(2001) 05 OHC CK 0009

In the Orissa High Court

Case No : O.J.C. No. 6954 of 1998

Sangram Keshari Mishra APPELLANT

Vs

State of Orissa and others RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 92 CLT 196

Hon'ble Judges : R.K. Patra, J;Ch. P.K. Misra, J

Bench : Division Bench

Advocate : Shri M.S. Panda, for the Appellant; Shri G.K. Mohanty, A.G.A. and Shri D.C. Mohanty, Senior Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Being aggrieved by the order dated 4-5-1998 of the Central Administrative Tribunal, Cuttack in O. A. No. 596 of 1997 (Annexure-23) by which it has refused to quash the disciplinary proceedings initiated by the Government in the General Administration Department memorandum dated 12-12-1996 (Annexure-4), the petitioner has approached this Court by filing the present writ petition for its quashing.

2. The case of the petitioner, briefly stated, is as follows : He is an Officer belonging to the Indian Administrative Service (RR-85) in the Orissa Cadre. During August, 1990 to July, 1992 he was the Project Officer, District Rural Development Authority (''D. R. D. A.'' in short), Koraput. In January, 1992, one P. K. Nayak, I. A. S. just one year senior to him came to be posted as the Collector and District Magistrate, Koraput. In that capacity he was also the ex-officio Chairman of the D. R. D. A. There were differences of opinion between them mainly because of petitioner''s persistent objections to certain financial irregulaties and illegalities committed by the said Nayak as Chairman, D. R. D. A. Consequently, he tried to harass the petitioner by inducing the subordinate to make annonymous petitions by making false and fabricated allegation against

him (petitioner). Shri Nayak even went to the extent of getting a false F. I. R. lodged against the petitioner through one R.C. Pattnaik, Clerk-in-charge of Stores alleging abduction, wrongful confinement and criminal intimidation. In view of the false and fabricated complaint made at the instance of Shri Nayak the Government directed for internal audit of D.R.D.A., Koraput for the period from August, 1990 to July, 1992 when the petitioner was the Project Officer. The Collector managed to withhold the relevant documents from examination of the audit party on account of which the internal audit report was incomplete and defective. Shri Nayak also pressurised the Government to place the petitioner under suspension and in fact Government passed order of suspension on 3-12-1992. The petitioner challenged the order of suspension by filing O. A. No.611/ 92 before the Central Administrative Tribunal, Cuttack which by order dated 9-7-1993 quashed the order of suspension. There was also test audit made by the Accountant General at the instance of Shri Nayak for the period in question. The State Government illegally initiated a departmental proceeding vide memorandum No. 5036/A1S dated 1-3-1993. In a public interest litigation (vide O. J. C. No. 8395 of 1992) this Court by order dated 3-12-1992 directed that the enquiry and audit might continue but before their acceptance, leave must be taken from the Court. As the internal and test audit reports were perfunctory and defective, the Advocate General of the State, on the matter being referred to him, submitted his opinion to the State Government on 20-2-1995 suggesting to hold special audit afresh by the Accountant General, The opinion of the Advocate General was concurred by the Law Department on 22-2-1995. The Chief Secretary of the Government on examination agreed with the aforesaid opinion on 25-2-1995. Pursuant to this, the State Government in the Panchayat Raj department letter dated 24-5-1995 requested the Accountant General, Orissa to conduct a special audit afresh into the accounts of D. R. D. A. for the relevant period. The Panchayat Raj Department simultaneously in its letter dated 23-3-1996 (Annexure-3) wrote to the Finance Department as follows

"The Internal Audit Report has not yet been released because of a number of complications about the accuracy and on account of non-examination of the relevant records. In the circumstances a report which has not yet been released by the Department cannot form the subject matter of further investigation."

In the said letter it was impressed that the Accountant General, Orissa may be requested to conduct de novo audit. The Panchayati Raj Department in the said letter also took the view that incomplete and defective audit report not yet released would be prejudicial. Instead of ignoring the internal audit report and test audit report and without conducting special audit, the State Government in General Administration Department memorandum dated 12-12-1996 (Annexure-4) initiated a second departmental proceeding against the petitioner by setting out a set of charges basing on them, The petitioner in his representation dated 20-1-1997 (Annexute-5) objected to the initiation of the proceeding and prayed to drop it in view of the fact that a special audit was going to be conducted, the previous audit reports being defective and incomplete which cannot form the basis of initiation of the departmental proceeding. Instead of considering the prayer made by the petitioner in his representation, the State Government proceeded with the inquiry by appointing an Inquiring Officer. The petitioner made further representations on 27-8-1997, 20-9-1997 and 29-9-1997 (Annex-ures-10, 11 and 13 respectively) to the State Government to drop the second departmental proceedings on the grounds inter alia that it was based on defective, incomplete and prejudicial audit reports. Finding no other alternative, the petitioner filed O. A. No. 596 of 1997 before the Central Administrative Tribunal, Cuttack for quashing of the departmental proceeding and prayed for stay of the departmental proceedings. The Tribunal by its order dated 10-10-1997 declined to grant any stay. The petitioner, thereafter, filed O. J. C. No. 14366 of 1997 challenging the aforesaid order of the Tribunal. This Court on 20-10-1997 passed an order in the aforesaid writ petition to the effect that the departmental inquiry shall not proceed until further orders. In the meantime, the main case filed by the petitioner before the Central Administrative Tribunal, i. e., O. A. No. 596 of 1997 came up for hearing and by the impugned order dated 4-5-1998 the same has been dismissed. As the main case (O. A. No. 596 of 1997) was disposed of by the Tribunal by the impugned order, the petitioner''s O. J. C. No. 14366 of 1997 which was filed against the order refusing to grant stay was disposed of as infructuous on 28-3-2001.

3. The State Government in the General Administration Department has filed counter affidavit. The petitioner has filed rejoinder affidavit stating inter alia that in the meantime the special audit report has come out and nothing has been found against the petitioner thus making the internal and test audit reports wholly ineffective.

4. Two questions arise for consideration. (1) Whether the Central Administrative Tribunal is justified in law in refusing to set aside the charge as per the impugned order and (2) Whether the internal and test audit reports can form the basis for framing charge when they are found to be incomplete, defective and prejudicial and more particularly when there is a decision of the Government to hold a special audit whose report has now come out.

5. Both the aforesaid questions are inter-linked and, therefore, they are taken up together for decision.

Perusal of the impugned order at Annexure-23 would show that the Tribunal has failed to appreciate that on the basis of the perfunctory, incomplete and defective audit reports framing of charge in a departmental proceeding is illegal and prejudicial to the delinquent. There is no dispute that the internal audit report and the test audit report are found to be incomplete, defective and that is the reason why the Government have decided to conduct special audit with regard to the accounts of the D. R. D. A. for the relevant period. When there is a clear decision by the Government to hold fresh audit, it is an indication that no action is available to be taken on previous audit reports. The State Government accordingly could not have framed charge as there is no definite basis constituting the misconduct. A charge is a notice in writing of specific and precise accusation made with certainty. In the face of the State Government''s decision to hold special audit with regard to the accounts of the D. R. D. A. for the relevant period, the internal and test audit reports relating to the said period which were found to be incomplete, perfunctory and defective are non est in the eye of law. Accordingly, the finding of the Tribunal that the petitioner would get full opportunity to explain the allegation against him before the inquiring officer is perverse. It is relevant to note here that the special audit conducted by the Accountant General pursuant to the said Government order did not find the petitioner to have committed any irregularity as indicted. This is evident from the letter of the Accountant General (Audit) dated 16-7-1993 dropping the offending paragraphs from the test audit report (vide Annexure-24).

Departmental inquiry even at its preliminary stage may be available foe judicial review, as has been held by the Supreme Court in Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, In that case the charges framed against the delinquent in the departmental inquiry were found to be vague inasmuch as they were not specific and clear and the delinquent was at dark as to which point he had to meet. The Tamil Nadu Administrative Tribunal accordingly quashed the memo of charges on that basis. Their Lordships of the Supreme Court while upholding that part of the order of the Tribunal observed that the charges were general in nature and the delinquent had been objecting to the charges on the ground of vagueness from the earlier but he was not furnished with any particulars. In view of the aforesaid, the impugned order of the Tribunal (Annexure-23) suffers from error of law apparent oh the face of the record and is hereby quashed. As a necessary corollary, we would have quashed the disciplinary proceedings but there is no need to pass any such order as after this case was heard and was pending for judgment, learned counsel for the petitioner on 4-5-2001 filed a memo by enclosing G. A. Department Order No. 14469 dated 1-5-2001 by which it has dropped both the impugned proceedings initiated against the petitioner. The Government could have done this much earlier when the petitioner had been objecting to the framing of charge basing upon the incomplete, defective and perfunctory audit reports.

With the aforesaid observations and direction; the writ petition is allowed. No costs.

Ch. P. K. Misra, J.

6. I agree.

7. Writ petition allowed.

