gives an option to the disciplinary authority to hold an enquiry at his desire, a careful consideration of the said rule makes it clear that where the delinquent denies the charges and prays for holding of an enquiry, two options are before the disciplinary authority, viz. to hold or not to hold an enquiry. In the former case, no prejudice is caused to the delinquent as his request for holding an enquiry is accepted and an enquiry is ordered. If, however, the disciplinary authority desires not to hold an enquiry in terms of Rule 37(b) then, before proceeding further in the matter, a duty is cast on him to record the reasons for not holding an enquiry and inform the delinquent of the same. Such recording of the reasons and communicating the delinquent thereof are mandatory requirements to be fulfilled by the disciplinary authority inasmuch as disciplinary authority's desire not to hold an enquiry in spite of the specific request made by the delinquent may cause prejudice to the interest of the delinquent. Further, holding of an enquiry in such a case may not result in any prejudice to the department but would be in the interest of both the parties, viz. the delinquent and the department.

7. It is well-known that the principles of natural justice plays a pivotal role in departmental disciplinary proceedings. The principles of natural justice requires that a departmental disciplinary proceedings shall be initiated, conducted and concluded in a fair manner and in strict compliance of the principles of natural justice ? otherwise called "Fair Play". "Fair play", in departmental proceedings, includes affording "full opportunity" to the delinquent to effectively defend the charges ? whether it is major or minor ? levelled against him. "Full opportunity" in its" strict legal parlance means not merely affording an opportunity to explain to the showcause notice issued or to submit a statement of defence to the charges framed, but also includes an opportunity of personal hearing and an enquiry into the charges, particularly when delinquent refutes the alleged charges and prays for an enquiry. This is all the more so, when the delinquent is prepared to undergo the ordeal of an enquiry and makes a specific request for holding an enquiry and the disciplinary authority desires not to hold an enquiry then it is incumbent upon the disciplinary authority to record his reasons for his desire not to hold an enquiry and communicate the delinquent of the same. This is irrespective of the fact whether the punishment warrants or proposed vis-a-vis the alleged charge is major or minor. This is a procedural safeguard to a delinquent employee to fully and effectively defend the charges levelled against him to have a clean chit in a departmental action. This procedural safeguard to the delinquent employee is one of the basic principles of service jurisprudence which cannot be thrown to the winds by the disciplinary authorities.

8. A similar situation came up for consideration before a Division Bench of this Court in W.P. No. 21954 of 2004 (Jamil Akhtar v. The Assistant Commandant, CISF, Arakonam). Writing the judgment for the Bench, Justice P. Sathasivam (as His Lordship then was), interpreting the purport of Rule 37(1)(b), observed as follows:

It is pointed out that as per Sub-rule (a), the petitioner was afforded reasonable opportunity. In fact, pursuant to the charge memorandum, the petitioner submitted his reply in respect of the charge levelled against him. Sub-rule (b) enables the Disciplinary Authority to hold an enquiry in the manner laid down under Sub-rules (3) to (22) of Rule 36. No doubt, as per the said provision, it is the discretion of the disciplinary authority to conduct enquiry or not. However, in view of the specific stand taken in the reply disputing the charge levelled against him and the specific request for enquiry and also taking note of the fact that the disciplinary authority did not send any reply for his request, we are of the view that the ultimate penalty imposed by him cannot be sustained.

In the light of the rule referred to above, when a specific request is made for an enquiry by a competent officer which is supported by relevant materials, we are of the view that it is but proper on the part of the Disciplinary Authority either to reply giving reason for not holding the enquiry or by accepting his request, conduct enquiry as pleaded by the delinquent. Such recourse has not been followed in the case on hand. Though the orders have been passed by the Appellate and Revisional Authorities, this relevant aspect has not been considered by these authorities, who have committed an error in confirming the order of Disciplinary Authority. On this ground, we quash the impugned orders and remit the matter to the Disciplinary Authority for passing fresh order. As observed above, the writ petition is allowed to this extent.

(emphasis supplied)

9. In an unreported decision in W.P. No. 26265 of 2007 (C.K.G. Nathan v. The Assistant Commandant, CISF Unit, CPCL, Manali and Anr. ? decided on 1-4-2009), a Division Bench considered the scope of "discretion" as found in Rule 37(1)(b), the Bench and observed as follows:

When the petitioner specifically refutes the charges framed against him, it is but proper for the disciplinary authority to indicate the reasons in writing as to why the enquiry is dispensed with on the facts of the given case. This is more so because the authority is duty bound to consider the imputation of the misconduct or misbehaviour committed by the delinquent officer, the explanation offered by him and the relevant records to satisfy himself as to whether an enquiry is necessary or not in terms of Rule 37(1)(b) of the Rules. On the facts of this case, the explanation of refutation of the charges was not accepted and findings were rendered in the impugned order holding that the charges were proved without assigning any reason. In our considered view, such a procedural lapse would defeat the valuable right of a delinquent employee to establish his case as to the

imputation....

In the said judgment, the Division Bench referred to the earlier judgment of this Court delivered in W.P. No. 34587 of 2005 (dated 1-4-2009), which followed the judgment of the Apex Court in O.K. Bhardwaj v. Union of India and Ors. 2002 SCC (L&S) 188. In O.K. Bharadwaj v. Union of India, cited supra, the Supreme Court held as follows:

While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with.

(emphasis ours)

10. Now turning our attention to the factual matrix of the case in hand, we find that while the crux of the showcause notice dated 15-2-2007 relates to alleged lapse on the part of the petitioner in allowing some criminals entering into the plant, the charge-memo dated 20-5-2007 issued to the petitioner contains two charges of the alleged gross misconduct of refusal to receive the official letter and disobedience of lawful orders of the superiors, which, in our opinion, are factual. Further, in the representation dated 2-7-2007 submitted by the petitioner, the petitioner had categorically denied the charges and had also requested for an indepth enquiry in the matter. No reply, however, has been given to the delinquent giving the reason for not holding the enquiry. The fifth respondent disciplinary authority had straight away imposed the minor penalty of payment of fine of two days' pay. Even the appellate authority and the revisional authority had failed to consider this aspect of the matter and erred in confirming the penalty imposed by the fifth respondent. Considering the facts and circumstances of the case in the light of our observations made and the judgments cited above, we are of the considered opinion that it was incumbent on the part of the disciplinary authority either to inform the petitioner of the reasons for not holding the enquiry into the charges or, accepting the request made by the petitioner, order for conduct of an enquiry. The disciplinary authority failed to comply with either of the above. In such circumstances, we are of the considered view that the impugned order imposing the penalty as well as the orders passed by the appellate and the revisional authority confirming the same are liable to be quashed and that the matter requires reconsideration.

11. For the reasons stated above, the impugned orders are quashed. The matter is now remitted back to the respondents to proceed for passing fresh order. In this regard, we hasten to point out that since the petitioner had attributed mala

fides on the part of the fifth respondent in imposing the penalty, which, in the light of the findings given by the fifth respondent in his order, appears to have some real basis and substance, we deem it fit and proper to issue a further direction to the respondents that on remand, the matter may be put up before some other disciplinary authority other than the one who passed the order of penalty. The disciplinary authority then consider the matter afresh on merits and in accordance with law and pass orders in the light of the observations made in this order. This exercise shall be completed as expeditiously as possible and, at any rate, within two months from the date of receipt of copy of this order. The writ petition is allowed to the above said extent. No costs.