Krishna Chandra Tandon

Vs

The Union of India

Civil Appeal No. 2041 of 1969

(D. G. Palekar, P. N. Bhagwati JJ)

24.04.1974

JUDGMENT

PALEKAR, J. -

1. This is an appeal by certificate from the judgment and decree of the Allahabad High Court dated July 30, 1969 reversing the decree of the learned Additional Civil Judge Lucknow dated January 1, 1964 in Regular Suit No. 36 of 1958. The appellant was the plaintiff in the suit.

2. The appellant joined service as a Junior Clerk in the Income-tax Department in 1925. He was promoted as an Officiating Inspector in 1943 and as Income-Tax Officer in 1946. Between June 25, 1949 and October 16, 1950, he was posted at Agra as Income-Tax Officer, Ward E. Thereafter, he was transferred to Kanpur. Since complaints had been received with regard to his work at Agra, Shri R. N. Srivastava, Inspecting Assistant Commissioner of Income-tax, made some preliminary enquiries and reported the matter to the Commissioner of Income-tax. On the basis of the report, the Commissioner of Income-tax issued a Memo dated March 8, 1952 to the appellant and this Memo is described in these proceedings as the first Charge-sheet. In contained 4 charges-(1) that the appellant did not properly handle seven stated cases which resulted in loss of revenue. The names of seven business firms were given in that connection; (2) that the appellant disposed of assessments in the case of six firms hurriedly and leniently on the eve of his departure and after the receipt of his transfer orders from Agra which also resulted in loss of revenue. Six names of the assessee firms were also given; (3) that he tampered with the records in two cases, the names of the two assessees were given; (4) that he disregarded the orders of the Commissioner in the case of two named assessees although he was required by the Commissioner to make an enquiry on the complaint filed by one G. K. Telang. Detailed particulars on the basis of which the charges had been made were given in Annexure `A' attached to the chargesheet. The nature and extent of the delinquency on the part of the appellant were highlighted in these particulars. The appellant was required to show-cause in writing within 15 days why he should not be suitably dealt with and was also required to state whether he would like to produce any evidence in his support or would like to be personally heard.

3. On April 17, 1952 another Memo was issued by the Commissioner of Income-tax and this was described as a Supplementary charge-sheet to the previous Memo dated March 8, 1952. It was stated therein that in addition to the charges already framed against the appellant and communicated to him by the Office Memo dated March 8, 1952 he was further charged that he had abnormally delayed his report in two cases. The description of the two cases was then given. The appellant was also required to show cause in writing why he should not be suitably dealt with. This second Memo is not of much importance because the charges therein have not figured in appeal.

4. The appellant submitted his explanations to the two charge-sheets on June 6, 1952 and October 24, 1952 respectively. They are Exhibits 54 and 55.

5. After considering the explanations, the Commissioner appointed by his order dated April 13, 1955 Shri G. S. Srivastava, Inspecting Assistant Commissioner as the Enquiry Officer for conducting enquiry into the charges already communicated. The appellant promptly objected to Mr. Srivastava's appointment as the Enquiry Officer, whereupon the Commissioner cancelled that appointment and appointed Shri V. S. Sundramurti Mudaliar, Deputy Director of Inspection (Investigation), New Delhi as the Enquiry Officer. The order was dated July 6, 1953. That Officer entered upon the enquiry by issuing a letter to the appellant on July 23, 1953 requiring the appellant to appear before him at Kanpur on July 25, 1953.

6. As the Enquiry was proceeding, the Commissioner of Income-tax served a third charge-sheet dated October 27, 1953, being supplemental to the charge-sheets which were already under enquiry. This charge-sheet contained 3 charges-(1) it was alleged that the appellant had failed to obtain the previous sanction for the purchase of two immovable properties both at Lucknow, and had failed to make a declaration, as required under the Conduct Rules; (2) that the cost of the two Lucknow properties and other assets acquired by the appellant were far in excess of his legitimate pecuniary resources giving rise to the reasonable presumption that he had been accepting illegal gratification in the course of the discharge of his duties (a) he deliberately and with dishonest motive made under assessments resulting in loss to revenue with a view to make illegal gains for himself in the case of assessment of nine firm and (b) that he manipulated and tampered with Government records or made false statements in case of five assessees who were also named. The 14 assessees named under the third charge are mostly the assessees mentioned in the first charge-sheet. In the First Charge-sheet the principal charge was that he had made under-assessments and caused loss of revenue. In the third charge-sheet the charge is more aggravated, because it is stated that the under-assessment was deliberate and dishonest with a view to make illegal gain for himself. This charge-sheet also had an annexure in which particulars in great detail were given with regard to the dishonest manner in which the assessments had been made by the appellant in the case of the firms mentioned in the First charge-sheet.

7. The three charge-sheet referred to above were attached to the plaint as Schedules II, III and IV. The appellant, as required under the third charge-sheet, submitted his explanation thereto on April 27, 1954.

8. The enquiry was principally based on the assessment records made by the appellant in the case of the several assessees. The Enquiry Officer had to question the appellant from time to time as to what he had to say with regard to the various items of irregular or erroneous assessment and his replies were duly noted. A number of points were raised by the Enquiry Officer and the appellant submitted his explanation in writing. Thereafter, the Enquiry Officer framed a questionnaire to which also the appellant made his reply. Ultimately the Enquiry Officer submitted his report dated July 16, 1954 to the Commissioner of Income-tax. On December 24, 1954, the Commissioner issued a letter to the appellant enclosing the report of the Enquiry Officer and the appellant was required to submit his comments thereon before any further action was taken. The appellant accordingly, submitted his comments on January 13, 1955 and January 20, 1955.

9. After the perusal of these comments the Commissioner of Income-tax issued a show-cause notice dated May 5, 1955 to the appellant recording therein that he concurred with the Enquiry Officers finding in respect of all the charges and had come to the provisional conclusion that the punishment

of dismissal from service should be awarded. The appellant was asked to show cause why the above mentioned punishment should not be imposed on him. The appellant sent two sets of replies to the show-cause notice one on May 26, 1955 and the other on June 10, 1955. After considering the replies, the Income Tax Commissioner passed an order of dismissal on July 28, 1955 (Ext. A-3).

10. The appellant filed the suit out of which the present appeal arises on August 29, 1958 asking for the following reliefs : (a) a declaration that the plaintiff is still in service and entitled to all emolument pay, dearness allowance, annual increments and privileges and that the suspension order dated January 23, 1953 and dismissal order dated July 28, 1955 were illegal ultra vires and void and ineffectual against the plaintiff; (b) that a decree for Rs. 26,897.25 p. should be passed in favour of the plaintiff against the Union Of India.

11. The relief was claimed on several grounds which, it is not necessary to enumerate here in detail. The suit was contested by the Union Of India which affirmed that the suspension and dismissal were both legal and operative and, therefore, the suit was liable to be dismissed.

12. The learned Trial Judge framed as many as 11 issues. He considered some of them cursorily. On some other he did not record any finding at all. He was generally of the view that there was no material before the Enquiry Officer on the basis of which the plaintiff could be found guilty of the various charges levelled against him. It also appears that the learned Judge was of the view that the enquiry was vitiated as no reasonable opportunity was given to the appellant to defend himself. Accordingly, the Trial Court decreed the suit. Aggrieved by that order, the Union Of India went in appeal before the High Court. The matter came for hearing before a Division Bench consisting of Laxmi Prasad and G. S. Lal JJ. The Principal judgment was delivered by Lal, J. Laxmi Prasad, J. agreed with most of the finding-with which we ar now concerned-recorded by Lal,J. The learned Judges held that the appellant had been dismissed from service after holding the necessary enquiry and after affording reasonable opportunity to defend. The appellant had alleged in his plaint 17 ground challenging the order passed against him. The trial Court had raised 11 issues. After co-relating those grounds with the several issues the High Court dealt with each one of the grounds in detail and came to conclusion that, on the whole, there was no substance in the appellants suit that he had been unlawfully or irregularly dealt with in the matter of the disciplinary enquiry. Though it was not necessary to consider in detail the various cases in which dishonest under assessment was alleged they considered the case with a view to see whether there was evidence for the finding of the Commissioner of Income-tax who passed the order of dismissal. The learned Judges correctly informed themselves that they could not examined the evidence as if they were sitting in appeal over the findings of the Commissioner. All they could do was to consider whether the order was based on no evidence. Except in the case of a few items the learned Judges found that the Commissioner of Income-tax had evidence for the finding he had recorded. That however, did not make any difference to the punishment inflicted by the Commissioner because as pointed out by this Court in the State of Orissa v. Bidyabhushan Mohapatra, (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : 1963 (1) Lab LJ 239) an order of punishment can be supported on any finding as to the substantial misdemeanor for which the punishment can lawfully be imposed and it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. Accordingly, the decree of the trial Court was set aside and the suit was dismissed.

13. The matter has come before us in appeal by certificate not because any substantial question of law is involved but because sub-clause (a) of the Old Article 133(1) of the Constitution applied.

14. Mr. Hardy took us through the relevant material on record and said whatever it was possible for

him to say on behalf of the appellant. We did not however, see much substance in the submission which we shall proceed to dispose of presently.

15. It was first argued that there was really no charge sheet and the enquiry was based on no regular charges. It was submitted that if the three alleged charge-sheet had really contemplated a major punishment, they would not have failed to mention what punishment it was intended to inflict on the appellant. It was argued that under rules which applied to the appellant, there were several modes of punishment out of which only the punishment of removal, reduction in rank and dismissal required a formal enquiry, while the lesser punishment did not require any such formal enquiry. Mr. Hardy's case is that in this case there was really no formal enquiry on regular charges and hence a major punishment was out of the question. Hence, the appellant not having known at the commencement of the enquiry that a major punishment would be inflicted on him had been prejudiced in his defence and therefore, on that ground the appellant was entitled to claim that the final order of dismissal passed against him was bad and was not in accordance with law. We do not think there is any substance in this submission. The appellant was under no misapprehension to the nature of the enquiry started against him. It is true that the first charge-sheet was described as a Memo but the Memo showed that it was a Memo issued in connection with disciplinary action against him. Four charges were formally framed and the Annexure gave detailed particular in support of the charges. In Para 2 of this Memo the appellant was required to show cause in writing as to why he should not be suitably dealt with. Para 3 asked him to say whether he would like to produce any evidence in support or would like to be personally heard. There is hardly any doubt about the nature of the disciplinary action intended to be taken. There is no magic in the word charge-sheet. The Memo clearly showed what were the heads under which disciplinary action was contemplated. That it was a charge sheet was made clear soon enough (before the Enquiry Officer was appointed) because the second charge-sheet which was issued on April 17, 1952 described itself as a supplementary charge sheet and stated that the charge made in this supplementary charge-sheet were in addition or supplemental to the charge framed against the appellant under the Memo dated March 8, 1952 that is to say, the first charge-sheet. The third charge-sheet which was served on him on October 27, 1953 described itself formally as a charge-sheet and also the previous two communications as charge sheets. The several charges were clearly set out in all of them and the necessary particulars on which the charges were based were set out in great detail in the Annexures attached to them. We are therefore, not at all impressed by the argument that there was in reality no charge-sheet which contemplated a formal enquiry. Nor are we impressed by the second part of the argument viz. that the appellant was prejudiced as the punishment contemplated was not referred to. We must point out here that the Enquiry Officer who was to make the enquiry was not the authority who could inflict the punishment. He had only to make his report, after enquiry, to the Commissioner of Income-tax who alone was the punishing authority. That authority, it is disputed, issued a show cause notice why the punishment of dismissal should not be imposed upon the appellant and the appellant did show cause. The appellant knew from the beginning that disciplinary action was contemplated against him and the very fact that formal charges were drawn up against him show that the major punishments were intended. Indeed it will be absurd to think that when a person in the position of an Income-tax Officer is charged for causing loss of revenue by under assessing the assessees with a dishonest motive he could be under any misapprehension as to the nature of punishment likely to be inflicted. The enquiry against him went on till 1954. He had been suspended in January, 1953 and the very nature of the enquiry could not have kept him under any belief that he was likely to be lightly dealt with if found guilty.

16. Mr. Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the

enquiry with which we have now to deal. It was first contended that inspection of relevant records have now a deal. It was first contended that inspection of relevant record and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr. Hardy was able to point out to us was that the reports received by the Commissioner of Income-tax from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the commissioner ofIncome-tax had asked the Inspecting Assistant Commissioner Shri R. N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr. Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinate to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the Commissioner of Income-tax relied on the report of Shri R. N. Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission.

17. It was next argued that the appellant had asked for the assistance of an advocate but the same was refused. It was submitted that having regard to the intricacies of the case and particularly the ill-health of the appellant, he should have been given the assistance of an advocate, and since that was not given there was no reasonable opportunity to defend. The High Court has rejected this submission and we think for good reasons. The appellant was not entitled under the Rules to the assistance of an advocate during the course of the enquiry. The learned Judges were right in pointing out that all that the appellant had to do in the course of the enquiry was to defend the correctness of his assessment orders. Clear indications had been given in the charges with regard to the unusual conduct he displayed in disposing of the assessment cases and the various flaws and defaults which were apparent on the face of the assessment records themselves. The appellant was the best person to give proper explanations. The circumstances in the evidence against him were clearly put to him and he had to give his explanation. An advocate could have hardly helped him in this. It was not a case where oral evidence was recorded with reference to accounts and the petitioner required the services of a trained lawyer for cross-examining the witnesses. There was no legal complexity in the case. We do not, therefore, accede to the contention that the absence of a lawyer deprived the appellant of a reasonable opportunity to defend himself.

18. It was next argued that in this case there was really no personal hearing, that is to say, according to Mr. Hardy, the enquiry was not conducted in the manner in which departmental enquiries are usually conducted. What he means is that the enquiry did not take the shape of trial as in a court of law where oral evidence is led and witnesses are offered for cross-examination. The enquiry consisted chiefly of eliciting replies to questions put by the enquiry Officer on the basis of the assessment records, and this, according to Mr. Hardy, did not amount to a proper enquiry. There is, however, no set from for disciplinary enquiries. It is true that in some cases oral evidence may have to be led when witnesses are called to give evidence and are offered for cross-examination. But in the other cases that may not be the appropriate mode of enquiry. For example, in the present case, the appellant was charged on the basis of his assessment orders. The various flaws in the assessment were pointed out to him. His answer were recorded. Opportunities were given to him to explain the

circumstances disclosed by the evidence culled from the assessment orders themselves. He gave the explanations. We do not see how it could be said that this is not personal hearing. In fact it is very much so. At every step he was questioned with regard to the record he himself had made and an opportunity granted to explain the circumstances against him. The necessary requirements of natural justice is a reasonable opportunity to defend. That was given in the present case and, therefore, there can be really no complaint on the score that there was no personal hearing. It appears that only one witness named Rajvir Singh had been examined but the Enquiry Officer himself rejected his evidence and no more was said thereafter.

19. It does appear in this case that while the enquiry was pending the Enquiry Officer made some enquiries with regard to the appellant's immovable properties at Lucknow. In these enquiries, the appellant himself was not associated. The High Court took exception to the Enquiry Officer's finding based on these private enquiries and, in our opinion, rightly. It held that finding on charge No. 2 in the third charge-sheet was vitiated. Except for this lapse on the part of the Enquiry Officer, there does not appear to be any serious ground for complaint that the appellant was convicted on evidence which was not disclosed to him.

20. It was next contended that the show-cause notice issued by the Commissioner of Income-tax on May 5, 1955 was vague and did not sufficiently specify the entire evidence against the appellant and the reasons and grounds for arriving at the provisional conclusion. We do not find any substance in this argument also. It must be recalled that after the Enquiry Officer's report was received by the Commissioner, he sent a copy of the same to the appellant who was requested to make his comments thereon. In fact this was not necessary, and it was open to the Commissioner to issue a notice to show cause against the punishment if he was provisionally satisfied on the report. The appellant made his comments on the report of the Enquiry Officer and after taking them into consideration the Commissioner informed the appellant by his order, dated May 5, 1955 that he had provisionally come to the conclusion that the findings of the Enquiry Officer were correct and, therefore, he was calling upon the appellant to show cause why he should not be dismissed from the service. The appellant gave his explanation. The Commissioner considered the evidence against the appellant and his explanations, some of which he accepted and some others he did not, and finally came to the conclusion that a majority of the charges had been established. It was not necessary for the Commissioner to make a precise summary of the evidence against the appellant and furnish him the reasons or grounds for arriving at the provisional conclusion when he issued the show-cause notice on May 5, 1955.

21. Complaint was made before us that the appellant was not informed as to what was the punishment recommended by the Enquiry Officer. This, however, assumes that the Enquiry Officer had made recommendation with regard to the punishment. There is no evidence that he did. In fact a copy of the Enquiry Officer's report had been sent to the appellant and it does not disclose that there was any such recommendation with regard to punishment. It is argued that since the Enquiry Officer had been asked to submit a report containing his findings and recommendations, there must have been some recommendation as to punishment. The question was not raised in the pleadings and learned counsel appearing for the Union of india informs us that he has in his possession the original report of the Enquiry Officer which he was willing to show to the Court and that report did not contain any recommendation as regards punishment. Merely because the Enquiry Officer was asked to send his report containing his findings and recommendations it does not follow that there must have been a recommendation with regard to punishment. In the absence of any finding on the point we do not think that we can accede to this contention.

22. Next it was contend that the Commissioner had unjustifiably made a finding which was contrary to the one made by the Enquiry Officer in the case of the assessment of the firm of Girdhari Lal Manoharlal Ferozabad. The Charge in this connection was that the appellant had failed to take action against the assessee for escaped income for earlier years. The Enquiry Officer though that there were no grounds to hold that the appellant had erred in not taking action. The Commissioner came to a contrary conclusion. Now there is no doubt at all that the Commissioner is not bound by the findings of Enquiry Officer See. Union Of India v. H. C. Goel. ((1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 Lab LJ 38) He was the punishing authority. He had to consider the evidence before him and though he had to consider the Enquiry Officer's report he was not bound by the latter's findings. What is further contended, however, is that in the notice to show cause, dated May 5, 1955, the Commissioner had stated that he had concurred with the finding of the Enquiry Officer which would mean that he had also concurred with the above finding of the Enquiry Officer in this respect. Reading the show-cause notice one feel no doubt that what the Commissioner meant to say in the notice was that he had provisionally concurred with the findings of the Enquiry Officer. If it was not so there would have been really no point in asking the appellant had omitted to give his explanation on the point, there might have been some prejudice. It is not shown that there had been any prejudice in fact. But assuming that there was this slight deviation it amounts to nothing significant because on the main two points considered in connection with the assessment of Girdharlal, namely, (1) that the appellant had not imposed a penalty although the returns for two years had not filed within the time allowed and (2) that the appellant had failed to add as profits cash deposits amounting to about Rs. 2/- lakhs both the Commissioner of Income-tax and the Enquiry Officer were at one.

23. Finally, it was contended that the enquiry was oppressive because instead of a regular enquiry on charge once framed, charge-sheets were filed as the enquiry went along. The complaint is that there were three charge-sheets filed against the appellant on three different dates, two in 1952 and one in 1953. In fact the third charge-sheet was issued when the Enquiry Officer had already undertaken the enquiry under the first two charge- sheets. It was contended that by adding charges as the enquiry proceeded, the enquiry was rendered oppressive and this amount to deprivation of reasonable opportunity. We do not find any substance in the contention also. The first charge-sheet was issued the appellant on March 8, 1952 and the second about 5 week later i.e. in April, 1952. The appellant filed his explanations to each charge- sheet and only on finding them to be unsatisfactory, the Commissioner appointed the Enquiry Officer in 1953 actually on July 6, 1953. The Enquiry Officer entered on the enquiry on July 23, 1953. The third charge-sheet, it is true, was issued by the Commissioner when the Enquiry Officer was proceeding with the enquiry in respect of the first two charge-sheets. But the third charge sheet was merely an aggravated form of the first charge-sheet. Under assessments referred to in the first charge- sheet were now linked with the appellants dishonest motive of accepting illegal gratification. In that connection, reference was also made in the third charge-sheet to the appellant acquiring assets in excess of his legitimate. Pecuniary resources. Indeed the latter charge failed. But under-assessment with a dishonest motive has been substantially held proved in the case of a large number of assessments. The charge about dishonesty and acceptance of illegal gratification was mainly inferential on the material which was placed before the appellant from the very beginning. After the third charge-sheet was given, the appellant was not hustled through the enquiry. He was given enough opportunity to make whatever representations he wanted to make against the evidence disclosed by the circumstances of the case. All that we can say is that by reason of the third charge-sheet the enquiry was prolonged for sometime, but the essential facts being the same, there was no basis for complaint that the enquiry had become oppressive.

24. In the result we do not think that the High Courts was in error in dismissing the plaintiffs suit. The appeal fails and is dismissed. No order as to costs.

</html