

(1956) 01 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 175 of 1955

Mohammad Shamsul Haque

APPELLANT

Vs

Member, Board of Revenue and Another

RESPONDENT

Date of Decision : 09-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1956 Ori 103 : (1956) 22 CLT 267

Hon'ble Judges : Panigrahi, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : S.G. Das, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohapatra, J.—This is a petition under Article 226 of the Constitution for quashing the order of dismissal dated 31-3-1954 passed by the Member, Board of Revenue, Sambalpur, in the following circumstances:

The petitioner was appointed the Chief Administrator, Orissa States, in the year 1949. In the same year, he was however transferred to Sambalpur to serve under the Member, Board of Revenue Sambalpur. He was however in the year 1950 prosecuting his studies in the commerce Class of Gangadhar Meher College, Sambalpur,

The petitioner was asked to continue his studies with the permission of the Member, Board of Revenue, and the application of the petitioner for permission was however refused on 24-7-1951. The Government issued a General Order dated 18-8-1951 that if such clerks who are continuing their studies in colleges without the permission, of the Government would make a clean statement to that effect they would not be subjected to any disciplinary action.

Thereafter the present petitioner made a statement admitting that in fact he was continuing his studies. For the second time in the year 1952 the Government also reiterated the same order of August 1951. The petitioner also made a

representation admitting about continuing his studies without permission for the second time.

The petitioner avers that there was no adverse report regarding the quality of the work of the petitioner by any superior officers. The Government however framed charge for the first time against the petitioner for having continued his studies without permission on 23-4-1953 to which the petitioner submitted his explanation on 25-5-1953.

The pertinent feature that arises next is that on 19-6-1953 the Government framed additional charges regarding his inefficiency in work and asked him to explain. The petitioner submitted his explanation on 16-7-1953. The Deputy Secretary having made an inquiry after taking evidence submitted a report finding that the petitioner was guilty of inefficiency of work, but nevertheless he did not recommend the punishment of dismissal.

On 11-12-1953, the petitioner was served with a notice to show cause why he should not be dismissed. The explanation was to be submitted within the month of December, but the petitioner did not submit his explanation. Thereafter a second notice was issued and finally the explanation was submitted on 10-2-1954.

It will be pertinent to mention here that in the notice to show cause dated 11-12-1953 there was a mention that if the petitioner wanted a personal hearing he would be allowed such a prayer, In the explanation submitted on 10-2-1954, the petitioner not only filed a written representation that he was not guilty of any Inefficiency of work but he added a further prayer that he may be allowed to explain his conduct by giving him an opportunity of personal hearing.

2. Mr. Das, appearing on behalf of the petitioner, urges the point that the order of dismissal is illegal and liable to be quashed as there has been a distinct infringement of the rules In not allowing the present petitioner a personal hearing before passing the final order of dismissal.

He further contends that it is also against the principles of natural Justice to pass the final order of dismissal without giving the present petitioner reasonable opportunity to explain his conduct personally, even though he had made a written representation to that effect.

In our opinion, there is considerable force in this contention. We will in this connection, refer to Rule 55A of the Rules and Orders relating to conduct, discipline and other conditions of service applicable to Government servants, under the rule-making control of the Government of Orissa:

"55-A. Without prejudice to the provisions of Rule 55, no order imposing the penalty specified in "Clauses (i), (ii) or (iv) of Rule 49 (other than an order based on facts which have led to his conviction in a criminal Court or by a Court-Martial or an order superseding him for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are

applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration before the order is passed;

Provided that the requirements of this rule may, for sufficient reasons to be recorded In writing, be waived when there is difficulty In observing them and they can be waived without injustice to the officer concerned".

Mr. Das relies upon the last clause of the rule that the final order should not be passed unless the man found to be guilty has been given adequate opportunity of making any representation that he may desire to make and if such representation, if any, has been taken into consideration before the order is passed.

In our opinion, this rule, fairly construed, means that if the petitioner, after filing a written representation, desired to be personally heard even after the second notice the dismissing authority should not have passed the final order without giving him the opportunity of making his representation personally before the authority,

It appears that the rules of natural Justice also have been infringed as the maximum punishment has been given to the petitioner without giving him opportunity of making personal representation in spite of the position that in the notice issued by me authority dated 11-12-1953 it was mentioned that the petitioner would be entitled to a personal hearing if he so desired.

It is quite reasonable to expect that on account of this notice he framed representation in such a way that it will require explanation by him personally before the authority. In this view of the matter therefore we are clear in our mind that the order of dismissal dated 31-3-1954 has been vitiated as illegal and is liable to be quashed which is accordingly quashed.

3. The O. J. C. is allowed. The petitioner is entitled to the costs of this Court. Hearing fee is assessed at one hundred rupees (Rs. 100/-).

Panigrahi, C.J.

4. I agree.