

(2002) 03 KL CK 0057
In the High Court Of Kerala
Case No : O.P. No. 6333 of 2002

Venkitachalam, C.R.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 16, 19, 27
Constitution of India, 1950 — Article 310, 311

Citation : (2002) 03 KL CK 0057

Hon'ble Judges : K. Thankappan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : M.R. Rajendran Nair and R. Sreeraj, for the Appellant; P.S. Sreedharan Pillai, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—While the Petitioner was working as Postal Assistant at Kilakkanchery Post Office, disciplinary proceedings were initiated against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules. On completion of the disciplinary proceedings, the Petitioner was dismissed from service by the 4th Respondent--Senior Superintendent of Post Offices Palakkad Division. Against the Order of dismissal the Petitioner filed an appeal before the third Respondent--Director of Postal Services, Northern Region, Calicut. The said appeal was disposed of by the third Respondent as per Ext. P-2 order dated 24th July 2000. In Ext. P-2 Order the third Respondent held that the enquiry conducted against the Petitioner suffered from non-compliance with the provisions of the rules and the principles of natural justice and that the Order of penalty flowing from such an enquiry could not be upheld. Without considering the other contentions raised in the appeal, the third Respondent remitted the case to the disciplinary authority with a direction to hold a de novo enquiry in the case. Against Ext. P-2 Order of the third Respondent, the Petitioner filed a revision petition before the second Respondent--Member (P), Postal Services

Board, Office of the Director General of Posts, Dak Bhavan, New Delhi. The revision petition was dismissed by the second Respondent as per Ext. P-6 Order dated 17th April 2001. Thereupon, the Petitioner filed O.A. No. 40L/2001 before the Central Administrative Tribunal, Ernakulam Bench. However, the said Original Application was dismissed by the Tribunal as per Ext; P-8 Order. Challenging Ext. P-8 Order, dated 8th February 2002 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 401/2001 the Petitioner has filed this Original Petition.

2. Shri R. Sreeraj, learned counsel for the Petitioner contends that even though the Appellate Authority held that the enquiry was not conducted in accordance with the rules and the principles of natural justice, the Appellate Authority ought to have considered the other two aspects also, viz. whether the findings of the Enquiry Officer are supported by evidence and whether the penalty imposed is unduly harsh. The learned counsel points out that as per Rule 27 of the C.C.S. (C.C.A.) rules, the Appellate Authority has to consider: (i) whether the enquiry has been conducted complying with the procedure laid down in the rules and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (ii) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and (iii) whether the penalty or the enhanced penalty awarded is adequate, inadequate or severe. It is contended that since the Appellate Authority considered only the first aspect and did not consider the other two aspects, the Order of the Appellate Authority is illegal and unsustainable. After considering the above contention, the Tribunal has observed in the impugned order that in this case the Appellate Authority considered the question whether the enquiry was held in accordance with the rules and whether the violation of the rules resulted in prejudice to the Applicant. After noting that the Applicant was not given access to certain documents which the Applicant required for his evidence, the Appellate Authority held that the said denial of access resulted in prejudice to the Applicant. Therefore, exercising the powers under Rule 27 of the C.C.S. (C.C.A.) rules, the Appellate Authority remitted the matter back to the Disciplinary Authority for a de novo enquiry from the stage of appointment of the Enquiry Officer. The Tribunal held that the Appellate Authority did the right thing. According to the Tribunal, having found that the enquiry was vitiated for non-observance of natural justice, there was no point in considering the remaining aspects, because, any finding in a vitiated proceedings would not have legal validity. Hence the Tribunal held that the non-consideration of the questions whether the finding of the Appellate Authority was supported by evidence on the record and whether the penalty was adequate, inadequate or severe did not vitiate the order of the Appellate Authority. We agree with the above view of the Tribunal. Since the enquiry itself was vitiated by procedural irregularity and violation of the principles of natural justice, consideration of the other aspects would be only a futile exercise and hence unnecessary. Hence, we uphold the view taken by the Tribunal that non-consideration of the two aspects mentioned

above did not vitiate the Order of the Appellate Authority.

3. The next contention of the learned counsel for the Petitioner is that the Appellate Authority has no power to direct a de novo enquiry. This contention was not raised, before the Tribunal. However, being a question of law we are inclined to consider this contention also. According to the learned counsel, under Rules 27 of the C.C.S. (C.C.A.) Rules, the Appellate Author has power only to confirm enhance, reduce or set aside the penalty or to remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. Rule 27(2) of the C.C.S. (C.C.A.) Rules reads thus:

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

And pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any ether authority with such direction as it may deem fit in the circumstances of these cases:

provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary:

(ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the Appellant has been given a reasonable

opportunity of making a representation against the proposed penalty; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the Appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty.

On a plain reading of the provisions in the above rule shows that the appellate authority has the power to remit the case to the authority which imposed the penalty "with such direction as it may deem fit in the circumstances of the case". The direction that may be issued under Rule 27(2) while remitting the case to the authority which imposed the penalty, can be a direction to conduct a de novo enquiry. In the absence of any restriction or limitation in this regard in the rule, the appellate authority is competent to direct a de novo enquiry. The very purpose of remitting a case to the lower authority is to reconsider the case and to dispose of it afresh. While remitting a case to the disciplinary authority it is necessary to indicate the stage from which the matter should be proceeded afresh. The stage may be different in different cases, depending on the facts and circumstances of each case. In a case where the enquiry conducted as part of the disciplinary proceedings is vitiated for any reason, the fresh proceedings should start from the stage of de novo enquiry. Only then the defect of the earlier enquiry can be rectified. If the appellate authority does not have power to direct de novo enquiry the very purpose of conferring the power to remit the case to the disciplinary authority will be defeated in a case where the order of the disciplinary authority is set aside solely on the ground that the enquiry already conducted was vitiated. Hence, in our view, under Rule 27(2), the appellate authority has power to direct a de novo enquiry. However, a question may arise whether in the circumstances of the case a de novo enquiry is necessary or not. In this case, since the appellate authority found that the enquiry already conducted was vitiated by procedural irregularity and violation of the principles of natural justice, the appellate authority was justified in directing a de novo enquiry.

4. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, a Constitution Bench of the Supreme Court held that where the High Court decreed the suit of the public servant on the ground that the procedure for imposing the penalty was irregular, such a decision could not prevent the state from commencing another enquiry in respect of the same subject matter consistently with the provisions of Articles 310 and 311 of the Constitution. If such a decision cannot prevent the State from commencing another enquiry in respect of the same subject matter, the court is competent to direct such an enquiry. In *Anand Narain Shukla Vs. State of Madhya Pradesh*, the Supreme Court rejected the contention that no second enquiry on the very same charges could be held after the order imposing the penalty of reversion was set aside by the High Court on the ground that the first enquiry was not proper and legal. The Supreme Court observed that the earlier order imposing the penalty was quashed on a technical

ground and that a second enquiry could be held on merits. In *Union of India and Ors. v. M.B. Patnaik and Ors.* AIR 1981 S.C. 858 , the service of the employee was terminated on the basis of an enquiry and the order of termination of service was quashed by the High Court on the ground of a technical error in the enquiry. A fresh enquiry on the same charge was held and an order of reversion was passed. The Supreme Court referred to the decision in *Anand Narain Shukla Vs. State of Madhya Pradesh*, , and agreed with the view taken there that when the earlier order of reversion was quashed on a technical ground, a second enquiry on merits could be held. According to the Supreme Court, where an order passed in appeal vacates the Order of the First Tribunal on purely technical grounds and expressly states that it was being passed without prejudice, which means that it was not an order on merits of the case, such an order does not debar fresh adjudicatory proceedings which may be justified under the law and that when an order is struck down as invalid being in violation of the principles of natural justice, there is no final decision of the case and all that is done is that the inherent defect is removed but the proceedings are not terminated. In *Yashbir Singh v. Union of India and Anr.* (1998) 8 S.C.C. 574, the Supreme Court considered a Case where the appellate authority, on coming to the conclusion that there was a violation of the principles of natural justice, in that, certain documents were not supplied to the delinquent, set aside the dismissal order and directed a fresh enquiry after satisfying the requirements of natural justice. The Supreme Court upheld the Order of the appellate authority and opined that it was a perfectly just and valid Order. The facts in the present case are identical to the facts in *Yashbir Singh v. Union of India and Anr.* (supra) and hence the ratio of the decision in the said case squarely applies to the facts of this case.

5. In the light of the discussion above, we hold that the Appellate Authority was competent to direct a de novo enquiry and that in the circumstances of the case the Appellate Authority was justified in directing a de novo enquiry.

6. Hence, there is no merit in the Original Petition and the petition is dismissed.