
(2008) 06 OHC CK 0027
In the Orissa High Court

Rushi Guman Singh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 311

Citation : (2008) 2 OLR 201 : (2009) 2 SLR 390

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S.C. Parija, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—The moot question which arises for consideration in the present writ petition, is that when the Inquiring Officer, during the course of disciplinary proceeding comes to a conclusion that all the charges alleging misconduct against a Government official are not proved then can the Disciplinary Authority differ from that and give a contrary finding without affording an opportunity of hearing to the delinquent officer.

2. The brief facts of the case is that while the petitioner was working as Soil Conservation Officer, Puri, he was transferred and his services were placed under Orissa State Cashew Development Corporation for posting as General Manager (Technical). Subsequently, vide Office Order dated 12.06.1998, the petitioner was posted as Principal, Soil Conservation Training Institute, Koraput. On the same date i.e., 12.06.1998 the Commissioner-cum-Secretary to Government, Agriculture Department issued Office Order under Rule 12(1)(a) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 (CCA Rules for short) placing the petitioner under suspension with immediate effect in contemplation of disciplinary proceeding.

3. The petitioner was subsequently issued with a memo of charges dated 27.07.1998 by the Commissioner-cum-Secretary to Government, Agriculture Department along with Statement of Imputation basing on which action was

proposed to be taken against the petitioner. The petitioner was asked to submit his written statement of defence within the stipulated period. The petitioner submitted his written statement of defence denying the charges. The State Government in the Agriculture Department, on considering the written statement of defence submitted by the petitioner, decided to refer the disciplinary proceeding against the petitioner to the "Commissioner for Departmental Inquiries", General Administration Department, for detailed Inquiry. Accordingly, the Commissioner for Departmental inquiries was appointed as the Inquiring Officer vide Office Order dated 27.05.1999, as per the provisions of Rule 15(4) of the CCA Rules, for the purpose of enquiring into the charges framed against the delinquent officer and submitting his detailed report containing his findings to the State Government in the Agriculture Department for necessary action.

4. Pursuant to the appointment of Commissioner for Departmental inquiries as Inquiring Officer, the enquiry was initiated against the petitioner vide CDI Case No. 17 of 1999 on the charges that the petitioner during his incumbency as Soil Conservation Officer, Puri, committed acts of omissions and commissions for which following charges were framed against him.

- (i) Violation of prescribed procedure of recruitment;
- (ii) Violation of ORV Act/Rules;
- (iii) Misuse of Official Powers;
- (iv) Unauthorized Government transactions;
- (v) Violation of Rehabilitation Assistance Rules;

5. The Inquiring Officer after several sittings and on consideration of materials on record, including oral and documentary evidence, came to the following conclusions;

However, in view of the facts analytically discussed, taking into all possible and available circumstantial evidence, it has been conclusively proved that there is no preponderance of doubt and ambiguity that the prosecution has failed to substantiate the charges. In the result, it is recommended that the D.O. may be summarily exonerated of the charges that the period of suspension may be treated as duty.

6. On submission of the enquiry report by the Inquiring Officer recommending for exonerating the petitioner from all the charges and also recommending to treat the period of suspension as on duty, the Disciplinary Authority considered the said enquiry report and decided to differ from the said findings of the Inquiring Officer as the same were found to be based on the pleas/statements of delinquent and without proper application of mind and to finalise the disciplinary proceeding against the petitioner by imposing the punishment of "dismissal from the service" and to treat the period of suspension as such on the grounds stated therein. Accordingly the petitioner was called upon to submit any representation

as he may wish to make against the above findings and decision of the Disciplinary Authority within 30 days from the date of receipt of said notice. The petitioner submitted his representation/reply to show-cause notice before the Disciplinary Authority, for consideration.

7. The Disciplinary Authority on receipt of the representation/reply of the petitioner, referred the matter to the Orissa Public Service Commission (OPSC for short) along with all relevant records of the disciplinary proceeding for their opinion/advice. On receipt of advice and the reasoning rendered by OPSC, the Commissioner-cum-Secretary to Government, Agriculture Department vide Office Order dated 14.02.2003 intimated the petitioner that the Government has been pleased to accept the said advice of the OPSC and finally order that the petitioner is removed from Government service with immediate effect and the period of his suspension from 13.06.1998 to 20.7.1999 is treated as such.

8. Being aggrieved by the aforesaid Office Order dated 14.02.2003 of the State Government in the Agriculture Department, directing removal of the petitioner from the Government service, he moved the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 994(C) of 2003. The learned Tribunal was not inclined to interfere with the order of punishment imposed on the petitioner and accordingly proceeded to dismiss the Original Application. It is against this order of the Tribunal dated 07.07.2006 dismissing the petitioner's Original Application (O.A. No. 994 (C) of 2003) and confirming the Office Order dated 14.02.2003, the present writ petition has been filed.

9. Shri Ashok Mohanty, learned Senior Counsel appearing on behalf of the petitioner has raised several contentions including that there is no material available before the Disciplinary Authority to differ with the findings of the Inquiring Officer. It is specifically contended by the learned Counsel that the Disciplinary Authority, which had disagreed with the findings recorded by the Inquiring Officer and had held that the charges against the petitioner were proved or established, had acted in violation of the "principles of natural justice", inasmuch as, it did not give an opportunity of hearing at the stage when it developed the inclination that the findings recorded by the Inquiring Officer were not acceptable and were liable to be reversed. It was further contended that the findings of the Inquiring Officer, which were based essentially on an appreciation of the evidence recorded by him, were considered by the Disciplinary Authority in the absence of the petitioner, without any notice to him and the Disciplinary Authority on a re-appraisal of the evidence came to the conclusion that the charges against the petitioner were established. The Disciplinary Authority thus having taken a decision, proceeded thereafter to issue a notice to the appellant to show-cause why he should not be dismissed from Government service. It was accordingly contended by the learned Counsel for the petitioner that the Disciplinary Authority had already made up its mind and it was only in support of the proposed punishment that a notice was issued to the petitioner. Consequently, the petitioner, was denied an adequate opportunity of hearing

which should have been afforded to him before taking a decision that he was guilty of the charges leveled against him.

10. Admittedly, disciplinary action against the petitioner has been taken under the CCA Rules. Rule 15 of the CCA Rules provides the procedure for imposing penalty, Sub-rule (6) of Rule 15 provides the procedure to be followed by the inquiring authority while holding the inquiry and the materials to be considered with regard to the charges under inquiry. Sub-rule (7) provides that the inquiring authority at the conclusion of the inquiry, shall prepare a report of inquiry regarding its findings on each of the charges together with reasons thereof. The inquiring authority may recommend the punishment to be inflicted when the charges are established on the basis of the findings. Sub-rule (8) provides that the record of inquiry shall include:

- (i) the charges framed against the Government servant and the statement of allegations furnished to him under Sub-rule (2);
- (ii) his written statement of defence, if any;
- (iii) the oral evidence taken in the course of inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry;
- (vi) a report setting out the findings on each charge and the reasons therefore; and
- (vii) the recommendations of the inquiring authority, if any, regarding the punishment to be inflicted.

11. Sub-rule (9) of Rule 15 of the CCA Rules provides that the disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge. Sub-rule (10)(i)(a) & (b) of Rule 15 of the CCA Rules, which is relevant for adjudication of present dispute, reads as follows:

(10)(i)(a) If the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish to the delinquent Government servant a copy of the report of the inquiring officer and give him notice by registered post or otherwise calling upon him to submit within a period of fifteen days such representation as he may wish to make against findings of the Inquiring Authority.

(10)(i)(b) On receipt of the representation referred to in Sub-clause (a) the disciplinary authority having regard to the findings on the charges, is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed, he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons, for disagreement, if any, with the findings of the inquiring officer and give him a notice by Registered post or

otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed penalty.

12. Shri Mohanty, learned Counsel for the petitioner with reference to the aforesaid statutory provisions contained in Rule 15 of the CCA Rules submits that it is open for the Disciplinary Authority either to agree with the findings recorded by the Inquiring Officer or disagree with those findings. If it does not agree with the said findings of the Inquiring Officer, it may record its own findings. Where the Inquiring Officer has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Officer has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established there would arise no difficulty. Difficulties arise in all those cases, as in the present case, in which the Inquiring Officer has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated but the Disciplinary Authority disagreed with those findings and recorded its own finding that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Learned Counsel for the petitioner further submits that such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority, may of its own, provide for such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the Inquiring Officer that the charges were established, an opportunity of hearing have to be read into the Rule by which the procedure for dealing with the Inquiring Officer's report is provided, principally because it would be contrary to the principles of natural justice, if a delinquent officer, who has already been held to be "not guilty" by the Inquiring Officer is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

13. In this regard, Shri Mohanty, learned Counsel for the petitioner relies on a decision of the Supreme Court in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another*, where the Apex Court while dealing with the similar provisions contained in Maharashtra Civil Services (Discipline and Appeal) Rules 1979 came to hold as follows:

We have already extracted Rule 9(2) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree With the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its "own findings, the Disciplinary Authority will give an opportunity of hearing to delinquent officer. But

the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

14. In the aforesaid case, the Hon'ble Supreme Court referred to a three Judge Bench decision of the Apex Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , wherein it has been held that:

It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

The Supreme Court in the said case further held as follows:

When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry, officer's

report and, while recording a finding of guilty, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.

15. Accordingly the Supreme Court in Yoginath D. Bagde's case (supra) after considering the contrary view expressed in three other decisions of the Hon'ble Court came to hold as follows:

In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges leveled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

16. Shri Jagannath Pattnaik, learned Senior Counsel appearing for the Agriculture Department, opposite party No. 1, submits that the disciplinary proceedings come to amend when the delinquent is exonerated of all the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Authority has given an opportunity of hearing to the petitioner before finally taking decision to remove the petitioner from service, after considering the materials on record and the advice of the OPSC, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the proceedings. He further contended that not only the findings recorded by the

Inquiring Officer but the reason for which the Disciplinary Authority had not agreed with those findings, were communicated to the petitioner to whom a notice was also issued to show-cause why he be not dismissed from service. It is further contended that the petitioner submitted his reply in which he attacked the reason for which the Disciplinary Authority had decided to disagree with the findings of the Inquiring Officer and therefore, in the given circumstances of this case, it can not be said that there was failure or denial of opportunity at any stage and the entire action taken by the Disciplinary Authority is in consonance with the provisions of Rule 15(10)(i) and (ii) of the CCA Rules. It is also contended by Shri Patnaik, learned Counsel for the opposite parties that this Court in exercise of its jurisdiction under Article 226 cannot reappraise the evidence which has already been scrutinized by the Inquiring Officer as also by the Disciplinary Authority, as this Court does not act as an Appellate Authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence.

17. Applying the above principles to the facts of the present case at hand, it is found that along with show-cause notice dated 14.02.2002 (Annexure-6), a copy of the findings recorded by the Inquiring Officer as also the reasons recorded by the Disciplinary Authority for disagreeing with those findings were communicated to the petitioner but it was immaterial as he was required to show-cause only against the punishment proposed by the Disciplinary Authority which had already taken a final decision that the charges against the petitioner were proved. It is not indicated to him that the Disciplinary Authority had come only to a "tentative decision" and that he could show-cause against that too. It was for this reason, it appears, that the reply submitted by the petitioner failed to find favour with the Disciplinary Authority. Since the Disciplinary Authority did not give any opportunity of hearing to the petitioner before taking a final decision in the matter relating to findings on the charges against him, the principles of natural justice as laid down in the Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , referred to above, were violated.

18. In Yoginath D. Bagde's case the Hon'ble Supreme Court dealing with similar contentions raised on behalf of the Disciplinary Authority, came to hold as follows:

The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, in which it had been categorically provided, following earlier decisions, that if the

Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

19. A Division Bench decision of this Court in the case of Dr. Raj Kishore Sahu Vs. Government of Orissa and Others, while considering the provisions of Rule 15(10) (1)(b) of the CCA Rules, placed reliance on the decision of the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, and came to hold as follows:

Apart from the statutory provision, it is the common law that according to the principle of natural justice an employee should at least know the tentative reasons for disagreement with the report of the enquiry officer before inflicting punishment upon him so that he may be able to make a representation to satisfy the punishing authority by way of his explanation to the tentative reasons which are formed by the punishing authority to its mind.

20. Considering the contentions of the parties and the principles of law as discussed above, we are of the view that admittedly no opportunity of hearing having been afforded to the petitioner at the initial stage and before taking a final decision in the matter, imposing the punishment of removal from service, the impugned Office Order dated 14.2.2003 (Annexure-8) directing removal of the petitioner from Government service with immediate effect is not sustainable in law, being in violation of the principles of natural justice and accordingly the same is quashed. The Disciplinary Authority is directed to provide reasonable opportunity of hearing to the petitioner before taking a final decision in the matter relating to the findings on the charges framed against him. As the matter is of the year 2003, the Disciplinary Authority shall do well to take effective steps for conclusions of the disciplinary proceeding as expeditiously as possible, preferably within a period of three months from the date of communication of this order. We make it clear that this Court has not expressed any opinion with regard to the merits of the charges framed against the petitioner or with regard to the findings of the Inquiring Officer.

21. The writ petition is allowed to the above extent.

I.M. Quddusi, Acting C.J.

22. I agree.