

(2020) 03 CAT CK 0069

In the Central Administrative Tribunal

Case No : Original Application No. 944 Of 2014

Rajesh Gupta And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

All India Service (Discipline And Appeal) Rules, 1969 — Rule 8, 9(2)

Citation : (2020) 03 CAT CK 0069

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Single Bench

Advocate : Nilansh Gaur, Rohit Sehrawat

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. The applicant has filed the present OA seeking the following reliefs:-

"8.1 To set aside the impugned order of dismissal dated 31.1.2014 and further direct the respondents to reinstate the applicant in

service with all consequential benefits including continuity, seniority, posting and back wages.

8.2 To set aside the Disagreement Note of disciplinary authority dated 10.5.2012; and

8.3 Any other relief which the Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case".

2. Briefly, the facts of the present matter are as follows:

2.1 The applicant was posted as Deputy Commissioner, Lohit, Arunachal Pradesh, for the period from 06.01.2004 to 02.08.2004. On 23.03.2004, he was issued a show cause notice by the Chief Secretary, Andhra Pradesh, asking for his explanation on certain allegations. The applicant submitted his explanation and

thereafter, on 20.07.2005, was issued a memorandum under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969. The memorandum contains four articles of charge. An Inquiry Officer (IO) was appointed by the Government and the Inquiry Report was submitted on 13.04.2011 in which charges 1, 2 and 4 were held to be not proved and article of charge 3 was held to be partly proved. Thereafter, the Disciplinary Authority (DA) issued a Disagreement Note dated 10.05.2012 and the Charged Officer was given an opportunity to make a representation. The matter was referred to UPSC. A copy of the opinion of UPSC dated 05.08.2013 was forwarded to the applicant to make a representation in this regard. Subsequently, the DA issued an order dated 31.01.2014 whereby a penalty of 'dismissal from service which shall ordinarily be a disqualification for future employment under the Government' was imposed upon the applicant.

2.2 The applicant has made a submission that only article 3 was partly proved and other articles of charge were not proved. He has also contended that the DA disagreed with the findings of the IO and the reasons for disagreement should have been recorded and a tentative note should have been issued but the Disagreement Note indicates that the DA has already taken a final view in the matter. He further submits that the reasons mentioned in the Disagreement Note are not adequate and hence DA was not justified in coming to the conclusion that he arrived at.

2.3 It is also the contention of the applicant that the UPSC went beyond its mandate which is relating to the quantum of punishment and recorded its own findings. It is also his submission that his representation to the UPSC, on its advice, was not taken into consideration and a non-speaking order was passed by the DA while passing the order of punishment.

3. The respondents filed a detailed counter reply. The respondents have contended that the Disagreement Note was served to the applicant and he was given an opportunity to submit his reply but he failed to do so. They have also justified the action of sending the matter to the UPSC for its advice and the response of the UPSC thereafter.

4. The matter came up before the Division Bench comprising Hon'ble Mr. Justice L. Narasimha Reddy, Chairman and Hon'ble Ms. Aradhana Johri, Member (A). Hon'ble Chairman while deciding the issue came to the following conclusion:-

"25. The result of the discussion undertaken above is that-

- i) the text of the disagreement note does not accord with the requirement of law;
- ii) the order of punishment is vitiated on account of-
 - a) lapses on the part of the disciplinary authority on the one hand, and assumption of role by the UPSC, which is not assigned to it in law, on the other; and
 - b) its being bereft of reasons in support of the conclusion.

27. Since the order of punishment is set aside, the applicant shall be deemed to have been reinstated for the limited purpose of continuing the disciplinary proceedings. He shall be treated to be under suspension, but without subsistence allowance, till the final order is passed by the disciplinary authority in accordance with the steps indicated above. The exercise in this behalf shall be completed within a period of three months from the date of receipt of this order. Depending on the outcome of the proceedings, the manner in which the period of deemed suspension and other spells are to be treated, shall be decided by the disciplinary authority. There shall be no order as to costs."

5. Hon?ble Member (A), on the other hand, has taken the view that the challenge to the Disagreement Note is not tenable. As regards the advice of the UPSC, it has been opined that all steps required by the UPSC have been duly followed and no fault can be found in it. It was also determined that the order of dismissal stands the scrutiny of law and should not be interfered with. Based on the conclusion, it was held that the OA deserves to be dismissed.

6. In view of the difference of opinion between the Hon?ble Chairman and the Hon?ble Member (A), the matter has been referred to a third Member (the undersigned) for adjudication on the following issues:-

"a) What is the procedure to be adopted by the Disciplinary Authority in the context of disagreeing with the findings recorded by the IO?

b) Whether it is competent for the UPSC to undertake any discussion upon the findings recorded by the IO, while rendering its opinion; and

c) Whether it is not incumbent upon the Disciplinary Authority to record reasons with reference to the explanation submitted by the delinquent employee, before an order of punishment is passed."

7. Heard Shri Nilansh Gaur, learned counsel appearing on behalf of the applicant and Shri Rohit Sehrawat for Shri Rajeev Kumar, learned counsel appearing on behalf of the respondents.

8. Learned counsel for the applicant further elaborated on the issues raised in the pleadings and submitted that the applicant was exonerated on three charges by the IO and one of the charges was only partly proved. The DA issued a Disagreement Note, which instead of being tentative was final in its nature. This, he submitted, was contrary to Rule 9(2) of All India Services (Discipline and Appeal) Rules, 1969, as explained vide Office Memorandum dated 23.08.2012 of DoP&T. He also submitted that the reasons given in the Disagreement Note were not on the basis of an evidence available on record and that it was based on assumptions only. He further submitted that the UPSC should have confined itself with the issue of quantum of punishment and should not have given the findings on the charges. It was further added that following the UPSC advice, the applicant submitted his representation, but it was not considered by the DA while

passing the final order which is evident from the way the order inflicting the penalty is worded.

9. Learned counsel for the respondents, on the other hand, contended that the applicant was given full opportunity for making his representation against the Disagreement Note and despite several opportunities; he did not avail of this opportunity. It was, thus, asserted that the DA had an open mind in the issue and came to the conclusion only after providing a number of opportunities to the applicant. It was also his contention that the UPSC looked into the issue comprehensively and there was no flaw in the process and their advice. After obtaining the advice of the UPSC, the DA came to its conclusion after due application of mind.

10. I have carefully gone through the pleadings on record as well as the submissions made by the learned counsels and I now proceed to discuss the three issues referred to, one by one.

Issues for adjudication

(a) (i) The relevant Rule in connection with the Disagreement Note is Rule 9(2) of All India Services (Discipline and Appeal) Rules, 1969, which reads as under:-

"9. Action on the inquiry report-

xxx xxx xxx

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any with the findings of inquiry authority on any article of charge to the Member of the Service who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Member of the Service."

(emphasis supplied)

(ii) This Rule has been sufficiently explained through Office Memorandum dated 23.08.2012 of DoP&T, which reads as under:-

"I am directed to say that Rule 9(2) of AIS (D&A) Rules, 1969 states the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any with the findings of Inquiry Authority on any article of charge to the Member of the Service who shall be required to submit, if he so desires, his written representation of submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Member of the

Service.

The necessity of following the above mentioned rule 9(2) both in letter and spirit is reiterated. The communication forwarding the IO's report along with the tentative reasons for disagreement, if any, seeking comments/representation of the Charged officer should reflect his position. All Ministries/Departments and State Governments are therefore, requested to ensure that the communication forwarding 'the IO's report etc. does not contain phrases such as 'Article of charge is fully proved' or 'Article of charge is fully substantiated' which could be construed to mean that the disciplinary authority is biased even before considering the representation of the charged officer and this would be against the letter and spirit of the AIS (D&A) Rules, 1969.

The instructions may be brought to the notice of all the members of All India Services."

(emphasis supplied)

(iii) From a plain reading of these, there is no doubt that if the DA intends to disagree with the findings of the IO, he shall record the reasons for disagreement in a manner in which the reasons for disagreement are given but the conclusion still left open. The Charged Officer should be communicated these and given an opportunity to offer his side of the reasoning. If the Disagreement Note is so worded as to convey the sense that the DA has already arrived at a particular conclusion then it can in no way, be regarded as tentative. Part of the Disagreement Note issued through OM dated 10.05.2012, reads as under:-

"xxx xxx xxx

2. The Inquiring Authority's report has been examined in the Ministry with the relevant documents and records. The disciplinary Authority (i.e. President) has decided to disagree with the findings contained in the Inquiring Authority's report for the reasons/grounds mentioned in the Annexure enclosed."

(emphasis supplied)

(iv) The Disagreement Note mentions that the charge against the Charged Officer is proved. From a plain reading of these, it is sufficiently clear that by no stretch of imagination can the Disagreement Note issued by the DA be taken as tentative in nature. It is clearly so worded as if the DA has already taken a decision and is only going through the formality, of giving the applicant an opportunity to make a representation. It should have been in the form of a preliminary finding providing opportunity for representation leaving option for correction rather than as a final view relegating all subsequent action to being a mere formality.

(v) Therefore, I find that the procedure adopted by the DA in the context of Disagreement Note is totally flawed and contrary to the Rules and instructions on the subject. I may also add that the substantive position of law has been laid

down in Rule 9(2) of All India Services (Discipline and Appeal) Rules, 1969 and the DoP&T OM dated 23.08.2012 is only explanatory in nature for the benefit of those who could not appreciate the import of the provisions regarding the Disagreement Note. This being so, the date of its issue vis-a-vis the date of Disagreement Note, is of no consequence. It has to be read not as laying down the law but only as explaining it.

(b) (i) The DA referred the matter to the UPSC for advice. There is no doubt, that the role of UPSC in such matters is purely advisory. The involvement of Constitutional Authorities is inherently to ensure that justice is fully done. The UPSC, while discharging its functions, regarding the advice, is not expected to place itself in the position of the IO and substitute their own judgement in place of the IO, as regards whether the charges are proved or otherwise.

(ii) On the articles of charge, the UPSC has gone into the area of appreciation of evidence and on each count have come to the conclusion that the charges stand proved. Thus, by doing so, it has gone beyond its expected role. The UPSC is a body, whose role in the matter is to examine the issues in the context of adherence to rules and procedure and not assign to itself the role of the IO.

(c) (i) Now to the third question. The DA has to take into account the material before him. He did not even refer to the representation of the Charged Officer and does not even attempt to deal with the issue raised in the representation. He only relied on the advice of the UPSC. In the process, he did not keep in view that the comments of UPSC are only advisory in nature and not mandatory. He has to evaluate them and reach his own conclusions. Issues raised in the representation of the Charged Officer are not even mentioned, leave alone considered or discussed. It is in no way a speaking order and is totally contrary to the principles of natural justice. DA was required to record reasons with relevance to the explanation submitted by the charged employee before passing the order of punishment.

11. The issues are answered accordingly.

The Registry shall place the file before the Hon?ble Chairman for necessary order.