State of Assam & Another

Vs

Bimal Kumar Pandit

Civil Appeal No. 832 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta, J. C. Shah JJ)

12.02.1963

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave raises a short question about the scope and effect of the provisions contained in Article 311(2) of the Constitution. The said question arises in this way. The respondent Bimal Kumar Pandit was serving appellant No. 1, the State of Assam, as an Extra-Assistant Commissioner, Shillong. On December 11, 1959, the second appellant, the Chief Secretary to the Government of Assam, served on the respondent a charge-sheet containing eleven specific charges and called upon him to show cause why he should not be dismissed from service of otherwise punished under Rule 55 of the Civil Services (Classification, Control & Appeal) Rules read with Art. 311 of the Constitution. The said notice further informed the respondent that the Governor of Assam had been pleased to authorise the Commissioner of Plains Division, Assam, to conduct the enquiry and to report to appellant No. 2. On January 13, 1960 the respondent submitted an elaborate explanation in respect of all the charges. The Commissioner of Plains Division, Assam, then proceeded to hold an enquiry and after considering the evidence adduced before him, he made the report on April 12, 1960. In this report the Enquiring Officer found that out of the 11 charges drawn up against the respondent, 6 had not been proved and of the remaining 5 charges, two had been fully established - they were charges (7) and (10); and the other three charges - Nos. (1), (2) and (4) had been partially established. The report made these findings and proceeded to add that the lapses proved did not cast any serious doubt on the honesty and integrity of the delinquent officer, although the evidence led in respect of charges (1) and (2) proved his inexperience and that led under charges (2) and (4) showed his irresponsibility. The report further stated that in the circumstances, the two charges which deserved consideration for purposes of punishment were charges (7) and (10); and it ended with the recommendation that in view of the limited scope of the charges proved and of the age and experience of the delinquent officer, the with-holding of three increments from his pay would meet the ends of justice in this case.

After this report was received, appellant No. 2 served a second notice on the respondent on June 1, 1960. This notice referred to the disciplinary proceedings held against the respondent and added that the respondent was thereby required under clause (2) of Art. 311 of the Constitution to submit his explanation if any, why the penalty of removal from service should not be imposed upon him. The notice further stated that a copy of the report of the Enquiring Officer in the disciplinary proceedings drawn up against the respondent was enclosed. The respondent was told that he had to submit his explanation through the Commissioner of Plains Division, Assam, on or before June 18, 1960.

On receiving this notice, the respondent submitted his explanation on June 21, 1960 in respect of the charges which had been held proved by the Enquiring Officer. After considering the explanation thus submitted by the respondent, the Governor of Assam was pleased to reduce in rank the respondent who was on probation in the Assam Civil Service, Class I to the Assam Civil Service Class II, permanently, with effect from the date he takes over as such. The Governor of Assam further ordered that the respondent will be on probation in the said Class II Service for two years, subject to termination if his work and conduct were not found satisfactory. The respondent was to draw his pay in the minimum of the scale of pay of A.C.S., Class II and his seniority in the cadre would be determined with effect from the date of him joining. This Order was made on July 8, 1961.

The respondent then challenged the validity of this order by a writ petition in the High Court of Judicature at Assam on August 24, 1961. One of the points urged by him was that he had not been given a reasonable opportunity of showing cause against the action which was ultimately taken against him under Art. 311(2); and he urged that the contravention of Art. 311(2) rendered the impugned order invalid. He urged other contentions also, but those have been rejected by the High Court, while his main point under Art. 311(2) has been upheld. In the result, the High Court has allowed the writ petition and issued a mandamus directing the appellants not to give effect to the order dated 8th July, 1961. It is against this order that the appellants have come to this Court by special leave.

We have already referred to the second notice served on the respondent under Art. 311(2). The respondent's contention which has been accepted by the High Court is that in the said notice, appellant No. 1 has not clearly indicated that it accepted the findings of the Enquiring Officer; and since such a statement is not made in the notice, the respondent could not have known on what ground appellant No. 1 provisionally decided to impose upon the respondent the penalty of removal from service. The High Court has held that the notice issued under Art. 311(2) must show that the dismissing authority has applied its mind to the findings of the Enquiring Officer and has accepted the said findings against the delinquent officer. In other words the notice should expressly state the conclusions of the dismissing authority, because unless these conclusions are communicated to the delinquent officer, he would not be able to make an adequate or effective representation. According to the High Court in recording such conclusions, the dismissing authority must also indicate the reasons on which it had come to those conclusions against the delinquent officer and since the impugned notice did not contain a specific averment that the dismissing authority had accepted the findings of the enquiring officer and otherwise gave no grounds or reasons for the action proposed to be taken against the respondent, it contravened the requirements of Art. 311(2) and so, it must be held to be void. Mr. Setalvad for the appellants contends that in coming to this conclusion, the High Court has mis-interpreted the scope and effect of Art. 311(2).

Article 311(1) provides, inter alia, that no person covered by the said sub-article shall be dismissed or removed by an authority subordinate to that by which he was appointed. We are not concerned with this sub-Article in the present appeal. Article 311(2) provides that no such person as specified in Art. 311(1), shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is finally taken against him. An enquiry must be held and it must be conducted according to the rules prescribed in that behalf and consistently with the requirements of natural justice. At this enquiry, the public officer concerned would be entitled to test the evidence adduced against him by cross-examination, where necessary,

and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the report and decide whether it agrees with the conclusions of the report or not. If the findings, in the report are against the public officer and the dismissing authority agrees with the said findings, a stage is reached for giving another opportunity to the public officer to show why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative of provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice; the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute.

The High Court seems to have taken the view that in order that the public officer may have a reasonable opportunity, the dismissing authority must indicate its conclusions on the findings recorded by the enquiring officer and must specify reasons in support of them. According to this view, the fact that the copy of the report made by the enquiring officer was sent to the delinquent officer along with the notice indicating the nature of the action proposed to be taken against him, does not help to meet the requirement of Art. 311(2). The argument is that unless this course is adopted, it would not be clear that the dismissing authority had applied its mind and had provisionally come to some conclusions both in regard to the guilt of the public officer and the punishment which his misconduct deserved. It may be conceded that it is desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the enquiring officer before it issues the said notice under Art. 311(2). But the question which calls for our decision is if the dismissing authority does not expressly say that it has accepted the findings of the enquiring officer against the delinquent officer, does that introduce such an infirmity in the proceedings as to make the final order invalid ? We are not prepared to answer this question in the affirmative. It seems to us that it would be plain to the delinquent officer that the issuance of the notice indicating the provisional conclusions of the dismissing authority as to the punishment that should be imposed on him, obviously and clearly implies that the findings recorded against him by the enquiring officer have been accepted by the dismissing authority; otherwise there would be no sense and no purpose in issuing the notice under Art. 311(2). Besides, we may add that in the present case, the affidavit made by appellant No. 2 clearly shows that before the impugned notice was served on the respondent, the Government had accepted the findings of the enquiring officer which means that the Government agreed with the enquiring officer in regard to both sets of findings recorded by him. Therefore, we do not think that the failure to state expressly that the dismissing authority has accepted the findings recorded in the report against the delinquent officer, justifies the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Art. 311(2). On receiving the notice in the present case, it must have been obvious to the respondent that the findings recorded against him by the enquiring officer had been accepted by the appellants and so, we think it would not be reasonable to accept the view that in the present case, he had no reasonable opportunity as required by Art. 311(2).

We ought, however, to add that if the dismissing authority differs from the findings recorded in the

enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Art. 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There also may be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter : but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Art. 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Art. 311(2) justify the view that the failure to make such a statement amounts to contravention of Art. 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in a common sense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.

It has, however, been urged by Mr. Chatterjee for the respondent that in the present case, the appellants must have proceeded to issue the notice against the respondent after coming to the conclusion that some of the findings recorded in the enquiry report in favour of the respondent were not correct. His argument is that the enquiry report had suggested that the withholding of three increments would meet the ends of justice in the present case, nevertheless the notice issued by the appellants indicated that the action proposed to be taken was the respondent's removal from service. It is true that the ultimate action taken against him was not as severe; he has been merely demoted to Class II Service. But it is suggested that the severity of the punishment proposed to be inflicted on the respondent rather suggest that the appellants felt that some of the other charges which the enquiring officer had not held proved appeared to be proved to the appellants. This argument is no doubt ingenious; but in the circumstances of this case, we do not think it can be accepted. As this Court has held in A. N. D'Silva v. Union of India [(1962) Supp. 1 S.C.R. 968.], in the absence of rules or any statutory provisions to the contrary, the enquiring officer is not required to specify the punishment which may be imposed on the delinquent officer. His task is merely to hold an enquiry into the charges and make his report setting forth his conclusions and findings in respect of the said charges. Sometimes the enquiring officers do indicate the nature of the action that may be taken against the delinquent officer, but that ordinarily is outside the scope of the enquiry. That being so, not much significance can be attached to the recommendation made by the enquiring officer in the

present case. Besides, it is absolutely clearly that under the relevant rules, the punishment proposed to be imposed on the respondent was justified even on the findings recorded against him by the enquiring officer, and so, it would be idle to contend that unless the appellants had differed from the conclusions of the enquiring officer in respect of the charges which he held not proved, they could not have legitimately thought of imposing the said punishment on him. Therefore, in our opinion, the argument that the action proposed to be taken itself shows that the appellants did not accept the findings recorded by the enquiring officer in favour of the respondent must be rejected.

We will now refer to some of the decisions on which Mr. Chatterjee relied. In the case of The High Commissioner of India v. I. M. Lal [(1945) F.C.R. 103, 136.], the Federal Court had to consider the scope and effect of the provisions of s. 240(3) of the Constitution Act of 1935. This provisions is substantially similar to the provisions contained in Art. 311(2) of the Constitution. According to the majority view of the Federal Court in that case, all that s. 240(3) required was not only notification of the action proposed but of the grounds on which the authority was proposing that the action should be taken, and that the person concerned must then be given reasonable time to make him representations against the proposed action and the grounds on which it was proposed to be taken. Mr. Chatterjee contends that this decision shows that the notice served on the delinquent officer must set forth the grounds on which the particular action was proposed to be taken. He emphasises that fact that in the judgment it has been specifically stated that grounds should be stated on which the action is proposed to be taken, and that clearly shows that the dismissing authority must indicate its reasons in support of the said action. In our opinion, this argument is not justified, because the context in which the said observations were made by the Federal Court clearly shows that the grounds to which the judgment refers are the findings or conclusions reached by the enquiring officer. In fact, in the subsequent passage, it has been expressly observed that the requirement of s. 240(3) involves "in all cases where there is an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank, that the person concerned shall be told in full, or adequately summarised form, the result of that enquiry, and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction in rank." It would be noticed that this statement clearly shows that what the Federal Court held was that the dismissing authority must convey to the delinquent officer the findings of the enquiring officer either fully, or adequately summarised, and state the nature of the action proposed to be taken against him. In other words, the officer concerned ought to know what findings have been recorded against him and should be given a chance to challenge those findings and to question the propriety of the action proposed to be taken against him. In this context, therefore, the grounds which, according to the judgment, have to be stated in the notice do not indicate grounds or reasons which would show why the dismissing authority accepts the enquiring officer's report, but the grounds, reasons, or findings which have been recorded by the enquiring officer are required to be stated. Therefore, we do not think that Mr. Chatterjee is justified in contending that the decision of the Federal Court in I. M. Lal's case supports the view taken by the High Court in the present proceedings.

It is true that in the case of Khem Chand v. The Union of India [(1958) S.C.R. 1080, 1097.], this Court has held that : "Reasonable opportunity envisaged by Art. 311(2) includes, inter-alia, an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant." There is no doubt that after the report is received, the appropriate authority must apply its mind to the report and must provisionally decide whether the findings recorded in the

report should be accepted or not. It is only if the findings recorded in the report against the Government servant are accepted by the appropriate authority that it has to provisionally decide what action should be taken against him. But this does not mean that in every case, the appropriate authority is under a constitutional obligation to state in the notice that it has accepted the adverse findings recorded by the enquiring officer before it indicates the nature of the action proposed to be taken against the delinquent officer. Therefore, we do not think that the decision of this Court in Khem Chand's case supports Mr. Chatterjee's contention.

On the other hand, the decision of this Court in The State of Orissa v. Govindadas Panda [Civil Appeal No. 412/1958 decided on 10th Dec., 1958.], shows that a similar order issued by the Orissa Government was upheld by his Court Court. In that case, the notice issued under Art. 311(2) did not expressly state that the State Government had accepted the findings recorded by the enquiring officer against the Government servant in question. In fact, even the nature of the punishment which was proposed to be inflicted on him was not specifically and clearly indicated. The Orissa High Court had struck down the order of dismissal on the ground that the notice was defective and so, the provisions of Art. 311(2) had been contravened. This Court in reversing the conclusion of the Orissa High Court, observed that "in the context, it must have been obvious to the respondent that the punishment proposed was removal from service and the respondent was called upon to show cause against that punishment. On a reasonable reading of the notice, the only conclusion at which one can arrive is that the appellant (the State) accepted the recommendation of the Administrative Tribunal and asked the respondent to show cause against the proposed punishment, namely, that of removal from service." It may be added incidentally that the punishment which had been suggested by the Tribunal was removal from service, as distinguished from dismissal, and this Court held that the impugned notice must be deemed to have referred to that punishment as the action proposed to be taken against the Government servant. Therefore, this decision, in substance, is against the contention raised by Mr. Chatterjee.

There are, however, some decisions which seem to lend support to Mr. Chatterjee's argument and it is, therefore, necessary to examine them. In the case of The State of Andhra v. T. Ramayya Suri [A.I.R. 1957 Andh. 370.], the Andhra Pradesh High Court has held that "under Art. 311(2) the authority concerned should necessarily in its order requiring the civil servant to shows cause give not only the punishment proposed to be inflicted but also the reasons for coming to that conclusion." If this observation is intended to lay down a general rule that in every case the appropriate authority must state its own grounds or reasons for proposing to take any specific action against the delinquent government servant, we must hold that the said view is not justified by the requirements of Art. 311(2). We ought, however, to add that in the case with which the Andhra Pradesh High Court was dealing, it appeared that the Government did not agree with the Tribunal in regard to its finding on the third charge and so, its conclusion on the said charge which was different from that of the Tribunal, weighed in its mind in proposing to take the specified action against the Government servant. In such a case, it would be legitimate to hold that the public servant did not know what was weighing in the mind of the Government and so, did not get an adequate opportunity to challenge to view which the Government was inclined to take in respect of the third charge framed against him. On these facts, we think, the High Court was justified in taking the view that the Government should have indicated in the notice its conclusion on the third charge. That, however, does not mean that in the notice, the Government ought to state its grounds or reasons in support of its conclusion. It is the finding or the conclusion which is weighing in the mind of the Government that must, in such a case, be communicated to the public servant.

In Bimal Charan Mitra v. State of Orissa [A.I.R. 1957 Orissa. 184.], the Orissa High Court has held

that "the service of the copy of the findings of the punishing authority on the public servant is mandatory and the service of the report of the enquiring officer who is not the punishing authority, when there is no indication at all in the notice that the authority competent to punish agrees with those findings, cannot constitute substantial compliance with the requirements of Art. 311(2). "This decision seems to suggest that in issuing the notice under Art. 311(2), the appropriate authority must, besides serving the copy of the enquiring officer's report on the government servant, supply the said officer the findings of the punishing authority and this requirement is treated as a mandatory requirement under Art. 311(2). In our opinion, this view is erroneous.

The same comment falls to be made about another decision of the said High Court in Krishan Gopal Mukherjee v. The State [A.I.R. 1960 Orissa 37.].

The last decision to which reference must be made is the decision of the Bombay High Court in the State of Bombay v. Gajanan Mahadev Badley [A.I.R. 1954 Bom. 351.]. In this case, Chief Justice Chagla has observed that under Art. 311(2) it is not sufficient that the State should call upon the servant to show cause against the quantum of punishment intended to be inflicted upon him; the State must also call upon the servant to show cause against the decision arrived at by a departmental enquiry if that decision constitutes the ground on which the Government proposes to take action against the servant. This view is clearly right. But then in support of this conclusion, the learned Chief Justice has observed that the public servant must have an opportunity to show cause not only against the punishment but also against the grounds on which the State proposes to punish him; and Mr. Chatterjee relies upon this sentence to support his argument that the grounds on which the State proposes to act must be communicated to the public servant. In our opinion, this statement must be read along with the conclusion of the High Court and so read, it would clearly show that what the C.J. intended to lay down was that the findings recorded in the enquiry report which constitutes the ground on which the Government proposes to take action must be communicated to the public servant. Therefore, this decision does not support Mr. Chatterjee's argument that the notice issued under Art. 311(2) must expressly state that the appropriate authority accepts the findings of the enquiry officer and must give reasons in support of the action proposed to be taken against him.

In the result, we hold that the High Court was in error in coming to the conclusion that the order of demotion passed against the respondent in the present case was invalid on the ground that the respondent had not been given a reasonable opportunity of showing cause against the said action under Art. 311(2). The appeal accordingly succeeds, the order passed by the High Court is set aside and the write petition filed by the respondent is dismissed. There will be no order as to costs.

Appeal allowed.

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