
(2009) 01 OHC CK 0063
In the Orissa High Court

Sudhansu Sekhar Gantayat

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 107 CLT 350 : (2009) 1 OLR 630 Supp

Hon'ble Judges : B.S. Chauhan, C.J.;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed for quashing the charge sheet I of Disciplinary Proceedings.

2. The facts and circumstances giving rise to the case are that certain allegations were made against the Petitioner while he was working as Civil Judge (Senior Division), as per the report submitted by the District Judge, mainly relating to misconduct with one lady Judicial Officer and for not making payment of Cable charges by his son to the Cable operator.

3. This Court on administrative side asked the Petitioner to submit his explanation in respect of the aforesaid allegations. Petitioner submitted his explanation to the same. The matter was considered by the Disciplinary Committee and it resolved that-the officer be instructed to keep cordial relationship with the superior officer. The matter was placed before the Full Court wherein vide Resolution dated 22.7.2001 the recommendation of the Vigilance Committee was accepted.

4. Subsequent thereto, this Court received some complaints against the Petitioner on the basis of which D.P. No. 9 of 2002 was initiated issuing the charge sheet dated 7.2.2003 (Annex-12) containing seven charges. Two charges are based on the allegations dealt with earlier. Hence this petition.

5. We have heard Mr. Das, Learned Senior Counsel for the Petitioner who submitted that it is a clear case of double jeopardy. On the same charges show cause notice was issued to the Petitioner and after considering his explanation, punishment has been awarded as explained hereinabove. Therefore, the second enquiry is not permissible and proceedings are liable to be quashed. More so, prior to the issuance of charge sheet, the Petitioner had been promoted vide Order Dated 26.8.2002. Therefore, it is not permissible for the Respondent to initiate disciplinary proceedings and the charge sheet is liable to be quashed.

6. On the other hand, Mr. Khuntia, Learned Counsel appearing for the Respondent has vehemently opposed the petition contending that earlier no enquiry had been conducted. It was merely a preliminary enquiry only on two allegations i.e. misbehavior with one lady Judicial Officer and not making payment of Cable charges and no punishment had ever been awarded to the Petitioner in respect of the same. On receiving certain fresh allegations of misconduct, charge sheet has been issued which is not liable to be quashed. No punishment had ever been awarded, thus, the question of double jeopardy does not arise at all.

7. We have considered the rival contentions made by the Learned Counsel for the parties and perused the record.

8. It is settled legal proposition that Disciplinary Proceeding commences with the issuance of charge sheet. Prior to the charge sheet dated 7.2.2003 (Annex-12), no charge sheet had ever been issued to the Petitioner. At least one of the allegations made earlier had been of a very serious nature i.e. touching modesty of a lady Judicial Officer. It was not a allegation warranting minor punishment where in issuance of a show cause and consideration of reply of the delinquent employee by the disciplinary authority could be enough to conclude the inquiry. Thus, in such a fact situation, at the most, it can be held that earlier a preliminary enquiry was conducted mainly on two allegations.

9. The Constitution Bench of Supreme Court in *Amalendu Ghosh Vs. District Traffic Superintendent North Eastern Railway, Katihar*, held that a preliminary enquiry held in respect of a particular instance is for the purpose of finding a particular fact and prima facie, to know as to who may be the person responsible for negligence/misconduct alleged. However, on the basis of findings of facts recorded in the preliminary enquiry, no order of punishment can be passed. Rather, if in view of result of the preliminary enquiry the competent authority is of the opinion that it requires initiation of disciplinary proceedings against delinquent (s), a regular enquiry may be held under the rules applicable. Nonetheless, a preliminary enquiry cannot be the basis for imposing any punishment upon delinquent(s) for misconduct.

10. In *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, , again a Constitution Bench of Supreme Court held as under:

...a preliminary enquiry is usually held to determine whether a prima facie case

for a formal departmental enquiry is made out, and it is very necessary that the two (preliminary enquiry & regular enquiry) should not be confused. Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a ... government servant.... In short, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held *ex parte*, for it is merely for the satisfaction of the government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that the protection implies as already indicated above. There must, therefore, be no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article, nor prior to that.

11. In *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, , Supreme Court observed:

...even before a formal departmental enquiry is launched, a preliminary enquiry is usually held to find out against a government servant. This preliminary enquiry is directed to the collection of facts in regard to the work and conduct of a government servant in which he may not be associated, so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry and such a preliminary enquiry may even be held *ex parte*.

12. In *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, , Supreme Court has held that a preliminary enquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry "is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or not, remains of no consequence.

13. The resolution of the Vigilance Committee which was ultimately accepted by the Full Court and communicated to the Petitioner vide letter dated 27TH/28TH August, 2002, reads as under:

...Shri Gantayat is instructed to keep cordial relations with his superiors and should not exhibit defiance to the superiors. Further Shri Gantayat be warned to mend his ways....

14. Admittedly, there is nothing in this order dealing with outraging modesty of the lady Judicial Officer or regarding nonpayment of the cable charges to the cable operator. It only dealt with for having cordial relations and not to exhibit defiance to the superior officials. Admittedly, the complainant lady Judicial Officer was not senior superior to the Petitioner. More so, he has merely been warned to mend his ways. Undoubtedly, warning is not a punishment under the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962. Thus by no stretch of imagination, it can be held that any inquiry had earlier been conducted and concluded against the Petitioner on any of the charges levelled in the impugned charge-sheet. Thus, question of quashing the charge-sheet does not arise.

15. The issue of quashing of charge-sheet is no more res-integra. The Supreme Court in *Union of India and Anr. v. Ashok Kacker* 1995 Supp (1) SCC 180 while dealing with a case, where the employee had challenged the charge sheet, clearly held that the Tribunal entertained the application at a premature stage. It was observed as follows:

In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the Respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the Respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the Respondent or which may have been raised by him.

16. In *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, the Supreme Court set-aside the order of the Tribunal by which the departmental enquiry and the charge-sheet were quashed on the ground of delay in initiation of the disciplinary proceedings and it was observed as follows:

Order Dated 12.11.1993 in Nos. Nos. 1702 of 1993 and 2206 of 1993 of the Tamil Nadu Administrative Tribunal, Madras is in question before us. The Respondent while working as Assistant Section Officer, Home, Prohibition and Excise Department had been placed under suspension. Departmental inquiry is in process. We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charge, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at

the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the Counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an Appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.

17. It was, therefore, emphasised by the Hon'ble Supreme Court that even by way of final order the departmental enquiry or the charge-sheet could not have been quashed. Thus, what could not have been done even at the final stage certainly could not have been done by way of any interim measure by the Tribunal.

18. It is settled legal proposition that ordinarily no writ lies against a charge sheet or show cause notice. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. The Writ Petition lies when some right of any party infringed. Therefore, a writ will lie only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. (Vide *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, ; *Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors.* AIR 2000 SC 3603; *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, ; and *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, .

19. In *Union of India (UOI) and Others Vs. Upendra Singh*, ; *Dy. Inspector General of Police Vs. K.S. Swaminathan*, ; *State of Punjab and Ors. v. Ajit Singh* : (1997)11SCC368 ; and *Kunisetty Sastyanarayana (supra)* the Apex Court has consistently held that there" is no scope of judicial review and interference with the charge-sheet and it cannot be set aside unless it is found that the authority issued the charge-sheet has no competence. The Court does not have the power to examine the correctness of the charges at this stage. The scope of judicial review is only to examine to the extent as to whether statement of facts and materials supplied to the delinquent discloses the misconduct alleged. Therefore, it is not permissible for the Court to enter into the merit of charges at such a stage..

20. Thus in view of the above, it is not desirable for this Court to interfere with the charge sheet or Disciplinary Proceedings and the same cannot be quashed.

21. So far as the issue raised by Mr. Das that the Petitioner stood promoted vide Order Dated 26.8.2002, and therefore, the proceedings could not be initiated

against him is without any substance for the reason that promotion even during the pendency of the Disciplinary Proceeding is not a bar and in exceptional circumstances, case for promotion can be considered under the sealed cover procedure. In the present case, promotion had been given on 26.8.2002, prior to the commencement of the Disciplinary Proceedings on 7.2.2003 (Annex-12). Therefore, the submission made are not worth consideration.

22. In view of the above, we do not find any force in the submission made by Mr. Das. The petition is misconceived and accordingly dismissed.

The interim Order Dated 24.1.2006 stands vacated.

I. Mahanty, J.

I agree.