

Dilip Kumar Roy Vs. Hon'ble Chief Justice and Anr.

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Court : Orissa

Decided On : Aug-31-1993

Reported in : 76(1993)CLT854; 1993(II)OLR519

Judge : G.B. Pattnaik and ;B.N. Dash, JJ.

Acts : Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 - Rule 15(3); [Constitution of India, 1950](#)

Appeal No. : Original Jurisdiction Case No. 6087 of 1992

Appellant : Dilip Kumar Roy

Respondent : Hon'ble Chief Justice and Anr.

Advocate for Def. : S.C. Roy, Adv. General

Advocate for Pet/Ap. : M.R. Panda, Adv.

Disposition : Writ application allowed

Judgement :

G.B. Pattnaik, J.

1. An order of removal dated 7-2-1992 passed by the disciplinary authority who is the Registrar (Judicial) of this Court, annexed as Annexure-22, finding the petitioner guilty i.e. departmental proceeding bearing D. P. No. 5 of 1989 and the

appellate order passed by the Chief Justice of this Court dismissing the petitioner's appeal as communicated to the petitioner under Annexure-24 are the subject-matter of challenge in this writ application.

2. The petitioner who was working as the Court Officer of the Orissa High Court was placed under suspension by order dated 17-9-1989 and a set of charges were framed against him which were communicated to him on 21-12-1989. When the petitioner was called upon to file his explanation, he applied for certain documents by letter dated 26-12-1989 in order to enable him to file his defence. Though the petitioner applied for 21 documents, but only four documents were supplied and before any explanation was received from the petitioner, an Enquiring Officer was appointed. That enquiry was ultimately terminated by holding the petitioner guilty and the disciplinary authority terminated the petitioner from his services. The petitioner filed an appeal to the Chief Justice of this Court who on consideration dismissed the appeal and hence the present writ application.

3. Several contentions have been raised in assailing the validity of the enquiry and the findings of the Enquiring Officer as well as the conclusion of the appellate authority, but it is not necessary for us to traverse all those grounds since the writ application can be disposed of on the ground that by non-supply of relevant documents, the petitioner has been denied of a reasonable opportunity of putting forth his defence and the enquiry is vitiated on that score.

4. The charges levelled against the petitioner are rather grave which would tantamount to gross misconduct on the part of the delinquent and gross disobedience of orders of the higher authority. The said charges have been enumerated in Annexure-2 to the writ application. The petitioner had been requesting for supply of documents ever since he received the charges against him and was called upon to file the explanation. But the registry of the Court did not supply the documents excepting four documents, as would appear from Annexure-4 and on 19-9-1990, the petitioner was communicated by letter No. 6939 that no more documents would be supplied to him. The petitioner, however, again requested on 21-9-1990 to supply the rest of the documents which are absolutely necessary for preparing his defence, as would appear from Annexure-6,

but without giving any reply, the date of hearing was communicated to the petitioner by letter dated 4-12-1990, annexed as Annexure-7, Petitioner pursued his request for getting copies of the documents and finally not being supplied with the documents did not file any explanation and the enquiry proceeded. The petitioner had also filed a representation before the Enquiring Officer indicating his prejudice for non supply of the material documents as would appear from Annexure-13, but it was of no avail and finally the enquiry was concluded and petitioner was found guilty and ultimately was terminated from services. In the appeal preferred by the petitioner, the appellate authority who is the Chief Justice of this Court came to the conclusion that refusal of the authority to supply documents mentioned in serial Nos. 5, 7, 8 and 11 was wrong, but being of the opinion that there has been no prejudice to the delinquent, the appellants authority did not interfere with the ultimate conclusion. Then again, the petitioner had called for the records of the preliminary enquiry supposed to have been made before passing the order of suspension and that had been refused on the ground that no preliminary enquiry had been held, as would be apparent from the order of the appellate authority itself. But in this Court, the Hon'ble Chief Justice himself has filed an affidavit wherein he has stated that on enquiry he found that there was a preliminary enquiry and indeed, statements of 21 persons had been recorded during the preliminary enquiry which were exhibited in the departmental enquiry, but no report of the preliminary enquiry had been prepared nor was any record kept showing day to day progress of the same and he states that there was factual mistake which had crept in the appellate order on account of non-supply of materials to the appellate authority while deciding the appeal.

5. An enquiry is to be conducted in accordance with the provisions of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. Punishment of removal is undisputedly a major penalty and the procedure for the same has been provided in Rule 15 of the Rules. Under Sub-rule (3) of Rule 15, the delinquent Government servant is entitled to be supplied with all the records on which the allegations are based for the purpose of preparing his defence and he shall also be permitted to inspect and take extracts from such other official records as he may specify, but permission may be refused for reasons to be recorded in writing, if in the opinion of the disciplinary authority such records are not relevant for the

purpose or it is against the interests of the public to allow the delinquent access thereto. The order of refusal passed by the authority does not indicate that the authority has come to an opinion either that the records are not relevant or it is against the public interest to allow access to the delinquent Government servant and, therefore, in the facts and circumstances of the present case, on the finding of the appellate authority, we have no hesitation to come to the conclusion that there has been an infraction of Sub-rule (3) of Rule 15 of the Orissa Civil Services (Classification, Control and Appeal) Rules. Since the petitioner did not receive the necessary documents he was prevented from filing a written statement of defence and ultimately the disciplinary proceeding was concluded without affording the petitioner a reasonable opportunity to defend himself.

6. Learned Advocate General in course of hearing appearing for the Court contends that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case and if adjudged from the aforesaid stand-point, the refusal to the petitioner of some of the documents sought for would not tantamount to a denial of a reasonable opportunity violating the principles of natural justice. We have no dispute with the proposition of law advanced by the learned Advocate General in view of the decision of the Supreme Court in the case of *Union of India v. P. K. Roy*, 1968 (2) SCR 186. But on examining the facts and circumstances of the present case, and in view of the finding of the appellate authority who is none else than the Chief Justice of this Court, we have no hesitation to come to the conclusion that there has been a denial of the principle of natural justice in the present case and the petitioner has not been given a reasonable opportunity of defending himself in the disciplinary proceeding.. We bear in mind the principles enunciated by Prof. Wade in his *Administrative Law* with regard to the application of principles of natural justice in the following words ;

'It is not possible to lay down rigid rules as to when the principles of natural justice are to apply : not as to their scope and extent. Everything depends on the subject

matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depends on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so forth.'

On examining the facts and circumstances of the present case, we cannot but hold that the disciplinary authority committed gross irregularity and illegality in the procedure which leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured by matter being examined by the appellate authority. The delinquent Government servant was prevented from filing his explanation for non-supply of the relevant documents and this defect would not be cured by providing for an appeal against the order of termination. Accordingly, we are of the considered opinion that the enquiry in question has been grossly vitiated and, therefore, the ultimate order of termination as well as the appellate order dismissing the appeal cannot be sustained.

But in view of the gravity of charges which are apparent from the memo of charges given to the petitioner, we think it appropriate that the disciplinary proceeding should be remitted back to the stage of enquiry and the matter should be enquired into afresh, as in our view, such serious charges, as levelled, cannot be permitted to be condoned on the ground of technical irregularities. It is with this object we had called upon Mr. Panda appearing for the petitioner to indicate as to which documents the petitioner would now require from out of the 21 documents given in his letter dated 21st of September, 1990, annexed as Annexure-6, and Mr. Panda on examination submitted that the petitioner would require the documents mentioned in item Nos. 4, 5, 7, 8, 11 and 12 of his application to the Registrar (Judicial) dated 21-9-1990. (Annexure-6) and does not insist on other documents mentioned therein. The grounds on which these documents were refused do not appear to us to be reasonable and even the appellate authority, namely, the Chief Justice had also come to the said conclusion. In the aforesaid premises, we would

call upon the disciplinary authority to supply the documents mentioned in item Nos. 4, 5, 7, 8, 11 and 12 to the delinquent Government servant within three weeks from the date of receipt of our order and within three weeks thereafter, the delinquent Government servant may be permitted to file his written statement of defence. If the Enquiring Officer who had conducted the enquiry is not there in the Court, a fresh Enquiring Officer be appointed and then the enquiry may be conducted and completed as expeditiously as possible. Though we are quashing the order of termination passed against the petitioner but the petitioner shall continue to be under suspension in view of Rule 12 (4) of the Orissa Civil Services (Classification,, Control and Appeal) Rules.

7. In the premises as aforesaid, the impugned order of dismissal passed by the disciplinary authority under Annexure-12, the appellate order under Annexure-24 as well as the enquiry report submitted by the Enquiring Officer in the Departmental Proceeding No. 6 are hereby quashed and the proceeding is relegated to the state of filing of written statement of defence as provided in Sub-rule(4) of Rule 15 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. Subject to compliance of the observations and directions made in this judgment, the proceedings may continue thereafter and be disposed of in accordance with law. The writ application is accordingly allowed. There will, however be no order as to costs.

B.N. Dash, J.

8. I agree.

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