K. L. Shinde

Vs

State of Mysore

Civil Appeal No. 847 of 1974

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

26.03.1976

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against the judgment and decree dated October 3, 1972, passed by a Single Judge of the Mysore High Court whereby allowing the respondent's Second Appeal No. 729 of 1967, he set aside the appellate judgment and decree dated April 18, 1967 passed by Civil Judge, Belgaum, declaring the order dismissing the appellant from service as illegal and ultra vires.

2. Facts material for the purpose of this appeal are : The appellant herein was a police constable attached to Khadebazar police station at Belgaum in 1960. In the small hours of the morning of November 17, 1960, the Cantonment Police intercepted a tonga transporting smuggled illicit liquor in four tubes from Devi Temple to the cantonment area with the intention of disposing of the same to bootleggers. After registering a case under Section 66(b) of the Bombay Prohibition Act, the Cantonment P.S.I. proceeded against the tonga driver and another person who was found following the tonga in a criminal court of competent jurisdiction and succeeded in securing their conviction for the aforesaid offence. On November 18, 1960, the Cantonment P.S.I. submitted a confidential report about the incident to the Superintendent of Police, Belgaum, and brought to the notice of the latter that some police constables including the appellant who were newly recruited and attached to different police stations in Belgaum were indulging in smuggling illicit liquor. On receipt of the report, the Superintendent of Police directed the P.S.I. Khadebazar police station, to record the statements of three constables namely M. Y. Akki, Waman Mangesh, and Nishikant Shimaji Satyannawar. Pursuant to these directions, the P.S.I. recorded the statements of the aforesaid police constables in the presence of the Superintendent of Police. The statement of Nishikant and Akki, constables disclosed their own and the other six constables and ordered the S. D.P.O. to hold a departmental enquiry against them. The Superintendent of Police also transferred all the seven delinquents from Belgaum and directed that they would not leave their new stations without his permission except for purpose of or in connection with the departmental enquiry. Though the appellant sought permission to stay at Belgaum during the period of his suspension, his request was refused.

3. As the appellant did not plead guilty to the charge farmed against him, the Enquiry Officer proceeded to hold the enquiry against him in accordance with the rules contained in the Bombay Police Manual, 1950. On the conclusion of the enquiry during the course of which a number of witnesses were examined both by the prosecution and the defence, the Enquiry Officer reported to the Superintendent of Police on November 10, 1961, that the charge against the appellant was not

established. He, however, recommended that the appellant should be administered a severe warning as he was convinced that he had been guilty of misconduct and dereliction of duty. The Superintendent of police did not agree with the findings of the Enquiry Officer and directed him to examine police constable Akki whose statement had been recorded before the charge was framed against the appellant. Akki was accordingly examined but he resiled from his earlier statement. The Enquiry Officer in the course of his second report dated November 30, 1961, submitted to the Superintendent of Police that no fresh evidence was forthcoming against the appellant. He, however, stuck to his former recommendation regarding administration of severe warning to the appellant.

4. The Superintendent of Police again disagreed with the report of the Enquiry Officer and found that there was sufficient evidence against the appellant to prove his guilt. Accordingly he issued a notice to the appellant on December 20, 1961, calling upon the latter to show cause why he should not be dismissed from service. Not feeling satisfied with the explanation tendered by the appellant, the Superintendent of Police passed an order on February 9, 1962, dismissing the appellant from service, Aggrieved by his order, the appellant went up in appeal to the D.I.G. of Police but was unsuccessful. He also took the matter in revision to the Government but there also he failed. Eventually he brought a suit in the court of the Second Additional Munsiff, Belgaum, challenging the aforesaid orders for his dismissal and claiming the arrears of his pay.

5. The principal contentions raised by the appellant were twofold :

> (1) That no reasonable opportunity was given to him to defend himself and (2) that the Superintendent of Police was wrong in relying on the statements of the witnesses recorded before the charge was framed against him and in reassessing the evidence contrary to the conclusion arrived at by the Enquiry Officer who held that there was no evidence to substantiate the charge against him.

6. After a regular trial, the suit was dismissed by the Munsiff, Belgaum. On appeal, the Civil Judge, Belgaum reversed the judgment of the Munsiff and decreed the suit. Aggrieved by the decision of the Civil Judge Belgaum the State Government preferred an appeal to the High Court of Mysore which, as stated above, was allowed.

7. Counsel for the appellant has, while supporting the appeal, vehemently contended that the aforesaid judgment and decree of the High Court cannot be sustained as the appellant was deprived of a reasonable opportunity of defending himself during the course of the departmental enquiry. Elaborating his submission, Counsel has urged that as restrictions were placed on the movement of the appellant and he was not permitted to remain at Belgaum during the period of his suspension and evidence of some of the prosecution witnesses was recorded in his absence there has been a gross violation of the provisions of Article 311 of the Constitution and the principles of natural justice. Counsel has further contended that the impugned judgment and decree cannot also be sustained as there is no legal evidence to establish the charge against the appellant.

8. It is well settled that whether a delinquent had a reasonable opportunity of effectively defending himself is a question of fact depending upon the circumstances of each case and no hard and fast rule can be laid in that behalf. In the instant case, the order restricting the movement of the appellant on which strong reliance has been placed on his behalf for assailing the impugned order of his dismissal was not such as can be said to have deprived him of the reasonable opportunity of making his defence. The order, it would be noted, did not place any embargo on the appellant's going to Belgaum for the purpose of and in connection with the departmental enquiry. In fact the appellant

fully participated in the enquiry held at the place. He also made full use of the assistance of a policeman (called police friend) provided to him to conduct the defence on his behalf. The police friend appeared on his behalf before the Enquiry Officer and cross-examined all the witnesses whom the prosecution examined or tendered for cross-examination. He was also furnished with copies of the statements of the three police constables recorded by the Cantonment P.S.I. and allowed an adequate opportunity of cross-examining them. There is also nothing to indicate that the appellant's request for an opportunity to examine any witness in his defence was refused. In fact, he did examine some witnesses in his defence. In view of all this, it cannot be held that a reasonable opportunity of defending himself as contemplated by Article 311 of the Constitution was denied to the appellant.

9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court not this Court can Re-examine and reassess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case, reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant Akki admitted in the course of his statement that he did make the former statement before the P.S.I. Khadebazar policed station, Belgaum, on November 21, 1961. (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his liability to do so. The present case, is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa ((1963) 2 SCR 943 : AIR 1963 SC 375) where it was held as follows :

> Domestic tribunal exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information, material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedures which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to

> the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them.

10. Following the above decision, this Court held in State of U. P. v. Om Prakash ((1970) 3 SCC 878) that the enquiry is not vitiated if the statements taken at the preliminary stage of enquiry are made available to the delinquent officer and he is given an opportunity to cross-examine the witnesses in respect of those statements.

11. The decision of this Court in Ghanshyam Das Shrivastava v. State of Madhya Pradesh ((1973) 1 SCC 656 : 1973 SCC (L&S) 289 on which strong reliance is placed is clearly distinguishable and is not at all helpful to the appellant. In that case the appellant was deprived of the opportunity to defend himself by participating in the enquiry which was held at Jagdalpur, 500 kilometers away from Rewa where the appellant was residing on account on paucity of funds resulting from non-payment of subsistence allowance during his suspension.

12. For the foregoing reasons, we do not find any force in the contention of Counsel for the appellant that there was no evidence on the record which could justify the appellant's dismissal from service.

13. Both the contention raised on behalf of the appellant being without any substance, we find ourselves unable to interfere with the judgment and decree passed by the High Court.

14. The appeal accordingly fails and is dismissed but in the circumstances of the case without any order as to costs.

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