
(2018) 02 GAU CK 0042
In the Gauhati High Court
Case No : 274 of 2017

UNION OF INDIA & ORS

APPELLANT

Vs

MD NAZIMUDDIN ANSARI & ANR

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

[Central Civil Services \(Classification, Control and Appeal\) Rules, 1965](#), [Rule 14](#), [Rule 16](#), [Rule 15\(2\)](#), [Rule 15\(3\)](#)

Citation : (2018) 02 GAU CK 0042

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : S P CHOUDHURY, K GOGOI, SC Keyal, IH Saikia, K Kalita

Judgement

1. This intra court appeal is directed against the order dated 27.8.2015 passed by the learned Single Judge of this Court whereby he has allowed

WP(C) No.304/2010 of Respondent No.1 - Mohd. Nasimuddin Ansari and quashed the minor penalty of recovery of loss from him.

2. Facts in short are these. During the relevant time, Respondent No.1 was serving as Manager, Inventory Group with the appellants. He was

Stock Holder of Shed No. 12, Eastern Stores Division (ESD), General Reserve Engineer Force (GREF), Tezpur. And on 20.09.2004, he

reported loss of 299 plungers and barrels of Cummins Engine of Fuel Injection Pump (D50 Bull Dozer). On this complaint, a special board of

officers was convened by the Commanding Officer to carry out physical verification of the stock in Shed No.12. After physical verification, 13

items of worth Rs.14,04,343/- were found missing. Thereafter, on 25.9.2004, Respondent No.1 handed over the charge of Shed No.12 to one

another officer, who later reported some more deficiencies. In the result, physical verification of stock was again made whereafter the value of missing items was quantified at Rs.18,28,081.56.

3. The discovery of missing items in large quantity led to convening of court of inquiry, which determined and quantified the loss of worth

Rs.19,83,468.49. The court of inquiry also held that the loss was on account of failure in the performance of duties by 8 officers including

Respondent No.1.

4. The findings of Court of Inquiry was placed before Appellant No.2, the Director General, Border Roads, who issued certain directions on

02.11.2007. One direction was that Respondent No.1 be called upon to pay Rs.49,587/- i.e. 2.5 % of the total loss towards making good part of

the loss and reasons be asked for from him in the event of his unwillingness to pay the amount. Another direction of Appellant No.2 was that

suitable disciplinary proceedings be initiated against Respondent No.1 and two other officers under Rule 16 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965 (in short "1965 Rules").

5. Respondent No.1 was, therefore, subjected to disciplinary proceedings, pursuant to which, he was served with a statement of imputation of

misconduct or misbehaviour dated 8.5.2008 against which he made his representation dated 9.6.2008. The disciplinary authority however did not

agree with the explanation of Respondent No.1 and concluded that the charge framed against Respondent No.1 stood conclusively proved. And

on this finding, the disciplinary authority vide order dated 8.12.2009 imposed a minor penalty of recovery of 20% of loss amount of

Rs.19,83,468.49 from the salary of Respondent No.1 in 100 equal monthly instalments effective from December, 2009. Aggrieved, Respondent

No.1 filed WP(C) No.304/2010 which the learned Single Judge has allowed by the impugned order and quashed the order of penalty. The

learned Single Judge has held that procedure prescribed under Rule 15(3) read with Rule 16 of 1965 Rules was not followed by the disciplinary

authority before imposing the penalty. The learned Single Judge has also found the second physical stock verification of Shed No.12 in the month

of November, 2004 questionable because before that verification, the respondent had already handed over its charge on 25.9.2004 to another

officer. Dissatisfied with the order of the learned Single Judge, the appellants have filed the present appeal.

6. It is argued on behalf of appellants that the learned Single Judge completely misread and misinterpreted the requirements of Rule 15(3) read with

16 of 1965 Rules in holding that procedure prescribed therein was not followed. On the other hand, the respondents vehemently defended the

impugned order passed by the learned Single Judge.

7. Rule 11 of 1965 Rules enumerates the penalties that may be imposed on a Government servant for good and sufficient reasons. Minor penalties

are mentioned from Clause (i) to (iv). Recovery from pay of the whole or part of any pecuniary loss caused by the Government servant to the

Government on account of negligence or breach of orders is a minor penalty under Clause (iii).

8. It is not in dispute that from the very beginning, the appellants decided to proceed against the respondent under Rule 16 of 1965 Rules to

impose minor penalties in the event of charge being proved. And Rule 16 deals with the procedure for imposing minor penalties. It reads as under:-

16. Procedure for imposing minor penalties-

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in

Clause (i) to (iv) of Rule 11 shall be made except after -

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or

misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may

wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is

of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held

under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (c) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include -

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advise of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.

9. A bare reading of the above quoted sub-rule 1 of Rule 16 makes it clear that Rule 16 is subject to the provisions of sub-rule (3) of Rule 15.

Rule 15 provides for the procedure and action to be taken on the inquiry report prepared following the procedure provided under Rule 14 for

imposing major penalties. Except when under sub-rule (3), the Disciplinary Authority after having regard to the finding of the inquiry report decides

to impose minor penalties on the Government servant instead of major penalties. The object is obvious to save the Disciplinary Authority from

initiating fresh proceedings as per procedure prescribed under Rule 16 for imposing minor penalties. This is essentially because all the necessary

requirements provided under Rule 16 for imposing minor penalties are already met at a stage when the Disciplinary Authority under sub-rule (3) of

Rule 15 decides to impose minor penalties instead of major penalties. Also as per

proviso to sub-rule (3) of Rule 15, in every case where it is necessary to consult the UPSC the record of inquiry shall be forwarded by the Disciplinary Authority to the UPSC for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant. Apparently, but for sub-rule (3) of Rule 15, Rule 16 is not subject to Rule 15.

10. As seen above, as per Rule 16(1) of 1965 Rules, a Government servant is required to be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on the basis of which the action is proposed and the Government servant must be given a reasonable opportunity of making representation against the proposal. If the Disciplinary Authority is of the opinion that an inquiry is required to be held in the manner laid down for imposition of major penalties, it shall hold an inquiry. The Disciplinary Authority is also required to take into consideration the representation, if any, submitted by the Government servant and also the record of such inquiry, if any, held. The Disciplinary Authority is then required to record a finding on each imputations of misconduct or misbehaviour and consult the UPSC, where such consultation is necessary.

11. We shall now examine whether the procedure prescribed in Rule 16 has been followed for imposing minor penalty on Respondent No.1. It is not disputed by Respondent No.1 that he was informed in writing of the proposal to take action against him and also of the imputations of misconduct or misbehaviour on which action was proposed to be taken. It is also not disputed by him that he was given an opportunity of making a representation against the proposal and that he did make the representation. The original record produced by the learned counsel for the appellants reveals that he had received the memorandum of imputations on 31.5.2008 in respect to which he submitted his reply dated 9.6.2008. He, in his reply, did not question the loss of worth Rs.19,83,468.49 and only stated that he was not responsible for the same. The record also reveals that since the respondent No.1 did not request for holding of an inquiry or inspection of any document a decision was taken not to hold any inquiry. Thereafter, the Disciplinary Authority vide order dated 8.12.2009 recorded a finding on each imputations of misconduct or misbehaviour and held

the same to be conclusively proved. The Disciplinary Authority also held that pecuniary loss is caused to the Government due to direct negligence

of Respondent No.1 and hence element of loss being directly attributed to him stands proved. The Disciplinary Authority in its wisdom even

thought it proper to consult UPSC in the matter and the UPSC also opined that imputations of misconduct or misbehaviour stood proved against

Respondent No.1 and ends of justice would be met if penalty of recovery of 20% of loss amount of Rs. 19,83,468.49 from him is imposed. The

Disciplinary Authority, therefore, in all fairness, imposed the same penalty on Respondent No.1.

12. Nothing has been shown by Respondent No.1 to suggest that action taken against him was on account of any malafide or any prejudice was

caused to him in the procedure adopted by the Disciplinary Authority for imposing minor penalty. In fact, we find the action of Disciplinary

Authority taken against Respondent No.1 to be well founded and unassailable. It was however submitted on behalf of Respondent No.1 that since

the advice of UPSC was not communicated to him before the final order of punishment was passed, he was unable to make an effective

representation as regards the punishment imposed. In support of this submission, reference was made to two decisions of the Supreme Court viz.

S.N Narula vs. Union of India, (2011) 4 SCC 591 and Union of India vs. R.P.Singh, (2014) 7 SCC 340. Both these decisions deal with a

situation where the Government servants were imposed major penalties on the advice of Union Public Service Commission. This is not the position

in the case at hand as Respondent No.1 has been only imposed with a minor penalty. The decisions, therefore, do not help Respondent No.1.

13. We are unable to agree with findings of the learned Single Judge that no satisfaction was recorded before dispensing with the inquiry and that

UPSC must be consulted by the Disciplinary Authority while recording finding on each and every imputations of misconduct or misbehaviour. As

mentioned above, a conscious decision was taken to dispense with the inquiry and Rule 16 nowhere says that prior consultation of UPSC by the

Disciplinary Authority is must before recording finding on each imputations of misconduct or misbehaviour. Instead, Rule 16 says that consultation

with the UPSC may be made when such consultation is considered to be necessary. Consultation is thus optional and is left to the discretion of the

Disciplinary Authority. We also do not agree with the learned Single Judge that action against Respondent No.1 was in violation of the principles of natural justice because he was not supplied with a copy of the court of inquiry report. We say so because, firstly, Respondent No.1, in his reply, against the imputations of misconduct or misbehaviour did not ask for the inquiry report and secondly, Rule 16 does not mandate such a requirement. Copy of the inquiry report is required to be supplied to the Government servant under Rule 15(2) when the inquiry report is prepared as per procedure provided under Rule 14 for imposing major penalties. Lastly, the finding of the learned Single Judge questioning the loss found in second physical verification is also without any basis. The second physical verification of stock was necessary because huge quantity of stock in the Shed was found to have been misappropriated. The final loss of worth Rs. 19,83,468.49 was quantified in a court of inquiry and Respondent No.1 in his reply to the imputations of misconduct also did not deny the loss quantified in the inquiry report.

14. For these reasons, we set aside the impugned order passed by the learned Single Judge and allow the appeal.