

Surath Chandra Chakrabarty

Vs

State of West Bengal

Civil Appeal No. 1258 of 1966

(Grover JJ)

14.12.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of Division Bench of the Calcutta High Court reversing the judgment and decree of a learned Single Judge made in exercise of original jurisdiction in a suit filed by the appellant.
2. The record of the case is voluminous and apparently that led to very lengthy judgments both by the Single Judge and the Division Bench. A host of facts have been introduced out of which it is necessary to state only those which are relevant for the purpose of the disposal of the points before us. The appellant was appointed Station Office in the Bengal Fire Service in 1943. In March 1949 he was appointed to Act as Assistant Director of Fire Services and Regional Officer, Calcutta Industrial Area, until further orders. S. Bose, who was appointed Director of Fire Service on or about the same date, received some complaints against the appellant. He made certain preliminary enquiries. In the beginning of May 1949 Bose informed the appellant that the post of Assistant Director Fire Service would be treated as abolished with effect from the date of the appointment of the appellant as Assistant Director. This led to protests by the appellant against the abolition of that post. A lot of acrimonious dialogue started between Bose and the appellant; the former made his final report to S. K. Gupta, Secretary, Local Self-Government, as to the charges which were to be preferred against the appellant. On July 12, 1949, the appellant was suspended. On July 19, 1949, a communication containing the charges against the appellant was sent to him by S. K. Gupta, Secretary, Local Self-Government. It is necessary to reproduce it in extenso :

"Charges. Whereas it has been made to appear to the Government of West Bengal :

(1) that you, Sri S. C. Chakravarty, Regional Officer, Calcutta Industrial Area, West Bengal Fire Service, incited the subordinate staff of the said service by circulating false rumours regarding the retrenchment policy of the Government, thereby spreading insubordination and discount within the Force :

(2) that you, Sri S. C. Chakravarty, Regional Officer, Calcutta Industrial Area, West Bengal Fire Service, took an active part in a conspiracy to implicate the present Director of Fire Service West Bengal in a false case by planting firearms in his office and to injure him by planting a time bomb in his car when he might be going on inspection :

(3) that you, Sri S. C. Chakravarty, Regional Officer, Calcutta Industrial Area, West Bengal Fire Service, have been guilty of -

(a) wilful disobedience of Government Order directing you to stay at your headquarters at Barrackpore and of the order of the Director Fire Service to produce the petrol log book of your inspection car;

(b) grave negligence of duty, failure to attend office on many days and irregular attendance even on the days when you came to office, resulting in accumulation of work;

(c) fabricating false entries in the cash book by putting signatures on dates when you did not attend office;

(d) taking illegal issue of petrol from the accounts of different fire stations in addition to the quota allotted to you for your use; and

(e) cooking up false complaint against some members of the staff of the West Bengal Fire Service whom you tried to rope in into the conspiracy but failed and refusing permission to them to see the Director, Fire Service, apprehending a disclosure.

And whereas these acts of indiscipline, conspiracy, negligence in the performance of your duties and other irregularities were committed by you while you were holding the responsible position of the Regional Officer, Calcutta Industrial Area, in a disciplined organisation like the West Bengal Fire Service and which therefore, amounted to an abuse or misuse of the position so enjoyed by you.

Now, therefore, you are directed to show cause why you should not be dismissed from the service of the Government or otherwise suitably punished departmentally.

The enquiry will be conducted by the undersigned. Sri S. C. Chakravarty is directed to put in a written statement of his defence by the 8th August, 1949, and to state within the time aforesaid whether he desires to be heard in person.

(Sd.) illegible Local Self-Government Department, Secretary to the Government of Calcutta. West Bengal."The 19th July, 1949.##

3. It is common ground that a statement of the allegations on which each charge was based was never sent to the appellant. He sent a letter, dated August 5, 1949, with reference to the communication containing the charges. He emphatically denied what had been alleged against him and described the charges as false and actuated by the mala fides. What is worth noticing is that the appellant in categorical terms stated that the charges and allegations were vague, indefinite and lacking in material particulars and pointed out that "unless the charges are made specific to the point and contain full details with date, time, place, and person etc. It is impossible for me to meet them properly". No further particulars or details were supplied at that stage or subsequently. S. K. Gupta submitted his report on May 1, 1950. He found Charges 1, 2 and 3(b) as having been proved against the appellant. Charge 3(a) was dropped. As regards Charges 3(c) and 3(d) it was found that there had been gross negligence on the part of the appellant in attendance as well as in carrying out all his ordinary duties, viz., checking and signing of the cash book and disposal of current work including grant or refusal of leave applications. The appellant was not found guilty of charge 3(e). On June 10, 1950, the Deputy Secretary to the Government, West Bengal, sent a notice to the appellant in

which it was stated that in view of the findings of the Enquiry Officer he was considered to be unsuitable for retention in service and it was proposed to remove him. A summary of the findings of the Enquiry Officer was sent and the appellant was directed to show cause why he should not be removed from the service of the Government. The appellant wrote a long letter on July 1, 1950, in which he once again pointed out that according to law he was entitled to have a statement of allegations on which each charge was based before the enquiry started. But he was not given any such statement with the result that he could not defend his case properly. On June 16, 1950, the Director of Fire Services communicated an order of dismissal to the appellant who filed an appeal to the Government without any success. In August 1951, the appellant moved the High Court under Article 226 of the Constitution for quashing the order of dismissal. In April 1952, the High Court acceded to the appellant's prayer and quashed the order of dismissal on the sole ground that the punishment which had been tentatively proposed in the show-cause notice was removal and therefore an order of dismissal could not have been made. On May 15, 1952, the appellant called upon the Government to reinstate him in his post. On May 31, 1952, an order was made by the Governor, West Bengal, removing the appellant from service. A memorandum was sent by the Joint Secretary, Local Self-Government, along with a copy of the order of Governor. It was stated therein that after a careful consideration of the report of the Enquiry Officer and the representation submitted by the appellant the Government, in consultation with the Public Service Commission, West Bengal, had decided that he should be removed from service.

4. In September 1952, the appellant filed a suit in the Calcutta High Court challenging the order of his removal from service and asking for various reliefs including a declaration that he was still in Government service and a decree for arrears of pay and allowances from the date of suspension till institution of the suit and interim pay and allowances till the disposal of the suit together with interest etc. We need refer only to Para 19(a) of the plaint in which it was pleaded that the enquiry was vitiated because under the rules and procedure for holding such enquiry the appellant was entitled to be furnished with definite charges, but the charges and allegations were vague, indefinite and lacking in material particulars and in spite of repeated requests these were neither made specific nor material particulars like, day, time, place and persons were supplied. In the written statement filed by the respondent it was denied that the charges or allegations were vague, indefinite or lacking in material particulars as alleged. It is unnecessary to set out the other pleadings but the issues which were settled would indicate the points which the Trial court was called upon to decide. These issues were :

1. Is there a valid contract of employment between the plaintiff and the defendant under the Government of India Act ?
2. Was the suspension order, dated 12th July, 1949, mala fide, wrongful and ultra vires ?
3. Was Mr. S. K. Gupta in a position to exercise unbiased mind in the matter of enquiry ?
4. Was the order, dated 16th September, 1950, illegal, void and ultra vires the Constitution and it cannot operate to terminate the service of the plaintiff ?
5. Was the order of removal, dated 31st May, 1952, illegal, void in law and ultra vires in the Constitution of India and the Civil Service Rules for grounds stated in Paragraphs 29 and 30 of the plaint ?

6. Was the plaintiff no longer in suspension and was unable to be reinstated in service to his usual pay and allowances from the date of his suspension in view of the order, dated 24th April 1952?

7. To what relief, if any, is the plaintiff entitled ?

Some additional issues were framed out of which we may only refer to those which were settled on June 8, 1959, and which were in these terms -

1. Was the enquiry made by Mr. Gupta vitiated on the grounds as alleged in Paragraph 19 of the plaint ?

2. Is the Court debarred from trying issue Nos. 4, 5, and 6 and the additional issues settled today by reason of res judicata ?

5, The learned Judge found that the Enquiry Officer, S. K. Gupta, was biased against the appellant before he held the enquiry. It was further found that no particulars and other necessary details were given in the charges and they were vague resulting in non-compliance with Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and the necessary particulars were not supplied in spite of the repeated objections of the appellant to the charges being vague and indefinite. In the opinion of the learned Judge the trial was vitiated for want of definite charges. It was held that the appellant had been duly appointed as member of the Fire Service of the State and that a contract in terms of Article 299 of the Constitution was not necessary. Issues 2 and 4 were not pressed. Reading the prayer in the light of the averments in the plaint the learned Judge granted a declaration that the purported removal of the appellant was void and inoperative and he remained or was still in Government service. He was held entitled to salary and other benefits from the date of his suspension till the date of the judgment. It was particularly mentioned that the parties had worked out the figures of the salary and allowances etc. At Rs. 69,636/- for which a decree was granted together with interest at 6% per annum till the date of realisation. The respondent filed an appeal to the Division Bench of the High Court. We do not consider that we need refer to all the points dealt with by the Division bench. In our judgment the Division Bench was wholly in error in reversing the decision of the learned Single Judge on one of the crucial points, namely, non-compliance with Fundamental Rule 55 and complete vagueness and indefiniteness of the charges on which no proper enquiry could be held. It is incomprehensible how the details as to date, time, place and person etc. would not have made the charges more definite as appears to have been the opinion of the Division Bench. We are unable to agree that the details without which a delinquent servant cannot properly defend himself are a matter of evidence. In this connection references may be made to Fundamental Rule 55 which provides, inter alia, that without prejudice to the provisions of the Public Servants Enquiry Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of service unless he is 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 have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending one self. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. By

way of illustration one of the grievances of the appellant contained in his letter, dated March 24, 1950, to the Enquiry Officer may be mentioned. This is what he said though the language employed is partly obscure and unhappy :

"Regarding the first charge, I bag to submit that the allegation is vague. In the charge it has not been specifically stated as to where, when and before whom I circulated false rumours, regarding retrenchment policy of the Government and thereby spread insubordination. In fact if one goes through the statements of P.Ws. made to D.F.S. as submitted before my suspicion, it will appear that no specific case could have made with all material particular as to date, time and person. Having been able to take deposition and to conduct enquiry keeping me in dark and finally put me out of office, Sri S. Bose was able to win over the witnesses and was able to shape his case to suit his purpose."

6. Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry Officer had made a report against him the appellant could have been given a further opportunity at the stage of the second show-cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Article 311(2) of the Constitution as they existed at the material time. The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the Trial Judge was fully justified in decreeing the suit.

7. A faint attempt was made by the learned counsel for the respondent to assail the decision of the Trial Court on issue No. 1. Both the Single Judge and the Division Bench had given concurrent findings against the respondent on that point. The respondent cannot be permitted to reagitate the matter before us.

8. We accordingly allow this appeal, set aside the judgment and decree of the Division Bench and restore that of the Trial Court. The appellant will further be granted a declaration that he is entitled to the salary and allowances for the period subsequent to the date of the decree of the learned Single Judge of the High Court to the date of his superannuation. The appellant will be entitled to his costs in this Court.

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