



Disciplinary proceedings—State of Orissa v. Dhirendranath Das and Jagannath Prasad v. State of Uttar Pradesh.

Different states have framed Disciplinary Proceedings (Administrative Tribunal) Rules which operate simultaneously with Service rules to regulate enquiries against public servants for certain kinds of misconduct. Inevitably it calls for a choice of one set of rules as against the other and in the absence of any definite criteria for such a choice there is room for grievance by the public servants. The Supreme Court recently considered the legitimacy of this grievance in the *State of Orissa v. Dhirendranath Das*¹ and *Jagannath Prasad v. State of Uttar Pradesh*². Broadly stated, the court held in *Dhirendranath* Case that the enquiry held under the Orissa Disciplinary Proceedings (Administrative Tribunal) Rules, 1951³ was bad, whereas it upheld the validity of an enquiry held under the U.P. Disciplinary Proceedings (Administrative Tribunal) Rules,⁴ which were identical with the Orissa 'Tribunal Rules'.

The Orissa 'Tribunal Rules' empower the Governor to refer cases of (a) corruption, (b) failure to discharge duties properly, (c) irremediable general inefficiency and (d) personal immorality to a Tribunal specially constituted under these rules. The rules make further provision for procedural matters.

The U.P. 'Tribunal Rules' are identical with the Orissa 'Tribunal Rules' except in a few matters. Whereas the Orissa 'Tribunal Rules' do not make it obligatory for the Governor to accept the Tribunal's recommendations, the U.P. Rules do impose such an obligation on the Governor. Likewise the Orissa 'Tribunal Rules' require consultation with the State Public Service Commission before the Governor passes an order of punishment. No such requirement is necessary under the U.P. Tribunal Rules.

The four offences referred to in the 'Tribunal Rules' can also be enquired under the respective civil service rules or the Police regulations. These rules and regulations are in several respects run into great

1. *State of Orissa v. Dhirendranath Das*, A.I.R. 1961 S.C. 1715. (Decided in 18th August, 1960. But it was reported in A.I.R. only in December, 1961).

2. *Jagannath Prasad v. State of Uttar Pradesh*, A.I.R. 1961 S.C. 1245. (Decided in 6th March 1961).

3. Orissa Disciplinary Proceedings (Administrative Tribunal) Rules, hereinafter called the 'Orissa Tribunal Rules'.

4. U. P. Disciplinary Proceedings (Administrative Tribunals) Rules, hereinafter called the U.P. Tribunal Rules.



details. Unlike under the Tribunal Rules enquiries are conducted under these Rules by departmental officers themselves. One material distinction between these rules and regulations and the Tribunal Rules is that the former do, but the latter do not, provide for 'right of appeal'.

In *State of Orissa v. Dhirendranath Das*, the public servant was enquired under the Orissa Tribunal Rules but not under the Service Rules. He contended before the High Court that the procedure under the Tribunal Rules was more onerous than the procedure under the Bihar and Orissa Subordinate Services Discipline and Appeal Rules, 1935.⁵ The High Court upheld the contention. On appeal preferred by the State of Orissa, the Supreme Court affirmed the High Court order. The court also observed: ".....if against two public servants similarly circumstanced, enquiries may be directed according to procedures substantially different at the discretion of the executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the enquiry, the order selecting a prejudicial procedure out of the two open for selection, is hit by Art. 14 of the Constitution".⁶

In *Jagannath Prasad v. State of Uttar Pradesh*, the Supreme Court however upheld the validity of the proceedings conducted under the Tribunal Rules. After examining the Tribunal Rules and the Police Regulations, the court came to the conclusion that the procedure prescribed by both sets of rules was materially the same and the Tribunal Rules were not 'more drastic' and 'prejudicial to the interests of the public servant'.

One of the major contentions raised in this case was that there was no right of appeal under the 'Tribunal Rules' whereas such a right was available under the Police Regulations and to that extent the Tribunal Rules were prejudicial. The majority negated this contention by observing that: "...In either case the final order rests with the Governor who has to decide the matter himself."⁷ Mr. Justice Das Gupta however dissented from the majority on this point and preferred to follow the earlier case of the court in the *State of Orissa v. Dhirendranath Das*. Curiously enough, Rule 10 of the U.P. Tribunal Rules

5. Hereinafter referred to as Orissa Service Rules.

6. A.I.R. 1961. S.C. 1715 at p. 1717.

7. A.I.R. 1961. 1245 at p. 1252.



which relieved the Governor from the obligation to consult the State Public Service Commission passed unnoticed both by the court as also by the counsel. Consultation with the Public Service Commission is certainly a substantial safeguard to the public servants and its dispensation under the Tribunal Rules would be prejudicial to the public servants concerned. The judgment might have taken a different complexion if this fact had been canvassed before the court.

As could be expected the appellant in the U.P. case relied on the Orissa case, wherein, the court earlier held that the Orissa Tribunal Rules were discriminatory and prejudicial to the interests of the public servants. While conceding that the U.P. Tribunal Rules and the Orissa Tribunal Rules were 'substantially the same' the court explained away its ruling in the Orissa case, an explanation which virtually amounted to the vanishing point of the ruling in the Orissa case.

The court was rather apologetic for having arrived at the conclusions in *Dhirendranath* case due to certain extraneous factors. Referring to this case, the court observed in the U.P. case that ".....the relevant rules were not in that case incorporated in the paper-book prepared for the hearing nor did counsel for the state produce for our consideration those rules. Counsel also conceded that by the adoption of the procedure prescribed by the Tribunal Rules in preference to the procedure in an enquiry under the Service Rules, discrimination would be practised, because there was substantial differences in the protection to which the public servants were entitled under the Service Rules and the Tribunal Rules".⁸

It is beyond comprehension how the court could decide the Orissa case even without perusing the relevant rules.

It may be seen from the above, that the U.P. case casts shadows on the continuing validity of the Orissa case. After the decision in the U.P. case the validity of the Orissa Tribunal Rules would naturally be reagitated even though they were once adjudged to be unconstitutional. Indeed the court was approached shortly after the U.P. case to pass on the validity of the Orissa Tribunal Rules in *State of Orissa v. Bidyabhusan Mohapatra*.⁹ In this case the court was squarely confronted with its earlier Orissa decision in *Dhirendranath* case. Referring

8. *Ibid.* p. 1254.

9. *State of Orissa v. Bidyabhusan Mohapatra*. (not yet reported)



again to the explanation it offered in the U.P. case the court would like us to believe that the ruling in *Dhirendranath Das* case was erroneous. In the later Orissa case the court went into a detailed examination of the Tribunal Rules and the Service Rules and came to the conclusion that the Orissa Tribunal Rules were not prejudicial and hence the proceedings taken thereunder were valid.

The cases reflect the undesirability of allowing different sets of rules occupying the same field regulating the disciplinary proceedings against government servants. The Public Servants Enquiries Act, 1850, the Central Civil Services Classification, Control and Appeal Rules, 1957, the Police Act, Police Regulations, the Railway Establishment Code, the Tribunal Rules and various State Service Rules merely complicate the problem and enlarge the scope for executive discretion and arbitrary action. We seem to suffer not because of lack of definite rules but because of their multiplication. Giving reasonable concessions to the organizational peculiarities of the various departments like the Police, Railways, Labour etc, it is desirable to prescribe a common code of conduct and discipline.

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A Note on Civil Servants—Disciplinary Proceedings

After the commencement of the Constitution, the amount of litigation—suits and writ petitions—in respects of service matters, based upon Article 311 (2) has been very large. Suggestions have been made about the amendment of this Article by providing for a single notice or opportunity instead of two opportunities. The position also has a real connection with corruption. In this note I am making a brief survey of the position pointing out the defects which, in my opinion, require to be removed.

The history of this matter has been set out in *Shyam Lal's* case¹. The fundamental rules provided for eight kinds of punishments. Prior to 1935, the rules provided that in respect of three of these punishments, namely, dismissal, removal or reduction in rank, a civil servant should not be subject to any of these punishments until he had been given a

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1. *Shyam Lal v. State of U. P.*, [1955] 1 S.C.R. 26; A.I.R. 1954 S.C. 369.