

Union of India (Uoi) and ors. Vs. Ram Phal Singh Rana

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Court : Delhi

Decided On : Mar-16-2005

Reported in : 121(2005)DLT81; (2005)IIILLJ418Del

Judge : Mukundakam Sharma and; Rekha Sharma, JJ.

Acts : Central Civil Services (Conduct) Rules, 1964 - Rule 21

Appeal No. : W.P.(C) 4691, 4692 and 4693/2005

Appellant : Union of India (Uoi) and ors.

Respondent : Ram Phal Singh Rana

Advocate for Def. : None

Advocate for Pet/Ap. : R.N. Singh, Adv

Disposition : Petition dismissed

Judgement :

Mukundakam Sharma, J.

1. These writ petitions are directed against the judgment and order dated 28.4.2004 passed by the learned Central Administrative Tribunal in OA No. 1274/2003. A disciplinary proceeding was instituted against Shri Ram Phal Singh Rana on the charge which is specifically set out in the memorandum of articles. An

enquiry was conducted into the said charge by the disciplinary authority by appointing an enquiry officer. The enquiry officer submitted his report on 28.12.1998. In the enquiry report, the enquiry officer gave his conclusions that the delinquent official had not contracted second marriage in conformity with the rites and that it was admitted by the delinquent official that Smt.Yashwanti is living with him, who is holding out to be his wife because of social bindings.

2. After going through the said report and records of the departmental proceedings, an order was passed by the disciplinary authority on 18.8.1999 disagreeing with the aforesaid findings recorded by the enquiry officer. The disciplinary authority recorded his findings that the delinquent officer had entered into or contracted marriage with a person having spouse living which debars him to continue in government service as provided under Rule 21 of CCS (Conduct) Rules, 1964. However, while recording his disagreement with the findings of the enquiry officer, it was incumbent upon the disciplinary authority to give a notice to the delinquent officer to show cause as to why the disciplinary authority would not disagree with the findings of the enquiry officer. As no such opportunity was given the principles of natural justice have been violated. In this connection, reference may be made to the decision of the Supreme Court in Punjab National Bank and Ors. v. Kunj Behari Misra and Anr. reported in : (1998)11LLJ809SC . In the said decision also almost a similar plea was raised. The Supreme Court considered various decisions of the Supreme Court including the decision in Managing Director, ECIL, Hyderabad and Ors. v. B.Karunakar and Ors. reported in : (1994)11LLJ162SC . After considering the various judgments, which were cited in the said case, it was held by the Supreme Court that when the enquiry is conducted by the Enquiry Officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded with decision of the disciplinary authority. It was also held that the disciplinary proceedings stand concluded with decision of the disciplinary authority and that it is disciplinary authority which can impose the penalty and not the Enquiry Officer. The Supreme Court thereafter proceeded to hold as follows:-

'When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an

opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar's case (supra).'

3. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the findings of the enquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its own findings on such charge. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

4. The aforesaid decision, therefore, clearly lays down a principle of law that when the disciplinary authority disagrees with the report of the Enquiry Officer on any of the articles of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and communicate the same to the delinquent official giving him an opportunity to represent before it against the tentative reasons for disagreement and to prove and establish that the findings recorded by the Enquiry Officer are justified. In that event the delinquent official would have the opportunity to persuade the disciplinary authority to accept the findings of the Enquiry Officer. It was further held that the principles of natural justice require the authority which has to take a

final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. In our opinion, the ratio of the aforesaid judgment squarely applies to the facts of the present case.

5. In our considered opinion, when the disciplinary authority disagrees with the findings of the enquiry officer, it was incumbent upon the disciplinary authority to record the reasons for disagreement and intimate the same to the delinquent official so as to enable him to show cause against the same. The same having not been done in the present case, the Tribunal set aside the order of punishment awarded to the delinquent official and directed that the said reasons for disagreement be communicated to the delinquent official and after receiving a reply from him, the disciplinary authority can proceed in accordance with law. Since the said decision is rendered by the Tribunal in accordance with the settled position of law by the Supreme Court in the decision of Punjab National Bank and Ors. v. Kunj Behari Misra and Anr. (supra), we find no infirmity in the said order.

6. The writ petitions therefore, are devoid of any merit and are accordingly dismissed.