
(2010) 08 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 35605 of 2006 (O.A. No. 7295 of 1999)

S. Dayanandam

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Government Service Conduct Rules — Rule 20(1)

Citation : (2010) 08 MAD CK 0079

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P. Jayaraman, SC for S. Namasivayam, for the Appellant; S. Gopinathan, AGP, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner while serving as Assistant Accounts Officer was subjected to a disciplinary proceeding for three charges. The

first charge shows that he failed to hand over the charge to his successor before relieved on transfer to other place. The second charge shows that

he had not produced statement of expenditure incurred for three PD cheques. The third charge alleges that failure to maintain absolute integrity on devotion to duty.

2. In view of the charge memo one and two, immediately after receipt of the charge memo, the petitioner submitted his explanations. Having not

satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer. The Enquiry Officer after giving an opportunity to both the

sides came to a conclusion that none of the charges leveled against the petitioner was proved. The Disciplinary Authority while differing with the

findings of the Enquiry Officer imposed with a punishment of stoppage of

increment for three years with cumulative effect. The grievance of the petitioner herein is that the imposition of punishment without issuing proper notice by the Disciplinary Authority clearly mentioning the reasons, for differing with the findings of the Enquiry Officer and without giving sufficient time to submit explanation not to differ with the findings of the Enquiry Officer is violation of the principles of natural justice and on that basis prayed for setting aside the impugned order.

3. In support of his submission, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon"ble Apex Court in

Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , wherein the Hon"ble Apex Court has held that whenever the Disciplinary

Authority disagrees with the findings of the enquiring authority on any article of charge, which is, before it records its findings on such charge, it

must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.

The report of the Enquiry Officer containing its finding will have to be conveyed and the delinquent officer will have an opportunity to persuade the

Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice require the authority which has to

take a final decision and can impose the penalty, to give an opportunity to the officer charged of mis-conduct to file a representation before the

Disciplinary Authority recording its finding on the charges framed against the petitioner. Since, the above said principles were not followed in the

petitioner's case, while imposing the major punishment, the learned Senior Counsel appearing for the petitioner sought for setting aside the

impugned order by allowing the writ petition on the ground that the petitioner suffered further promotion in view of the punishment imposed by the

Disciplinary Authority.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submits that the Enquiry Officer submitted his finding

holding the petitioner not guilty of all the three charges. Thereafter, the Disciplinary Authority declined to accept the findings of the Enquiry Officer.

Therefore, a notice dated 11.02.1998 was prepared but the same was not served upon the petitioner till 10.06.1998. But however, the said

differing view of the Disciplinary Authority was served upon the petitioner on

10.06.1998 and personally served upon the petitioner on

10.06.1998. The petitioner also on receipt of the notice dated 11.02.1998 on 10.06.1998 gave his further representation requesting the

Disciplinary Authority to accept the findings of the Enquiry Officer without deviating from the said findings. The Disciplinary Authority having got

the authority to deviate from the findings of the Enquiry Officer by assigning sufficient reason as to why the findings of the Enquiry Officer was not

acceptable to the Disciplinary Authority on the basis of reasoning given for his deviation from the findings of the Enquiry Officer imposed with the

punishment of stoppage of increment for three years with cumulative effect since the procedure for differing with the findings of the Enquiry Officer

have been followed properly. The petitioner cannot be allowed to complain the non-compliance of the procedure by the Disciplinary Authority for

imposition of the impugned punishment. On that basis prayed for dismissal of the writ petition.

5. Prima facie, three charges were levelled against the petitioner, namely, the petitioner failed to handover the charge to his successor on time

before he was transferred to another station, that the petitioner failed to render appropriate accounts for the cheques drawn by him to the number

of the training center as a drawing officer and his failure to maintain absolute integrity and devotion to duty being violative of Rule 20(1) of the

Government service conduct rule which are all dismissed by the officer as not established against the petitioner. The Disciplinary Authority, after

receipt of the Enquiry Officer's finding, though legally entitled to deviate from the findings of the Enquiry Officer, in law is bound to give sufficient

reasons with sufficient time as to why the Disciplinary Authority was unable to accept the findings of the Enquiry Officer which was in favour of the

delinquent officer by differing with the findings of the Enquiry Officer must give its tentative reasons for such disagreement by giving to the

delinquent officer a sufficient opportunity to represent his further case before the Disciplinary Authority regards its finding.

6. In that process, the report of the Enquiry Officer containing its finding will have to be conveyed and the delinquent officer will have an

opportunity to persuade the Disciplinary Authority to accept the favourable condition of the Enquiry Officer. The principles of natural justice

require the authority which has to take a final decision to give an opportunity to the officer charged of misconduct to file a representation before the

Disciplinary Authority regarding its findings on the charges framed against the officer. At this juncture, it will be useful to refer to the case of State

of Assam and Another Vs. Bimal Kumar Pandit,

...decided by a Constitution Bench of this Court. A question arose regarding the contents of the second show-cause notice when the Government

accepts, rejects or partly accepts or partly rejects the findings of the enquiry officer. Even though that case relates to Article 311(2) before its

deletion by the 42nd Amendment, the principle laid down therein, at p. 10 of the Report, when read along with the decision of this Court in

Karunakar case will clearly apply here. The Court observed at SCR pp.10-11 as follows:

We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional

conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but

the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be

necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the

nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to

issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and

against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in

their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or

all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be

necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be

based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the

other charges not held proved by the enquiring officer are, according to the dismissing authority proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.

In view of the judgment of the Hon'ble Apex Court, if the dismissing authority accepts of the said findings in the entirety, it is another matter, but if the dismissing authority accepts findings recorded against the delinquent officer and differs from some or of all it is recorded in his favour and proposed to be taken on its own conclusion, it would be necessary that the said conclusion should be provisionally indicated in the notice, in order to give the delinquent officer a reasonable opportunity to show cause under article 311(2). It is essential the condition imposed in such cases to specify in the notice, but, where the dismissing authority purports to issue the notice against the delinquent officer after accepting the Enquiry Officer report in its entirety, it cannot be said that it is essential that the Disciplinary Authority must say that it has so accepted the report. It is desirable that even in such cases a statement to that effect should be made. At this Juncture, a copy of the Enquiry report should have been enclosed with the notice.

7. On the other hand, it must be kept in mind the fact that, whenever a Disciplinary Authority disagrees with the findings of the enquiring authority,

on any article of charge or all the charges, then before it records its own finding on such charge, it must record its tentative reasons so far as the disagreement and give to the delinquent officer, an opportunity to represent before it to record its finding. Further, the report of the Enquiry Officer containing its findings will have to be conveyed to the delinquent officer and the delinquent officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusions reached by the Enquiry Officer on the charges levelled against the petitioner because the principles of natural justice requires the authority which has to take a final decision and can impose the penalty, to give an opportunity to the officer charged of mis-conduct to file a representation before the Disciplinary Authority regards its findings on the charges framed against the officer by keeping in mind that the charges levelled against the petitioner having been already found in favour of the delinquent officer on the basis of his earlier representation given by the delinquent officer while dealing with the charges levelled against him.

8. This view has been reiterated in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another*, wherein while dealing with Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the Hon''ble Apex Court has ruled that though the above said Rule 9(2) did not specifically provide for a Disciplinary Authority to give an opportunity of hearing to the delinquent officer before differing in the view of the Enquiry Officer has held as follows:

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 the disciplinary authority finally disagrees with the findings of the enquiring 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 enquiring 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 enquiring 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 enquiring authority are into germane

and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with.

9. In another judgment given by the Hon'ble Apex Court in the case of *Lav Nigam v. Chairman & MD, ITI Ltd.* (2006) 9 SCC 440 the above

said principle was reiterated by making things very clear that in case the Disciplinary Authority differs with the view taken by the Enquiry Officer,

the Disciplinary Authority is bound to give a notice setting out his tentative conclusions to the delinquent officer. It is only after hearing the

delinquent officer, that the Disciplinary Authority would at all arrive at a final finding of guilt. Again thereafter, the employee should be served with a

notice relating to the punishment proposed. This is to provide reasonable opportunity to the delinquent officer in whose favour, the Enquiry Officer

given favourable finding dismissing the charges, to indicate with the findings recorded by the Enquiry Officer do not suffer any error and there was

no occasion to take a different view.

10. It is pertinent to explain the two stages took place in the disciplinary proceedings. The first stage when the Disciplinary Authority arrives at its

conclusions on the basis of the evidence, the Enquiry Officer's report and the delinquent employees reply to it. The second stage begins when the

Disciplinary Authority decides to impose penalty on the basis of its conclusion. In the first stage, the delinquent officer is issued with a charge memo

calling upon him to submit his explanation on the charges mentioned in the charge memo by giving reasonable time. If the delinquent officer sought

for any document based on which document to submit his explanation in reference to the charges levelled in the charge memo either he should be

furnished with the soft readable copies of the document enabling him to prepare his defence in the form of written submission as well as to equip

himself to participate in the enquiry to encounter the prosecution witnesses, presenting officer and the Enquiry Officer.

11. After the submission of the written explanation, he should be officially intimated for the date, place and time of enquiry and thereafter the

Enquiry Officer by giving all reasonable opportunity during the course of enquiry on concluding the enquiry proceeding submits his enquiry report

before the Disciplinary Authority. If the Enquiry Officer gives an adverse finding, as per the Managing Director, ECIL, Hyderabad, Vs. Karunakar,

etc. etc., it requires an opportunity to be given to the employee to represent the Disciplinary Authority, even when an earlier opportunity had been

granted to them by the Enquiry Officer. It will not stand to reason that when the finding in favour of the delinquent officer is proposed to be over-

turned by the Disciplinary Authority then no opportunity should be granted.

12. 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 opportunity which proposes to decide against the delinquent officer must give him a hearing. When the Enquiry 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 stage conclusions, it is that authority which has to decide against the

delinquent officer, must give him an opportunity of being heard. Lest, the petitioner would be condemned un-heard. The case in departmental

proceedings, what is of ultimate importance is, the findings of the Disciplinary Authority, when the enquiry is conducted by the Enquiry Officer is

neither final nor conclusive and the disciplinary proceedings stands concluded only with the final decision of the Disciplinary Authority.

13. It is the Disciplinary Authority which can impose the penalty but not the Enquiry Officer. Therefore, when the Disciplinary Authority differs with

a view of the Enquiry Officer and proposes to go to a different conclusion, there is no reason as to why an opportunity of hearing should not be

granted. It will be most unfair to snatch away the benefit of the findings of the Enquiry Officer held in favour of the petitioner, particularly, when the

charged officer succeeds before the Enquiry Officer, when he is deprived of further chance of reading to the Disciplinary Authority before that

authority differs with Enquiry Officer's report and while recording a finding of guilt, imposes punishment on the officer. In my 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 the punishment imposed which is required to be done as a part of the first stage of enquiry as explained in Karunakar's case.

14. But in the present case, the Disciplinary Authority, though the petitioner succeeded before the Enquiry Officer in disproving the charges, the Disciplinary Authority after receipt of the favourable findings submitted by the Enquiry Officer holding the delinquent not guilty of the charges levelled against him failed to give sufficient notice to the petitioner, while over turning the findings of the Enquiry Officer, imposed a punishment of stoppage of increment against the petitioner on the next day namely 11.06.1998. Infact, no notice was given before the Disciplinary Authority recorded its final conclusions differing with the findings of the fact of the Enquiry Officer. Further, the Disciplinary Authority has to communicate to the delinquent officer, the tentative reasons for disagreeing with the findings of the enquiring 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 enquiring authority are not germane and the findings are not guilty already recorded by the enquiry authority was not found to be interfered with.

15. In a nutshell, there was a need to give two separate show cause notices. One before the Disciplinary Authority found against the delinquent employee while differing with the view of the Enquiry Officer, and another notice relating to the proposed punishment. In the present case, though the notice dated 10.06.1998 was given one day before the final order dated 11.06.1998 was served, since the petitioner was not given sufficient time to submit his explanation and the second notice proposing punishment having not been given, the impugned order imposing punishment is not supported with any legal basis. In other words, the two notices also cannot be combined in one. In the present case, though the petitioner was served with insufficient notice showing the reasons for disagreement of the Disciplinary Authority on the findings of the Enquiry Officer on 10.06.1998, giving him 15 days time to submit his further defence statement, if any, on the disagreement of the Disciplinary Authority within 15 days from the date of receipt of this memo, the petitioner was served with the above said notice of disagreement on 10.06.1998. A hand written explanation was obtained on the same date on 10.06.1998. On the very next day i.e., on 11.06.1998, the Disciplinary Authority imposed the punishment before the completion of the 15 days notice period.

16. Therefore, as rightly contended by the learned Senior Counsel appearing for the petitioner, the impugned order imposing the punishment of stoppage increment for 3 years with cumulative effect by over-turning the findings of the Enquiry Officer was passed on the very next day before completion of the 15 days time on the ground that the petitioner submitted his explanation, without giving the second notice informing the proposed punishment. As held by the Apex Court reported in (2006) 9 SCC 440 in the case of *Lav Nigam v. Chairman & MD, ITI Ltd.*, this Court by setting aside the impugned order on the ground that the petitioner was condemned before being heard, allows the writ petition. However, there is no orders as to cost.