
(2009) 04 OHC CK 0048
In the Orissa High Court

N.V. Krishnan Kutty

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Citation : (2009) 108 CLT 103 : (2009) 1 OLR 1090 Supp

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed against the Judgment and order of the Central Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter called the "Tribunal") dated 25.05.2005 in O.A. No. 633 of 2004, by which the Tribunal restrained the Opposite Parties to proceed with fresh inquiry but permitted to conclude the earlier inquiry from the point it stood vitiated for non-consideration of objections filed by the Petitioner against the inquiry report.

2. The facts and circumstances giving rise to this case are that the Petitioner-employee was served with charge-sheet dated 25th September, 1998 (Annex. -1) that he was responsible for non- inspection and supervision of the maintenance of the Railway Track which ultimately led to derailment of the Goods Train on 4.6.1998. Petitioner-employee replied to the said charge-sheet and as the employer was not satisfied with the same, the Inquiry Officer was appointed. During the pendency of the said Inquiry the Petitioner-employee filed O.A. No. 180 of 1999 seeking various reliefs, namely, Inquiry Officer be changed; competent authority may also be changed; he should be furnished all material documents used in the inquiry against him; and he should be permitted to examine the witnesses. During the pendency of the said application, an interim order was passed that inquiry proceedings be completed but no final order be passed without leave of the Court. The inquiry was completed and the Petitioner-employee was served with the inquiry report on 30.4.1999 and he was asked to

file objections within 10 days against the same. He did not submit any reply. The matter was listed for hearing before the Tribunal. It was appraised of all subsequent developments and the Tribunal vide Judgment and Order Dated 19.6.2000 disposed of the said Application issuing directions that Petitioner/delinquent would submit his objections to the inquiry report and the authority would take final decision after considering the same. However, in case the decision was taken to impose any punishment, the delinquent would be free to approach the Tribunal. In pursuance thereof, Petitioner/delinquent submitted the objections to the inquiry report. Punishment Order Dated 30.01.2001 (Annex.-4) was passed by the competent authority imposing the punishment of reduction in rank to next lower grade with cumulative effective.

The said order was challenged by the Petitioner-employee by filing O.A. No. 104 of 2001 on the grounds that (1) the authority which passed the order of punishment was not competent to do so, (2) the delinquent was not permitted to examine the documents, (3) the witnesses to be relied upon by the delinquent were not summoned, (4) the findings of facts recorded by the inquiry officer were based on no evidence and (5) penalty so imposed was disproportionate to the delinquency. The aforesaid Application was contested by the Opposite Party-employer. However, the Tribunal opined that two relevant issues were involved there, that as to whether the penalty was harsh or disproportionate to the delinquency and as to whether order of punishment could be a non-speaking one. After considering all pros and cons, the Tribunal came to the conclusion that impugned Order Dated 30.01.2001 and the consequential letter dated 11.01.2001 were liable to be quashed as the reply submitted by the delinquent-employee on 7.7.2000 to the inquiry report had not been considered and the said impugned Order Dated 30.01.2001 and Order Dated 11.1.2001 were quashed. Subsequent thereto, a fresh inquiry on the same charges was initiated appointing a new Inquiring Officer vide Order Dated 2.12.2002, which was challenged by the delinquent-employee by filing O.A. No. 633 of 2004 which has been decided by the Tribunal vide impugned Judgment and order holding that second inquiry was not permissible. However, there was no bar for the employer to recommence the earlier inquiry from the point it stood vitiated and conclude the same by taking into consideration the reply/objections submitted by the delinquent/employee. Hence this Writ Petition.

3. Shri J.M. Mohanty, Learned Counsel for the Petitioner has submitted that as the Tribunal had allowed the Original Application quashing the punishment imposed by the Opposite Parties, it was not permissible for the Opposite Parties to hold the de-novo inquiry. More so, the Tribunal was not competent to direct that the earlier inquiry be concluded afresh from the point it stood vitiated i.e. taking into consideration objections to the inquiry report. Thus the part of the order directing to conclude the inquiry taking into consideration the objections to the inquiry report is liable to be quashed.

4. On the contrary it has submitted by the Learned Counsel for the Opposite

Parties employer that as the punishment was set aside on a technical ground, there could be no prohibition even to hold a fresh inquiry. The employer is also competent to take up the inquiry from the point it stood vitiated and conclude the same in accordance with law as per the directions given by the Tribunal. Therefore, the petition is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

6. A Constitution Bench of the Supreme Court in *K.R. Deb Vs. The Collector of Central Excise, Shillong*, considered the statutory provisions of Central Civil Services (Classification, Control & Appeal) Rules, 1957 in this respect and held as under:

It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept in to the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself & come to its own conclusion under Rule 9.

7. The matter was reconsidered by the Apex Court in *the State of Assam and Another Vs. J.N. Roy Biswas*, and after considering the application of doctrine of double jeopardy, the Court held as under:

We may however make it clear that no government servant can urge that if for some technical or other good ground, procedural or other; the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official re-instated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in absence of specific power to review or revise, vested by the rules in some authority. The basis of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry.

8. In *State of Punjab and Another Vs. Kashmir Singh*, , a similar view has been reiterated by the Supreme Court observing that there must be sufficient reasons and compelling circumstances to hold a fresh inquiry. However, the question of holding second inquiry does not arise, in case the earlier inquiry report has been accepted and acted upon and the proceedings stood concluded.

9. In *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, it was held that the departmental proceedings stand concluded with the final decision of the disciplinary authority. Therefore, the proceedings attain finality. When after acceptance of the inquiry report and considering the reply of the delinquent, the

disciplinary authority passes an order imposing punishment or exonerating him.

10. In *Union of India and Others Vs. P. Thayagarajan*, , the Apex Court reconsidered its earlier Judgment in *K.R. Deb (supra)* and explained the same observing as under:

A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand results in a miscarriage thereof. Therefore, we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of present nature...the Disciplinary Authority will have to be satisfied with the procedure adopted by the Enquiry Officer before passing an order. It does not stand the logic that in a given case the Appellate authority could order a fresh enquiry and not the Disciplinary Authority at whose instance the enquiry began and which is not satisfied with the enquiry held for some vital defects in the procedure adopted....

11. In *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, the Apex Court considered the issue of double jeopardy, initiation of second enquiry on the same charges and considered its earlier Judgment in *Lt. Governor, Delhi v. HC Narinder Singh (2004) 13 SCC 342*; wherein it had been held that once after holding the enquiry punishment had been imposed, the enquiry comes to an end and it is not permissible for the disciplinary authority to issue show cause again on the same mis-conduct as it would amount to double jeopardy. The Court came to the conclusion that in a case where enquiry stood concluded and final order of exoneration has been passed, the question of initiation of second enquiry/de novo enquiry does not arise. But where in the earlier proceedings, no finding had been recorded and it did not attain finality, there could be no bar in initiating the second/de novo enquiry.

12. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, , nearly a Constitution Bench of the Supreme Court has considered the issue wherein the Tribunal/Court interferes with the order of punishment and set aside it on technical ground, but did not make any observation to hold a fresh inquiry or to take up the inquiry from the point it stood vitiated and conclude the same, and

came to the conclusion that in such circumstance, the binding effect of a Judgment depends not upon any technical consideration of form but of substance. In case the Court does not exonerate the delinquent from its charges and allows the case on the ground that the procedure of imposing penalty was irregular, such a decision cannot prevent the employer/Authority from commencing another inquiry in respect of the same subject matter consistent with the provisions of Articles 310 and 311 of the Constitution.

13. In *Anand Narain Shukla Vs. State of Madhya Pradesh*, , the Supreme Court reiterated a similar view observing that if the order of punishment was quashed on technical ground there could be no prohibition for the employer to hold a fresh inquiry on merits.

14. In *Union of India and Ors. v. M.B. Patnaik and Ors.* AIR 1981 SC 858, the Apex Court dealing with a similar issue held that where the order is passed by the Court without entering into the merit of the case on a technical ground, such an order does not debar fresh adjudicatory proceedings which may be justified under the law and that when an order is struck down as invalid, being in violation of the principles of natural justice, there is no- final decision of the case and all that is done is that the inherent defect is removed but the proceedings are not terminated. However, such a proceeding should not recommence after lapse of a long period.

15. Further, once the Court set aside the order of punishment on the ground that inquiry had not properly been conducted, the Court cannot reinstate the employee, it has to remit the case to the disciplinary authority to take up the inquiry from the point it stood vitiated and conclude the same afresh. (vide *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *Hiran Mayee Bhattacharyya case*, (2002) 10 SCC 293; *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, ; and *Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector*,).

16. In view of the above, law can be summarised that in case the Court interferes on a technical ground and quashes the order of punishment, the inquiry may be recommenced from the point it stood vitiated. In exceptional circumstances, there is no prohibition in law even to hold the de-novo inquiry. However, it should not be done at a much belated stage, as the delinquent has already suffered a lot because of the pendency of the departmental proceedings and in such circumstances, the proceeding may become liable to be quashed on the ground of delay and laches.

17. The instant case requires to be considered in the light of aforesaid settled legal proposition.

18. Petitioner was furnished with the charge-sheet. Inquiry had been conducted and order of punishment was passed reverting the Petitioner to lower rank. Undoubtedly, in all the three Applications filed before the Tribunal, case has never been decided on merit. Issues raised by the Petitioner have neither been adjudicated upon by the Tribunal. No finding on either of the issues raised

therein has been recorded. The Tribunal interfered only on the technical ground in 2nd Application i.e. O.A. No. 104 of 2001. While quashing the punishment, the Tribunal did not make any observation as to whether the Disciplinary Authority could recommence the inquiry from the point it stood vitiated or could hold fresh inquiry. In such a fact situation, the Authority had option to proceed in either of the methods. The Authority cannot be deprived of its right to punish a delinquent on proved charges.

19. In such a fact situation, the order impugned does not warrant interference. Petition lacks merit and is accordingly dismissed.

B.N. Mahapatra, J.

20. I agree.