
(2011) 08 OHC CK 0028
In the Orissa High Court
Case No : Writ Petition (C) No. 907 of 2010

Sri Satyananda Nayak

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 12, 14, 14(8)

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2012) 113 CLT 261

Hon'ble Judges : Pradip Moahnty, J; B.K. Nayak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—Aggrieved by the Order Dated 20.11.2009 under Annexure-21 passed by the Central Administrative Tribunal refusing to interfere with the original and Appellate orders of punishment under Annexures-14 and 18 respectively and dismissing O.A. No. 441 of 2006, the Petitioner has filed this writ application.

2. The facts of the case are that while working as Draftsman in Division-I, No. 11 Drawing Office (SEC) Survey of India, the Petitioner faced a disciplinary proceeding in which the following two chargers were framed:

(a) That the said Shri Satyananda Nayak while functioning as Draftsman Div.I during the period December, 1998 submitted a false declaration about the death of his second wife Smt. Pramila Kabita Nayak and based on the death declaration of his second wife the said Shri Satyananda Nayak asked the office viz. No. 11 D.O.(SEC) to delete the name of the: said wife from his service records while the said wife as per his own statement after seven months was still reported to be living. Thus, the said Shri Satyananda Nayak acted in a manner unbecoming of a Govt. servant.

(b) That the said Shri Satyananda Nayak while functioning as Draftsman Div.I in the office of No. 11 Drawing Office (SEC), survey of India, Bhubaneswar has committed an act of insubordination in a series of his letters addressed to O.C. No. 11 Drawing office (SEC), Surveyor General of India by making vituperative and derogatory remarks against O.C. No. 11 D.O.(SEC) and the Estate Officer and thus, displayed a conduct unbecoming of a Govt. Servant.

The memorandum along with article of charges and a list of documents by which the charges were proposed to be proved was served on the Petitioner. The Petitioner submitted his written statement before the disciplinary authority (Opp. Party No. 2) in which, with regard to charge No. 1 he explained that the words "passed away" which he used for his wife-Pramila Kabita Nayak in his letter dated 11.12.1998 only meant that she has gone away and not that she was dead. With regard to the second charge he replied that whatever correspondences he had made with the authorities could have been avoided in case his letter dated 11.12.1998 would have been truly interpreted or at least clarification would have been asked from him by providing an extract or a copy of the said letter as per his request dated 06.01.1999 and 05.02.1999. Hence, there was no trace of vituperative and derogatory remarks against O.C. No. 11 D.O. (SEC) and the Estate Officer as alleged in the charge. Not being satisfied with the written statement of the Petitioner, the disciplinary authority appointed one Mr. P.V. Srinivas, Superintendent Surveyor as the Inquiry Officer to inquire into the charges and one Baikuntha Sahoo, Officer Surveyor as the Presenting Officer. After making inquiry, the Inquiry Officer came to the conclusion, that both the charges were proved against the Petitioner and accordingly submitted his inquiry report (Annexure 10) to the disciplinary authority. A copy of the inquiry report was served by letter under Annexure-9 asking the Petitioner to submit his representation, if he so desired, to the disciplinary authority within fifteen days from the date of receipt of the letter. The Petitioner submitted a representation vide Annexure-11 questioning the propriety of the procedure adopted in the inquiry and commenting upon the conduct of the Inquiry Officer, the details of which we may advert to at a later stage. By Order Dated 27.09.2001 the disciplinary authority passed order of punishment which was challenged by the Petitioner before the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 102 of 2002. The Tribunal disposed of the O.A. on 06.12.2004 directing as follows:

Thus order of punishment has to be held defective as the punishment order suffers from serious legal lacuna. We, however, do not find any legal infirmity with the enquiry report. We, therefore, while quashing the punishment Order Dated 11.09.2001, remand the case to the Disciplinary Authority to pass a fresh order which should be both speaking and reasoned one, after due consideration of the report of the I.O. and the written statement submitted by the applicant after receipt of the I.O's report.

Aggrieved by the finding of the Tribunal that there was no legal infirmity with the

enquiry report, the Petitioner challenged the Tribunal's order before this Court in W.P.(C) No. 14723 of 2004, which was disposed of by Order Dated 07.01.2005, the operative portion of which is quoted hereunder:

In view of the above mentioned facts and circumstances, this Writ Petition is allowed in part. The part of the Judgment and order of the Central Administrative Tribunal by which it has held that "there is no infirmity in the inquiry report" is quashed. The Disciplinary Authority is directed to consider the matter afresh taking into consideration the written statement as well as the additional written statement, if the same is filed within a period of 15 days from today, raising the points of law only independently without being influenced by the order of the Central Administrative Tribunal.

In pursuance to the aforesaid order of this Court, the Petitioner filed an additional written statement raising some points of law as per Annexure-13 before the disciplinary authority. On consideration, Opp. Party No. 3 as the disciplinary authority again passed Order Dated 07.09.2005 (Annexure 14) imposing punishment on the Petitioner to the following effect:

The pay of Shri Satyananda Nayak, Draftsman Div.I is reduced to Rs.7,600 in the time scale of pay of Rs.5500-175-9000 for a period four years and he will earn the increments of pay during the period of such reduction and on expiry of 4 (four) years from the date of issue of this order, i.e., 07.09.2005, the reduction will not have the effect of postponing the future increments of his pay.

Challenging the aforesaid order of punishment, the Petitioner filed an appeal on 05.10.2005 before Opp. Party No. 1. During the pendency of the appeal, the Petitioner also filed O.A. No. 441 of 2006 on 12.05.2006 before the Central Administrative Tribunal, Cuttack Bench, Cuttack challenging the very same punishment order. During the pendency of the O.A. before the Tribunal, the appeal filed by the Petitioner was disposed of by Opp. Party No. 1 reducing the punishment of reduction of pay from four years to three years. The Petitioner there upon amended his Original Application before the Learned Tribunal.

3. The original punishment order as modified in appeal was challenged before the Tribunal on the following grounds:

(a) the charge-sheet which was served on the Petitioner was incomplete inasmuch as Article III in Annexures I and II and Annexure-IV were not supplied to the Petitioner and as such the entire proceeding stood vitiated;

(b) Opp. Party No. 3, the Director, Jharkhand Geo Spatial Data. Centre, Survey of India, Daronda, Ranchi-2 was not competent to act as disciplinary authority inasmuch as he was the parent Director in respect of the Petitioner after reorganization of the Respondent's office. The Petitioner was under the disciplinary control of Opp. Party No. 2 till his office was merged with Opp. Party No. 3 after reorganization;

(c) the order of punishment is a non-speaking order, without consideration of the

written statement and the additional filed by the written statement Petitioner;

(d) the inquiry was vitiated for non-supply of documents to the Petitioner three days prior to the sitting of the inquiry as mandatorily required under the rule;

(e) the Petitioner was not afforded adequate opportunity of hearing by the disciplinary authority;

(f) the proceeding was vitiated since no opportunity was given to the Petitioner for engagement of defence assistant as required under sub rule (8) of the Rule;

(g) The I.O. accepted as proof xerox copies of documents without calling for the originals, which cannot be accepted as legal proof; and

(h) after closure of evidence by both sides, during enquiry the a stranger to the examined I.O. proceeding, namely, Pramila Kabita Nayak as a Court witness in order to patch up lacuna, without any prayer from either side, which is arbitrary, malafide and beyond the ambit of the procedure and it proves the bias of the inquiry Officer. Though such bias attitude of the I.O. was complained before the disciplinary authority asking for change of I.O., the said prayer was illegally turned down by the disciplinary authority.

4. It is contended in this Writ Petition that although the above grounds were urged, the Learned Tribunal without considering the same in proper perspective dismissed the original application,.

5. The Opp. Parties have filed a counter affidavit replying to each of the grounds which had been raised before the Learned Tribunal and have been repeated in this Writ Petition. It is stated in the counter affidavit that the issuance of memorandum of charge-sheet to the Petitioner was in conformity with Rule 14 of the CCS (CCA) Rules, 1965. Since only two charges were framed, there was no need to annex Article III in Annexures-1 and 2 in the memorandum of charge-sheet. Similarly, Annexure-4 containing the list of witnesses through whom the charges were to be proved was not necessary to be annexed to the memorandum as the disciplinary authority did not intend to prove the charges through any witness. It is also stated that the allegation of non-supply of documents to the Petitioner is not correct. On the date of preliminary hearing the Petitioner admitted to have received all the listed documents in Annexure- III, which is evident from the copy of the Order Dated 21.6.2000, which was enclosed as Annexure-R/1 to the counter of the Opp. Parties in the original application. It is also stated that the documents exhibited as S/15 and S/21 were produced by the Presenting Officer as additional evidence and on the very day, the copies of those documents were supplied to the Petitioner who did not dispute the contents of those documents. On the request of the Petitioner, one week time was granted to him to file his statement in his defence and accordingly the inquiry was adjourned and the Petitioner was thus afforded reasonable opportunity to defend his case. The allegation of bias raised by the Petitioner against the I.O. was considered by the disciplinary authority, who on

careful examination found that there was no prima facie evidence to suggest that the I.O. was biased. Since the charge-sheet vide Charge No. 1 related to the lady witness, whose statement was considered necessary for the ends of justice, the I.O. examined her, and therefore, that does not smack of bias on the part of the I.O. and as such the Petitioner's complaint was turned down by the D.A. as per Annexure-7. It is also stated in the counter affidavit that despite adequate and reasonable opportunity was given, the Petitioner did not bother to attend the hearing even after issuance of several notices for which the I.O. adjourned the inquiry to several dates, i.e., 02.01.2001, 08.01.2001, 24.01.2001, 06.02.2001 and ultimately to 14.02.2001 with notice to the Petitioner that no further adjournment will be given for examination of Court witness. Even on that date the Petitioner having not turned up the I.O. had no option but to proceed ex-parte.

6. After closure of hearing of the Writ Petition, the Petitioner filed another affidavit stating that the woman; Kabita Pradhan was examined as Court witness by the Inquiry Officer in the proceeding and that the said Court witness was not his legally married wife and that this Court by Order Dated 03.12.2010 passed in SAO No. 10 of 2008 has declared that the said Kabita Pradhan is not the wife of the Petitioner, A copy of the order passed in SAO No. 10 of 2008 has been annexed as Annexure-1 to the affidavit.

7. During the course of argument the Learned Counsel for the Petitioner raised contentions reiterating the same grounds of challenge as had been advanced before the Tribunal and noted in paragraph-3 above. The grounds of challenge mainly relate to violation of principles of natural justice at different stages of the proceeding, malafide and biased attitude of the Inquiry Officer and lack of jurisdiction of Opp. Party No. 3 to act as the disciplinary authority. The Learned Asst. Solicitor General repelled the contentions raised by the Learned Counsel for the Petitioner submitting that there has been no violation of principles of natural justice or infraction of the rules in the matter of conduct of the enquiry and that since adequate opportunity was given to the Petitioner to defend himself, it cannot be said that the Inquiry Officer was biased. It is also contended by him that Opp. Party No. 3 was the appropriate disciplinary authority in respect of the Petitioner and, therefore, he cannot be said to have acted without jurisdiction. It is also submitted by him that scope of judicial review in the matter of departmental enquiry is very limited and unless the Court comes to a conclusion that there was a gross procedure irregularity or violation of principles of natural justice or that the findings of the authority are perverse, this Court shall not interfere.

8. In the case of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, while considering the scope of judicial review in dealing with departmental enquiries, the Apex Court quoted with approval paragraph-21 of the Judgment reported in State of Andhra Pradesh and Others Vs. Chitra Venkata Rao,

21. The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

9. The Apex Court in the case of General Manager (P), Punjab & Sind Bank and others v. Daya Singh: (2010) 11 SCC 233 has held as under:

25. As held T.N.C.S. Corpon. Ltd., v. K. Meerabai the scope of judicial review for the High Court in departmental disciplinary matters is limited. The observations of this Court in Bank of India v. Degala Suryanarayana are quite instructive:

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an Appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

23. The High Court can and must enquire whether there is any evidence at all in

support of the impugned conclusion. In other words, if the whole of, the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the Respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

10. In the case of *The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad*, , the Apex Court held as under:

14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the Appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/tribunal.

11. We have carefully gone through the Judgment passed" by the Learned Tribunal and also the records produced by the Opp. Parties. With regard to the allegation that there was violation of principles of natural justice, it is submitted on behalf of the Petitioner that the articles of charge which had been served on the Petitioner was incomplete inasmuch as Article-III in Annexures-I and II and Annexure-IV were not supplied to him and that necessary documents were not supplied to the Petitioner and that no opportunity was given for engagement of defence assistant. In this context, the Learned Counsel for the Petitioner has relied upon several decisions including those reported in *State of U.P. and Others Vs. Saroj Kumar Sinha*, where discussing the scope of principles of natural justice it was held that non-supply of foundational documents to the delinquent on lame excuse, non-affording of opportunity of hearing and non-examination of witness to prove the documents would vitiate the proceeding and the resultant order of punishment. There is no quarrel over the aforesaid propositions of law which are fairly well settled. As has been contended in the counter affidavit of the Opp. Parties, it is seen that two charges were framed which are served along with Annexure-II, i.e., imputation of misconduct and Annexure-III, i.e., the list of documents by which the charges were sought to be proved. The gravamen of the first charge has reference to the two letters of the Petitioner himself, i.e., letter dated 11.12.1998 indicating that his second wife, Smt. Parmila Kabita Nayak passed away about a month back for which a request was made to delete her name from the Petitioner's service record, and the letter dated 26.07.1999 again indicating that the said second wife of the Petitioner was alive. After receipt of the first letter, the authorities addressed several letters to the Petitioner to submit the death certificate of his second wife. Therefore, the charge is not so much with respect to submitting false information to the authorities about his wife, but by writing the aforesaid two letters and compelling the authorities to time and again correspond with him, the Petitioner made a farce of office procedure and as such acted in a manner unbecoming of a Government servant. This is amply clear from Annexure-II of the charge memorandum, i.e., the

statement of imputation of misconduct, the relevant portion of which is quoted hereunder:

The said Shri Satyananda Nayak was repeatedly asked by O.C. No. 11 Drawing Office (SEC) vide O.C. No. 11 DO (SEC)'s letter Nos. (i) 343/4-A-55 dated 16.2.1999, (ii) 605/4-A-55 dated 13.04.1999 and (iii) 811/4-A-55 dated 7.5.1999 to submit the death certificate in respect of his second wife Smt. Pramila Kabita Nayak and to furnish other information which the said Shri Satyananda Nayak did not do and suddenly in his letter dated 26.7.1999 addressed to Surveyor General of India Shri Satyananda Nayak declared that his second wife Smt. Pramila Kabita Nayak, who had been reported dead vide his letter dated 11.12.1998, was found alive. Thus the said Shri Satyananda Nayak has made a farce of office procedure and thus, acted in a manner unbecoming of Govt. servant.

In his written statement to the charges the Petitioner did not dispute about writing of the aforesaid two letters but only tried to explain the meaning of his first letter stating that the words "passed away" which are used for his wife only meant that she had gone away and not dead. It is incomprehensible that the Petitioner, who works as a draftsman, did not understand the meaning of the words "passed away": The falsity of the explanation is also amply evident when considered in the light of his second letter by which he informed the authorities that the said second wife is not dead but alive. This evidently means that in the first letter by using the words "passed away" he indicated that his wife has died. In the list of documents supplied to the Petitioner his two letters find mention at SI. Nos.1 and 2 and the authorship of those letters is admitted by the Petitioner. The second charge relates to insubordination of superior authorities by using derogatory and vituperative remarks against superior officers. There is no specific denial by the Petitioner in his written statement that his correspondences did not contain derogatory remarks against the superior authorities, namely, O.C. No. 11 D.O. (SEC) and the Estate Officer. The explanation of the Petitioner is to the effect that the correspondences made by him to the authorities would have been avoided in case his letter dated 11.12.1998 would have been truly interpreted or at least clarification in respect thereof would have been asked from him. This, in other words, means that he would not have used derogatory remarks against the superior officers, if the authorities would have asked for his own interpretation of his letter. In fact, the charges were sought to be proved through Petitioner's own admitted documents, i.e., the letters.

There was no allegation of any non-supply of documents to the Petitioner. Rather as has been contended in the counter affidavit, the record shows that on the date of preliminary hearing the Petitioner had admitted all the documents listed in Annexure-III. The records do not reveal that no reasonable opportunity was given to the Petitioner to defend his case. Notices were issued to the Petitioner by the Inquiry Officer adjourning the enquiry from day to day and lastly to 14.02.2001 for examination of the Court witness and the Petitioner having

chosen not to appear, the examination was conducted ex-parte. Considering the gravamen of the imputation of the misconduct in respect of charge No. 1, the evidence of the Court witness appears to be not very relevant: In any event though the Inquiry Officer thought it proper and examined the Court witness, he has given adequate opportunity to the Petitioner by issuing notices to him for adjourned dates.

12. Non-observance of each and every component of principles of natural justice does not vitiate the proceeding or the resultant punishment order. Courts are to see whether non-observance of any of the said principles in a given case has resulted in denial of justice. In this context, it is apt to note the following dictum of the Apex Court in the case of A. Sudhakar Vs. Post Master General, Hyderabad and Another,

25. In terms of Article 311(2) of the Constitution, the procedural requirements which were required to be followed were as under:

(i) opportunity to the officer concerned to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;

(ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and

(iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

26. It is well settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution in view of the decision of this Court in Khem Chand v. Union of India are held to be as a part of the principle of natural justice. The Courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance with the procedure, the Court may not interfere. (See State of U.P. v. Om Prakash Gupta and Kuldeep Singh v. Commr. of Police.)

13. As has been seen earlier, there is no plausible explanation by the Petitioner to the charges which are based mainly on his own letters and correspondences sent to the authorities. In this context, we may profitably note the observation made by the Apex Court in the decision reported in Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, .

8. Giving of opportunity or an enquiry of course is a check and balance concept that, no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is

placed before the authority concerned.

14. In the instant case, we are satisfied that there has been substantial compliance of the procedure and principles of natural justice and there has been no denial of justice or non-observance of any principle.

15. Regarding the allegation that the Petitioner was not given opportunity for engagement of defence assistant, it is found that he nominated an employee of South Eastern Railway as his defence assistant and accordingly the I.O. requested the Controlling Authority of the defence assistant to relieve him to take part in the proceeding as and when required. In the meantime, the Petitioner made a request for engagement of a legal practitioner to defend him which was turned down by the disciplinary authority in terms of Rule 14(8) of the CCS (CCA) Rules, 1965. Meanwhile, the Controlling Authority of the nominated defence assistant in his letter dated 12.07.2000 intimated that the defence assistant could not be spared officially. Afterwards, the Petitioner confirmed that he could take part in the proceeding without any defence assistant. Therefore, the Tribunal has rightly said that in the circumstances the Petitioner cannot be said to have been deprived of the opportunity to defend his case. In any view of the matter having regard to the nature of charges for which there has been no plausible explanation, the deprivation of service of defence assistant cannot be said to have prejudiced the Petitioner or caused injustice to him.

16. As regards the competency or jurisdiction of Opp. Party No. 3, the Director, Jharkhand, Geo-Spatial Data Centre, Ranchi to act as the disciplinary authority of the Petitioner, it is stated in the Counter affidavit of the Opp. Parties that on merger of different centres, Opp. Party No. 3 became the disciplinary authority as per departmental order No. W-177/709-GDC dated 05.04.2005 and accordingly he passed the order of punishment (Annexure-14) on 07.09.2005 in accordance with Rule 12 of the CCS (CCA) Rules, 1965. The contention of the Petitioner is that as per Annexure-IS dated 9/12th September, 2005, the Director of merged Bhubaneswar Centre (Opp. Party No. 2) would be the disciplinary authority. We have seen that the punishment order was passed in terms of departmental Order Dated 05.04.2005, under which Opp. Party No. 3 was the disciplinary authority. The Tribunal has rightly considered the case holding that the subsequent departmental Order Dated 9/12th September, 2005 would have no application. We are, therefore, of the view that Opp. Party No. 3 was the appropriate disciplinary authority at the time of passing of the punishment order under Annexure-14.

17. On perusal of the records, we are satisfied that the allegations of bias and prejudice made against the Inquiry Officer are baseless and have no substance. The Tribunal has considered all material aspects of the case in their proper perspective and its findings are not unjustified.

The subsequent affidavit of the Petitioner filed along with copy of order of this Court in SAO No. 10 of 2008 is of little help to the Petitioner having regard to the

gravamen of the charge.

18. In the light of the discussions made in the foregoing paragraphs, we do not find any infirmity in the impugned orders, nor does the punishment as modified by the Appellate authority appear to be disproportionate and, therefore, we refuse to interfere with the impugned orders.

The Writ Petition is devoid of any merit and is accordingly dismissed. No Costs.

Pradip Mohanty, J.

19. I agree.