
(2001) 05 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 15075 of 1997

Shri K.N.B. Rao

APPELLANT

Vs

The Central Administrative Tribunal, Cuttack and others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 92 CLT 45

Hon'ble Judges : Pradipta Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : M/s Dr. V. Prithviraj and N. Pradhan, for the Appellant; M/s Bijay Pal, P.C. Panda, A. Kr. Mishra, S.K. Ojha and P. Das, for the Respondent

Final Decision : Allowed

Judgement

Pradipta Ray, J.—The writ petitioner was working as Head Clerk in Pass Section in the Personnel Branch, Divisional Personnel Office at Khurda Road. A disciplinary proceeding was initiated against the petitioner and a charge-sheet was issued to him on September 19, 1986. Annexure-3 to the charge-sheet contained a list of documents by which the articles of charges were sought to be substantiated. The said list of documents contained as many as 28 documents including the statements of various persons recorded at the time of fact-finding inquiry.

2. On receipt of the charge-sheet the petitioner sent a letter on October 1, 1986 to the Divisional Personnel Officer requesting him to supply the copy of the investigation report submitted by the Vigilance Department particularly when the said report has been quoted to support one of the charges. The Divisional Officer by his letter dated November 18, 1986 turned down the petitioner's request for a copy of the investigation report on the ground that the said investigation report was considered a classified document not to be supplied.

3. In the disciplinary proceeding the Department did not examine any witness, but relied upon the statements stated to have been made by the petitioner and

other persons during the fact-finding inquiry by the Vigilance Department. The Enquiring Officer submitted his report holding that all the charges against the petitioner were proved. In the inquiry report the Enquiring Officer relied upon the answers given by the petitioner during vigilance inquiry. After submission of inquiry report, the authorities remained silent and did not take any action. On June 27, 1989 the petitioner was asked to furnish the letter of his initial appointment to show who was his appointing authority. As the disciplinary proceeding was kept pending, the petitioner moved the Central Administrative Tribunal for quashing the proceeding on jurisdictional issues. The said case was registered as O. A. No. 350 of 1989. While the said application was pending before the Tribunal, the petitioner was once again placed under suspension. During the pendency of the said proceeding before the Tribunal, the petitioner was asked to receive the final order of punishment imposed on him. The proceeding before the Tribunal was disposed of on April 19, 1991 by giving liberty to the petitioner to prefer appeal against the order of punishment imposed by the disciplinary authority within one month from the date of judgment of the High Court (Tribunal) ?

4. At the request of the petitioner, the inquiry report and the final order of removal were supplied to the petitioner by the Divisional Railway Manager on May 13, 1991. In pursuance of the liberty given by the Tribunal, the petitioner preferred an appeal to the Chief Personnel Officer, Garden Reach on May 25, 1991. By order dated October 14, 1991 the appellate authority rejected the memorandum of appeal. The petitioner again moved the Central Administrative Tribunal in O. A. No. 45 of 1992 against the order of removal from service. By judgment and order dated April 3, 1997 the Tribunal dismissed the petitioner's Original Application. Against the said order of the Tribunal the petitioner has filed this writ petition.

5. In the Tribunal the petitioner raised the following questions :

(i) In absence of the letter/order appointing the petitioner to the post of Head Clerk, the Divisional Personnel Officer could not be accepted as his appointing authority.

(ii) Under the rules/instructions, if there is no certainty about the disciplinary authority the General Manager is the authority who can issue charge-sheet in a disciplinary proceeding against the concerned employee and as such the Divisional Personnel Officer could not act as the disciplinary authority of the petitioner when there is no document to show who the appointing authority is.

(iii) Whether refusal to supply a copy of the fact-finding inquiry report amounts to denial of effective opportunity to defend particularly when the statements made in the said fact-finding inquiry have been relied upon by the Department ?

6. The records of the disciplinary inquiry have been placed before us. On perusal of the records it appears that the Enquiring Officer committed several irregularities in conducting the disciplinary proceeding.

7. Not a single witness was examined by the Department to prove the charges. The statements made by the delinquent and other persons at the time of fact-finding vigilance enquiry have been placed on record, but none of the persons making those statements was examined as witness. Even the statement made by the delinquent at fact-finding stage was not confronted to him. Although the statements recorded at the time of vigilance inquiry were placed on record, the fact-finding report was not disclosed. The petitioner applied for production of the said inquiry report, but the same was rejected.

8. It is now settled position that the delinquent is entitled to copy and/or inspection of a relevant document, if he needs it for the purpose of his effective defence. In the present case reliance has been placed on the statement made by persons during the vigilance inquiry, but the report of the vigilance inquiry has not been disclosed. When the statements recorded during vigilance/fact-finding inquiry were placed on record and relied upon, the delinquent was/is entitled to a copy of the vigilance inquiry report as part of his defence. According to us, non-disclosure of the vigilance report was an irregularity which caused substantial prejudice to the defence of the delinquent officer.

9. We also fail to appreciate how statements stated to be recorded during fact-finding enquiry could be accepted without examining the persons making such statements. Non-examination of those persons deprived the petitioner of opportunity of cross-examining the said persons.

10. It appears that the petitioner was asked questions by the Enquiring Officer himself. Not a single question was asked by the marshalling officer. Before the Enquiring Officer the petitioner expressly stated that he was retracting from the statements made by him on January 28, and 29 of 1986 before the vigilance.

11. The Enquiring Officer in his inquiry report placed reliance on the petitioner's answer to question No. 14 during vigilance inquiry. In his answers to questions put by the Enquiring Officer in the disciplinary proceeding the petitioner clearly stated that he was retracting all the statements recorded by the vigilance officer. In such situation mechanical acceptance of the statements made by him during fact-finding inquiry without confronting the petitioner with the said answer was contrary to the basic rule of evidence.

12. Irregularities committed by the Enquiring Officer in the disciplinary proceeding appear to be substantial in nature and cannot be over-looked and brushed aside as mere technicalities. The Tribunal has failed to appreciate the vitiating impact of the said irregularities.

13. For the foregoing reasons, the impugned judgment and order of the Central Administrative Tribunal is set aside. The impugned order of punishment and the inquiry report are also set aside. The disciplinary authority will, however, be at liberty to continue/resume the disciplinary proceeding from the, stage of evidence. The Railway authorities will also disclose the fact-finding report submitted by the Vigilance Department, if they decide to proceed with the

disciplinary proceeding. If the Railway authorities proceed with the disciplinary proceeding, the petitioner will fully cooperate with the same for the purpose of early disposal of the same.

14. The writ application is allowed to the extent indicated above.

A.S. Naidu, J.

15. I agree.

16. Writ application allowed.