
(2015) 01 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition(C) No. 6584 of 2007

State of Orissa

APPELLANT

Vs

Balabhadra Jal

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 144 FLR 962 : (2015) 2 ILR Ori 843 : (2015) LabIC 1036 : (2015) 1 OLR 537

Hon'ble Judges : Amitava Roy, C.J. Dr., J.; Akshaya Kumar Rath, J.

Bench : Division Bench

Advocate : B. Pradhan, Addl. Govt. Advocate, for the Appellant; P. Chuli, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Amitava Roy, C.J.—Whether a charge sheet can be quashed due to delay in finalization of the disciplinary proceeding is the sole question that hinges for our consideration?

2. The opposite party was a Forester. A departmental proceeding was initiated against him vide the Office Order No. 168 dated 31.7.1987 by the Divisional Forest Officer, Titilagarh (KL) Division, Titilagarh-petitioner No. 2. He was charged with gross negligence in duty causing loss to the Government to a tune of Rs. 34,560/-, suppression of fact and misappropriation leading to loss of Government property to a tune of Rs. 34,560/-. Since the disciplinary proceeding was not completed, he approached the Orissa Administrative Tribunal, Bhubaneswar (in short, hereinafter referred to as "the Tribunal") in O.A. No. 320 of 2001 to quash the same. By order dated 22.3.2001, the learned Tribunal disposed of the said application with the following observations:--

"xxx xxx xxx

Since the proceeding is lingering for more than 14 years, we direct that it shall be finalised by 31.8.2001 at the latest and if no final decision is taken by that

date, the charges shall be treated as quashed since they have already become stale charges after such a long period.

xxx xxx xxx"

3. Thereafter an application for extension of time was filed by the petitioners, who were respondents therein. As the proceeding was not finalized with the time fixed by the Tribunal, the opposite party filed a contempt proceeding vide C.P.(C) No. 194 of 2001. The contempt proceeding was disposed of on 14.1.2004 granting liberty to him to file fresh Original Application.

4. While matter stood thus, after conclusion of enquiry, the disciplinary authority awarded the following punishment on the opposite party on 25.09.2001.

"1. The period of suspension shall be treated as leave due and admissible.

2. Two increments are stopped with cumulative effect.

3. The loss of Govt. money of Rs. 37,056/- (Rs. Thirty seven thousand and fifty six) only shall be recovered from his pay bill in 74 (seventy four) instalments @ Rs. 500/- P.M. and last being Rs. 556/- P.M."

5. On an appeal filed by the opposite party, the appellate authority modified the same and awarded higher punishment as follows:

"1. The loss of Govt. money to the tune of Rs. 37,056.00 shall be recovered from him as per installments fixed by DFO.

2. The period of suspension shall be treated as leave without pay.

3. Two increments are stopped without cumulative effect.

4. He is censured."

6. Thereafter the opposite party filed O.A. No. 194 of 2005 to quash the order of punishment dated 25.9.2001 passed by the petitioner No. 2 vide Annexure-6 and the order dated 6.1.2005 passed by the Conservator of Forests, Balangir (K.L.) Circle, the appellate authority, vide Annexure-9 awarding higher punishment. Taking a cue from the order dated 22.3.2001 passed in O.A. No. 320 of 2001, learned Tribunal came to hold that the charges framed against the opposite party in the year 1987 be deemed to have been quashed and the period of suspension was to be treated as duty on the failure of the disciplinary authority to finalise the proceeding by 31.8.2001 and accordingly allowed the application on 11.04.2005. Aggrieved by and dissatisfied with the said order, the State of Orissa and its functionaries have filed the present writ petition.

7. Heard Mr. B. Pradhan, learned Additional Government Advocate for the State-petitioner and Mr. P. Chuli, learned counsel for the sole opposite party.

8. Mr. Pradhan, learned Additional Government Advocate submitted that the opposite party has committed malfeasance and misfeasance for which the

disciplinary proceeding was initiated against him. After affording opportunity of hearing to him, the disciplinary authority came to hold that the charges have been proved and awarded punishment. On an appeal filed by the opposite party, the appellate authority awarded higher punishment keeping in view the gravity of the charges. Thus, the learned Tribunal committed a manifest illegality and impropriety and holding that the charges are deemed to have been quashed in view of the order dated 22.3.2001 passed in O.A. No. 320 of 2001.

9. Per contra, Mr. Chuli, learned counsel for the opposite party, argued with vehemence that the order passed by the learned Tribunal is conformity in consonance with law and no interference is called for. He submitted that the disciplinary proceeding initiated against the opposite party on 31.7.1987, but the same was not completed in time for which the learned Tribunal by order dated 22.3.2001 passed in O.A. No. 320 of 2001 has directed to complete the disciplinary proceeding by 31.8.2001, failing which the charges would be deemed to have been quashed. He further submitted that the opposite party has retired from services on attaining the age of superannuation long since and not getting full pension. He further submitted that the appellate authority committed a manifest illegality in awarding higher punishment. To buttress his submission, Mr. Chuli submitted that the appellate authority had only three options, i.e., either the appeal filed by the opposite party should have been allowed or dismissed or lesser benefit could be imposed. He relied on a Division Bench decision of this Court in the case of Keshab Chandra Sahu Vs. State of Orissa and Others, .

10. Having regard to the pleadings of the parties and rival submissions made at the Bar, really two points arise for our consideration.

"(1) Whether the learned Tribunal is justified in directing the disciplinary authority to complete the proceeding within a particular time, failing which the charges would be deemed to have been quashed?

(2) Whether the appellate authority has jurisdiction to award higher punishment?"

Point No. 1

11. The law regarding quashment of charge sheet in a disciplinary proceeding is no more res integra. After a survey of the earlier decisions, the apex Court in the case of The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, , the Bench speaking through Hon"ble Dr. Justice B.S. Chauhan (as his Lordship then was) held as follows:

"Para-8. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the Court/Tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved

in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstances (vide : The State of Madhya Pradesh Vs. Bani Singh and another, ; State of Punjab and Others Vs. Chaman Lal Goyal, ; Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, ; (1995) AIR SCW 3028); Union of India and Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, ; State of Andhra Pradesh Vs. N. Radhakishan, ; Food Corporation of India and Another Vs. V.P. Bhatia, ; Additional Supdt. of Police v. T. Natarajan, 1999 SCC (L and S) 646; M.V. Bijlani Vs. Union of India (UOI) and Others, ; P.D. Agrawal Vs. State Bank of India and Others, ; and Government of A.P. and Others Vs. V. Appala Swamy, ; (AIR 2007 SC (Supp) 587).

Para-9 "In The Secretary, Forest Department and Others Vs. Abdur Rasul Chowdhury, , this Court deal with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceeding should not be permitted to continue."

Para-10 "Ordinarily, a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, ; Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, : (AIR 1996 SC 691); Hanuman Prasad Vs. IIrd Additional District Judge and Others, (2); The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, ; and Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, "

Para-11 "In State of Orissa and Another Vs. Sangram Keshari Misra and Another, , this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also : Union of India (UOI) and Others Vs. Upendra Singh, "

Para-12 "Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been

issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

(emphasis ours)

12. On the anvil of the decisions cited supra, we have examined the present case. The opposite party has not challenged the charge-sheet on the ground that the authority issuing the same is not competent to initiate the disciplinary proceeding. A disciplinary proceeding is not liable to be quashed on the ground that the proceeding had been initiated at a belated stage or could not be concluded in a reasonable period, unless the delay creates prejudice to the delinquent employee. While passing the order, the learned Tribunal has not kept the aforesaid principles in view. In view of the same, we are of the opinion that that order dated 22.3.2001 passed by the learned Tribunal in O.A. No. 320 of 2001 is not in consonance with law. The learned Tribunal travelled beyond its jurisdiction in passing the order.

Point No. 2

13. Rule 29 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 provides for consideration of appeals. The same is quoted hereunder.

"29. Consideration of Appeals-(1) In the case of an appeal against an order imposing any of the penalties specified in Rule 13 the appellate authority shall consider--

(a) whether the procedure prescribed in these rules has been complied with and, if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate; and, after consultation with the Commission if such consultation is necessary in the case, pass orders -

(i) Setting aside, reducing confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that -

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (vi) to (ix) of Rule 13 and an inquiry under Rule 15 has not already been held in the case the appellate authority shall, subject to the provisions of Rule 18, itself hold such inquiry or direct that such inquiry be held and, thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(2) In the case of an appeal against any order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable."

14. On a conspectus of sub-clause (i) of Clause (c) of sub-rule (1) of Rule 29 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, it is evident that the appellate authority can pass orders enumerated in sub-clause (i). To wit, the appellate authority can set aside, reduce confirm or enhance the penalty as the case may be subject to the proviso made thereunder.

15. However, in Keshab Chandra Sahu (supra), the said rule was not brought to the notice of the Bench for which the Division Bench came to hold that the appellate authority had only three options, i.e., either the appeal filed by the delinquent employee should have been allowed or dismissed or a lesser punishment could be imposed.

16. The latin expression *per incuriam* literally means "through inadvertence". A decision can be said to be given *per incuriam* when the Court of record has acted in ignorance of any previous decision of its own, or a subordinate Court has acted in ignorance of a decision of the Court of record.

17. In this regard, we may refer to a passage from A.R. Antulay Vs. R.S. Nayak and Another, wherein Sabyasachi Mukharji, J. (as his Lordship then was) observed thus:- "....."Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong." At a subsequent stage of the said decision it has been observed as follows: - "....It is a settled rule that if a decision has been given *per incuriam* the court can ignore it.

18. Thus, we hold that the decision in the case of Keshab Chandra Sahu (supra) is *per incuriam* and not a binding precedent.

19. Though we hold that the appellate authority has power to enhance punishment, but in the facts and circumstances of this case, it is difficult to

sustain the order so far as punishment awarded in respect of period of suspension and stoppage of increments. The order of the appellate authority is bereft of any reasons. It is settled principles of law that even in respect of administrative orders, reasons should be recorded. We may quote a passage from the judgment of the apex Court in the case of MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another, .

"5. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed : (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed :

"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar)."

We affirm the order of the disciplinary authority.

20. Before the disciplinary authority, the opposite party gave a writing to pay an amount of Rs. 37,056/- as would be evident from the finding of the Conservator of Forests, Balangir (K.L.) Circle, the appellate authority vide Annexure-9.

21. In the wake of the aforesaid, the order dated 11.04.2005 passed in O.A. No. 194 of 2005 by the learned Tribunal vide Annexure-10 is quashed. Taking into consideration the fact that the opposite party has retired long since on attaining the age of superannuation and has admitted to pay an amount of Rs. 37,056/-, we direct that the petitioners to deduct the said amount from the retiral dues of the opposite party. We further direct that the retiral dues of the opposite party shall be calculated and paid to him within a period of two months from the date of production of certified copy of this order.

The writ petition is allowed to the extent indicated above.

Amitava Roy, C.J.

I agree.