

(2000) 04 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 3807 of 1998

Union of India and (UOI) Ors.

APPELLANT

Vs

Ratneswar Karmakar

RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 23
Central Civil Services (Conduct) Rules, 1964 — Rule 11, 15
Constitution of India, 1950 — Article 14, 226, 227

Citation : (2000) 2 GLT 610

Hon'ble Judges : Brijesh Kumar, C.J; B. Biswas, J

Bench : Division Bench

Advocate : K.N. Choudhury, for the Appellant; G.K. Bhattacharyya, B. Chakraborty and K. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The application under Article 226 / 227 of the Constitution has been filed by the Union of India challenging the legality and validity of the judgment and Order dated 8.5.1998 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 228/96.

2. We have heard Mr. K.N. Choudhury, learned senior counsel for the Petitioners and also Mr. G.K. Bhattacharyya, learned senior counsel assisted by Mr. B. Chakraborty and Mr. K. Pathak, learned Counsel for the Respondent.

3. The Respondent, an Income Tax Officer in the office of the Deputy Commissioner of Income Tax, Guwahati was served with an order of dismissal on the last date of his service career. His statutory appeal preferred against the order of dismissal was also rejected. Aggrieved thereby, the Respondents approached the Central Administrative Tribunal, Guwahati Bench, for necessary direction for quashing both the orders of dismissal and rejection of appeal passed on 30.12.1993 and 28.6.1996 respectively.

4. Mr. Choudhury, learned senior counsel assailed the judgment of the Tribunal mainly on the ground that the disciplinary proceeding initiated at the instance of the Central Bureau of Investigation against the Respondent for possession of assets disproportionate to his known source of income to the tune of Rs. 78,901/- came to its logical end after due compliance of the relevant provisions of the Central Civil Services (Conduct) Rules, 1965 and the finding of the Enquiry Officer that the charges framed against the Respondent have been proved ought not to have been distributed by the learned Tribunal. In his argument, Shri Choudhury submitted that the Tribunal has exceeded its jurisdiction in evaluating the evidence on record as an appellate authority in a domestic proceeding without adhering to the settled principles that while reviewing an order passed in a disciplinary proceeding, the Court should restrict its role to the examination of the decision making process only.

5. Shri G.K. Bhattacharyya, learned Counsel for the Respondent, however, submitted that the disciplinary authority was in a haste, with a predetermined mind concluded the proceeding in total disregard to the Respondent's prayer for giving him an opportunity to cross-examine the two important witnesses and to inspect two vital documents, served the order of dismissal on the last date of his service career.

6. The factual background as is available from the pleadings would show that the Respondent joined the services of the Petitioner as an Upper Division Clerk in 1959 and eventually rose to the position of Income Tax Officer in 1980. During his tenure as Income Tax Officer at Tezpur, a case was registered against him by the Central Bureau of Investigation for amassing assets worth Rs. 2,39,000/-. The Central Bureau of Investigation also recommended initiation of disciplinary action against the Respondent. Accordingly, a charge sheet was served on him on 23.10.1990. He was indicted of acquiring assets to the tune of Rs. 78,901/- disproportionate to his known source of income during the period between 1959 to 1987. The Respondent took part in the proceedings which were finally concluded on 1.11.1993. The Enquiry Officer submitted his report on 30th November, 1993 holding that the charge is proved to the extent that the Respondent was having disproportionate assets to the extent of Rs. 48,878.28 paise. The disciplinary authority by the impugned order dated 30.12.1993 disagreeing with the finding of the Enquiry Officer with regard to the extent of disproportionate assets imposed the penalty of dismissal from service as per provision of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The order of the disciplinary authority reads as follows:

15. From the above it is abundantly clear that the charges stand proved. The extent of disproportion is Rs. 78,901.00, which comes to 39% of the income of the Charged Officer.

This clearly reflects on the integrity of the Charged Officer, and in the circumstances the undersigned is, therefore, of the view that Shri Ratneswar Karmakar, Income Tax Officer, in the Income Tax Department, N.E. Region is not

a fit person to be retained in service. The undersigned under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 hereby imposes on the said Shri Ratneswar Karmakar the penalty of dismissal from service, as enunciated in Clause (ix) of Rule 11 of the said Rules.

7. The Respondent preferred a statutory appeal as per provisions of Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 before the President against the order of dismissal. The result of the appeal was communicated to the Respondent by the Assistant Commissioner of Income Tax (Vigilance) conveying that the President was pleased to reject the appeal.

8. On the background of the case as stated above, this Court is required to examine whether non-examination of Shri P.L. Yadavendu, AVO and Shri R.K. Choudhury, no (Vigilance) and the consequent denial of the opportunity to cross-examine them by the Respondents have in any manner occasioned failure of justice. Shri Yadavendu, Assistant Valuation Officer of the Department has assessed the valuation of the building of the Respondent at Sree Nagar, Guwahati. The valuation report tendered in evidence as Exhibit-S-1 shows that the property has been valued at Rs. 3,27,830/-. The Respondent contended before the Inquiry Officer that Shri Yadavendu assessed the building on the basis of the Delhi Plinth Area rate as on 1.10.1976 of the Central Public Works Department and it was unfair to adopt the rate applicable in Delhi in assessing the valuation of the building in Guwahati. The point has been vehemently argued before us by the learned Counsel for the Respondent. Despite that Shri Yadavendu was not called for a witness to enable the Respondent to cross-examine him. It would appear from the enquiry report that Shri Yadavendu did not turn up during the course of enquiry and the case being time-bound had to be closed. On the other hand, the valuation report prepared by Shri I. Sarma, a Government approved valuer at the instance of the Respondent shows that the building in question is worth Rs. 1,82,059.50 only. The Inquiry Officer observed that the valuation report submitted by Shri Yadavendu and Shri I. Sarma stand on equal footing as Shri I. Sarma was also not produced as a defence witness. The Inquiry Officer has relied upon a diary (Exhibit-S 33) maintained by the wife of the Respondent where he found that a total sum of Rs. 2,63,309.20 was spent by the Respondent in the construction of the building. Taking into consideration the entries made in the diary and on speculation of probable expenditure on account of electrical fittings, glasses etc., the report given by Shri Yadavendu in Exhibit-S 33 has been held to be reasonable. The I.O. simultaneously held that the report given by the Government approved valuer is, therefore, undervalued. Eventually, taking into consideration the savings, the Inquiry Officer assessed the value of disproportionate assets at Rs. 48,878/-. The Inquiry Officer also observed that the rate adopted by Shri Yadavendu are the Delhi Plinth Area rate with cost index for the relevant period for Guwahati.

9. It is apparent from above that the Inquiry Officer relied upon the valuation report submitted by Shri Yadavendu without giving an opportunity to the

Respondent to cross-examine him. The report submitted by Shri Yadavendu being crucial in the disciplinary proceeding, all efforts should have been made to procure his attendance. The plea that the case was time-bound as per direction of the Central Administrative Tribunal and, as such, had to be closed cannot be an acceptable ground. It was open to the authorities concerned to move the learned Tribunal for extension of time. The casual observation by the Inquiry Officer that Shri Yadavendu relied upon the Delhi Plinth Area rate with cost index for the relevant period for Guwahati also cannot be accepted in its finality as the question raised by the Respondent relating to the rates applied is significant for the purpose of his defence. That apart, it would be grossly incorrect to equate the report of Sri Yadavendu with that of the Government approved valuer for non-examination of the latter and then to take the report submitted by Shri Yadavendu into consideration. The Inquiry Officer has drawn support to the report from the entries made in a diary maintained by the wife of the respondent. This is not permissible as the diary was not allowed to be inspected by the Respondent .

10. The Respondents also raised grievance before the Inquiry Officer for non-examination of Shri R.K. Choudhury, Income Tax Officer (Vigilance) who had computed the pay and allowances of the Respondent. Respondent's specific defence was that computation of pay and allowances for the pre-check period was made on the basis of average salary. The report submitted by the Inquiry Officer as well as the order passed thereon by the disciplinary authority would show that there have been some aberrations. According to them, the pay and allowances for such period have been taken into account on the basis of average salary being drawn by the officer in the proximate period for which particulars were available. On this point there is a difference between the Inquiry Officer and the disciplinary authority as well. The benefit on this count given by the Inquiry Officer to the extent of Rs. 25,000/- in computing the pay and allowances has been held to be unwarranted. The fact remains that the disciplinary authority adjudged the value of the assets disproportionate to his known source of income at Rs. 78,901/- in variance with the value of the said assets assessed at Rs. 48,878.28 by the Inquiry Officer. There has been, therefore, a genuine dispute with regard to the total income of the Respondent which touches the very root of the controversy. The Respondent's grievance in this regard would have been mitigated if Shri Choudhury was produced as a witness for the Department. This omission on the part of the Department for whatever reason it may be cannot be ignored. It is obvious from the above, that the Respondent did not get proper opportunity in the departmental proceeding for non-examination of Shri Choudhury, ITO (Vigilance).

11. Besides, grievance have been raised for denial of opportunity to the Respondent to inspect the diary maintained by his wife. According to the learned Counsel, the diary was not maintained by the Respondent. There are various entries in the said diary maintained by the Respondent's wife which do not relate to the construction of the house. Despite repeated requests, the authority did not

allow the Respondent to inspect the said diary. This diary relied upon by the Inquiry Officer for the purpose of evaluating the valuation of the house and for determining the extent of disproportionate assets ought not to have been made withheld.

12. The disciplinary proceeding was initiated at the instance of the Central Bureau of Investigation on registration of a criminal case against the Respondent. There is no dispute to the fact that the Central Bureau of Investigation has submitted the final report which otherwise leads to a presumption of innocence of the Respondent. The Respondent insisted for permission to inspect the report, but the authorities did not allow him to do so. It cannot be disputed that this piece of document was very essential for the purpose of proper adjudication of the matter. No reason has been made available for with-holding the said document by the authorities. In our considered view, the failure on the part of the authorities to allow access to the said document has prejudiced his defence in the departmental proceeding.

13. The learned Counsel for the Respondent also pointed out mat the orders passed in the appeal and communicated to the Respondent do not show mat it was the statutory appellate authority, namely the President, who had disposed of the appeal. This point was also urged before the learned Tribunal and the learned Tribunal expressed the view that no material was produced before them to show that the statutory appellate authority had even approved the rejection of the appeal. The learned Counsel for the Petitioner also did not offer any satisfactory explanation to the above view of the Tribunal. When President is the appellate authority as per provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, it was, therefore, necessary on the part of the Petitioner to dispel the doubt expressed by the learned Tribunal.

14. A brief review of the lapses discussed hereinabove would show that non-examination of two important witnesses, denial of the opportunity for inspection of the diary and the Central Bureau of Investigation's report has been unfair on the part of the Inquiry Officer. The argument that the proceedings had to be concluded within the time frame given by the Tribunal is of no consequence as the Inquiry Officer as well as the disciplinary authority are expected to discharge their statutory duty in a just, proper and fair manner. Had the opportunities as highlighted above been afforded, it might have had the effect of reversal of the order of dismissal. The right to impose a penalty carries with it the duty to act in a fair manner. The disciplinary proceeding was initiated in the year 1990 and the order of dismissal was passed on 30.12.1993, the last day of the Respondent in service. The disciplinary authority took three years to complete the enquiry and there was delay of about Anr. three years for the appellate authority to dispose of the appeal. The manner in which the proceedings have been concluded indicate that the sense of urgency developed at a belated stage only with a view to impose the penalty before the Respondent goes on superannuation. The principles of natural justice are part of Article-14 and have application to

departmental proceedings. The cardinal principle of natural justice is that the decision maker should afford a party to a dispute an opportunity to present his case and that he must be given a fair opportunity to meet the case before an adverse decision is taken. It is needless to reiterate that the purpose of the Rules of natural justice is to prevent miscarriage of justice and when there is violation of such principle in the form of denial of adequate and reasonable opportunity to a party to present his case, the order passed cannot be supported. The irregularities in the disciplinary proceeding on various counts as discussed above, if considered on the touch-stone of prejudice would invariably, in the given case, would lead to the conclusion that the decision making process in the proceeding has been glaringly arbitrary.

15. In the above circumstances, we are of the opinion that the impugned orders of dismissal and rejection of appeal cannot be sustained. The judgment of the learned Tribunal in setting aside the said orders calls for no interference.

16. In the result, the appeal is dismissed