
(2009) 10 DEL CK 0053
In the Delhi High Court
Case No : Writ Petition (C) 199 of 1991

Rajesh Joshi	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Constitution of India, 1950 — Article 16, 311, 311(2), 315, 320

Citation : (2009) 10 DEL CK 0053

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V. Shekhar, Pradeep K. Dubey, Zangpo Sherpa and Deepakshi Jain, for the Appellant; R. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 22.1.1991 show cause notice as to why rule nisi be not issued was restricted in the following language:

Notice to show cause as to why rule nisi be not issued for February 15, 1991. Notice is confined to the question as to whether UPSC can in its discretion enhance the punishment suggested by the disciplinary authority.

2. On 5.12.1991 limited rule was issued in the following language:

Mr. Shekhar says that the revision petition has since been dismissed by order dated 14.3.91. A copy of that order he has filed along with his rejoinder.

When notice to show cause was issued in this matter, it was confined to the question as to whether UPSC could in its discretion enhance the punishment suggested by the disciplinary authority. As a matter of fact if reference is made to the advise rendered by the UPSC (Pages 116 to 123) the UPSC said that in its opinion the ends of justice would be met if the penalty of removal from service was imposed on the officer, and the UPSC, therefore, advised the department accordingly. The disciplinary authority had proposed the penalty of compulsory

retirement. Mr. Mathur says that the UPSC had merely advised the department and that advise was not binding on the department as such. However, Mr. Shekhar points out that after the advise of the UPSC was received there is nothing on the record to show as to what happened after considering thereof and the petitioner in any case did not receive any notice to show cause for the proposed penalty of termination of service. Limited to this we issue Rule.

3. Thus, final hearing of the writ petition has been restricted to the question whether UPSC could in its discretion enhance the punishment suggested by the disciplinary authority.

4. The answer takes us straight to the Constitution of India. Two articles of the Constitution need to be noted. The first is Article 311 of the Constitution of India and the other is Article 320 of the Constitution of India.

5. Article 311 of the Constitution of India reads as under:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State ? (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this Clause shall not apply- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

6. Article 320 of the Constitution of India reads as follows:

320. Functions of Public Service Commissions. ? (1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more State so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor, of the State, may refer to them:

Provided that the President as respects the all India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in Clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in Clause (4)

of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335.

(5) All regulations made under the proviso to Clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

7. Suffice would it be to state that post Constitution 42nd Amendment, with effect from 3.1.1977, the requirement of a second show cause notice pertaining to the penalty proposed to be inflicted upon a civil servant has been done away with. The proviso to Article 311(2) of the Constitution of India evidences that the mandate of the Constitution is to afford an opportunity to the delinquent to represent with respect to the findings at an inquiry. The proviso expressly states that it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

8. Union Public Service Commission is an authority created under the mandate of the Constitution i.e. Article 315 of the Constitution of India. A perusal of Article 320 of the Constitution of India shows that of the various functions of the Union Public Service Commission, one of the function of the Commission, vide Sub-clause (c) of Sub-article 3, is to assist on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters.

9. Thus, it is apparent that in the case of the present petitioner, consultative process with the UPSC was mandatorily to be followed in relation to the disciplinary proceedings which were initiated against the petitioner.

10. Indeed, during arguments learned Counsel for the petitioner did not question the action of the respondents in taking consultative advice from Union Public Service Commission.

11. Time to get into the facts of the present case.

12. The petitioner was appointed as a Deputy Superintendent CRPF on 22.11.1976. On 2.1.1988 a charge memo was issued to the petitioner alleging two charges against the petitioner. Inquiry officer was appointed who submitted a report on 4.7.1988. The report indicted the petitioner on both counts. On 4.1.1989 the inquiry report was furnished to the petitioner for his response informing the petitioner that the disciplinary authority would take a decision keeping in view the facts brought out in the inquiry report.

13. Before the inquiry report was furnished to the petitioner for his response, on 7.7.1988 the Deputy Director Establishment penned a note for consideration by the Director General of CRPF informing the Director General that five major

penalties were provided under the service rules. Opinion of the Director General was sought as to which punishment would be recommended by him.

14. Processing the note, on 22.7.1988 the IGP (HQ) penned a note that a tentative decision to impose the major penalty of compulsory retirement may be approved. The next day i.e. on 23.7.1988 the Director General approved the tentatively proposed punishment of compulsory retirement.

15. Since the mandate of Article 320(3)(c) of the Constitution of India required consultative process with UPSC, a communication was sent to the Union Public Service Commission informing the Commission the tentative opinion of the Director General for imposing the penalty of compulsory retirement with reference to the findings of the inquiry officer.

16. UPSC considered the report of the inquiry officer and the record of the inquiry officer. UPSC opined that the proposed penalty of compulsory retirement was not adequate penalty and advised that the penalty of removal from service should be imposed.

17. We may note that before giving the advice UPSC had the benefit of the response of the petitioner to the report of the inquiry officer which response was specifically sought by the UPSC.

18. We may note at this stage that the original record pertaining to the disciplinary proceedings and the communication between the respondent and UPSC has been shown to us in Court today.

19. Proceeding ahead, after receiving the advice from UPSC, a note was penned on 6.7.1990. The note was for the benefit of the Director General CRPF. The note clearly refers to the hiatus between the penalty proposed and tentatively approved by the Director General and the penalty proposed as per the advice received from the UPSC.

20. At each stage thereafter, each officer who processed the file, consciously penned the fact that the Director General CRPF should consider the matter with reference to the recommendations of the UPSC vis-?-vis his tentative decision pertaining to the penalty proposed i.e. of compulsory retirement.

21. While according his final approval, post rejection of the representation of the petitioner against the report of the inquiry officer and agreeing with the findings of the inquiry officer, the Director General CRPF granted approval for levy of the penalty of removal from service.

22. The fact that the Director General CRPF has not acted mechanically, in that, has not blindly accepted the advice of the UPSC but has kept in mind his earlier decision is evidenced from the office note dated 11.7.1990 penned by the Commandant Assistant Director Establishment conveying the final decision of the Director General. The note reads as under:

MHA may kindly refer UPSC letter No. F.3/43/89-SI dated 27.6.1990 placed at

page 42/corr. with Ministry's earlier references at pages 38 to 40/corr.

2. In this case D.E. proceedings were conducted against Shri Rajesh Joshi, DYSP. The Inquiry Officer held the charges against the officer proved. The disciplinary authority also agreed with the findings of the Inquiry Officer and came to the conclusion tentatively to impose the major penalty of ?Compulsory Retirement? on the charged officer. The case was then referred to UPSC for advice as may be seen at pages 38 to 40/corr.

3. The UPSC has, vide their letter dated 27.6.1990 placed at page 42/corr., rendered their advice differing with the conclusion of the disciplinary authority as they considered the proposed penalty on the lower side and advised that the ends of justice would be met if the penalty of ?Removal from Service? is imposed on Shri Rajesh Joshi, DYSP.

4. DG, CRPF recommends acceptance of the advice of the Commission.

5. MHA may kindly see and convey the formal acceptance of the competent authority on the advice of the UPSC.

Sd/-11.7.1990

(Bhola Nath)

Commandant

Assistant Director (Estt)

23. In the backdrop of the aforementioned facts and the legal position suffice would it be to state that it is not a case of UPSC enhancing the punishment. It is a case where, during the consultative process with UPSC, there was a difference of opinion between UPSC (which suggested a higher penalty) and the opinion (tentative) of the Director General who had proposed a lesser penalty. Inherent in every consultative process would be difference of opinion. If UPSC was to be bound by the tentative decisions taken by disciplinary authorities, where would be the scope for an advice? We can think of none.

24. Facts, as noted above, of the instant case evidences that a difference of opinion was resolved by the Director General CRPF who chose to finally accept the opinion expressed by UPSC. It is not a case where the disciplinary authority has acted as if it was bound by the opinion of the UPSC. Thus, strictly speaking, it cannot be said that it is a case of enhancing a penalty.

25. Before concluding we may note that in the writ petition, the petitioner has raised various issues impinging upon the legality of the inquiry proceedings, but in view of the orders dated 22.1.1991 and 5.12.1991, which orders have attained finality, we refrain from going into the said issues.

26. We find no merit in the writ petition on the limited issue which we have been called upon to adjudicate today.

27. The writ petition is dismissed.

28. No costs.