

(2024) 02 CHH CK 0050
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 594 Of 2017

Sanjay Dubey

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 22-02-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 — Rule 15, 15(1), 15(2)

Citation : (2024) 02 CHH CK 0050

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench?

Advocate : Anand Mohan Tiwari, Saumya Rai?

Final Decision : Allowed

Judgement

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner against the order dated 10.05.2016 vide memo No. 2196 stha-Sancha./430/2016 (Annexure P/2) whereby respondent No.2 rejected the findings of the enquiry officer mentioned in its report dated 04.03.2016. He further challenged the order dated 05.01.2017 vide memo No. 94/stha-Sancha./430/2017 (Annexure P/1) whereby respondent No.2 framed article of Additional Charge No.1 against the petitioner as also the order dated 05.01.2017 vide memo No. 96/stha-Sancha./430/2017 (Annexure P/1) whereby the name of 4 new witnesses who were found totally responsible for the irregularity in the report of the enquiry officer dated 04.03.2016, was included as additional witnesses.

2. Brief facts of the case as projected by the petitioner, are that the petitioner was working under respondent No.2 on the post of Assistant Food Officer (AFO) and during 2013-14, being Assistant Food Officer, he was posted at Aarang Abhanpur Division District-Raipur C.G. The petitioner was suspended by respondent No. 2 on 16.01.2015 alleging charges of irregularity for use and

storage of allocated food for the operation of Dal Bhat Kendra in Rajyotsav Function-2014 and respondent No. 2 framed 2 articles of charges against the petitioner and served the same to the petitioner on 09.02.2015 which was specifically denied by the petitioner in his reply before the respondent No. 2. Being dissatisfied with the reply of the petitioner, a departmental enquiry was initiated by respondent No.2 against the petitioner. Deputy Director Khadya Nagrik Aapurti Avm Upbhokta Sanrakshan Vibhag was appointed as enquiry officer and one Mr. Devlal Adhikshak Khadya Nagrik Aapurti and Deputy Director Directorate Raipur were appointed as presenting officer. The petitioner specifically denied all the charges alleged against him and a detailed reply was submitted by him for such denial. In the said departmental inquiry proceeding, the department produced its witnesses namely- Mrs. Nilam Alma Assistant Director, Mr. Bhupendra Mishra the-then Assistant Director, Mr. Ravindra Soni the-then Assistant Director, Miss Manjula Salam, Mr. Dinesh Ram the-then in-charge of Distribution Canter Abhanpur Nagrik Aapurti Nigam And the petitioner himself appeared as defence witness.

3. On 04.03.2016, after completion of due process of the departmental inquiry, the inquiry officer after due consideration of the statements and document adduced by the parties submitted the enquiry report to respondent No.2 whereby the charges against the petitioner were found not proved. On 10.05.2016 respondent No.2 without assigning any reason and without giving any opportunity of hearing to the petitioner rejected the findings recorded by the inquiry officer mentioned in its report dated 04.03.2016 in which it has been categorically mentioned that no charges have been proved by the department against the petitioner, and further directed for de novo inquiry by appointing other new inquiry officer and presenting officer. On 05.01.2017, respondent No.2 framed one additional charge vide its Memo No. 94/stha-Sancha./430/2017 against the petitioner and sought reply from him.

4. Further respondent No. 2 issued an order dated 05.01.2017 memo No. 96/stha-Sancha./430/2017 to establish the said additional charge by adding 4 more new witnesses namely- Mrs. Dayamani Minz Joint director of Khadya directorate the then Food Controller Raipur, Mr. Shahzafar Khan & Ms. Bindu Pradhan, both are Food inspectors in District Raipur and Mr. Durga Prasad Banjare, Director of Fair price shop Jai Durga prathmik sahkari upbhokta Bhandar Nayakbandha. The steps taken by respondent No. 2 are only for fulfilling the lacuna and anyhow to implicate the petitioner in false case with mala-fide intention and create fabricated grounds for illegal de novo inquiry. Hence, this petition has been filed by the petitioner for the following reliefs:-

10.1. The Hon'ble Court may kindly be pleased to quash the impugned order and notification of witnesses in respect of the petitioner's departmental enquiry Annexure P/1 dated 05.01.2017 and the order dated 10.05.2016 Annexure P/2 issued by respondent No.2 being illegal, arbitrary and issued without authority of law.

10.2. The Hon'ble Court may kindly be pleased to issue any other order, direction, writ which the Hon'ble Court deems fit and proper in the interest of justice.

5. Learned counsel for the petitioner submits that the order dated 05.01.2017 and notification of witnesses of de novo enquiry are not having any force of law and hence, are liable to be set aside. Order dated 10.05.2016 (Annexure P/2) was passed without application of mind and against the provisions contained in the CCA Rules 1966 therefore, is liable to be set aside. Respondent No.2 has no authority to give direction for de novo enquiry upon same set of articles of charges and has no power to prove/rectified again the same article of charges by new/fresh witnesses against whom the enquiry officer categorically recorded the findings that the said witnesses would be liable and responsible for the irregularities committed in the function of RAJYOTSAV 2014. Respondent No. 2 committed gross illegality by mechanically issuing order for de-novo enquiry without assigning any reason and without considering and giving any opportunity of hearing to the petitioner. The conclusion of enquiry made by respondent No.2, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion. Hence the impugned orders dated 05.01.2017 (Annexure P/1) & 10.05.2016 (Annexure P/2) are not sustainable in the eyes of law.

6. Reliance has been placed on the decisions of Hon'ble High Court of Madhya Pradesh in the matter of B.S. Jaiswal Vs. State of M.P.; 2008(1) JLJ 291, Sanjay Thorat Vs. M.P. Urja Vikas Nigam & this Court's order dated 24.08.2021 passed in W.P.S. No.3792 of 2011 and another connected matter in the matter of K.M. Mishra Vs. State of Chhattisgarh and others.

7. Learned counsel for the respondents/ State opposes the prayer of the petitioner and submits that in the year 2013-14, the petitioner was posted at Aarang Abhanpur as Assistant Food Officer and he was suspended on 15.01.2015 and thereafter a departmental enquiry was initiated against him by issuing a charge-sheet leveling two charges vide order dated 30.09.2015. The Deputy Director, Food and Civil Supplies, Raipur was appointed as enquiry officer and after conducting a detailed enquiry, enquiry report was submitted by the enquiry officer before respondent No. 2. The disciplinary authority after receipt of enquiry report from enquiry officer, examined the enquiry report and noticed several discrepancies in the enquiry report and while exercising power conferred under Rule 15 sub rule 1 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 refused the said enquiry report and directed for fresh and proper enquiry by including one additional charge vide impugned order dated 05.01.2017. By including one additional charge against the petitioner a Senior Officer Joint Director, Food and Civil Supplies has been appointed as Enquiry Officer and at the same time, 4 more witnesses have been included in the list of witnesses vide order dated 05.01.2017. At the time of consideration of the enquiry report of Inquiry Officer, several irregularities were noticed by the

disciplinary authority accordingly, while exercising power conferred under rule 15 sub rule 1 of the Rules, 1966, the disciplinary authority decided to initiate fresh departmental enquiry against the petitioner including one additional charge and 4 more witnesses by impugned order dated 05.01.2017. Thus, there is no infirmity or illegality in the same and, therefore, the impugned orders dated 05.01.2017 and 10.05.2016 are just, proper and legal and therefore, the instant petition is liable to be dismissed.

8. Heard counsel for the parties and perused the material placed on record.

9. Admittedly, the petitioner was working under respondent No.2 on the post of Assistant Food Officer and during 2013-14, the petitioner worked on the same post at Aarang Abhanpur division, District- Raipur (C.G.). It is also admitted fact that the petitioner was suspended by respondent No.2 in the January, 2015 on account of charges of irregularity in uses and storage of allocated food grains for operation of Dal Bhat Kendra in Rajyotsav Function 2014. Respondent No. 2 framed two articles of charges against the petitioner and served the same to the petitioner on 09.02.2015. After departmental enquiry, enquiry report was submitted by enquiry officer and the disciplinary authority issued order dated 10.05.2016 (Annexure P/2) whereby enquiry report was denied by the disciplinary authority and another article of charge was framed against the petitioner and ordered for re-enquiry.

10. Vide impugned order dated 05.01.2017 (Annexure P/1), additional charge was framed against the petitioner. In support of his argument, respondent authorities placed reliance on Rule 15 sub Rule 1 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 which is reproduced as under:-

"15(1). Action on the inquiry report.- (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be."

11. Learned counsel for the respondents submits that as per Rule, disciplinary authority has every right to order for re-enquiry.

12. Petitioner filed the enquiry report dated 04.03.2016 (Annexure P/3) and operative para of the same reads as under:-

13. Thus, it is clear from the enquiry report that the enquiry officer exonerated the petitioner from all the charges but disciplinary authority again issued order dated 10.05.2016 (Annexure P/2) for initiating de novo enquiry against the petitioner and some relevant portion of the said order reads as under:-

14. It is evident from Annexure P/1 dated 05.01.2017 that additional charge was framed against the petitioner and additional witnesses was listed in the witness list.

15. Relevant portion of para 3 of the enquiry report reads as under:-

16. It is clear from witness list that Ku. Bindu Pradhan, Food Inspector, District- Raipur & Mr. Shahzafar Khan, Food Inspector, District- Raipur are listed as departmental witnesses.

17. This Court in the case of K.M. Mishra Vs. State of Chhattisgarh passed in W.P. (S) No. 3792 of 2011 and another connected matter vide order dated 24.08.2021 observed and held in paras 13, 14, 15, 16 and 17 as under:-

13. The question for consideration would be, whether the Inspector General of Police is justified in ordering / remanding for second enquiry on 20-11-2009 by appointing a new enquiry officer Mr. M.L. Kotwani, in view of the fact that in first enquiry dated 31-1-2009, ?? N.S. Bais, Sub-Divisional Officer (Police), Bemetara, has not found the charges proved against the petitioners?

14. At this stage, it would be appropriate to notice Rule 15(1) of the Rules of 1966. Rule 15 of the Rules of 1966 which provides for action on the inquiry report. Sub-rule (1) of Rule 15 states as under: -

"15. Action on the inquiry report. (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14 as far as may be.

"15. In K.R. Deb (supra), their Lordships of the Supreme Court (Constitution Bench) have considered the identical issue with reference to Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and held that the disciplinary authority has no power to set aside the previous enquiry, as there is no provision in Rule 15 of the said Rules of 1957, and observed as under:

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

16. In the matter of Kanailal Bera v. Union of India and others, (2007) 11 SCC 517, the Supreme Court while following the principle of law laid down in K.R. Deb (supra), held that once a disciplinary proceeding has been initiated, the same must be brought to its logical end, meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not.

17. The principle of law laid down in K.R. Deb (supra) was further followed with approval by the Supreme Court in Vijay Shankar Pandey (supra) in which it was held as under:

"24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority (multi-member)? The issue is not really whether the enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb v. CCE, (1971) 2 SCC 102, examined the question in the context of Rule 15 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a Sub-Inspector, Central Excise (the appellant before this Court). The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge".

18. Hon'ble High Court of Madhya Pradesh in the matter of Sanjay Thorat Vs. M.P. Urja Vikas Nigam; 2010 (3) MPWN 87 held in para 6 as under:-

6. Considering the aforesaid dissenting note, it is evident that the Disciplinary Authority while holding the petitioner guilty of the charge levelled against him has not relied upon the statement of even a single witness, no cogent reason has been assigned for disagreeing with the finding arrived at by the Inquiry Officer and merely because the Board of Directors was not in agreement with the findings arrived at by the Inquiry Officer it does not mean that the charges can be held to be established against the petitioner. For holding the petitioner guilty of alleged misconduct, proper reasons should have been assigned by the Disciplinary Authority.

19. High Court of Madhya Pradesh in the matter of B.S. Jaiswal Vs. State of M.P. and others; 2008 (1) JLJ 291 held in para 12 as under:-

12. In view of the aforesaid legal position, even though rule 15(2) of MPCCA Rules, 1966 is silent about giving of opportunity to the delinquent employee but in case the Inquiry Officer held the employee not guilty of any or all the charges and the disciplinary authority is disagreeing with the findings of Inquiry Officer, it is the requirement of the principles of natural justice for the disciplinary authority

to communicate the delinquent employee the tentative reason for disagreeing with the findings of Inquiry Officer. The principles of natural justice will have to be read into rule 15(2) of MPCCA Rules, 1966. In the present case the disciplinary authority having not communicated to the petitioner the tentative reasons for disagreeing with the findings of the Inquiry Officer, the impugned order of the disciplinary authority being in violation of principles of natural justice is liable to be quashed and consequently the order of the appellate authority is also liable to be quashed.

20. In this case, it is clear that in previous enquiry report, the enquiry officer did not find the petitioner guilty of any charges and hold that the charges are not proved. Being disagreed with the finding recorded by the enquiry officer, the disciplinary authority framed one additional charge against the petitioner. It is the requirement of principles of natural justice for the disciplinary authority to communicate the delinquent employee the tentative reason for disagreeing with the findings of enquiry officer but in the present case, the enquiry officer not only ordered for re-enquiry but also framed additional charge against the petitioner and as per previous enquiry report, the persons who are responsible for misconduct, they are listed as witnesses. This conduct of disciplinary authority is not in accordance with Rule 15 (2) of Civil Services (Classification, Control and Appeal) Rules, 1966.

21. In view of the aforesaid discussion and considering the facts and circumstances of the case, the impugned orders dated 05.01.2017 (Annexure P/1) and 10.05.2016 (Annexure P/2) are set aside. The petitioner be entitled for all consequential benefits in accordance with law except the monetary benefits.

22. Consequently, the petition thus stands allowed.