Shri B. D. Gupta

Vs

State of Haryana

Civil Appeal No. 2129(N) of 1969

(CJI J. M. Shelat A. N. Grover, S. N. Dwivedi JJ)

18.09.1972

JUDGMENT

MUKHERJEA, J. -

1. This appeal on special leave is from an order of the Division Bench of the Punjab and Haryana High Court dismissing summarily an appeal directed against a judgment and order of a single Judge of that Court by which a petition of the appellant under Article 226 of the Constitution of India was dismissed. The matter arises in connection with a disciplinary proceeding under the Punjab Civil Services (Punishment and Appeal) Rules, 1952 which had a very chequered career.

2. For a proper appreciation of the points raised in this case it is necessary to set out some of the salient facts. The appellant joined the Punjab Irrigation Department as a temporary engineer in 1939 and in course of time became in Executive Engineer in that department. In December, 1954, he was arrested in connection with a case under Section 5(2) of the Prevention of Corruption Act which had been registered against one K. R. Sharma, Superintending Engineer, with whom the appellant had been working as a Personal Assistant. The appellant was, however, enlarged on bail. About the same time the appellant was suspended with effect from December 13, 1954, and certain departmental proceedings were started against him. In November, 1956, the appellant was served with a charge-sheet under Rule 7.2 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. There was two distinct charges made against the appellant which will, for the sake of convenience, be described hereinafter as charge No. 1(a) and charge No. 1(b). Both the charges were based on allegations that the appellant had taken illegal gratification. We are not concerned for the purposes of this appeal with the details of the charges. On December 18, 1956, the appellant submitted a reply to the charge-sheet to which he added certain supplementary replies between May and July, 1957. Government, it appears, appointed as enquiry officer as late as October, 1957. On February 18, 1958, the appellant was reverted from the post of Executive Engineer (under suspension) to that of an Assistant Engineer (under suspension). In May, 1958, Government decided to defer the enquiry in respect of charge 1(b) until there was a decision in regard to charge 1(a). In October, 1958, the Enquiry Officer submitted to Government a report in respect of charge 1(a) which exonerated the appellant completely. The Government then waited for another six months before appointing another Enquiry Officer to conduct the enquiry in regard to charge 1(b). The appellant, it appears, asked Government on more than one occasion to supply him with a copy of the report of the first Enquiry Officer in respect of charge 1(a). Government, however, declined to supply any copy. In December, 1960, the criminal case which had been started against the appellant in 1954 ended in discharge of the appellant. On April 19, 1961 the appellant was dismissed from service on the basis of a report of the second Enquiry Officer regarding Charge 1(b). This order of dismissal was, however, quashed in March, 1963, by the High Court of Punjab and Haryana. The appellant

was, thereafter, reinstated and forthwith placed under another order of suspension in May, 1963. A third Enquiry Officer was appointed simultaneously for a fresh enquiry into charge 1(b). In February, 1965, the appellant got a decree in a civil suit by which he was allowed to recover the balance of his pay and allowances for the period of suspension and for quashing the order of reversion. Between 1963 and 1965 the appellant made various attempts through what was apparently a high-powered board called the Establishment Board to bring about a closure of the enquiry proceedings initiated against him. Nothing happened until December 15, 1965, when, once again Government appointed a new Enquiry Officer to replace the earlier officer who had been appointed in February, 1965. In January, 1966, the appellant was reinstated as Executive Engineer and in October, the same year, the entire enquiry against the appellant was withdrawn. One would have thought that this would be the end of the unusually protracted proceedings against the appellant. On the contrary, however, on October 26, 1966, Government served a fresh "show-cause notice" on the appellant by which the appellant was told that his explanation of December 18, 1956, in reply to the charges and allegations levelled against him had been found unsatisfactory by Government and that Government proposed to censure his conduct.

3. Immediately upon receipt of the said "show-cause notice" the appellant asked for a copy of the statement made by one S. D. Khanna, Sub-Divisional Officer under Section 164 of the Code of Criminal Procedure. The appellant justified his demand for a copy of S. D. Khanna's statement by reference to two facts. First, charge No. 1(b) related to an alleged demand by the appellant for illegal gratification in the presence of S. D. Khanna and he was, therefore, entitled to have a copy of the statements made by S. D. Khanna, before the police and the magistrate. Secondly, the appellant pointed out, under the orders of the High Court he was expecting a copy of Khanna's statement to be supplied to him on October 27, 1966. He did not, however, receive a copy because the Government withdrew the charge-sheet against him on October 18, 1966. If, therefore, by a fresh "show-cause notice" the appellant was called upon to vindicate his earlier reply to the charge-sheet, he was, he claimed, entitled to a copy of the statement of S. D. Khanna. On November 24, 1966, however, Secretary to the Government of Haryana turned down the appellant's request for a copy of Khanna's statement. Thereafter, on December 16, 1966, the appellant submitted a reply to the "show-cause notice."

4. On February 27, 1967, the Government passed an order imposing the penalty of censure on the appellant. The substantive part of the order is in the following terms :

> "Your explanation has been duly considered and the same has been found to be unsatisfactory. The Governor of Haryana is accordingly pleased to order that the penalty of censure be imposed on you. Your conduct is, therefore, censured."

5. On the same day another order was communicated to the appellant by which the Governor of Haryana had directed that under Rule 7.3(3) of the Punjab Civil Services Rules, Volume I, Part I, the appellant should not be allowed anything more than what had already been paid to him as subsistence allowance during the period of his suspension from May 31, 1963 to January 6, 1966. The order included also a direction that the entire period of absence from duty of the appellant on account of suspension from May 31, 1963 to January 6, 1966, was to be treated as a period spent on duty for all other purposes.

6. In June, 1967, the appellant was given a notice of compulsory retirement which was subsequently withdrawn. In October, 1968, however, the appellant was compulsorily retired. In the meantime, however, in November, 1967, the appellant had filed a writ petition in the High Court of Punjab and

Haryana challenging the validity of the two orders, dated February 27, 1967 - one inflicting on him the punishment of censure and the other withholding from him his usual pay and allowances beyond what had been paid to him as subsistence allowance during the period of suspension. The writ petition was dismissed by a Single Judge of the High Court on November 6, 1968. The appellant then went on appeal before a Division Bench of the High Court. The appeal was, however, dismissed in limine. Upon being refused a certificate for appeal to this Court, the appellant asked for special leave which was granted to him on October 3, 1969.

7. Only two contentions were raised, on behalf of the appellant before us. First, it was contended that the appellant did not get a reasonable opportunity to reply to the "show-cause notice", dated October 26, 1966, on the basis of which he had been censured by the Government inasmuch as the notice was too vague to enable him to give an effective reply. Secondly, it was contended that the order of February 27, 1967, which withheld from the appellant any payment in excess of the subsistence allowance he had drawn during the period of his suspension was liable to be struck down on the ground that it had been passed without giving him any opportunity to make a representation against it. We shall now deal with these contentions one by one.

8. The appellant's complaint about the "show-cause notice" of October 26, 1966, is one that has to be accepted as substantial. For a proper appreciation of the appellant's contention, the memorandum containing the "show-cause notice" may be set out in extenso. It was in the following terms :

> "Your explanation, dated the December 18, 1956, in reply to the statements of charges and allegations has been considered and found to be unsatisfactory. The President of India, after taking a lenient view, has tentatively decided to censure your conduct and also to place a copy thereof on your personal file.
>
> 2. Before the proposed punishment is inflicted, you are given an opportunity of making representation against the action proposed to be taken. Any representation which you make in this connection will be considered before taking the proposed action. Such representation, if any, should be made in writing and submitted so as to reach me not later than the 7th day from the receipt of this communication by you. In case no reply is received within the aforesaid period it will be presumed that you have no explanation to offer."

9. The only ground on which the Government proposed to censure the appellant is the fact that the appellant's explanation dated December 18, 1956, in reply to the statement of charges and allegations had been found unsatisfactory by Government. By the expression "charges and allegations" in this "show-cause notice", reference obviously is to the letter of October 22, 1956. That letter, it will be remembered, contains two charges, namely, charge 1(a) and charge 1(b). The appellant's explanation of December 18, 1956, which is said to have been found unsatisfactory by Government was a reply not only to charge 1(a) but also to charge 1(b). Of these two charges, so far as charge 1(a) is concerned the appellant had been completely exonerated in October, 1958. There is nothing, however, in the "show-cause notice" of October 26, 1966, to indicate clearly that the dissatisfaction of Government with the appellant's reply of December 18, 1956, had nothing to do with charge 1(a). The "show- cause notice" merely states in vague general terms that the appellant's reply to the charge and allegations was unsatisfactory. Even if we were to assume, though there is no reasonable ground for this assumption, that Government did not have in mind the contents of charge 1(a) while serving this "show-cause notice", there is nothing in the "show-cause notice" to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to Charge 1(b). The notice is vague on other grounds

as well. As one reads the first paragraph of the notice, the questions that at once assail one's mind are many : In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the appellant's explanation was unsatisfactory. It is to our mind essential for a "show-cause notice" to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply. We have no manner of doubt that the "show-cause notice" in the instant case did not give the appellant any real opportunity to defend himself against the complaint that his previous explanation of December 18, 1956, had been unsatisfactory. The appellant did not, therefore, get any chance at all to show that he did not deserve a censure upon his conduct.

10. We were told that since the appellant was aware of the charge and also aware of the reply he had given to the charges made against him, it was enough for Government to tell him that his answer was unsatisfactory. It was argued that since the "show-cause notice" really pointed this out and mentioned that the very lenient sentence of censure upon the appellant's conduct was going to be imposed, there was nothing further that Government could be expected to do in this case. We have no hesitation in rejecting this contention made out on behalf of the State. It is manifestly clear that the "show-cause notice" was too vague to permit the appellant to deal with it effectively and that consequently the order of censure passed on him is bad and liable to be struck down.

11. We now come to the second contention raised on behalf of the appellant that the order passed by the Governor of Haryana which directed the withholding from the appellant any payment in excess of the subsistence allowance he had already received during the period of his suspension between May 31, 1963 and January 6, 1966, was bad insofar as the appellant had not been given a prior opportunity to make a representation against such order.

12. The relevant order was passed under Rule 7.3 of the Punjab Civil Services Rules (Vol. I, Part I) which is in the following terms :

> "7.3 (1) When a Government servant, who has been dismissed, removed, or suspended, is reinstated, the authority competent to order the reinstatement shall consider and make a specific order -
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and
>
> (b) Whether or not the said period shall be treated as a period spent on duty.
>
> (2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.
>
> (3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe :

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

13. It is clear that before passing an order under Rule 7.3 the authority concerned has to form an opinion as to whether the Government servant has been fully exonerated and, also, whether, in the case of suspension, the order of suspension was wholly unjustified.

14. It was urged on behalf of the appellant that before the authority formed such an opinion, it was incumbent upon it to afford him an opportunity to make suitable representations in this behalf. Reliance was placed upon the judgment of this Court in M. Gopala Krishna Naidu v. State of Madhya Pradesh. ([1968] 1 SCR 355 : AIR 1968 SC 240). The appellant in that case had been exonerated of the charges framed against him in a departmental enquiry. Government held, however, that the appellant's suspension and the departmental enquiry instituted against him "were not wholly unjustified". The relevant order, after reinstating the appellant with effect from the date of the order and directing the appellant's retirement from the same date on the ground that he had already attained the age of superannuation contained a further direction that the entire period of the appellant's absence from duty should be treated as a period spent on duty under Fundamental Rule 54(5) for the purpose of pension only, but that "he should not be allowed any pay beyond what he had actually received or were allowed to him by way of subsistence allowance during the period of his suspension." The appellant in that case contended that his case really came under Fundamental Rule 54(2) and not under Fundamental Rule 54(5) and that the Government should have granted him an opportunity to be heard before deciding as to the rule which applied to his case. It was contended on behalf of the Government that the order regarding allowances was a mere consequential order and in passing such an order it was not necessary to give a hearing to the party affected by the order. This Court, however, held that an order passed under Fundamental Rule 54 is not always a consequential order of a mere continuation of the departmental proceeding taken against the employee. Since consideration under Fundamental Rule 54 depends on facts and circumstances in their entirety and since the order may result in pecuniary loss to the Government servant, consideration under the Rule "must be held to be an objective rather than a subjective function". Shelat, J., who delivered the judgment of the Court went on to observe; "The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck-down as invalid on the ground that it is one in breach of the principles of natural justice."

15. We have no doubt in our minds that in this case also justice and fair play demand that the Government should have given the appellant a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should not be made.

16. The decision in M. Gopala Krishna Naidu's case (supra) had been cited before the High Court. The High Court, however, sought to distinguish that case from the instant case on facts. The High

Court held that since in M. Gopala Krishna Naidu's case (supra) the proceedings had been dropped and the officer concerned reinstated, he never got an opportunity to show to the appointing authority that his suspension had been unjustified and that he was entitled to full pay and allowances, while in the instant case the appellant has already, according to the High Court, received all reasonable opportunity to show cause against the punishment that has been meted out against him. With respect, we do not think that there is any real difference in substance between the facts of the instant case and those in M. Gopala Krishna Naidu's case (supra). The appellant in the instant case did not really get an opportunity to defend himself against Charge 1(b). It will be remembered that in this case also the Government abondoned the proceedings against the appellant with regard to Charge 1(b). Had the proceedings been completed, it is not altogether impossible that the appellant would have been exonerated also of that charge just as he had been exonerated of charge 1(a) earlier. To that extent the appellant did not get any opportunity to show that the suspension order against him had been unjustified and that he was, therefore, entitled to full pay and allowances. From this point of view there is really no difference between the instant case of M. Gopala Krishna Naidu case (supra).

17. Besides, the real ratio in M. Gopala Krishan Naidu's case (supra) was that if an order affects the employee financially, it must be passed after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order. In the instant case the order unquestionably is one that seriously prejudices the appellant. We would further like to add that the fact that even the order of punishment was made without giving the appellant a real opportunity to make an effective representation against it makes the second order affecting his pay and allowances still more vulnerable.

18. Mr. Mahajan appearing for the State sought to rely in this connection upon an unreported decision of this Court in the State of Assam and Another v. Raghava Rajagopalachari. (C.A. Nos. 1561 and 1562 of 1966, decided by the Supreme Court on October 6, 1967). That case was a case dealing with Fundamental Rule 54 which is more or less similar to Rules 7.3 of the Punjab Civil Services Rules, under which this second order of February 27, 1967, had been passed by the Governor. The relevant portion of Fundamental Rule 54 is in the following terms :

> "F.R. 54. When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable; or
>
> When a Government servant who had been dismissed, removed or suspended is reinstated;
>
> The revising or appellate authority may grant to him for the period of his absence for duty -
>
> (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or
>
> (b) if otherwise such proportion of such pay and allowances as the revising or appellate authority may prescribe.
>
> In a case falling under clause (a) the period of absence from duty will be treated as a

> period spent on duty. In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct."

19. This Court held that clause (b) of the Fundamental Rule 54 would be applicable in all cases where the officer concerned is not honourably acquitted. Since in that case the Government servant had clearly not been fully exonerated of the charges levied against him it was open to Government to decide what period of absence from duty during the period of suspension should be treated as period spent on duty and, also what proportion of pay and allowances should be given to him. This decision cannot apply to the instant case for the simple reason that Government, by withdrawing the proceedings initiated against the appellant in respect of Charge 1(b) made it impossible for the appellant to get himself fully exonerated. Since the appellant had been exonerated of Charge 1(a) and since Charge 1(b) was withdrawn, it is impossible for Government to proceed on the basis as if the appellant has not been fully exonerated or to assume that the order of suspension was one which was not wholly unjustified. In that view of the matter, we do not think that the case of State of Assam and Another v. Raghava Rajagopalachari case (supra) can be of any assistance to the respondents.

20. In the result this appeal succeeds. The judgment and order of the High Court are set aside. The orders, dated February 27, 1967, impugned in the appellant's petition before the High Court are quashed. The appellant will get the cost of this appeal as well as the costs incurred below.

</html