

(2008) 05 OHC CK 0046

In the Orissa High Court

Case No : Writ Petition (C) No. 12092 of 2005

State of Orissa and Another

APPELLANT

Vs

Rajkishore Dash and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3

All India Services (Discipline and Appeal) Rules, 1969 — Rule 8

Citation : (2008) CLT 298 Supp

Hon'ble Judges : Sanju Panda, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Addl. Government Advocate, for the Appellant; Jaydev Sengupta, Dinesh Kumar Panda, Gopal Sinha and Amrit Mishra for Opp. Party No. 1 and S.C. Samantaray, for Opp. Parties Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Sanju Panda, J.—Challenge has been made by the State Government in this writ petition to the order dated 3.3.2005 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1254 of 2003 quashing the charges framed and the appointment of enquiring officer made in the D.P. against opposite party No. 1.

2. The facts of the case are as follows:

The present opposite party is a Senior Member of the Indian Police Service, Orissa Cadre. He held the post of Commandant, O.S.A.P., 4th Battalion Rourkela for the period from 5.9.1997 to 18.11.2000. During that period, the opposite party appointed nine persons in base level Class-IV posts in different posts i.e. two as Cook, four as Visties (Water carrier) and one as Follower Orderly and two as Sweepers without following the proper procedure of advertising the vacancies for giving equal opportunity to all, without following the provisions of ORV Act & Rules and in disobedience and defiance of Government Order contained in Finance Department Letter No. 11172/F dated 20.3.1998 by which a ban was

imposed on the recruitment to the base level posts in the Government of Orissa unless clearance from the High Power Committee was obtained and the said order was communicated to all Heads of Department including the State Police Headquarters, Cuttack. The opposite party also received the copy of the said letter on 6.4.1998 but he deliberately disobeyed the order of the State Government and acted in most irresponsible manner against the public policy. Therefore, for the above misconduct he was proceeded against under Rule 8 of AIS (D&A) Rules, 1969 vide Home Department Memorandum No. 42666 dated 23.9.2003 basing on the prima facie evidence available on record.

The opposite party filed his written statement of defence. He denied the charges without submitting any substantial material in support of his denial for which the State Government appointed an Enquiring Officer and a Marshalling Officer under the Rules vide Home Department Order No. 52494 dated 1.12.2003 for the purpose of inquiring into the charges framed against the opposite party. During pendency of such proceeding, the opposite party moved the Central Administrative Tribunal challenging initiation of the disciplinary proceeding against him and appointment of Enquiring Officer without having any basis. In the said original application, the present Petitioners after receiving notice appeared and filed its counter affidavit. The Tribunal after hearing the parties and ignoring the materials available on record disposed of the Original Application with a direction to the present Petitioners to examine the reason for overlooking the reports of the successive senior officers about the hollowness of the allegations and the reason for pursuing the matter in a manner as they have done and quashed the charges framed against the Applicant vide letter dated 23.9.2003 and communicated to him vide Annexure-7 dated. 30.9.2003 as well as the order of the Home Department dated 1.12.2003 appointing I.O. to enquire into the matter.

3. It appears from the impugned order that the Tribunal has mainly considered the fact that the Applicant-opposite party has not committed any illegality in not following the direction issued by the State Government not to fill up the base level posts on the basis of which the authority came to the conclusion that opposite party deliberately misconducted himself and their failure to place those materials on record before the Tribunal has made their decision totally subjective, capricious and sustainable in the eye of law. It has been observed by the Tribunal that since there is no whisper in the counter affidavit about the existence of any ulterior or malicious intention of the Applicant-opposite party in appointing the persons in base level posts, charges should not be levelled against him for misconduct or violation of any direction issued by the State Government. The Tribunal has quashed the charges levelled against the delinquent and the order of appointment of the Enquiring Officer, as if it is the appellate authority and reassessing the materials available on record. The correctness of the said order has been questioned by the Petitioners in this writ petition.

4. The learned Counsel for the opposite party submitted that the Tribunal has

considered the matter in its perspective and the direction given by the Tribunal is just and proper. Since the opposite party has not committed any misconduct or disobeyed the order of the State Government, the disciplinary proceeding should not be continued against him. The main contention of opposite party is that on the mala fide intention of the authority the disciplinary proceeding has been initiated and he has been victimized and subjected to disciplinary action under Rule 3 of AIS (Conduct & Service) Rules with a view to harassing him.

5. Admittedly, the opposite party appointed nine minial officials against the vacancies and those posts were filled up without obtaining prior permission from the State Government or from the Police Headquarters when the State Government had specifically banned to fill up the base level posts and the order of the State Government was communicated to all the Departments of the State Government, the Tribunal specifically held that it was unable to understand why the authorities have not been able to place on record before the Tribunal those materials which led them to come to the decision that all the reports submitted by the senior officers of the Police Department were not trustworthy or produce the materials based on which they could come to the conclusion that the opposite party had deliberately misconduct himself and their failure to place those materials on record before the Tribunal showed that they have taken a decision which is not sustainable in the eye of law. It came to the conclusion that the charges brought against the opposite party are based on erroneous interpretation of the Government order with regard to fill up the vacancies of the base level posts and the charges have been framed without application of mind. Thus, the same is not sustainable in the eye of law. It further held that as to why the authorities, opposite parties 3 and 4 before the Tribunal, found it worthwhile to initiate disciplinary proceeding against the Applicant-opposite party by overlooking the reports of the Senior Officer.

6. Law is well settled that the plea of mala fide can only be sustained if clear allegation is made against any particular officer and he is made a party to the proceeding. In absence of clear allegations against any particular officer and in absence of impleading such person eo-nomini so as to enable him to answer the charge framed against him, the charge of mala fide cannot be sustained. In the present case, the charges are not simple i.e. opposite party No. 1 has exceeded his limits and violated the Government order. The report submitted by Addl. D.G. & I.G. dated 1.10.2001 along with the letter of the Commandant O.S.A.P., 4th Battalion, Rourkela on 20th April, 2001 issued a confidential letter to the Addl. D.G. & I.G. of Police, SAP, Orissa, Cuttack regarding misconduct of opposite party No. 1. In the said letter, it was also mentioned that no appointment certificate was issued to the persons and the persons who are appointed have also not produced all the relevant papers for such appointments. He has also stated that all the appointments have been made illegally without any order from the Government or S.P. Headquarters are without having any Recruitment Board as per Rule. The authorities have initiated the disciplinary proceeding against the delinquent. The authority, while considering as to whether they will initiate a

disciplinary proceeding, has to take a decision considering the materials available before them. In the present case, the authority has weighed the facts that the opposite party being a member of the highly discipline Department maintaining the law and order has disobeyed the order of the higher authority. Law is well settled that the Court has to examine whether, in the interest of administration of justice it is necessary to find out the truth in the matter, the authorities have taken a decision to initiate a disciplinary proceeding and the nature of the offences and other circumstances may be such that initiation of the proceeding may not be in the interest of justice. In such a situation, it is open to the Court to pass such other appropriate order as it finds to be just and proper.

7. The Supreme Court in the case of Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, has held that the Administrative Tribunal has committed gross error in exercising its power of judicial review. The member of the Administrative Tribunal has to exercise his power as if he was an appellate forum de hors the limitations of judicial review. But in the case at hand, the Tribunal has exceeded its power of judicial review and quashed the charges at the threshold. To initiate a disciplinary proceeding is an administrative function. What is required for the same is that the authority should be prima facie satisfied that the officer has misconducted himself and exceeded his jurisdiction or disobeyed the order of higher authority. On considering the necessary materials before the authority they have to take a decision. Therefore, the Tribunal has erroneously held that those materials had not been produced before it, and the authority has taken a decision without any material. The authority, while taking a decision to initiate a disciplinary proceeding, has to look into the proper administration of the organization. It is true that the delinquent may be saddled with the liability of being prosecuted in a Court of law but what is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the authority and it has to consider those materials. Prima facie the authority is required to reach the satisfaction that the relevant facts have constituted the offence. Then, they can proceed with the decision that a disciplinary proceeding should be initiated against the errant officer. In the present case, since the charges have been framed and the State Government has already appointed an Enquiring Officer and a Marshalling Officer under the Rules vide Home Department Order No. 52494 dated 1.12.2003 at that stage the Tribunal should not have quashed the charges framed against the opposite party.

8. Considering the above principle, this Court quashes the order dated 3.3.2005 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1254 of 2003 by directing the Petitioners to conclude the departmental proceeding and take a decision on the basis of the enquiry report submitted by the Enquiring Officer. The entire exercise shall be completed preferably within a period of three months from today.

9. The writ petition is allowed. There shall be no order as to costs.

I.M. Quddusi, J.

10. I agree.