R.P. BHATT

v.

UNION OF INDIA AND ORS.

December 14, 1982

[A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

The Central Civil Services Classification, Control and Appeal) Rules 1965. Rule 27(2)—'Consider'—Interpretation of.

Duty of appellate authority—To consider relevant factors Set forth in clauses (a) to (c).

Constitution of India 1950 : Article 311(2)—Disciplinary proceedings—Appellate authority—Whether required to give reasons for its order.

The Central Civil Services (Classification, Control and Appeal) Rules 1965 by Rule 27 casts a duty on the Appellate Authority in the case of an appeal against an order imposing any of the penalties specified in Rule 11 to *consider :* (a) whether the procedure laid down in the rules has been complied with: and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constiution or in the failure of justice (b) whether the findings of the disciplinary authority are warranted by the evidence on record; and (c) whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

The appellant was appointed as Supervisor in the Border Roads Organisation on probation for a period of two years. Before the expiry of the probation period, the Chief Engineer terminated this services. The order of termination however could not be served as the appellant absented himself without leave. He was later transferred and the Officer Commanding forwarded the order of termination to him. On his representation the Director-General cancelled the order of termination on a misapprehension that the period of probation having expired no order of termination could be made. He, however, directed that the taking of disciplinary action against him as a deserter since he had absconded from service to evade service of the termination order. After a regular departmental enquiry, he was served with a show-cause notice under Art. 311(2) of the Constitution and after consideration of his representation, the Chief Engineer imposed the punishment of removal from service under Rule 12 read with Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules 1965.

A The appeal under Rule 23 of the Rules preferred by the appellant was dismissed by the Director-General observing, that 'after thorough examination of the facts brought out in the appeal, the punishment imposed upon the appellant was just and in accordance with the rules'.

The writ petition having been dismissed *in limine* the appellant appealed by special leave to this court.

B

Allowing the appeal

HELD : The word 'consider' in Rule 27(2) implies 'due application of mind'. [951A]

C

In the instant case, there is no indication in the order that the Director-General was satisfied as to whether the procedure laid down in the Rules had been complied with. No finding has been given on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. [951C]

D

2. The Director-General only applied his mind to the requirements of clause (c) of Rules 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the case. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof. [951E]

E

3. There being non compliance with the requirements of Rule 27(2) of the Rules, the order passed by the Director-General is set aside. He is directed to dispose of the appeal afresh after applying his mind to the requirements of Rule 27(2) of the Rules. [(951E; 953E]

F

4. It is not the requirement of Art. 311(2) of the Constitution of India or of the Rules of natural justice that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority. [951F]

State of Madras v. *A.P. Srinivasan,* AIR 1966 SC 1827; *Som Datt Datta* v. G *V.O.I. and Ors.*, [1969] 2 SCR 176 and *Tara Chand Khatri* v, *Municipal Corporation of Delhi and Ors.*, AIR 1977 SC 567, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3165 of 1981.

H

From the Judgment and Order dated 20.11.1980 of the Delhi High Court in Writ Petition No. 1632 of 1980.

M.K. Ramamurthy, M.A. Krishnamurthy and *Miss Kuttu Bansilal* for the Appellant. A

N.C. Talukdar and *M.C. Dhingra* for the Respondents.

The Judgment of the Court was delivered by B

SEN, J. The short point involved in this apeal by special leave from a judgment and order of the Delhi High Court dated November 20, 1980 dismissing *in limine* the writ petition filed by the appellant, is whether the appellate Order passed by the Director-General, Border Roads Organisation dated October 14, 1980, is in conformity C with the requirements of r. 27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('Rules' for short) which have been made applicable to the personnel of the Border Roads Organisation.

D

The facts are that the appellant was appointed as Supervisor (Barracks & Stores) Grade I attached to 60 Road Construction Company, General Reserve Engineering Force on probation for a period of two years by an order dated July 7, 1976. Before the expiry of the probationary period, the Chief Engineer (project) Dantak by E an order dated June, 24, 1978 terminated the services of appellant. The order of termination however could not be served on the appellant as he absented himself without leave. Thereupon, the Officer commanding by a movement order dated June 27, 1978 transferred the appellant to 19 Border Roads Task Force. On July 1, F 1978 the Officer Commanding forwarded the order of termination issued by the Chief Engineer, but on representation by the appellant, the Director-General, Border Roads Organisation by order dated November 17, 1978 cancelled the order of termination presumably on a misapprehension that the period of probation having expired, no G order of termination could be made. He however directed the taking of disciplinary action against the appellant as a deserter since he had absconded from service to evade the service of the order of termination. After a regular departmental inquiry, the appellant was served with a show cause notice under Article 311 (2) of the Constitution and after considering the representation made by him, H the Chief Engineer (Project), Dantak imposed on the appellant the punishment of removal from service in exercise of the powers conferred by r. 12 read with r. 11(VIII) of the Rules with effect from

June 10, 1980. Against the order of removal, the appellant preferred an appeal under r. 23 of the Rules before the Director-General, Border Roads Organisation. The Director-General by the impugned order dismissed the appeal observing :

> "After thorough examination of the facts brought out in the appeal, the DGBR is of the opinion that the punishment imposed by the CE (P) DANTAK vide his Order No. 10527/762/EIB dated 24 June 78 was just and in accordance to the Rules applicable. He has accordingly rejected the appeal."

Having heard the parties, we are satisfied that in disposing of the appeal the Director-General has not applied his mind to the requirements of r. 27(2) of the Rules, the relevant provisions of which read as follows :

> "27(2). In the case of an appeal against an order imposing any of the panalties specified in Rule 11 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider
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> (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;
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> and pass orders—
>
> (i) confirming, enhancing, reducing or setting aside the penalty; or
>
> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case."

The word 'consider' in rule 27 (2) implies due application of mind'. It is clear upon the terms of r. 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the 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; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in cls. (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director-General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director-General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of cl. (c) of r. 27(2), viz. whether the penalty imposed was adequate or justified in the facts and cirumstances of the present case. There being non-compliance with the requirements of r. 27(2) of the Rules, the impugned order passed by the Director-General is liable to be set aside.

It is not the requirement of Art. 311(2) of the Constitution of India or of the Rules of natural justice that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority. In *State of Madras* v. *A.R. Srinivasan*,(1) a Constitution Bench repelleed the contention that the State Government's order compulsorily retiring the delinquent from service was bad as it did not give reasons for accepting the findings of the inquiring tribunal and observed as follows :

> "Mr. Setalvad for the respondent attempted to argue that the impugned order gives no reasons why the appellant accepted the findings of the Tribunal. Disciplinary

(1) AIR 1966 SC 1827

A proceedings taken against the respondent, says Mr. Setalvad, are in the nature of quasi-judicial proceedings and when the appellant passed the impugned order against the respondent, it was acting in a quasi-judicial character. That being so, the appellant should have indicated some reasons as to why it accepted the findings of the Tribunal; B and since no reasons are given, the order should be struck down on that ground alone.

We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the C order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard D to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable E that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer, and propose to imposes a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed F or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with G the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

H In *Som Datta Datta* v. *Union of India & Ors*(1), a Constitution Bench of this court rejected the contention that the order of the Chief

(1) [1969] 2 S.C.R. 176

of the Army Staff confirming the proceedings of the Court-Martial unders. 164 of the Army Act and the order of the Central Government dismissing the appeal of the delinquent under sec. 165 of the Army Act were illegal and *ultra vires* as the did not give reasons in support of the orders, and summed up the legal position as follows :

> "Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

To the same effect is the decision in *Tara Chand Khatri* v. *Municipal Corporation of Delhi & Ors.*(1)

Accordingly, the appeal must succed and is allowed. The impugned order passed by the Director-General, Border Roads Organization is set aside and he is directed to dispose of the appeal afresh after applying his mind to the requirements of r. 27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, with advertence to the points raised by the appellant in his petition of leave.

There shall be no order as to costs.

N.V.K. *Appeal allowed.*

(1) A.I.R. 1977 S C. 567.