Shadi Lal Gupta

Vs

State of Punjab

Civil Appeal No. 1527 of 1971

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

07.03.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal is by way of special leave against the judgment of the High Court of Punjab and Haryana dismissing the Second Appeal filed by the appellant. He was a clerk in the Treasury at Ludhiana. He filed the suit out of which this appeal arises for three different reliefs out of which the only that now survives is regarding the order withholding his increment for one year with cumulative effect.

2. The sole point raised on behalf of the appellant before the High Court was overruled by it on the basis of the full bench decision of the High Court in Malvinderjit Singh v. The State of Punjab and Others, (ILR (1970) 2 Punj 580) which overruled the decision in Kalyan Singh v. The State of Punjab. (ILR (1967) 2 Punj 471)

3. This is perhaps the first case that comes to this Court in the matter of a minor punishment. The appellant relied upon the decision of this Court in B. D. Gupta v. State of Haryana, (AIR 1972 SC 2472 : (1973) 3 SCC 149 : 1973 SCC (L&S) 49) the facts of which are rather complicated, and are unnecessary for the purpose of this case. One of the points that arose in that case was regarding the minor punishment of censure, though it was an incidental one in an appeal which involved a much more important question. It was held that the show-cause notice in that case did not give the appellant (the aggrieved Government servant) any real opportunity to defend himself. That is not the case here.

4. The charge-sheet served on the appellant on November 10, 1961, was to the following effect :

> "(i) That you have been careless and negligent in the performance of your duties at Sub-Treasury, Sirhind, as per concrete instances mentioned in the enclosed statement of allegations.
>
> (ii) That you have been disobedient to the Assistant Treasury Officer, Sirhind."

and an elaborate of allegations was enclosed alongwith the charge-sheet, which is set out below :

> "Statement of allegations. - While Shri Shadi Lal Gupta, Clerk, Sangrur Treasury, was working as Routine Clerk, Sirhind Sub-Treasury, he had been disobedient to the Assistant Treasury Officer, Sirhind and negligent in the discharge of his duties, and a

few instances of his carelessness, negligence and disobedience are given below :

(1) Shri Shadi Lal Gupta was allotted the work of passing Deposit repayment Orders issued by the Courts and it was found vide some instances quoted below that the calculated wrong balances in the Deposit Receipt Registers which were likely to cause over-payment in certain cases and refusal to make payment in other cases at some later stage -

(a) While passing D.R.O. No. 17, dated November 15, 1960, on November 18, 1960, the balance was calculated by him as Rs. 327.60 instead of Rs. 317.60 np.

(b) While passing D.R.O. 15, dated November 10, 1960, on November 25, 1960 the balance was calculated by him as Rs. 56.44 n.p. instead of Rs. 56.33 np.

(c) In the said D.R.O. 15, dated November 10, 1960, passed on November 25, 1960, the amount to be paid was entered by him as Rs. 74 only instead of Rs. 74.11 np.

(d) While passing payment of Rs. 131.06 n.p. in respect of D.R.O. 17, dated November 15, 1960, on November 18, 1960, the balance in the deposit receipt register was calculated by him as Rs. 595.23 n.p. instead of Rs. 495.23 np.

(e) In passing payment of Rs. 28.71 n.p. relating to D.R.O. 23, dated December 7, 1960, the balance was worked out by him as Rs. 261.71 n.p. instead of Rs. 281.71 np.

(f) The passing payment of Rs. 1562.70 n.p. in respect of D.R.O. 124, dated November 8, 1960, repaid on November 9, 1960, the actual payment was shown as Rs. 1,600 in the deposit receipt register.

(2) He passed cheque No. 335553, dated November 13, 1960, on November 15, 1960, without verifying the particulars of the cheque in question as the cross entry of the cheque was wrong and he did not point it out. Similarly cheque No. 395202, dated November 21, 1960, for Rs. 126 was passed on November 24, 1960, by him without verifying the identifier of the payee, as neither he asked him to produce his half of the P.P.O. quoted by him in his identification nor did he confirm the fact from the Sub-Treasury record.

(3) Inward letters Nos. 419 and 420 were received from the Deputy Commissioner, Patiala on December 6, 1960, which remained undisposed of by him till January 3, 1961. Letter No. 695, dated November 14, 1960, regarding verification of credits received from the N.T. (Recovery) was not disposed of by him till January 3, 1961. He also did not diarise them.

(4) On December 30, 1960, the Assistant Treasury Officer asked him verbally to attend office on December 31, 1960, to clear arrears on his seat. He refused to do so. Thereon he gave him written orders to that effect and he refused to note them. Again he asked him to record his refusal in black and white but he declined even to do so.

(5) He refused to write-up the Assistant Treasury Officer's set of Double Lock registers on his ordering him to do so as is evidenced by the fact that when the fact

> that when he asked him even in writing on January 13, 1961, after obtaining Treasury Officer, Patiala's orders to write-up his set of Double Lock registers, he stated in his application, dated January 16, 1961, that he had no objection to carry out the work under protest for some days up to the decision of the Treasury Officer, Patiala.
>
> The carelessness, negligence and disobedience of the official has rendered him liable to disciplinary action."

5. Thereafter the appellant seems to have submitted his explanation and then Deputy Secretary, Shri Banwari Lal, seems also to have Given him a personal hearing. The appellant complained that he was not given any opportunity to adduce any evidence in defence and no prosecution witnesses were examined in his presence. Shri Banwari Lal seems to have felt it necessary to have a local enquiry and, therefore, asked the Treasury Officer to send a report after a local enquiry. One of the complaints of the appellant was that these proceedings were started because one Yash Pal Kaura, the Treasury Officer was inimically disposed towards him. But we consider that point irrelevant because how the proceedings came to be initiated would not in any way affect the validity or otherwise of the disciplinary proceedings. The Treasury Officer who sent up the report, after the local enquiry, was another person.

6. Two contentions were urged on behalf of the appellant -

(1) that by the failure to give him copy of the report of the Treasury Officer and taking it into consideration behind his back, he has been prejudiced; and

(2) Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 has been contravened.

7. Under Rule 4 of the above rules the following penalties may, for good and sufficient reason, be imposed -

(i) Censure;

(ii) Withholding of increments or promotion, including stoppage of an efficiency bar, if any;

(iii) Reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence of breach of order;

(v) Suspension;

(vi) Removal from the Civil Service of the Government, which does not disqualify from future employment;

(vii) Dismissal from the Civil Service of the Government which ordinarily disqualifies from future employment.

Rule 8 is to the following effect :

> "8. Without prejudice to the provisions of Rule 7, no order under clauses (i), (ii), or (iv) of Rule 4 shall be passed imposing a penalty on a Government servant, unless he

> been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration."

There are two provisos to the rule which it is unnecessary to set out for the purposes of this case. Under this rule the only requirement is that the officer concerned should be given an adequate opportunity of making any representation that he may desire to make. There is no provision for examination of witnesses, cross-examination of witnesses and furnishing a copy of the report, all requirements which we find in Rule 7. Therefore, in this case if the punishment had been imposed after the charge-sheet had been served on the appellant and he had made his representation and also been personally heard by Banwari Lal, it would have been perfectly legal. Rule 8 does not require anything more than that the allegations on the basis of which the officer concerned is charged should be made known to him and he should be given an opportunity to make any representation with regard to them. He need not be told the punishment which is sought to be imposed on him, either at the time the charge-sheet is served on him or at any other stage. There is no question of his being given an opportunity a second time after the enquiry is completed in respect of the punishment sought to be imposed on him unlike in a case covered by Rule 7.

8. Rule 7 of these Rules deals with cases where the major punishment of dismissal, removal or reduction in rank are proposed to be imposed and sub-rule 6 of that rule specifically provides that in such a case after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer shall be supplied with a copy of the report of the enquiring authority and be called upon to show cause against the particular penalty proposed to be inflicted on him. The words "without prejudice to the provisions of Rule 7" occuring at the beginning of Rule 8 are sought to be taken advantage of to contend that even in the case of minor punishments referred to in that rule, of censure, withholding of increments and recovery from pay, an opportunity should be given to show cause against the punishment proposed to be imposed. Those words do not fit in the context and cannot mean that in a case of minor punishment not only the provisions of Rule 8 but also the provisions of Rule 7 should be followed. The rules must be interpreted in their proper setting and if so interpreted, those words would not bear the interpretation sought to be placed on them. The provisions of Rule 7 are necessitated by the provisions of Article 311(2) of the Constitution. As far as other punishments are concerned, the only right which a Government servant is entitled to is that the action proposed should be in accordance with the rules made under the proviso to Article 209. That rule, Rule 8 does not contemplate anything more than an adequate opportunity of making a representation. We are, therefore, unable to accept this contention.

9. We shall now consider some of the decisions cited before us. It is first necessary to refer to the decisions in Kalyan Singh v. The State of Punjab (Supra) which has been overruled by the Full Bench in Malvinderjit Singh v. The State of Punjab and Another (supra). The High Court was not quite right in dismissing the appellant's appeal on the basis of Malvinderjit Singh's case (supra). Kalyan Singh's case (supra) was overruled only as regards the question whether a copy of the report of the Vigilance Department on the basis of which proceedings were initiated, should be given to the concerned officer or not. We are not concerned with that question in this case. But the Full Bench also dealt with the question of the procedure to be adopted in the case of imposition of minor punishment and it held :

> "(a) that for the minor punishment to public servants for their misconduct the authorities have designedly provided for a simple and summary procedure of representation only, untrammelled by any furnishing of copies of documents or

material on which the allegations are based or the right of cross-examination or the right of leading defence evidence which are all provided in the case of enquiries qua major punishments. The furnishing of documents as provided for in Rules 7 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, stands excluded under Rule 8. Basically the right to secure copies of documents or other specific material is a procedural right which accrues if it is so granted in express terms by a statue. Nobody can be said to have any inherent right to secure copies or to have any access to confidential State records. Such a right can only be a creature of a statue. On an overall view of the specific language of Rule 8 of the Rules, its setting in the relevant rules and the scope and ambit thereof, all collectively tend to negative any such procedural right.

(b) That the words 'adequate opportunity' in the context of Rule 8 of the Rules may mean no more than an adequacy of time to make a representation which alone is guaranteed by Rule 8. It is possible to place such a limited meaning upon these words, but even if a more liberal construction is placed, these words cannot be elongated enough to create a specific procedural right to secure copies and materials. Moreover, the adequacy of opportunity to make representation under Rule 8 cannot possibly imply a larger right than what has been judicially interpreted to be the basic requirements of a reasonable opportunity of being heard or to show cause against specific allegations.

(c) That under Rule 8 of the Rules, unlike Rule 7, the employee has only one opportunity of making a representation. No enquiry need be conducted as under Rule 7 and no evidence need be recorded in the presence of the employee. It is open to the punishing authority to collect any material either itself or through any specialised agency like the Vigilance Department to acquaint itself with the real facts in order to take a decision whether any action is to be taken against the employee, and, if so, what action is to be taken. But if such an enquiry is made and material is collected on the basis of which a prejudicial view is taken against the employee and he is charge-sheeted under Rule 8 with a view to impose one of the three minor punishments, then the employee is entitled to an adequate opportunity to make a representation to show that (1) he is not guilty and (2) that the proposed punishment should not be imposed on him, being excessive. It would be impossible for an employee to make such a representation unless it is made known to him the material on the basis of which it has been decided that he is guilty and that the particular punishment be imposed on him. ..... Without being supplied with such a material he cannot make an effective and real representation. The only case in which the punishing authority would be justified in withholding such a material, would be where under the second proviso to Rule 8, sufficient reasons are recorded in writing to the effect that it is not practicable to observe the requirements of the rule and that this can be without injustice to the officer concerned.

(d) That the words 'adequate opportunity' in the context of Rule 8 of the Rules connote 'reasonably sufficient opportunity' in every respect, to make a representation against the action sought to be taken against the employee. Before an employee can be said to have had this 'adequate opportunity', the employee has to be told the charges of misconduct and then he must have an opportunity to be heard in answer to those charges."

The case in R. D. Rawal v. State, (1967 CLJ 439) was also noticed in the above Full Bench decision. In that case two charges were made against Rawal and one of the charges was held not established. Another charge was on the basis that certain action taken by him was mala fide. The mala fides were held not established but the impugned order withholding one increment was passed on the ground that some lapses on his part had resulted in excess payment to a contractor. This order was set aside by the High Court. That decision could be explained on the basis that the officer concerned did not have an opportunity of showing that there was no lapse on his part.

10. We may also refer to the decision in Roop Lal v. State of Punjab, ((1971) 1 SLR 41) of the Punjab and Haryana High Court. The ratio of decision in that case is stated as follows :

> "In the present case if the procedure under Rule 7 of the Rules had been followed and instead of a major punishment a minor punishment had been inflicted, no fault could be found therewith but if no enquiry was held as envisaged under Rule 7 ibid and the minor punishment prescribed under Rule 8 had to be followed."

11. We thus come to the conclusion that there was no failure in this case to follow the relevant rules, which, as we have already indicated, only require that the officer concerned should have an opportunity of making a representation in respect of the charges made against him. This leaves the question of whether any principles of natural justice have been violated in this case.

12. The rules of natural justice would undoubtedly have to be observed in any proceedings even by a domestic tribunal. But the principles of natural justice to be applied would depend upon the circumstances of each case. In Surest v. Kerala University ((1969) 1 SCR 317 : AIR 1969 SC 244 (1969) 1 SCJ 748) this Court pointed out that the question whether the requirements of natural justice have been met by the procedure adopted must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. After referring to the decisions in Russel v. Duke of Norfolk & others, ((1949) 1 All ER 108 at 118) Local Government Board v. Alridge, (1915 AC 120) and De Verteuil v. Knaggs & Another (1918 AC 557) this Court also referred to the observations of Lord Harman, J. in Byne & Another v. Kinematograph Renters Society Ltd. ((1958) 2 All ER 579) to the following effect :

> "What, then, are the requirements of natural justice in a case of this kind ? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

and went on to lay down the same principle in its own words :

> "Suffice it to say that in the case before us there was a fair inquiry against the appellant; the office appointed to inquire was an impartial person; he cannot be said to have been biassed against the appellant; the charge against the appellant was made known to him before the commencement of the inquiry; the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of natural justice. It is true that the Vice-Chancellor did not make available to the appellant a copy of the report submitted by the Inquiry Officer.

> Admittedly the appellant did not ask for a copy of the report. There is no rule requiring the Vice-Chancellor to provide the appellant with a copy of the report of the Inquiry Officer before he was called upon to make his representation against the provisional decision taken by him. If the appellant felt any difficulty in making his representation without looking into the report of the Inquiry Officer, he could have very well asked for a copy of that report. His present grievance appears to be an after-thought and we see no substance in it."

13. As we have indicated earlier, if Shri Banwari Lal had imposed the punishment after he had given a hearing to the appellant, the order would have been perfectly legal and it could not have been perfectly legal and it could not have been said that any principle of natural justice had been violated. The criteria indicated above would have been satisfied. But what is urged before us in this case is that as the report of the Treasury Officer, which we have already referred to earlier, was taken into consideration without showing it to the appellant he has been seriously prejudiced and the principles of natural justice have been violated insofar as he has not had an opportunity of making his representation in respect of that report. We find no substance in this contention. When Shri Banwari Lal wanted a local enquiry to be made he apparently wanted the representation made by the appellant to be checked up with the records and that is what has been done as is clear from a comparison of the allegations on the basis of which the charge-sheet was served on the petitioner, and the report of the Treasury Officer. We have carefully gone through it and it does not add one single instance more than what is already found in the allegations. It merely sets out the evidence in support of these allegations. We are, therefore, of the opinion that the appellant has not been in any way prejudiced by the Treasury Officer's report being taken into consideration before the order of punishment was passed against the petitioner. If before the Treasury Officer had sent his report he had associated the appellant in the enquiry he held it would not have been necessary to give him a copy of the report he sent. If the report had contained any material extraneous to the charges against the appellant, or anything in addition to what is found in the original allegations against him then only be could be said to have been prejudiced. In the decision of the Judicial Committee in B. Surinder Singh Kanda v. Government if the Federation of Malaya (1962 AC 322) noticed in Suresh v. Kerala University (supra) a report made by the Board, which held the preliminary inquiry, which was highly prejudicial to Kanda had been placed in the officer who held the formal enquiry was not made available to Kanda. That report was likely to have prejudiced the Inquiry Officer and the Judicial Committee held that the enquiry was not fair. There is no question in this case of the Treasury Officer's report having prejudiced the punishing officer, Mr. D. D. Sharma. The application of the principles of natural justice is not a question of observance of a formula or a mere technicality. In essence it is meant to assure that the party concerned has an opportunity of being heard, the principle of audi alteram partem. Whether in any particular case it has been violated will depend on the facts and circumstances of that case. It is not to be considered that unless all the procedure of the courts are observed it would mean failure to observe the principles of natural justice. We are of the opinion that no principles of natural justice have been violated in this case. We think it useful in the circumstances of this case to refer to the observations made by this Court in Suresh's case (supra) to the effect :

> "There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceedings must consist of two inquiries, one before issuing the show-cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show-cause notice is provided by law

from that it does not follow that a copy of the report on the basis of which the show-cause notice is issued should is made available to the person proceeded against or that another inquiry should be held thereafter."

14. In the result this appeal is dismissed.

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