State of Bombay (now Maharashtra)

Vs

Narul Latif Khan

Civil Appeal No. 1040/63

(CJI P. B. Gajendragadkar, Raghuvar Dayal, V. Ramaswami – I JJ)

22.02.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

The short question of law which arises in this appeal is whether the appellant, the State of Bombay (now Maharashtra), shows that its predecessor State of Madhya Pradesh (hereinafter called the Government) had given a reasonable opportunity to the respondent, Narul Latif Khan, to defend himself before it passed the final order on June 6, 1952 compulsorily retiring him under Article 353 of the Civil Service Regulations. By this order, the respondent was compulsorily retired and in relaxation of Art. 353, The Government was pleased to allow the respondent to draw a compassionate allowance equal to the pension which would have been admissible to him had he been invalidated.

This order was challenged by the respondent by filing a suit in the Court of the first Additional District Judge at Nagpur. In his plaint, the respondent alleged that the impugned order whereby he was compulsorily retired, was invalid and he claimed a declaration that it was ultra vires and inoperative. He also asked for a declaration that he was entitled to be restored to the post which he held on July 6, 1950, and that he should be given all pay, allowances, increments and promotions to which he would have been entitled if he had been permitted to continue in service. In the result, the respondent asked for a decree for Rs. 62,237 with interest at 6 per cent per annum from the date of the suit till realisation.

This claim was resisted by the appellant on several grounds. The principal ground on which the appellant challenged the respondent's claim, however, was that he had been given a reasonable opportunity to defend himself, and so, the impugned order was perfectly valid, and legal. Several other pleas were also raised by the appellant. On these pleas, the learned trial Judge framed appropriate issues. The issue with which we are concerned in the present appeal, however, centered round the question as to whether the Constitutional provision prescribed by Art. 311 affording protection to the respondent had been contravened. The trail Judge made a finding against the respondent had been contravened. The trial Judge made a finding against the respondent on this issue. He also recorded his findings on the other issues with which we are not directly concerned in the present appeal. In regard to the money claim made by the respondent, the learned trial Judge made a finding that in case he was held entitled to such relief, a decree for Rs. 37,237 may have to be passed in his favour. In view of his conclusion that the impugned order was valid, no question arose for making such a decree in favour of the respondent. The respondent's suit, therefore, failed and was dismissed.

The respondent then took the matter in appeal before the High Court of Judicature at Bombay, Nagpur Bench. The High Court has, in substance, held that the constitutional provisions prescribed by Art. 311 have not been complied with by the appellant before it passed the impugned order against the respondent. It has found that the departmental enquiry which was held suffered from the serious infirmity that the enquiry officer did not hold an oral enquiry and did not allow an opportunity to the respondent to lead his oral evidence. It has also held that the second notice served by the appellant on the respondent calling upon him to show cause why the report made by the enquiry officer should not be accepted and appropriate punishment should not be inflicted on him, was defective, and that also made the impugned order invalid. The High Court appears to have taken the view that the impugned order does not show that the appellant had taken into account the explanation offered by the respondent in response to the second notice issued by the appellant. As a result of these findings, the High Court has reversed the conclusion of the trial Court on the main question and has found that the impugned order is invalid and inoperative. On that view, the High Court considered the money claim made by the respondent, and it confirmed the finding of the trial Court that the respondent would be entitled to a decree for Rs. 37,237. In fact, the alternative finding recorded by the trial Court in respect of the amount to which the respondent would be entitled in case he succeeded in challenging the validity of the impugned order, was not questioned before the High Court. In the result, the High Court allowed the appeal and passed a money decree for Rs. 37,237 in favour of the respondent in terms of prayer (A) of paragraph 31 of the plaint. The appellant then applied for and obtained a certificate from the High Court and it is with the said certificate that it has brought the present appeal before this Court. That is how the main question which falls for our decision is whether the constitutional provision prescribed by Art. 311 has been complied with by the appellant before it passed the impugned order.

At this stage, it may be relevant to refer to some material facts. The respondent was appointed as Extra Assistant Commissioner in 1926 and since then he had been holding various offices in the State service of the then Madhya Pradesh Government. In 1950, he was holding the post of a Treasury Officer at Nagpur. It appears that privilege leave for over a year was due to him and he had applied for four months' privilege leave. On June 12, 1950, Government informed him that his request for leave was rejected and he was told that no further application for leave would be entertained in future. On July 7, 1950, the respondent proceeded on casual leave for two days, and on July 8, 1950 he renewed his application for four months' leave on medical grounds. This application was accompanied by a certificate given by Dr. Dange. Government, therefore, decided to constitute a Medical Board for examining the respondent in order to decide whether leave on medical grounds should be granted to him. Accordingly, the respondent appeared before a Special Medical Board on July 22, 1950. The Medical Board, however, could not come to a decision as to whether the respondent should be granted leave on medical grounds for four months. It recommended that the respondent should get himself admitted in the Mayo Hospital, Nagpur, for observation and investigation. In accordance with this report, Government asked the respondent to get himself admitted in the Mayo Hospital in time, so that the Board could examine him on August 8, 1950. The respondent refused to go to the Mayo Hospital and pressed that he should be allowed to go to Calcutta to receive medical treatment from experts. It appears that on July 26, 1950, the respondent received a telegram from Raipur stating that his daughter was dangerously ill there. He, therefore, made another application on the same day requesting for ten days' leave to enable him to go to Raipur and see his ailing daughter. On July 31, 1950, Government granted the respondent's request. Accordingly, the respondent went to Raipur. From Raipur he renewed his application for four months' leave on Medical grounds and produced certificates from Dr. Bhalerao and Dr. Kashyap. That led to a lengthy correspondence between the respondent and the Government which

shows that Government insisted on his appearing before the Medical Board and the respondent was not prepared to go to Nagpur because he alleged that he was seriously ill and could not undertake a journey to Nagpur. Ultimately, on September 9, 1950, Government called upon the respondent to resume his duties within three days from the receipt of the said letter failing which he was told that he would be suspended and a departmental enquiry would be started against him. On October 4, 1950, the respondent wrote a lengthly reply setting forth his contentions in detail. Since he did not resume his duties, Government decided to suspend him and start a departmental enquiry against him. Mr. S. N. Mehta, I.C.S., was accordingly appointed to hold the enquiry. On November 29, 1950, Mr. Mehta wrote to the respondent that Government had directed him to conduct the departmental enquiry, and called upon the respondent to attend his office on December 7, 1950, at 11.00 a.m. The respondent, however, did not appear before him and wrote to Mr. Mehta that owing to his illness, he was unable to appear before him. He again pleaded that he was seriously ill.

On January 15, 1951, Mr. Mehta served the respondent with a charge-sheet. Three charges were framed against him. The first charge was that he had deliberately disobeyed the orders of Government when he was asked to get himself admitted in the Mayo Hospital for observation and investigation. The second charge was that he had failed to report for duty even though no leave was sanctioned to him by Government and he was specifically ordered by Government to report for duty. The third charge was that he had persistently disobeyed the orders of Government and he had thereby shown himself unfit to continue as a member of the State Civil Service. Material allegations on which reliance was placed against the respondent in support of these charges were also specified under the respective charges.

The respondent was, however, not prepared to appear before Mr. Mehta and he raised several technical contentions. Ultimately, he sent his written statement and denied all the charges. His case appears to have been that he had not deliberately disobeyed any of the orders issued by Government. In regard to his getting admitted in the Mayo Hospital, he seems to have taken the plea that when he was allowed to go on casual leave to see his ailing daughter at Raipur, it was clear that he could not have got himself admitted in the Mayo Hospital so as to enable the Medical Board to examine him on August 8, 1950. In respect of the charge that he had persistently refused to obey the orders of Government, his case was that he was dangerously ill and that he genuinely apprehended that if he undertook a journey to resume him duty, he might even collapse. He requested the enquiry officer to allow him to appear by a lawyer whom he would instruct to cross-examine the witnesses whom the Government would examine against him. He also stated that he wanted to give evidence of his own doctors who would depose to his ailing condition at the relevant time.

It appears that Mr. Mehta wanted to accommodate the respondent as much as he could and when he found that the respondent was not appearing in person before him, he in fact fixed a date for hearing at Raipur on September 21, 1951 where he happened to be camping. On that date, the respondent appeared before Mr. Mehta and Mr. Mehta made a note as to what transpired on that date. The note shows that "the whole case was discussed with the respondent. His plea was that he should be allowed to appear through a counsel, but it was explained to him in detail that as far as the case can be seen from Government side at present, it does not involve the taking up oral evidence. He agreed that he would not press for this facility. He would, however, like to give a detailed answer to the charge-sheet. He also undertook to appear in person regularly in future". Thereafter, Mr. Mehta required the respondent to file his detailed written statement, and in fact, the respondent did file his detailed written statement containing the pleas to which we have already referred. On November 8, 1951, Mr. Mehta wrote to the respondent that he would be glad to hear him in person in case he wished to make an oral statement on November 20, 1951, and when the respondent did not appear

on the said date, Mr. Mehta proceeded to examine the documentary evidence showing the failure of the respondent to comply with the orders issued by Government and made his report on November 24, 1951. He found that the three charges framed against the respondent were proved. In his report, Mr. Mehta observed that "the conduct of the respondent and the language used by him from time to time in his communications discloses an attitude of disobedience and insubordination which no Government can tolerate from its subordinate officers". We may incidentally observe that the comment thus made by Mr. Mehta in regard to the communications addressed by the respondent to him appears to us to be fully justified but, in our opinion, this aspect of the matter cannot have any material bearing on the question with which we are concerned. The validity of the impunged order must be judged objectively without considering the impropriety of the language used by the respondent or the reluctance shown by him to appear before Mr. Mehta.

In his report, Mr. Mehta has also observed that when the respondent met him, he explained to him that the case did not involve recording of any oral evidence as it was based on documents only. Mr. Mehta adds that according to the impression he got at that time, the respondent was satisfied that in the circumstances, the assistance of a counsel was unnecessary. It is, however, plain from the several letters written by the respondent to Mr. Mehta that he was insisting upon an oral enquiry and that he wanted to examine his doctors to show that he was so ill at the relevant time that he could not have resumed his duties. On March 2, 1951, the respondent wrote to Mr. Mehta stating, inter alia, that he wished to put in the witness-box a few high-ranking Government officers and the doctors whom he had consulted about his illness. Earlier on January 20, 1951, he had written to Mr. Mehta requesting him to conduct an oral enquiry as laid down in paragraph 8(iv) G.B. Circular 13. Similarly, on April 23, 1951, he again informed Mr. Mehta that in his opinion the institution of the departmental enquiry after suspending him was illegal and had caused him grave injury, and he added that oral and documentary evidence will be produced in defence.

It does appear that Mr. Mehta explained to the respondent that so far as Government was concerned, it rested its case merely on documents and did not think it necessary to examine any witnesses, and thereupon the respondent agreed that he need not have the facility of the assistance of a lawyer. But it is clear from the remarks made by Mr. Mehta in the order sheet on September 21, 1951, and the observations made by him in his report that the only point on which the respondent agreed with Mr. Mehta was that he need not be allowed the assistance of the lawyer in the departmental enquiry. We have carefully examined the record in this case and we see no justification for assuming that the respondent at any time gave up his demand for an oral enquiry in the sense that he should be given permission to cite his doctors in support of his plea that his failure to resume his duties was due to his ill-health. The charge against him was that he had deliberately disobeyed the Government orders, and it is conceivable that this charge could have been met by the respondent by showing that though he disobeyed the orders, the disobedience was in no sense deliberate because his doctors had advised him to lie in bed; and thus considered, his desire to lead medical evidence cannot be treated as a mere subterfuge to prolong the enquiry. It is true that the respondent did not give a list of his witnesses; but he had named his doctors in his communications to Mr. Mehta, and in fact Mr. Mehta never fixed any date for taking the evidence of the witnesses whom the respondent wanted to examine. If Mr. Mehta had told the respondent that he would take the evidence of his witnesses on a specified date and the respondent had failed to appear on the said date with his witnesses, it would have been an entirely different matter. Therefore, the position is that Mr. Mehta did not hold an oral enquiry and did not give an opportunity to the respondent to examine his witnesses and so, the question which arises for our decision is : does the failure of Mr. Mehta to hold an oral enquiry amount to a failure to give a reasonable opportunity to the respondent within the meaning of Art. 311 ?

The requirements of Art. 311(2) have been considered by this Court on several occasions. At the relevant time, Art. 311(2) provided that no person to whom Art. 311 applies 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 common ground that the impugned order of compulsory retirement attracts the provisions of Art. 311(2). If it appears that the relevant statutory rule regulating the departmental enquiry which was held against the respondent made it obligatory on the enquiry officer to hold an oral enquiry if the respondent so demanded, then there would be no doubt that the failure of the enquiry officer to hold such an oral enquiry would introduce a serious infirmity in the enquiry and would plainly amount to the failure of the appellant to give a reasonable opportunity to the respondent. This position is not disputed by the learned Attorney-General and is indeed well-settled. So, the narrow question to which we must address ourselves is whether it was obligatory on Mr. Mehta to hold an oral enquiry and give a reasonable opportunity to the respondent to lead oral evidence and examine his doctors. We will assume for the purpose of this appeal that in a given case, Government would be justified in placing its case against the charge-sheeted officer only on documents and may be under no obligation to examine any witnesses, though we may incidentally observe that even in such cases, if the officer desires that the persons whose reports or orders are being relied upon against him should be offered for cross-examination, it may have to be considered whether such an opportunity ought not to be given to the officer; but that aspect of the matter we will not consider in the present appeal. Therefore, even if it is assumed that Government could dispense with the examination of witnesses in support of the charges framed against the respondent, does the relevant rule make it obligatory on the Enquiry Officer to hold an oral enquiry and give the respondent a chance to examine his witnesses or not ?

This question falls to be considered on the construction of rule 55 of the Civil Services (Classification, Control and Appeal) Rules. This rule reads thus :-

> "Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a service (other than an order based on facts which have led to the conviction in a Criminal Court or by a Court, Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so direct, an oral enquiry shall be held. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the enquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

It appears that the Government of Madhya Pradesh had issued a Circular explaining this Rule. The Circular contained Rule 8 which is relevant. It provides that "particular attention is invited to the provisions regarding oral enquiry. In case the person charged desires that an oral enquiry should be

held, the authority holding the departmental enquiry has no option to refuse it". The High Court seems to have based its conclusion substantially, if not entirely, on this rule. We do not propose to adopt that course. The rule may be no more than a circular issued by Government and we do not propose to examine the question as to whether it has the force of a statutory rule. Our decision would, therefore, be based on the construction of Rule 55 of the Civil Services Rules which admittedly applied and which admittedly is a statutory rule.

The relevant clause in this Rule provides that the officer charge-sheeted shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. This clause has been complied with in the present proceedings. Mr. Mehta gave notice to the respondent to appear before him in person on the 20th November, 1951 and the respondent did not appear on that date. It is the next clause on which the decision of the present appeal depends. This clause lays down that if he, that is to say the charge-sheeted officer, so desires or if the authority concerned so directs, an oral enquiry shall be held. In our opinion, it is plain that the requirement that an oral enquiry shall be held if the authority concerned so directs, or if the charge-sheeted officer so desires is mandatory. Indeed, this requirement is plainly based upon considerations of natural justice and fairplay. If the charge-sheeted officer wants to lead his own evidence in support of his plea, it is obviously essential that he should be given an opportunity to lead such evidence. Therefore, we feel no hesitation in holding that once the respondent expressed his desire to Mr. Mehta that he wanted to lead evidence in support of his plea that his alleged disobedience of the Government orders was not deliberate, it was obligatory on Mr. Mehta to have fixed a date for recording such oral evidence and give due intimation to the respondent in that behalf.

It is true that the oral enquiry which the enquiry officer is bound to hold can well be regulated by him in his discretion. If the charge-sheeted officer starts cross-examining the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If the officer desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine such witnesses; but in doing so, he will have to record his special and sufficient reasons. In other words, the right given to the charge-sheeted officer to cross-examine the departmental witnesses or examine his own witnesses can be legitimately examined and controlled by the enquiry officer; he would be justified in conducting the enquiry in such a way that its proceedings are not allowed to be unduly or deliberately prolonged. But, in our opinion, it would be impossible to accept the argument that if the charge-sheeted officer wants to lead oral evidence, the enquiry officer can say that having regard to the charges framed against the officer, he would not hold any oral enquiry. In the present case, the witnesses whom the respondent wanted to examine would undoubtedly have given relevant evidence. If the doctors who treated the respondent had come and told the enquiry officer that the condition of the respondent was so bad that he could not resume work, that undoubtedly would have been a relevant and material fact to consider in deciding whether the charges framed against the respondent were proved. Even if we disapprove of the attitude adopted by the respondent in the course of this enquiry and condemn him for using extravagant words and making unreasonable contentions in his communications to the enquiry officer, the fact still remains that he wanted to examine his doctors, and though he intimated to Mr. Mehta that he desired to examine his doctors, Mr. Mehta failed to give him an opportunity to do so. That, in our opinion, introduces a fatal infirmity in the whole enquiry which means that the respondent has not been given a reasonable opportunity to defend himself within the meaning of Art. 311(2). On that view of the matter, it is unnecessary to consider whether the High Court was right in its other conclusions that the second notice served by the appellant on the respondent was defective and that the final order was also defective inasmuch as it did not appear that the appellant

had taken into account the representation made by respondent.

It is not disputed by the learned Attorney-General that if we hold that the enquiry conducted by Mr. Mehta contravened the mandatory provision of r. 55, the decision of the High Court could be sustained on that ground alone.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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