

(1969) 03 CAL CK 0004

Calcutta High Court

Case No: None

Anil Kumar Biswas

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: March 20, 1969

Acts Referred:

- Constitution of India, 1950 - Article 136, 226, 227

Citation: 73 CWN 660

Hon'ble Judges: D. Basu, J

Bench: Single Bench

Advocate: A.K. Dutta and S.K. Majumdar, for the Appellant; B.B. Mitter, for the Respondent

Judgement

D. Basu, J.

The Petitioner, who had been appointed as Examiner of Stores in the year 1944, was at the material time serving as Assistant Inspecting Officer under Respondents 3-4, having been promoted to that post in 1958. In October 1964, he was served with the charge sheet at Anns. D-D1 to the petition, charging him with (a) acquiring assets to the extent of Rs. 22,000/- odd "by dishonest and corrupt practices" and (b) contravening Rule 15(1) of the C.C.S.(Conduct) Rules, 1955.

2. The Petitioner submitted his explanations to the charges in November and December 1964 (Anns. E-F) upon which there was an inquiry held by Respondent 5, the Commissioner for Departmental Inquires, Central Vigilance Commission. The Inquiry Officer's Report of November 1965 is at Ann. G, by which held the Petitioner guilty of charge No. 1 to a modified extent of failing to account for Rs. 8,000/- instead of Rs. 22,000/- odd as specified in the charge and of Charge II, in respect of one of the two allegations, in so far as the Petitioner had purchased in the name of his wife 1 k. 6 ch. of land without permission of the Government.

3. Agreeing with the findings of the Inquiry Officer, Respondent 4, the Director General of Supplies, issued the notice of 29.1.66 at Ann. H, calling upon the Petitioner to show cause why he should not be dismissed. This has been followed by the order of dismissal at Ann. Judge, dated 18.e.66. The Petitioner's appeal to the President of India (Ann. K) has been rejected by the order of 23.8.66, which is at Ann. L (p. 80).

4. I. The Petitioner firstly challenges the order in appeal, which is at Ann. L on the ground that it gives no reasons and is not in accordance with the law.

5. The appeal was preferred in terms of Rule 23 of the Central Services (Classification, Control and Appeal) Rules, 1957. Rule 30(2) of these Rules provides the mode of disposal of an appeal so filed. It says:

In the case of an appeal against an order imposing any of the penalties specified in Rule 13, the appellate authority shall consider * * * .

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

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate * * * * * .

6. It is to be noted that the contents of the foregoing rule are similar to the provisions of Rule 1731(2) of the Railway Establishment Code, which has been explained in many decisions of this Court [e.g., (1) Shivananda v. Divisional Commercial Superintendent, (1969) 18 FLR 137 (140)] and those decisions apply to the instant case.

7. It is to be noted that Sub-rule (3) of Rule 30 of the Central Civil Services (C.C.A.) Rules, which deals with appeals against orders of penalties other than those specified in Rule 13, the appellate authority has a larger discretion, as the language in that sub-rule is different * * * .

In the case of an appeal against an order specified in Rule 24, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

8. The concluding words of Sub-rule (3) are absent from Sub-rule (2) which shows that under Sub-rule (2), the decision in appeal must be objectively based on the three points specified in that sub-rule, instead of being left to the wide discretion of the authority as in Sub-rule (3). It has been contended before me in various cases that Sub-rule 92) or the corresponding Rule 1731(2) of the Railway Establishment Code merely requires the appellate authority to take into consideration the specified matters and does not require him to write and does not require him to write out a judgment showing that he has in fact considered these matters.

9. It cannot be overlooked, however, that the decision of an administrative appeal governed by statute is undoubtedly a quasi-judicial function which is subject to the supervisory jurisdiction of the High Court and the Supreme Court under articles 226, 227, 136, of the Constitution, the exercise of which powers will be rendered nugatory if no reasons at all are given and it is not demonstrated on the order of the authority that he has considered all the matters specified in the Rule. Though there has been some wavering of judicial opinion on this point, it is now settled by a number of decisions of the Supreme Court that a tribunal which is subject to the supervisory jurisdiction of the superior Courts, must give reasons for its decisions so that the supervisory jurisdiction of the courts may not be rendered infructuous (2) [Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others](#), . Once it is held that the tribunal is under an obligation to give reasons, it goes without saying that those reasons must show that the authority had directed his mind specifically to the questions raised before him and what view he had taken of them (3) Poyser and Mill's Arbitration, re., (1963) 1 All E R 612 (614); (4) Iveagh v. Minister of Housing, (1963) 3 All E. R. 817 (820).

10. It is patent that if this be the law, the impugned order at Ann. L must patently fail, for it simply says:

Sri A. K. Biswas is informed that the President has rejected his appeal * * * against the order of dismissal which had been passed by the Director General, Supplies and Disposals.

11. I have no doubt that the above order fails to comply with the statutory requirements of Rule 30(2) which governs the exercise of the appellate power. The question as to the quantum of punishment, in particular, assumes some importance in this case inasmuch as the Inquiry Officer found the Petitioner guilty only of a part of each of the two charges. The case must be, therefore, sent back to the appellate authority, after quashing Ann. L.

12. II. (a) The Inquiring Officer has found the Petitioner guilty of contravention of r. 15(1) of the Conduct Rules for having purchased, without permission of the Government, 1-k. 6 ch. of tank site in the name of his wife. in the year 1961. It appears from Ann. Calcutta that the Petitioner duly applied for and obtained permission for the purchase by his wife of a residential plot of 6 kottas, in December 1960, as stated in paragraphs 6-8, which are admitted. As regards the contiguous tank site, the Petitioner's case in paras. 9-11 is that this latter parcel of 1 k. was a part and parcel of the residential plot of 6 kottas and since the vendor insisted that this parcel should be purchased as a part of the same transaction, the Petitioner in good faith acted under the impression that no fresh permission of the Department should be necessary for the purchase of the small parcel valued at Rs. 1,000/-, when the wife's income from her father for the purchase of the residential plot had been shown to the Departmental and the purchase of the residential plot by that money had been sanctioned by the Department.

13. In my opinion, there has been a technical violation of r. 15(1) inasmuch as the Petitioner should at least have informed the Department of the subsequent development regarding the tank site, and that, accordingly, it is not possible for this Court to give the Petitioner any legal relief on this score. Nevertheless, it is for the Appellate Authority to consider the circumstances just narrated, in assessing the severity or otherwise of the punishment inflicted.

14. (b) As regards the other charge, it is to be noted that the amount of assets which the Petitioner has according to the Inquiry Officer, failed to give a satisfactory account, has come down from over Rs. 22,000/- to Rs. 8,000/-, which is another circumstance to be taken into consideration by the appellate authority in reviewing the punishment.

15. The Petitioner's contention is that even the figure of Rs. 8,000/- will disappear if proper account is taken of the Petitioner's story of gifts and sale of ornaments, referred to in para. 18 of the Inquiry Officer's Report. The Inquiry Officer has disbelieved this story. There is no error apparent on the face of the record. What the Petitioner requires this Court is to re-appraise the evidence, as if sitting in appeal on facts over the Inquiry Officer. This Court is incompetent to do this, but the appellate authority, to whom this case is being sent back, is competent to review the evidence on this point, which he is under a duty to do, if he is to comply with Clause (b) of Rule 30(2), referred to earlier herein.

16. In the result, this Rule succeeds in part, and is made absolute to the extent of quashing Ann. L only. The matter will go back to the appellate authority for disposing of the appeal afresh, complying with the requirements of Rule 30(2) of the Central Services (C.C.A.) Rules, 1957, in the light of the observations made herein.

There will be no order as to costs.