
(2010) 05 OHC CK 0008
In the Orissa High Court
Case No : Writ Petition (C) No. 10381 of 2006

Union of India (UOI)

APPELLANT

Vs

Hadibandhu Behera

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9

Citation : (2010) 1 ILR (Ori) 105

Hon'ble Judges : L. Mohapatra, J;B.P. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Ray, J.—The Union of India has filed this writ application assailing the order passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 22 of 2004. This Original Application was disposed of by the learned Tribunal by order dated 16.11.2005 by which the learned Tribunal has quashed the order of punishment dated 31.10.2003 passed by the Under Secretary to the Government of India, Ministry of Communications & Information Technology, Department of Telecommunications and the consequential report of the Inquiring Officer and the charges.

2. The fact giving rise to filing of O.A. No. 22 of 2004 before the Tribunal was that the opposite party retired from service as Telecom District Engineer, (in short "T.D.E."), Rourkela in the month of July, 1991. After retirement, a charge sheet dated 31.8.1994 was issued under Rule 9 of CCS (Pension) Rules, 1972. The gist of the allegation in the charge sheet was that while the opposite party was functioning as T.D.E. during the period 1990-91, he had passed orders for sale of unserviceable store materials to one contractor, Shri M. Koteswar Rao without inviting sealed tenders or holding public auction which was in violation of the order of the General Manager and thereby the loss sustained by the Department was estimated at Rs. 8.17 lakhs. On conclusion of the enquiry, the Disciplinary Authority by order under Annexure-1 imposed punishment on the

opposite party by which the pension of the Petitioner was reduced to minimum level of pension i.e. Rs. 1275/- per month and also the gratuity amount of Rs. 72,188/- was forfeited. This punishment was imposed by the Disciplinary Authority on the basis of the advice tendered by the Union Public Service Commission and the Central Vigilance Commission. This order under Annexure-1 was assailed before the learned Tribunal in the aforesaid O.A.

3. The learned Tribunal after hearing the parties and on consideration of the relevant materials on record and also on perusal of the relevant files has quashed the order of punishment imposed on the opposite party. The Tribunal while quashing the order of punishment has also quashed the report of the Inquiring Officer as well as the charge. Thus the Tribunal by order dated 16.11.2005 has allowed the O.A. filed by the opposite party. The present writ petition has been filed by the Union of India challenging the said order.

4. On being noticed, the opposite party has filed a return. In the said return of the opposite party, it has been stated that the punishment under Annexure-1 was imposed on the intervention of a 3rd party without supplying copy thereof and it was also stated that on the advice of the U.P.S.C. and the Central Vigilance Commission, the impugned punishment under Annexure-1 was imposed.

5. We have heard learned Central Government Counsel appearing for the Union of India and also the learned Counsel appearing for the opposite party and we have also carefully perused the impugned order passed by the learned Central Administrative Tribunal.

6. On perusal of the impugned order passed by the learned Tribunal, it appears that the departmental proceeding was initiated against the opposite party after his retirement from service under Rule 9 of CCS (Pension) Rules, 1972. The allegation contained in the charge has been noticed by us in the preceding paragraph referring to the findings of the enquiry report. Learned Tribunal has held that no specific finding has been arrived at by the Inquiring Officer as to whether the Department had sustained financial loss of Rs. 8.17 lakhs and the Disciplinary Authority agreed with the said findings of the Inquiring Officer. It appears from the impugned order of Tribunal that the Central Vigilance Commission to which the file was submitted found that the charges were fully proved and it has further held that the lapses committed were serious in nature attaching doubtful integrity of the opposite party and that the Central Vigilance Commission had advised to impose penalty of suitable reduction in pension of the opposite party. This advice of the Central Vigilance Commission having accepted by the Disciplinary Authority, the learned Tribunal in the impugned order has held that the opposite party had no dishonest motive, the decision to initiate action under Rule 9 of the Pension Rules was violative of the own policy of the Department. It also further appears from the impugned order that the action of the opposite party regarding disposal of unserviceable store materials was referred to the C.B.I. in R.C. No. 45(A)92-BBS and the C.B.I. after holding a detailed inquiry remitted back the matter with the findings that the charges of

criminal conspiracy, cheating etc. could not be substantiated against the opposite party. But, however, the C.B.I. was of the view that the opposite party has committed grave mis-conduct in the alleged disposal of the unserviceable store materials. Therefore, the Tribunal has held that the Disciplinary Authority was more influenced by the findings of the C.B.I. to initiate the disciplinary proceeding though no reason was available in the report of the C.B.I. in support of such recommendations. Accordingly, the learned Tribunal has held that the Disciplinary Authority has failed to apply its mind. The learned Tribunal having analyzed all the materials available in the relevant files came to the conclusion that the C.B.I. had influenced the decision for initiating a major action against the opposite party though such recommendation of the C.B.I. The Tribunal has also found that similar such transactions were undertaken in other districts, but no action was taken in respect of such transaction by the responsible officers. But so far as the opposite party is concerned, he was singled out for the action under Rule 9 of the Pension Rules.

7. Learned Tribunal having made a detailed analysis of the materials available on record came to the conclusion that the alleged mis-conduct does not attract the rigor of Rule 9 of the Pension Rules. Therefore, keeping in view, the law enunciated by the Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, , learned Tribunal has reached the conclusion that as the punishment has been imposed on the intervention of 3rd party, the same is unsustainable and so also the proceeding initiated.

8. We are in respectful agreement with the conclusion reached in the impugned order of the Tribunal and we concur with the same, inasmuch as we also do not find any infirmity therein.

Accordingly, the writ petition fails and is dismissed.