

(1969) 07 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 327 of 1965

Sri Purna Chandra Das

APPELLANT

Vs

Chairman, State Transport Authority and Another

RESPONDENT

Date of Decision : 09-07-1969

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 15(4),
15(6)

Citation : AIR 1970 Ori 1 : (1969) 35 CLT 931

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : B.K. Pal, B. Pal and A. Mohanty, for the Appellant; A.G. and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner was a peon attached to the office of the State Transport Authority and was a permanent Class IV servant. On 12th May 1964 he was charged with tampering and misdelivery of two envelopes meant for registration and of handing over the same to a person not the addressee and misappropriation of service postage stamp. He was suspended on that very day. One Sri B. B. Roy, was appointed the Enquiring Officer. In his Enquiry Report he exonerated the petitioner. Mr. Ram-nathan, Chairman of the State Transport Authority, the ultimate punishing authority, did not agree with the Enquiry Report and passed the final order of dismissal. Against this order the writ application has been filed under Articles 226 and 227 of the Constitution. The aforesaid facts are not challenged by the State in its counter-affidavit.

2. In the petition Mr. Pal covered a large many grounds. In the course of argument he confined himself to the main contentions enumerated in paragraph 10 of the petition. The essence of the averment in that paragraph is that there, was no enquiry at all into the charges by the Enquiring Officer and no date was

fixed for any such enquiry, and that the petitioner was not intimated about the time and place of such enquiry and he was not given a reasonable opportunity of showing cause against the charges and to defend himself by adducing evidence. The petitioner came to know of the entire proceeding only from the punishing authority. Most of these assertions are not correct. The petitioner was supplied with the charge-sheet. He was asked to show cause, but without showing cause he asked for copies of documents from time to time. The petitioner was intimated that he could take copies from the records in the office. When the petitioner took exception that he had no knowledge of English he was further intimated that he might come with a person having knowledge of English to take copies from the records. The petitioner did not take advantage of this opportunity on the date fixed. This complaint has, therefore, no substance.

3. The petitioner however asserted that though he did not give any explanation to show cause, no date was intimated to him as to when the evidence, oral and documentary, was to be led on behalf of the opposite parties. In the counter-affidavit filed on behalf of the opposite parties 1 and 2 this fact has not been denied. Mr. Mohapatra took time to examine the records. He stated before us that after examining the records he was satisfied that, in fact, no intimation was given to the petitioner about the date when the evidence on behalf of the opposite parties was to be led.

4. The sole question for consideration in this writ application, therefore, is whether the absence of notice to the petitioner regarding the date of hearing when evidence was to be led on behalf of the Transport Authority would vitiate the final order of dismissal.

Sub-rules (4) and (6) of Rule 15 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 may be noticed:

"15. (4) On receipt of the written statement of defence, or, if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a board of inquiry or an inquiring officer for the purpose."

"(6) The inquiring authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in persn. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the inquiring authority declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reasons in writing."

On a bare perusal of these rules it is manifest that it was the duty of the Transport Authority to fix a date of hearing and to intimate the same to the petitioner. The right of the petitioner to know the date of hearing so as to cross-

examine the witnesses for the Transport Authority or to make comments in respect of any documents given by way of evidence is not taken away merely because the petitioner failed to show cause. It is well known that the petitioner has rights at different stages of the proceeding. His default at one stage will not take away his right to cross-examine witnesses which is an altogether different stage.

5. The identical view was taken by the Supreme Court in a series of decisions beginning with *Khem Chand Vs. The Union of India (UOI)and Others*, . In paragraph 19, their Lordships summed up the position thus:

"To summarise: the reasonable opportunity envisaged by the provision under consideration includes:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

In short the substance of the protection provided by rules like Rule 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act 1935, so as to give a statutory protection to the Government servants and has now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard".

6. On the admitted position that no notice was given to the petitioner about the date of hearing when the Transport Authority was to present its evidence, both oral and documentary, conclusion is irresistible that reasonable opportunity was not afforded to the petitioner to cross-examine the witnesses appearing on behalf of the Transport Authority, or to insist upon the examination of persons on whose previous statements an adverse view was taken against the petitioner. In this particular case no witnesses had been examined. That makes no difference. Even if the witnesses were not examined their previous statements were taken into consideration as evidence. If the petitioner had got notice, he would have insisted on those persons being called for cross-examination and in cross-examination he might have been able to establish that their statements were unreliable.

7. It is not necessary to refer to another ground raised by Mr. Pal that certain statements recorded before charge-sheet was given were taken into consideration by the punishing authority.

8. On the aforesaid analysis, we are of opinion that the petitioner was not afforded a reasonable opportunity as envisaged in Article 311(2). The order of dismissal must accordingly be quashed on this simple ground. It need hardly be stated that it is always open to the punishing authority to proceed with the enquiry from the stage where it became illegal.

In the result the writ application is allowed with costs. Hearing fee Rupees 100/- (Rupees one hundred only).

R.N. Misra, J.

9. I agree.