

State of Uttar Pradesh & Anr

Vs

Sri C. S. Sharma

Civil Appeal No. 1260 of 1966

(M.Hidayatullah, C. A. Vaidialingam JJ)

01.05.1967

JUDGMENT

HIDAYATULLAH, J.

This is an appeal by the State of Uttar Pradesh against the judgment and order of the High Court of Allahabad, October 24, 1962, confirming in special appeal the decision of a learned Single Judge dated July 10, 1962. By that order the High Court has set aside the order of dismissal made by the State Government against the respondent C. S. Sharma on the ground that he did not have a fair enquiry before the Commissioner of sales tax when certain charges against him were inquired into.

The facts of the case are as follows. The respondent C. S. Sharma was appointed as a Sales Tax Officer in January 1949 and was transferred on April 1, 1950 to Hathras where he remained till the end of September 1952. An enquiry was made with reference to certain allegations against him during his period of stay at Hathras. On October 3, 1952, he was transferred to Lakhampur Kheri and was ordered not to visit Hathras until allowed by the authorities. It appears that in November 1952, an ex-parte inquiry was made by the Assistant Commissioner and the proceedings were submitted with a preliminary report to the Commissioner. On the basis of this report an order of suspension was passed against him on February 18, 1953 and he was placed for inquiry before the Commissioner. A set of charges was delivered to him on April 15, 1953; then a supplementary charge-sheet was issued on July 8, 1953. Sharma asked for the inspection of the record of the preliminary inquiry as also the report but he was told to submit his explanation to the charges first before inspection could be allowed. He submitted his explanation and in compliance with the directions contained in the charge-sheet issued to him, he submitted a list of three defence witnesses whom he wished to examine in support of his case. He requested that the witnesses against him should be examined viva-voce in his presence before he was asked to meet that evidence and also wished to be heard in person. On October 31, 1953 Sharma submitted the list of witnesses above-mentioned. On the same day the Commissioner informed Sharma that he would be permitted to produce the witness mentioned in his letter in due course. In another communication he was told that another date would be fixed for hearing the witnesses in his defence. It is not necessary to describe the charges here because many of them, though found against him by the Commissioner, were not accepted by the state Government. The order of dismissal was based upon three allegations Nos. 1 and 3 in charges Nos 2 and 3 respectively. The Commissioner in his report found him guilty of these charges and also of other allegations which the State Government did not accept. We shall refer to these charges presently after completing the narration of event which took place before the Enquiring Officer.

After the inquiry opened, the Commissioner did not examine the witness afresh, but their previous

statement, recorded at the earlier enquiry, were tendered in evidence and Sharma was asked to cross-examine them. Sharma duly cross-examined those witnesses and then the question arose whether he would be allowed to lead his defence or not. In the first application which he had made giving the list of witnesses he had named three witnesses and had also added that were to be examined in relation to a specific charge about a car owned by him. On February 2, 1954, he made an application for 20 days' extension of time for giving the list of witnesses he wished to examine in his defence. Third February had been fixed for summoning of the witnesses against him but no date till then was fixed for the examination of his defence witnesses. His application of February 2, 1954 was rejected by the Commissioner on February 6, 1954, without fixed a date for the examination of the witnesses or for giving him an opportunity to give evidence on his own behalf. Not knowing that he would not be given any further opportunity, Sharma submitted a list of four witnesses on February 10, 1954, but stated that he could not give the addresses of some of the witnesses because he did not know where they were on February 24, 1954, he again stated that he wanted to examine defence witnesses and to examine himself. No order was, however, made on these applications. On April 8, 1954, the Commissioner made his report recommending the dismissal of Sharma and the order of the State Government was after due opportunity to show cause why he should not be dismissed. In reply to the show cause notice Sharma complained that he had not been allowed to lead evidence on his own behalf and that is one of the contentions in the present case.

The charges against him which have been held proved against him and to which we have referred were as follows :

Charge No. 1 Allegation No. 5

"You accepted the accounts of Sarvsri Radhey Shiam Brij Kishore without due verification."

Charge No. 2 Allegation No. 1.

"Sarvsri Damodar Das Radhey Shiam had been declared non- assessable for 1948-49 and for three quarters of 1949-50 by your predecessor. The judge (Appeals) had also declared the dealer unassessable in an appeal against your orders. Still you assessed the dealers for the first three quarters to harass him. Ultimately you declared the dealer unassessable."

Charge No. 3 Allegation No. 3

"You accepted Rs. 500/-from Mithoo Lal of the firm Noor Mohammed Mithoo Lal as bribo through Chhotey Lal vaki."

In addition to these charges there was a charge against him that he was in possession of a car which his mean did not allow him to purchase and in respect of which he had made a reply that he had received this car from his father in law. This was charge No. 4 and in relation to this charge apprently he had cited the first list of three witness for the examination in his defence. This charge was not accepted by the State Government when the matter reached it.

After the order of dismissal was made Sharma filed a writ petition in the High Court of Allahabad asking that the order made against him be quashed and his allegations were that the enquiry against him was made by a Commissioner who was biased against him that the witness for the enquiry were not examined viva voice. In his presence but were only tendered for cross examination and lastly that no adequate opportunity was given to him for summoning his defence witness or to

examine himself. The High Court in the two orders which were made reached the conclusion that the enquiry was defective. but different reason were given by the learned Single Judge and the Division Bench. We need not go into this matter elaborately because in our opinion the appeal here must be dismissed because we are satisfied that no adequate opportunity was afforded to Sharma to lead his defence which the principles of natural justice required.

The first question is whether this inquiry was made under sub-rule (1) or (3) of r. 55 of the Civil Services (Classification Control and Appeal) Rules. It is an admitted fact that Sharma was a temporary employee and therefore his case would fall to governed by sub rule (3) of r. 55 if it could be said that the enquiry which was being made was for a specific fault or on account of his unsuitability for service. Sub-rule (1) of r. 55 is a general rule for enquiries where the conduct of a person is inquired into for misconduct but sub-rule (3) says that the sub rule shall not apply where it is proposed to terminate the employment of a probationer or to dismiss remove or reduce in rank a temporary government servant for any specific fault or on account of his unsuitability for the service. Sub-rule (3) says that in such cases the probationer or temporary Government servant concerned shall be apprised of the grounds of such proposal given an opportunity to show cause against the action to be taken against him and his explanation in this behalf if any shall be duly considered before orders are passed by the competent authority. If the third sub rule applied it is obvious that the kind of enquiry made complied with its requirements. The first sub rule however provides for a full blooded enquiry which is the counter part of a regular trial with witness have to be examined in support of the allegations opportunity has to be given to the delinquent officer to cross-examine them and to lead evidence in his defence. In our judgment the present case was governed by the first sub rule and not the third sub rule. The Third sub rule deals with the unsuitability of an officer for the service with a charge for any specific fault. This fault means a fault in the execution of his duties and not a misconduct such as taking bribe character of the individual concerned. The collection of the words "any specific fault" or "on account of unsuitability for service" give the clue of the distinction between the third sub-rule and the first sub rule. An officer who is for example, habitually lazy or makes mistakes frequently or is not polite or decorous may be considered unsuitable for the service. Another officer who makes a grievous default in the execution of his work may be charged for the specific individual fault that is a dereliction or defect in the execution of that duty. Where there is an allegation that an officer is guilty of a misconduct such as accepting bribe or showing favour the matter is not one of specific fault in the execution of his work but something more. That matter will fall to be governed by the first sub rule because you cannot charge a man with criminal conduct without affording him adequate opportunity to clear his character Mr. Aggarwal fairly pointed out that the Government had appointed the enquiring officer to take action under r. 55(1) and it is thus quite clear that Government viewed the matter also in this light.

It therefore follows that if the procedure under the first sub rule had to be followed adequate opportunity had to be given to Sharma to lead evidence on his own behalf. The question is where he has to thank himself or the omission proceed because of some action on the part of the enquiring officer was to blame and we shall now show why we think so.

Through the enquiry as late as February 24, 1954 Sharma had again and again given indication that he would lead evidence in his defence At first he had given a list of three witness which he later amplified to four leaving out one from the original list and adding two new names. He had also stated that he wanted to examine himself in his defence. The learned Commissioner who was holding the enquiry on more than one occasion stated that he would be afforded this opportunity and also that a date would be afforded this opportunity and also that a date would be fixed for the

examination of the defence witness. It is true that Sharma was playing for time and on the 2nd of February (before the date of hearing came) he put in an application that he would like an adjournment of 20 days before he submitted a final list of witness with their address. This application was rejected on February 6, but between February 6 and April 8 when the report was made two long months passed and it was possible for the Commissioner to have fixed a date on which if he was so minded, Sharma could bring his witness in support of his case or tender himself for examination. No action was taken between February 6, 1954 and April 8, 1954 to enable Sharma to lead his defence if any in support of his part of the case. This omission in our judgment was sufficient to vitiate the whole proceeding because no enquiry of this type in which there are charges of a criminal nature can be said to be properly conducted when the defence of the officer is either frustrated or ruled out.

It was submitted by Mr. Agarwal that the witnesses were being summoned by him to clear himself of the charge of owing a car without having the visible means to afford it and this charge was not accepted by the State Government came on the scene must later. In so far as the enquiring office was concerned, he had accepted the allegation against Sharma and even if the original list be considered, Sharma was entitled to lead evidence with regard to the car itself. It is possible that if a date had been fixed he would not only have led evidence with regard to the car but would have brought witness to clear himself of other charges but no such opportunity was clearly afforded to him. Further before the case closed, the Commissioner had before him a list of four witnesses and fair play demanded that he should have fixed a date and left it to Sharma to procure attendance of his witness on that date but if no date was fixed, Sharma was not expected to bring his witness day after day in the hope that the Commissioner would examine them any day. The enquiry cannot be said to comply with the elementary principles of natural justice and therefore we have no hesitation in accepting the decision of the High Court that the enquiry was vitiated.

We may not omit to state that there was an allegation against the Commissioner that he was biased against Sharma. It does appear that the Commissioner in one of his letters stated that he had heard witness and satisfied himself that Sharma was guilty although the State Government cannot be said to share this bias of the Commissioner. We would have said something more about this if the occasion had demanded this but as we are upholding the order of the High Court on the ground that no reasonable opportunity was afforded to Sharma to lead his evidence it is not necessary to say whether an officer in the position of the Commissioner who on the basis of secret enquiries behind the back of delinquent officer has reached the conclusion that there are good grounds for holding that the officer is corrupt should himself conduct the enquiry. That matter may be left for consideration in another case.

On the whole therefore we think that the ends of justice will be served in maintaining the order made by the High Court. The enquiry if Government so decides must proceed before an officer who will examine the witness in support of the charge in the manner laid down by this Court and afford Sharma an opportunity of leading his defence if any.

The appeal therefore fails and is dismissed with costs.

G. C. Appeal dismissed

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