

(2010) 08 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No. 6743 of 2010 (Arising out of SLP (C) No. 16683 of 2009)

Union of India (UOI) and Others

APPELLANT

Vs

P.C. Ramakrishnayya

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 14(12), 14(14), 14(2), 14(25)
Public Servants (Inquiries) Act, 1850 — Section 3
Railway Servants (Discipline and Appeal) Rules, 1968 —

Citation : (2011) 1 AWC 969 Supp : (2010) 9 JT 29 : (2010) 8 SCC 644 : (2010) 10 SCR 414 : (2011) 1 SLJ 158 : (2010) 6 SLR 713

Hon'ble Judges : R. M. Lodha, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Leave granted.

2. This appeal raises the question regarding the validity of a departmental inquiry, under Rule 14 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 held and conducted by an Inquiry Officer who was not a serving officer but whose name was taken from a panel of retired officers prepared for the purpose of holding departmental inquiries.

3. The respondent was an employee of the Geological Survey of India (hereafter 'GSI') and at the material time he was holding a Group 'B' post. He was due to superannuate from service on November 30, 2000. On November 24, 2000, he was served with a show cause notice dated November 23, 2000 in connection with various charges and asking him to give his explanation within a week. The respondent gave his reply to the show cause notice but it was not found satisfactory and a charge-sheet was issued against him. One Shri S.M.M.V. Krishna Rao, was appointed as the Inquiry Officer who was selected from a panel

of retired officers for appointment as Inquiry Officers approved by the Central Vigilance Commission. The respondent took serious objection to the appointment of Shri Krishna Rao as Inquiry Officer, who was not a serving officer of the GSI but a retired Chief General Manager of IDBI. The respondent did not take part in the departmental inquiry and strongly challenged the competence and authority of Shri Krishna Rao to hold and conduct the departmental inquiry against him. All through the disciplinary proceedings, the respondent stubbornly stuck to his stand and in response to notices issued by the Inquiry Officer in regard to the schedule of the inquiry his response would be that he had no authority to hold the inquiry. As a result of his non-participation an ex parte inquiry was held in which the charges were found established against him. The disciplinary authority then sent him a notice along with a copy of the inquiry report, calling upon him to make his representation, if any, on the inquiry report within 15 days. In response to the notice, the respondent once again reiterated that the inquiry held against him was illegal and invalid. Eventually, by order dated July 7, 2003, he was given the punishment of cut in pension by 10% for 2 years.

4. The respondent challenged the punishment order before the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in OA No. 531 of 2004. The challenge to the punishment order was mainly on the ground that the punishment order was passed on the basis of an invalid departmental inquiry inasmuch as the Inquiry Officer had no competence or authority to conduct the inquiry. The Tribunal by its judgment dated December 17, 2007, upheld the respondent's contention, set aside the punishment order and remanded the matter ordering as follows:

25. In view of the above, we quash and set aside the order of the disciplinary authority dated 07.07.2003 and direct the authority to consider the objections raised by the applicant as mentioned above including the service of notice and punishment imposed and pass appropriate order thin (sic within) a period of two months from the date of communication of the order. The disciplinary authority, while considering the same shall keep in mind the verdict of the Apex court as pointed out by the applicant.

5. The appellants took the matter to the High Court in Writ petition No. 18584 of 2008 and the High Court by its order dated September 19, 2008 affirmed the judgment and order passed by the Tribunal and dismissed the appellants' writ petition.

6. The appellants have now brought this matter in appeal before this Court.

7. Before adverting to the merits of the case, we must note a rather curious feature in the judgment and order passed by the Tribunal and the High Court. While upholding the respondent's contention that a serving officer alone could be appointed as Inquiry Officer for holding a departmental inquiry under Rule 14(2) of the CCS (CCA) Rules, 1965 the Tribunal has referred to and relied upon two decisions of this Court. One, in the case of Ravi Mack (sic Ravi Malik) v. National

Film Development Corporation Ltd. and Ors. 2008 SCC (L&S) 882 which is referred to in paragraph 10 of the Tribunal judgment (at page 167 of the Paper Book). No exception can be taken to this reference. But in the concluding portion of paragraph 8 of its judgment (at page 165 of the Paper Book) the Tribunal also quotes the following extract purportedly from a decision of this Court in National High School, Madras Vs. Education Tribunal and another, .

The principle in this regard is that if the rules specifically provide that a person not belonging to the service concerned or even outsider can be appointed as an Inquiring Authority, no difficulty shall arise. But when the Rules do not provide for it, an outsider may be appointed as an Inquiring Authority only after the consent of the employee concerned is obtained and relaxation of the rule is obtained at appropriate level.

8. The same extract is quoted in the High Court order with the following observations (at pages 6 & 7 of the Paper Book):

The appointment of Inquiry Officer who is an outsider is not permissible as per the law laid down by the Hon'ble Supreme Court in National High School, Madras v. Education Tribunal which reads as follows:

The principle in this regard is that if the rules specifically provide that a person not belonging to the service concerned or even outsider can be appointed as an Inquiring Authority, no difficulty shall arise. But when the Rules do not provide for it, an outsider may be appointed as an Inquiring Authority only after the consent of the employee concerned is obtained and relaxation of the rule is obtained at appropriate level.

9. The above quotation is not from the decision in National High School, Madras. The decision in that case is quite brief and of no more than 6 paragraphs. In that case the teacher of a recognized private school was proceeded against on certain charges. In reply to the show cause notice by him, it was pleaded that the inquiry into the matter should be made by some retired educationists in the local area and not by the school committee. The school committee acceded to his request and a committee (other than the school committee) was constituted for holding the inquiry. The committee found him guilty and submitted a report to the school committee on the basis of which he was dismissed from service. He challenged his dismissal order before the Joint Director who allowed his application on the ground that the inquiry could only be conducted by the school committee. The view taken by the Joint Director was upheld by the Education Tribunal. A learned single judge of the High Court took the contrary view and held that the school committee must take the decision on the misconduct but the inquiry could be entrusted to others. On further appeal, the division bench of the High Court took the same view as the Joint Director; it observed that the management had no power to constitute any other committee to inquire into the misconduct of teachers and the school committee should itself conduct the inquiry. When the matter reached this Court, it took the only logical view and

pointed out that in the facts of the case the whole debate was quite academic inasmuch as the school committee entrusted the inquiry to another committee constituted for that purpose on the express request of the concerned teacher. It was, therefore, not open to him to question the inquiry held by that committee, that was constituted as per his own request. In paragraph 4 of the judgment, this Court observed and held as follows:

4. ...In our opinion, it is unnecessary to decide this issue since the appeal could be conveniently disposed of on another ground. It is not in dispute that the respondent himself demanded that the enquiry should be held by educationists other than the school committee. That request seems to have been necessitated since he has made accusations against the Headmaster of the School. Accordingly a committee of outsiders was appointed to hold the enquiry. The respondent participated in the enquiry and did not at any time raise objection as to the jurisdiction of the committee. He was, therefore, estopped from raising the objection as to the jurisdiction of the school committee....

10. As stated above, in National High School, Madras there is no passage as attributed to it in the judgment and order passed by the Tribunal and the High Court. Now, had this mistake occurred only in the judgment of the Tribunal, one could have ignored it as an error of citation. But its repetition in the order of the High Court points to only one thing, that the quoted passage was lifted from somewhere without a proper verification from an approved law report. We express our regret at such cavalier attitude in making judicial pronouncements.

11. Coming back to the merits of the case, we must point out that the issue is no longer *res integra*. The question of validity of appointment of a retired officer from a panel prepared for appointment of Inquiry Officers for holding departmental inquiry was examined in great detail in a recent decision of this Court in *Union of India (UOI) and Others Vs. Alok Kumar*, . It may be clarified that the decision in *Alok Kumar* was rendered in a case under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the present case arises from Rule 14(2) of the CCS (CCA) Rules. But it needs to be pointed out that the provisions of Rule 9(2) Railway Servants (Discipline and Appeal) Rules, 1968 dealing with the appointment of inquiry officers are in *pari materia* with Rule 14(2) of the CCS (CCA) Rules. Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is as follows:

9. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Sub-rule (1) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or

under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof.

(3) Where a Board of Inquiry is appointed under Sub-rule (2) it shall consist of not less than two members, each of whom shall be higher in rank than the railway servant against whom the inquiry is being held and none of whom shall be subordinate to the other member or members, as the case may be, of such Board.

Explanation.- Where the disciplinary authority itself holds the inquiry, any reference in Sub-rule (12) and in Sub-rule (14) to Sub-rule (25), to the inquiring authority shall be construed as a reference to the disciplinary authority.

Rule 14(2) of the CCS Rules is reproduced herein below:

14. Procedure for imposing major penalties.-

(1) xxx

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule, or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

12. It is, thus, to be seen that the only difference between Rule 14(2) of CCS (CCA) Rules and Rule 9(3) of Railway Servants (Discipline and Appeal) Rules is that in the former the words "a Board of Inquiry or" are not there. But that is of no significance for the issue in hand.

13. In Alok Kumar this Court considered in great detail, the meaning of the word "authority" occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the Disciplinary Authority (see paragraphs 26-62) to hold the inquiry. It may also be noted that in Alok Kumar, this Court also considered the decision in Ravi Malik v. National Film Development Corporation Ltd. (2004) 13 SCC 427 and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. In paragraph 45 of the judgment, the Court observed as follows:

45. Reliance placed by the respondents upon the judgment of this Court in Ravi Malik is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression "public servant" appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that "public servant" should be understood in its common parlance and a retired officer would not fall within the meaning of "public servant", as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which

we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. "other authority" and "person/ persons". In other words, the absence of the words "public servant" of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance.

14. In light of the discussions made above, we are satisfied that the judgments of the Tribunal and the High Court are contrary to the correct legal position and therefore cannot be sustained. We, therefore, set aside the judgment of the Tribunal and the High Court and dismiss the respondent's OA No. 531 of 2004 filed before the Tribunal. The appeal is allowed.

15. There will be no order as to costs.