

# ORISSA HIGH COURT

Sadananda Mohapatra

Vs

State (Orissa)

O.J.C. No. 77 of 1964

(S. Barman and G.K. Misra, JJ.)

17.02.1965

## JUDGMENT

### **S. Barman, J.**

1. The main point which gives rise to this petition for writ by a Government servant is : Can adverse remarks in a Government servant's confidential character roll be used for inflicting punishment on him without giving him a reasonable opportunity to explain?
2. The petitioner was from 1955 to 1962 an Inspector of Commercial Taxes who, after departmental enquiry on a charge of having taken illegal gratification from a dealer, was reverted to the rank of a Head Clerk of the Range Office by an order made by the Commissioner of Commercial Taxes.
3. On a complaint by a certain dealer. Sri Tarachand Agarwalla of Titilagarh and the report of the Vigilance Department that the petitioner had demanded illegal gratification from the said dealer and that the petitioner had obtained supply of rice from a dealer without payment, the petitioner was served with a notice dated September 24, 1960 to show cause why he should not be adequately punished on account of the charges mentioned in the said notice. In due course the petitioner submitted his explanation on March 9, 1962. The petitioner was also given an opportunity of being heard in person by the enquiring Officer Mr. D. N. Das who was at the time the Additional Commissioner. The enquiring officer in his report dated May 9, 1962 gave the finding that on considering the circumstances and the evidence both the charges should fail.
4. The matter then went to Mr. S. M. N. Burney, Commissioner of Commercial Taxes who is the punishing authority. The petitioner was thereupon served with second notice to show cause dated September 17, 1962 stating therein that

"As the charge of demand of illegal gratification that has been proved against you is a grave one, it is proposed to revert you to your substantive rank of Head Clerk. You are hereby called upon to show cause by 29-9-62 as to why the proposed punishment of

reduction in rank should not be confirmed. If you want to be heard in person, you should appear before me in my office in the old Secretariat premises at Cuttack 11 A. M. on the said date.

Sd. S. M. N. Burney, Commissioner of Commercial Taxes, Orissa." The petitioner submitted his explanation on September 27, 1962. On October 20, 1962, Mr. Burney gave the petitioner a personal hearing. By Order dated December 6, 1962 passed by Mr. Burney, the petitioner was reverted to the rank of a Head Clerk of the Range Office with effect from the date of service of the order upon him. It is against this punishment order reducing him in rank that this writ petition has been filed by the petitioner.

5-6. The two grounds on which the petitioner challenges the legality of the impugned order of punishment are, as stated in paragraphs 6 and 7 of the petition, these:

"(6) That the punishing authority took into consideration certain adverse entries in the confidential character roll of the petitioner in holding the petitioner guilty of the charge. These were neither communicated to the petitioner at any time before the charge nor was the petitioner informed in the course of inquiry that the said entries would be considered against him. This is against all canons of natural justice and amounts to denying the petitioner reasonable opportunity to show adequate cause against the proposed punishment.

(7) That at the worst, in my view of the matter, the authorities appear to have relied only on what may be called suspicious circumstances against the petitioner which were neither proved in the enquiry nor brought out otherwise. The petitioner could not show cause against suspicion which is based on no evidence or proof and this again amounts to denial of reasonable opportunity."

(6) In support of his first point against the use of the adverse remarks in his confidential character roll without giving the petitioner reasonable opportunity for explanation, he relies on a recent decision of the Supreme Court in *State of Mysore v. K. Manche Gouda*<sup>1</sup>, The material portion in paragraph 7 of the judgment on which the petitioner relies is this: ".....What the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts (past record and earlier punishments) will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers..... He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. ...."

We, therefore, hold that it is incumbent upon the authority to give the Government Servant at the second stage reasonable opportunity to show cause against the

proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation."

7. The question here is. Was such reasonable opportunity in fact given to the petitioner before Mr. Burney the punishing authority made use of the adverse remarks in the petitioner's confidential character roll? It appears that the petitioner in his explanation dated September 27, 1962 to the second show cause notice referred to the good services that he rendered to the department so that in recognition of such meritorious service, authorities may view his work with satisfaction; the petitioner also stated in his explanation that the detection work which he had done within seven years after he came as Inspector from his substantive post in the year 1955 would compare well with that of any other more experienced Inspector. It is apparently the fact of the petitioner himself having relied on his past record of service which led the punishing authority Mr. Burney to refer to the petitioner's confidential character roll. It was in order to examine the correctness of his statements in the explanation that Mr. Burney referred to the petitioner's confidential character roll.

8. Then, what followed was this : Mr. Burney's order itself shows that during personal hearing the confidential character roll was discussed with the petitioner. In the face of the petition that at the time of personal hearing the adverse remarks in the petitioner's confidential character roll was the subject matter of the discussion, it cannot be said that no reasonable opportunity was given to the petitioner as alleged. So, even though, the adverse remarks in the petitioner's confidential character roll were not mentioned in the second show cause notice dated September 17, 1962, still, if, in fact, they were discussed with the petitioner at the time of personal hearing, it cannot be said that no reasonable opportunity was given to the petitioner. In our view, before making the order of punishment Mr. Burney gave the petitioner a reasonable opportunity to explain the adverse remarks in his confidential character roll.

9. The petitioner's further contention is that specific adverse remarks in his confidential character roll were not shown to him. Paragraph 4 read with paragraph 2 of Mr. Burney's order lead to the irresistible conclusion that such opportunity was given to the petitioner. The material portions of Mr. Burney's order are these:

"..... I have also gone through the confidential character roll of the delinquent inspector and find that he has always had a reputation of being dishonest. Several entries at several portions of his service regarding his doubtful integrity have been made. Against this background, reputation and record of the Inspector the circumstantial evidence adduced in support of charge No. (1) becomes significant.

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.....In response to this notice (second show cause notice), he submitted his explanation on 27-9-62. I have gone through his explanation

..... During personal hearing the delinquent inspector pointed out that no adverse remarks in his confidential character roll were ever communicated to him. To this it may be said in answer that normally entries regarding doubtful honesty of a Government servant are not communicated to him."

It is thus clear that the discussion in course of the personal hearing was with reference to the specific adverse remarks in the petitioner's confidential character roll. There is no force in the petitioner's contention that the entries were not shown to him. In fact the petitioner has not made any grievance in his writ petition that the specific entries were not pointed out to him.

10. There is one other aspect with regard to the confidential character. In fact it was in view of certain good detection made by the petitioner that a lesser punishment was given to him. In fact what mainly weighed with Mr. Burney in not inflicting the extreme punishment of dismissal was certain good work done by the petitioner as will appear from the punishment order itself. In the order Mr. Burney records:

"Lastly, the Inspector prayed to be excused particularly in view of good detections made by him during the period. The charge of demanding illegal gratification is a grave one and neutralized all good work done by a public servant. . . .

.....Since this is a very grave offence of which a public servant can be accused and found guilty, I consider that nothing short of reduction in rank will be adequate punishment for it. In fact, dismissal or discharge from service would have been the proper punishment for the charge. But in view of the good work done by this Inspector, I am not inflicting the extreme punishment on him."

This shows that but for the previous good work and detections made by the petitioner, the punishing authority might have imposed the penalty of dismissal or discharge on him. Thus the confidential character roll helped the petitioner in having lighter punishment.

11. In taking this view, we have followed the basic principles underlying the reasoning of their Lordships of the Supreme Court in *Manche Gouda's case* AIR 1964 SC 506 cited above. While maintaining the order of the High Court of Mysore quashing the Government Order of the respondent's dismissal from service, their Lordships concluded thus :

"In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But a comparison of paragraphs 3 and 4 of the Order of dismissal shows that but for the previous record of the Government servant, the Govt. might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission. Their order, therefore, indicates that the show cause notice did not give the only reason (previous punishments) which influenced the Government to dismiss the respondent from service."

12. There was, thus, clearly a distinguishing feature which was decisive. In *Manche Gouda's case* AIR 1964 SC 506 what primarily weighed with the Government in dismissing the officer was his previous record. There is no doubt that that was pre-eminently a case where in the 2nd show cause notice there should have been specific mention about his past record of previous

punishments on the basis of which alone the officer was dismissed. What there turned the balance against the officer was his past record of previous punishments. In the present case, however, the charge of demanding illegal gratification had been found to have been proved on evidence. As regards punishments, nothing in law prevented the punishing authority from taking previous record into consideration during the second stage of the enquiry, for essentially it related to the domain of punishment rather than to that of guilt. In the present case, we are satisfied that the petitioner was given a reasonable opportunity to know that fact and meet the same. The petitioner's confidential character roll was discussed at the personal hearing before Mr. Burney. A reasonable opportunity was given to the petitioner to explain the adverse remarks. Here, but for the confidential character roll which rather helped the petitioner in showing his past good work and detections made by him, the petitioner might not have escaped enhanced punishment.

13. The second ground on which the petitioner challenges the impugned order of punishment is that suspicious circumstances should not have been relied on in inflicting punishment because mere suspicion is not proof. It is further contended that there is no evidence of the petitioner having obtained illegal gratification as alleged; therefore, the order of punishment based on no evidence cannot be sustained. There is no dispute about the well settled proposition that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will issue without further proof of mala fides.

14. The question now is: Can we hold in this case that the finding of Mr. Burney that the charge of demanding illegal gratification against the petitioner had been established is based on no evidence? Our considered answer is : No. We cannot. The reasons are these; There is strong circumstantial evidence against the petitioner as fully discussed by Mr. Burney in his order. The telling circumstances, inter alia, are these: As the dealer did not pay the bribe demanded by the petitioner, assessment proceedings were started against the dealer. Although the petitioner visited the shop on May 16, 1957, he did not submit his report to his superior officer until about three months thereafter on August 12, 1957 which indicates that the petitioner was expecting subsequent contacts with the dealer over the payment of the bribe. Furthermore, the petitioner did not make any mention of this detection in his diary dated May 16, 1957 on which date the petitioner visited the shop as aforesaid. Thus the delay in submission of his report as well as the omission to mention the detection in his diary are staggering circumstances to support the charge of the petitioner having demanded illegal gratification. Apart from the strong circumstantial evidence, there is the statement of a disinterested witness Sri Gour Bhati who had identified the petitioner as the person who had demanded such illegal gratification from the dealer as stated in the charge.

15. Thus, it is not a case of no evidence. The order of punishment is based on the appreciation of the evidence of Mr. Burney as fully discussed by him. This court in its writ jurisdiction is not to question the adequacy of such evidence on which the order of punishment was passed and cannot reappreciate the evidence. The question to be considered is whether Mr. Burney's conclusions can be set aside on the ground that they are not supported by any evidence as contended by the petitioner. In our opinion it is difficult to accept the argument that there is no evidence in support of the conclusions recorded by Mr. Burney against the petitioner.

16. In this view of the case this writ petition fails and is dismissed. No order as to costs.

**Misra, J.**

17. I agree.

Petition dismissed.

Cases Referred.

<sup>1</sup> AIR 1964 SC 506