

Dharmananda Harijan Vs. State of Orissa

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Court : Orissa

Decided On : Apr-07-1972

Reported in : AIR1972Ori243; 38(1972)CLT498

Judge : G.K. Misra, C.J. and ;K.B. Panda, J.

Acts : Orissa Civil Services (Classification, Control and Appeal) Rules, 1952 - Rules 3(1) and 32

Appeal No. : Original Jur. Case No. 671 of 1969

Appellant : Dharmananda Harijan

Respondent : State of Orissa

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : Sk. Rahenoma and ;B.C. Das, Adv.

Disposition : Application dismissed

Judgement :

Misra, C.J.

1. The petitioner was appointed as a constable on 17-9-1962. He was made permanent after undergoing training in the Police Training College, Angul. By Annexure A dated 9-5-1964 the Superintendent of Police, Kalahandi, framed the

following two charges against the petitioner.

'1. He absented from duty from 12-2-1964 A.M. to 19-2-1964 A.M. without any leave or permission.

2. That he proceeded on four days C.L. with effect from 21-2-1964 P.M. and though he was warned against overstaying he overstayed C. L, by 3 days without leave or permission and returned to duty on 28-2-1964 P. M.'

2. After regular enquiry the Superintendent of Police, Kalahandi, found the petitioner guilty and imposed the following penalty by his order (Annexure B) dated 10-7-1964:

'The period of absence from 12-2-1964 to 18-2-1964 and 26-2-1964 to 28-2-1964 is treated as E. O. L. Since he has already suffered financial loss and mental agony I award him a lenient sentence i.e. a severe censure'.

3. On 4-2-1966 the D. I. G., Southern Range, initiated a proceeding under Rule 853 of the Police Manual to review Annexure B and issue a notice to the petitioner to show cause by 20-2-1966 as to why he would not be dismissed from service. The petitioner did not show cause and the D. I. G. ultimately passed an order of dismissal (Annexure C) on 8-5-1966. The petitioner made a representation against Annexure C to the I. G. of Police the representation was rejected by the I. G. of Police by his order (Annexure D) dated 17-12-1968. The writ application has been filed under Article 226 of the Constitution to quash Annexures C and D by issue of a writ of certiorari.

4. Counter-affidavit has been filed on behalf of the opposite party justifying the order of dismissal.

5. The only question raised by Mr. Rahenoma is that the review order (Annexure C) dated 8-5-1966 dismissing the petitioner was contrary to law as it was passed six months after Annexure B dated 10-7-1964.

6. That Annexure C was passed long after six months of the expiry of Annexure B is not disputed. Reliance is placed by Mr. Rahenoma on R. 32 of the Orissa Civil

Services (Classification, Control and Appeal) Rules. 1962 (hereinafter to be referred to as the 1962 Rules) in support of his contention that no review of orders in disciplinary cases lies after expiry of the period of six months.

7. Rule 32 runs thus:--

'32. Review of Orders in Disciplinary Cases. The authority to which an appeal against an order imposing any of the penalties specified in Rule 13 lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and, after consultation with the Commission, where such consultation is necessary, pass such orders as it deems fit as if the Government servant had preferred an appeal against such order:

Provided that no action under this rule shall be initiated more than six months after the date of the order to be reviewed'.

8. If the power of review is exercised by the appropriate authority under Rule 32, no action under the rule shall be initiated more than six months after the date of the order to be reviewed.

9. If Rule 32 applies to this case, the review order (Annexure C) and the appellate order (Annexure D) are liable to be quashed.

10. The sole question for consideration, therefore, is whether Rule 32 has any application to police service.

11. Rule 3 (1) (c) and (d) of the 1962 Rules runs thus:--

'3. Application-- (11 These rules apply to all Government servants except-

X X X X X (c) persons for whose appointment and other matters covered by these rules special provision is made by or under any law for the time being in force, in regard to the matters covered by such law; and

(d) members of the All-India Services'.

12. It is contended by the learned Advocate-General that disciplinary proceedings against members of the Police Service are governed by the Indian Police Act and the Orissa Police Manual containing rules made by the State Government under the Police Act (Act VI) 1861. If the Police Manual is a self-contained code in respect of disciplinary proceedings relating to the police service. R. 32 of the 1962 Rules shall have no application to the police service.

13. This contention requires careful examination.

14. Chapter XXV of the Police Manual deals with departmental punishments. The Chapter begins with an introduction that rules marked with an asterisk (*) have been sanctioned under Section 7. Act V of 1861. Rule 824 gives the description of departmental punishments. It runs thus:--

'824. Description of departmental punishments -- The following punishments may be inflicted departmentally on a police officer below the rank of Deputy Superintendent:--

(a) Dismissal,

(b) Removal,

(c) Reduction in rank,

(d) Reduction in time-scale,

(e) Withholding of the next increment for a specific offence, with or without corresponding postponement of subsequent increments,

(f) Black mark or marks,

(g) Removal from any office of distinction or special emolument.

(h) Censure.

(i) Warning.

(j) Confinement to quarters for a period not exceeding 15 days.

(k) Punishment drill, and

(1) Extra guard or other duty,

Provided that the punishment mentioned in Clauses (i) to (1) shall not be imposed on any officer of or above the rank of sub-inspector nor the punishment mentioned in (k) on any assistant sub-inspector or havildar.

Punishments mentioned in Clauses (a) to (g) are classed as major and the rest is minor. All major punishments and censure shall be entered in the service book; other minor punishments may be so entered if the officer awarding the punishment so directs.

Note 1-- Superintendents may use the Orderly Room Register in P. M. Form No. 114 when dealing with cases of misconduct and breaches of discipline in which the punishments mentioned in Clauses (L) to (1) (sic) are imposed.

Note 2-- Forfeiture of pay for overstaying leave (Service Code Rule 144) and deductions from pay on account of loss or damage to Government property shall not be treated as punishment.

Note 3-- When applied as a punishment for a specific offence, and not as a means of preventing unmerited promotion the withholding of promotion or the next increment due should be used sparingly and with due regard to the period that must elapse before it will take effect, as its deterrent effect must vary with the length of the period.

Note 4-- For purposes of punishment, an officer, while officiating in a higher rank, shall be treated as belonging to that rank'.

15. Rule 825 enumerates the officers empowered to impose punishments.

16. Rule 828 runs thus:

'828 (a) Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on any police officer (other than an order based on facts which have led to his conviction in a

criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself (See Appendix 49).

(b) In other cases, the punishments mentioned above may be inflicted after a less formal enquiry but every proceeding shall state clearly:-- first, the charges against the defaulter; then his answers to each charge, one by one and lastly, the finding upon each charge of the officer inflicting the punishment. In such cases, the Superintendent need not hold the enquiry himself, nor shall the delinquent have the right to appear before him, but he has the right to appear before the officer deputed to record the evidence and to take his defence; and such officer, who shall not be below the rank of inspector, shall come to a clear finding on each charge and shall submit the record with his recommendations to the Superintendent'.

17. Thus Rule 828 read with Appendix 49 in the Orissa Police Manual, Vol. II lays down the entire procedure for departmental proceeding which corresponds to the procedure under Article 311(2) of the Constitution.

18. Rule 851 prescribes as to against what orders appeal lies and when the order of the appellate authority shall be final. That rule is as follows:

'851 (a) General Rules -- No appeal shall lie against an order imposing any one of the following punishments:---Forfeiture of leave censure or reprimand, confinement to quarters, punishment drill, extraguard or other duty.

(b) Against an order of dismissal, removal, reduction, withholding of promotion of (sic) or periodical increment, suspension with loss of pay, removal from any office of distinction or special emolument or against an order awarding one or more black marks, there shall be one appeal in each case as follows:--

Against an order passed by the Superintendent, to the Deputy Inspector-General.

Against an original order passed by the Deputy Inspector-General, to the Inspector-General.

Against an original order passed by the Inspector-General, to the State Government.

(c) The order of the appellate authority on any such appeal shall be final.

(d) An original order passed with the concurrence of any superior authority shall be considered to be an original order of such superior authority'.

19. Rule 853 confers the power on certain authorities to call for records. It says: The Governor, the Inspector-General or the Deputy Inspector-General may call for the proceedings in any case, even where no appeal lies, and pass such orders as may seem fit.

20. All the aforesaid rules are marked with an asterisk and are statutory rules framed under Section 7, Act V of 1861. Those rules and many other statutory rules in the Orissa Police Manual not referred to in this judgment, constitute a complete code regarding classification, control and appeal corresponding to the 1962 Rules prescribing the nature of penalties, the authorities to impose the penalties, the cases where appeal lies, the manner of disposal of the appeals and the authorities who can review an order and in what circumstances.

21. There is considerable difference in the nature of penalties prescribed in the Police Manual and the 1962 Rules. For instance, in Rule 824 of the Orissa Police Manual, Vol. I, there are punishments like black mark or marks (824 (f)), removal from any office of distinction or special emolument (824 (g)), confinement to quarters for a period not exceeding 15 days (824 (j)), punishment drill (824 (k)) and extra guard or other duty (824 (1)). There is no punishment corresponding to this in the 1962 Rules.

22. The power of review provided for in Rule 32 of the 1962 Rules has no application to the police service. Revisional power has been conferred upon some authorities under Rule 853 of the Orissa Police Manual. The restriction imposed regarding period of limitation of six months in Rule 32 has, therefore, no application to proceedings of review in respect of police service.

23. In terms of Rule 3 (1) (c) of the 1962 Rules there is a complete code relating to the members of the Police Service in respect of their appointment and disciplinary proceedings in the Orissa Police Manual. Rule 32 and the 1962 Rules have no application to Police service. Their cases of review would be governed by Rule 853 of the Police Manual.

24. On the aforesaid analysis, there is no merit in the petitioner's case. The writ application is accordingly dismissed but in the circumstances, without costs.

Panda, J.

25. I agree.

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