

(2009) 04 MAD CK 0329

In the Madras High Court

Case No : Writ Petition No. 34587 of 2005

N. Subramanian

APPELLANT

Vs

The Group Commandant Central Industrial Security Force and
The Deputy Commandant, CISF

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16(1),
16(1A)
Central Industrial Security Force Rules, 2001 — Rule 34, 36, 37, 37(1)

Citation : (2009) 04 MAD CK 0329

Hon'ble Judges : D. Murugesan, J;C.S. Karnan, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant; B. Shanthakumar, for the Respondent

Judgement

D. Murugesan, J.—The petitioner was appointed to the Central Industrial Security Force during the year 1976 as a Constable. He was issued with a charge memo dated 1.11.2004 containing the following charge:

CISF No. 763470027 HC(GD) N.Subramanian of CISF Unit CPCL Manali, Chennai-68, when detailed for "A" shift duty from 0500 hrs to 1300 hrs on 26.09.2004, during shift mounting has voluntarily requested the shift I/c to detail at ETP-II gate with an ulterior motive on the pretext that some relatives would meet him at ETP-II gate. Accordingly he was detailed at ETP-II gate. At about 0550 hrs on 26.09.2004 SI(Exe) L.Stalin I/c CIW and Constable (CIW) M.Rajan of CISF Unit CPCL Manali who were returning after completion of ambush duty noticed suspicious movement of Tempo Van (Model 407), coming out of ETP-II gate but fled towards Thiruvottiyur, before the CIW personnel tried to stop the vehicle. Being the Gate I/c he failed to record the movement of the vehicle through the ETP-II gate. The above act on the part of CISF No. 763470027 HC(GD) N.Subramanian tantamounts to gross misconduct, indiscipline and dereliction of duty. Hence the charge.

By explanation dated 16.11.2004, he disputed the charge and had also stated that if an enquiry is held, he would certainly establish that the charge is false and unsubstantiated and the action is only to victimize him. In spite of such denial and the request for enquiry, the Deputy Commandant, Central Industrial Security Force, the second respondent passed the impugned order dated 25.11.2004 imposing a minor penalty of withholding of one increment for a period of one year which will not have the effect of postponing his future increments of pay. The said order was taken on appeal before the Group Commandant, Central Industrial Security Force, the first respondent and the same was rejected on 26.2.2005. The orders of both the original authority as well as the appellate authority are questioned in this writ petition.

2. We have heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

3. The only ground of challenge is that inasmuch as the charge is denied, the respondents ought to have conducted enquiry before imposing the penalty. The respondents ought to have conducted enquiry as the same was requested. On the other hand, it is the stand of the respondents that in the event the respondents impose a minor penalty, no enquiry is contemplated in terms of Rule 37 of the Central Industrial Security Force Rules, 2001 (for short, "the Rules"). The punishment of withholding of increment is a minor penalty in terms of Rule 34(ix) of the Rules. Hence no enquiry is contemplated.

4. We have carefully considered the above submissions. Of course, as per Rule 34(ix) of the Rules, withholding of increment is a minor penalty. Section 37 of the Rules reads as under:

37. Procedure for imposing minor penalties: (1) No order imposing any of minor penalties specified in Rule 34 shall be made except after-

(a) informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;

(b) holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules (3) to (22) to Rule 36;

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

(d) recording the findings on each imputation of misconduct or misbehaviour.

Rule 37(1)(b) empowers that in the event the disciplinary authority so desires can order enquiry. Learned Counsel for the respondents would submit that only in the event the disciplinary authority desires depending upon the case warranting an enquiry, such an enquiry could be ordered and not otherwise. In

our opinion, the stand taken by the respondents cannot be accepted. When the charge is denied, denial of the same must necessarily be presumed as one of placing the burden of proving the charge on the respondents. Though a right is conferred on the disciplinary authority to order enquiry if he is satisfied on the facts of the case, such a right is not conferred under Rule 37 on the delinquent employee. In such a situation, it is for the Court to import the principles of natural justice for such an enquiry in the event the charge is denied. Enquiry is a bare minimum for a delinquent to expect from the employer before he is inflicted with the penalty, even in case of minor penalty.

5. The principles of natural justice means "fair play in action" and the requirement of natural justice depends upon the facts of each case. In judging the validity of an order when the complaint is admittedly non compliance of the principles of natural justice, the following principles must be kept in mind. In case the rules contemplate either a notice calling for explanation or an enquiry or a personal enquiry, compliance of the same is mandatory. In fact, Rule 36 of the Rules relating to the procedure for imposing major penalties contemplates the above procedure and to this extent there cannot be any dispute.

6. Whether such compliance of the principles of natural justice is also required in case where the rules do not contemplate an enquiry. In our opinion, even in case where the rules do not make a provision for enquiry in cases where minor penalties are imposed, nevertheless, the compliance of the principles of natural justice may be required and the non compliance may vitiate the order. Then again, it depends upon the facts of each case. In the event the charges are very minor and the order imposing minor penalty merely refers to the charge without adversely imputing anything about the delinquent employee, the failure to conduct an enquiry will not vitiate the order. However, the same cannot be the general rule. In case if the charges are serious in nature and nevertheless the employer proceeds to follow Rule 37 and the order of punishment contains certain adverse imputation, remarks or even comments on the delinquent employee which may be considered as a stigma or which may likely to affect his reputation in the eye of public, certainly the failure to conduct enquiry by giving an opportunity to such delinquent employee would vitiate the order for non compliance of the principles of natural justice. This principle also applies to the case where charges are minor, nevertheless some imputations/observations are made against the delinquent. The test to decide whether an enquiry is required or not is not the mere fact of minor penalty is imposed, but the nature of charges, the nature of observations or findings of the disciplinary authority while passing final orders of penalty. While deciding the question as to whether the failure on the part of the employer to hold an enquiry in the absence of rules would by itself vitiate the order, the Court must keep the above principles in mind. This is more so when the delinquent employee seeks for such an enquiry before he is mulcted with any penalty.

7. The charge levelled against the petitioner is that while he was in "A" shift duty

on 26.9.2004, he has voluntarily requested the shift in-charge to detail at ETP-II gate with an ulterior motive on the pretext that some relatives would meet him at ETP-II gate and on being detailed at ETP-II gate, the CIW personnel noticed the suspicious movement of Tempo Van coming out of ETP-II gate and fled towards Tiruvottiyur before the CIW personnel tried to stop the vehicle. The petitioner failed to record the movement of the vehicle through the ETP-II gate. This charge was denied in the detailed explanation. The explanation was not accepted and findings were rendered in the impugned orders holding that the charge was 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.

8. In this context, we may also refer to the clarification issued by the Government of India for conducting enquiry. The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 suggested that Rule 16(1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry. The said suggestion was considered by the G.I. Department of Personnel & Training O.M. No. 11012/18/85-Estt.(A) dated 28.10.85 and it has been directed as follows:

Rule 16(1A) of the CCS(CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

9. From a perusal of the above, it is seen that even in case where a minor penalty is imposed, the disciplinary authority should 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.

10. To appreciate the issue, we may usefully refer to the judgment of the Supreme Court in *O.K. Bhardwaj v. Union of India* and Ors. 2002 SCC (L&S) 188 and the following observations of the Supreme Court would make the position clear.

2. The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty", a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. 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 principle of natural justice and the said requirement cannot be dispensed with.

4. Learned Counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs.

11. In fact a Division Bench of this Court in an unreported decision in W.P. No. 21954 of 2004 dated 11.12.2006 (*Jamil Akhtar v. The Assistant Commissioner, Central Industrial Security Force, 6th Reserve Battalion, Arakkonam* and Ors.) has also quashed the impugned order of punishment on the ground of non holding of enquiry in spite of a specific request made by the employee in that regard.

12. In our considered view, an enquiry is contemplated in case where a

delinquent refutes the charge and by such refutation, the employer is duty bound to prove the charge levelled against the delinquent by letting in evidence. This is more so when the delinquent employee seeks for such an enquiry in his explanation as well.

13. In view of the above, the order questioned in the writ petition is quashed to enable the respondents to conduct enquiry and the matter is remitted back to the respondents to proceed from the stage where the defect had crept in by conduct of enquiry, after considering the explanation of the petitioner, and pass orders in the light of the observations made in this order. Such an exercise shall be completed within a period of two months from the date of receipt of a copy of this order or on production of the same by the petitioner. The writ petition is disposed of accordingly. Consequently, W.P.M.P. No. 37496 of 2005 is closed. No costs.