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Court : Chennai

Decided On : Jun-09-2009

Reported in : (2009)5MLJ175

Judge : K. Chandru, J.

Acts : Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 - Rule 9(2)

Appeal No. : W.P. No. 35028 of 2006

Appellant : S. Subramanian

Respondent : The Additional Director General of Police-cum-commissioner of Police

Advocate for Def. : P. Gurunathan, GA

Advocate for Pet/Ap. : Ayangaraprabhu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Chandru, J.

1. The petitioner has filed O.A. No. 8219 of 1997, seeking to challenge an order dated 16.09.1997 of the respondent. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 35028 of 2006.

2. By the impugned order, dated 16.09.1997, the petitioner was imposed with a punishment of reduction in the time scale of pay by two stages for two years without cumulative effect. Before the Tribunal, the petitioner did not have the benefit of any interim order. Even at the time of filing of the O.A., the petitioner was 50 years old and he would have reached the age of superannuation during the year 2005.

3. The charge against the petitioner was that when an accused was brought before the Chief Metropolitan Magistrate Court, Egmore, he did not provide adequate bandobust, which resulted in one accused by name Vijayakumar was murdered in the 10th Metropolitan Magistrate Court premises itself and this was due to the neglect of duty by the petitioner. The Deputy Commissioner of Police at Guindy was directed to conduct an oral enquiry. The Enquiry Officer gave a report of enquiry holding that the charge against the petitioner was not proved.

4. However, the respondent, by his proceedings, dated 2.7.97 disagreed with the Enquiry report and held that the charge against the petitioner was proved. Therefore, after holding that the petitioner was guilty of the charges, in para 4 of the notice, dated 2.7.97, he gave the following direction to the petitioner:

4. It is proposed to inflict a punishment commensurate to the gravity of the delinquencies he has committed. He is therefore directed to Show Cause as to why the punishment should not be inflicted on him. His explanation should reach this office within 15 days from the date of receipt of this Show Cause Notice, failing which it will be construed that he has nothing to offer on his defence and orders will be passed on merits.

After the petitioner gave his explanation, the respondent by his order dated 16.9.97, imposed the punishment, as noted above.

5. The only contention raised by the counsel for the petitioner was that before disagreement with the enquiry report, the petitioner was not given any notice. The only notice given to him was on the proposed penalty, which was not contemplated under the Rules. Having made up his mind on the minutes of the enquiry report, the notice given to the petitioner was an empty formality.

6. In support of the above proposition, reliance was placed upon the decision of the Supreme Court in *Lav Nigam v. Chairman & MD, ITI Ltd.* reported in (2006) 9 SCC 440. A reference was made to the following passages found in paragraphs 9 to 14, which are as follows:

9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court. The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show-cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show-cause notices one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The writ petition was accordingly dismissed.

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In *Punjab National Bank v. Kunj Behari Misra* a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97, para 19)

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 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 findings. 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 favourable 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.¹² This view has been reiterated in *Yoginath D. Bagde v. State of Maharashtra*. In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p.758, para 29)

But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with. (See also *State Bank of India v. K.P. Narayanan Kutty*.)

13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the

disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.

14. The proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the appellant indicating his tentative disagreement with the findings of the inquiry officer.

7. The stand taken by the petitioner is well founded. In the light of the above, the writ petition will stand allowed. However, there will be no order as to costs.

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