
(2020) 02 MP CK 0192
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4102 Of 2020

Rajesh Prasad Soni

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 16, 16(1)(b)

Citation : (2020) 02 MP CK 0192

Hon'ble Judges : Rajeev Kumar Shrivastava, J;Sheel Nagu, J

Bench : Division Bench

Advocate : Smrati Sharma, Vivek Khedkar

Final Decision : Allowed

Judgement

(1) Present petition invoking writ and as well as supervisory jurisdiction of this Court u/Art.226/227 of the Constitution assails the final order of the

Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting Gwalior passed on 27.09.2019 dismissing Original Application No.202/01010/2015

whereby challenge was made to the penalty of withholding two future increments for three years without cumulative effect passed vide order dated

12.05.2014 which was watered down by the appellate authority by order dated 01.10.2015 to withholding one future increment for three years without cumulative effect.

(2) Learned counsel for rival parties are heard on the question of admission and as well as final disposal.

(3) Learned counsel for the petitioner relying upon the decision of Apex Court in *Kranti Associates Pvt. Ltd. And another Vs. Masood Ahmed*

Khan and others (2010) 9 SCC 496 submits that the impugned order of

penalty of disciplinary authority dated 12.05.2014 and as well as order of appellate authority dated 01.10.2015 are non-speaking orders and have been passed without considering the contentions raised by the petitioner and thus they deserve to be annulled on the anvil of law laid down by Apex Court in *Kranti Associates (supra)*.

(4) Further ground of challenge raised is that the charges alleged were factual in nature which were denied in toto by the delinquent employee and

therefore in view of decision of Apex Court in *O.K. Bhardwaj Vs. Union of India* and others reported in [(2001) 9 SCC 180]the employer was

obliged to hold a full-scale enquiry u/R.14 in terms of u/R.16(1)(b) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (â??1965

Rulesâ?? for brevity), for which the decision of Apex Court in *O.K. Bhardwaj (supra)* is relied upon.

(5) Learned counsel for the employer, on the other hand, relying upon â??*Food Corporation of India v. A. Prahalada Rao and Anr.* [AIR 2001 SC 51]

submits that in the said decision, the Apex Court held that holding of disciplinary enquiry u/R.14 in charges issued u/R.16 of 1965 Rules is discretionary

power vested with the disciplinary authority which is to be exercised by considering the facts of each case and is open to judicial review only if it is

proved that such discretionary power is exercised arbitrarily or mala fide.

(6) This Court is conscious of the limitations of the power of judicial review u/ Art.226 of the Constitution. The power of judicial review strikes at the

decision making process but not the decision per se. If there is any legal flaw in the decision making process which is either against any statutory

provision or principles of natural justice or against good conscience or fair play, the Court can interfere but not otherwise.

(7) In the instant case, the charge-sheet was issued to the petitioner u/R.16 of 1965 Rules for minor misconduct on 25.04.2014. The petitioner

submitted a detailed reply dated 02.05.2014 not only refuting the charges but also furnishing his explanation in support of his innocence. The penalty

order thereafter was passed on 12.05.2014 whereby before imposing the penalty of withholding two future increments for three years non-

cumulatively observations were made that the petitioner has submitted a representation consisting of six handwritten pages which has been duly

considered but are not found to be valid especially in view of his acceptance in

his replies to previous memos and advisories and that after careful consideration of all facts and circumstances, the disciplinary authority has come to the conclusion that the act amounts to failure to maintain absolute integrity and is unbecoming of a government servant.

(7.1) Thereafter, when an appeal was preferred on 12.05.2014, the appellate authority watered down the punishment by appellate order dated

01.10.2015 to that of withholding one future increment for three years without cumulative effect but did not pass reasoned and speaking order

considering all the contentions raised by the petitioner in his memo of appeal.

(8) So far as the disciplinary authority is concerned, as explained above, the reasons assigned by the disciplinary authority before imposing penalty fell

desperately short of bare minimum findings which are obligatory on the part of the disciplinary authority to record in the penalty order in respect of

each and every contention raised by the petitioner in the reply to the charge-sheet. A penalty order, be it of minor penalty, entails serious adverse

consequences upon service conditions of delinquent employee. The least that is required of disciplinary authority is to render findings, if not elaborate,

at least in a concise and precise manner, meeting out each and every contention raised by the delinquent employee in his reply to the charge-sheet.

This not only instills transparency and rationality in the process of passing of penalty order but also assists the higher forums, which may be

departmental or judicial, to know the mind of the disciplinary authority while adjudging the legality and validity of the penalty order.

(8.1) Thus, in the considered opinion of this Court, the penalty order of the disciplinary authority dated 12.05.2014 falls desperately short of legal

requirement and thus can easily be categorized as non-speaking. However, the issue of impugned penalty order passed by the disciplinary authority

being non-speaking was raised by the petitioner in appeal. The Appellate Authority though toned down the sting of the penalty from withholding two

future increments to one non-cumulatively but again repeated the same mistake as committed by the disciplinary authority of passing a non-speaking

order.

(8.2) A bare perusal of the appellate order dated 01.10.2015 reveals that the only observation which may, to some extent, reveal application of mind is

that the petitioner has submitted an appeal against the penalty order and that in

view of the Tribunal observing in OA/202/000706/2015 that the quantum of punishment appears to be excessive and that the undersigned has considered the case after going through the reasons/facts submitted by the petitioner in appeal, the penalty order is toned down to withholding one future increment for three years without cumulative effect as explained above.

(9) The aforesaid appellate order is a perfect example of a non-speaking order where the mind of the appellate authority is not disclosed in express terms in regard to the contentions raised by the petitioner in his appeal. Just because the punishment has been toned down does not absolve the appellate authority of its obligation to pass a speaking order. The petitioner, in his appeal, had sought complete exoneration and thus to the extent it was denied in the appellate order the same can easily be categorized as non-speaking.

(10) As regards the other aspect of disciplinary authority ought have conducted a full-scale enquiry u/R.14 in terms of Rule 16(1) (b) of 1965 Rules instead of adopting shortcut method, the record reveals that petitioner in his reply had denied the allegations contained in the charge-sheet and had given his explanation in detail. The charges in the charge-sheet dated 25.04.2014 were predominantly factual in nature which were refuted by the petitioner. The charges were not as simple as they appeared to be since each one of them is related to certain documents, the veracity of which could not have been established unilaterally without affording the petitioner opportunity to refute the evidence and material in support of the charges by way of oral evidence and producing defence evidence in support of his innocence. Thus, the decision of the Apex Court in the case of O.K. Bhardwaj (supra) squarely applies to the facts and circumstances prevailing herein.

(11) This Court has no manner of doubt that petitioner has been denied a reasonable opportunity of being heard by disciplinary authority. The disciplinary authority and appellate authority both are also found wanting in discharge of their legal obligations of passing speaking orders.

(12) Consequently, this petition stands allowed in following terms:

(i) Impugned order dated 27.09.2019 passed by Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting Gwalior in Original Application

No.202/01010/2015 is set aside.

(ii) The impugned order of penalty of disciplinary authority as well as of appellate authority dated 12.05.2014 and 01.10.2015 are quashed. The

disciplinary authority is now at liberty to proceed in the matter by holding a full-scale enquiry u/R.14 of 1965 Rules or else to assign reasons for not

doing so in express terms.

(iii) In case, a full-scale enquiry u/R.14 of 1965 Rules is initiated against the petitioner, it is needless to emphasize that due and sufficient opportunity as

per Rule 14 of 1965 Rules would be afforded to the petitioner to defend his innocence, with corresponding obligations on the disciplinary authority to

pass a speaking order.

(iv) The petitioner thereafter, if occasion arises, would be free to avail departmental and other remedies available to him.