Dewan Singh

Vs

State of Haryana and Another

Civil Appeal No. 27 of 1971

(H. R. Khanna, P. K. Goswami, V. R. Krishna Iyer JJ)

07.05.1976

JUDGMENT

GOSWAMI, J.

1. This appeal by special leave is directed against the judgment of the Division Bench of the Punjab and Haryana High Court by which the appellant's application under Article 226 of the Constitution was rejected.

2. The appellant is a Veterinary Compounder serving at the material time under the Chairman, Panchayat Samiti, Hansi-I. The Zila Parishad Tribunal transferred him from Hansi-I Block to Singhani (Loharu Block) by its resolution of June 30, 1967. The order appears to be transmitted by Memo No. 3201-A of July 6, 1967. On July 27, 1967, the Chairman of the Panchayat Samit, Hansi-I, requested the Chairman of the Zila Parishad, Hissar, to reconsider the decision of transfer and to allow him to continue at his village Umra in public interest. A copy of this letter written to the Zila Parishad was forwarded to the appellant. Since the appellant did not comply with the order of transfer, the Chairman, Zila Parishad Tribunal, served a notice upon him on August 13, 1967, to show cause as to why he should not be dismissed from service on the grounds mentioned in the notice. It is mentioned in the notice that this action has been taken under Section 124 of the Punjab Panchayat Samiti and Zila Parishad Act, 1961 (briefly the Act).

3. The particulars of charges described in the show-cause notice are briefly as under :

> (1) You did not hand over charge of veterinary dispensary to Balwan Singh, Veterinary Compounder, on July 25, 1967, in compliance with the transfer order dated July 6, 1967.
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> (2) You also did not hand over charge to the District Animal Husbandry Officer who was ordered to personally take over charge from you on July 26, 1967.
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> (3) You were again asked by letter dated August 2, 1967 to hand over charge to Balwan Singh, Veterinary Compounder, but you did not hand over the charge.
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> (4) When Ch. Bir Singh Lamba, Secretary, Zila Parishad Tribunal, along with Balwan Singh reached Umra on August 10, 1967 between 4.30 and 5.00 p.m. in order to take charge from you they found you absent and the dispensary locked.
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> (5) That on August 15, 1967 at about 4.00 p.m. when Balwan Singh went to take

> charge from him along with Ch. Bir Singh Lamba, Secretary, Zila Parishad Tribunal, along with Ch. Balbir Singh, Chairman Zila Parishad, Hissar and Kali Member, Panchayat Samiti, Hissar, you refused to hand over charge to Balwan Singh, Veterinary Compounder.
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> (6) When on August 15, 1967 Ch. Bir Singh Lamba, Secretary, Zila Parishad Tribunal, with the held of Balwan Singh was preparing a list of stock in the presence of the Chairman and others, you with Rattan Singh, sarpanch Gram Panchayat, Umra, Giani Ram of village Majahadpur and three or four other unknown villagers entered the office. Giani Ram out of your group snatched the paper from Ch. Bir Singh Secretary, Zila Parishad Tribunal and threatened them to leave the dispensary before they manhandled him. You are thus at the root of all this incident.

4. The appellant submitted a reply on September 13, 1967, describing it as interim explanation and reserving his right to submit a final reply after inspection of certain records and he requested for a date for inspection of the records. In this reply he admitted to have received the transfer order and pleaded that he did not hand over charge to Balwan Singh on July 25, 1967 under instructions from the Chairman, Panchayat Samiti, who, according to him, was the appointing authority and he was carrying out his orders. He particularly denied the incident on August 15, 1967 for which he was held principally responsible in the show-cause notice.

5. It does not appear that the Zila Parishad Tribunal gave any opportunity to the appellant for inspection of records, nor sent any communication to him rejecting the request giving any justifiable reason. The appellant seemed to have been waiting for some communication to his interim reply in order to submit a final explanation when on December 5, 1967, he received the order of the Zila Parishad Tribunal dismissing him from service with immediate effect in pursuance of its resolution of December 1, 1967. The resolution states :

> The Tribunal has come to a conclusion that your reply is not a satisfactory one. And the allegations made against him (sic) seemed to be correct.
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> That led to the appellant's writ application in the High Court resulting in the impugned order.

6. The short question that arises for decision is whether the order of dismissal is in conformity with Section 124 of the Act, or, in other words, whether the same is in violation of the principles of natural justice.

7. We may, therefore, read the material provision under Section 124(2) of the Act :

> 124 (2) The tribunal may suo motu or on the move of the Panchayat Samiti or the Zila Parishad or on the application of any servant of a Panchayat Samiti or Zila Parishad other than a government servant placed at their disposal enquire into the conduct of any servant of the Panchayat Samiti or the Zila Parishad and after making such enquiry as it may deem fit pass such order imposing any punishment including dismissal or removal as it may deem proper :
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> Provided that the tribunal shall not pass any such order in respect of a servant having a right of a appeal under Section 116.

> Provided further that the tribunal shall before passing any order of dismissal or removal give a notice to the servant to show cause against the action proposed to be taken against him.

8. A perusal of Section 124(2) goes to show that before any action is taken for dismissal or removal of an employee the tribunal has to enquire into his conduct justifying such action. This enquiry must necessarily have to be made in the presence of the employee giving him an opportunity to rebut the allegations mentioned against him. It is only after affording him a reason able opportunity to rebut the allegations in the charge and the tribunal is satisfied that the misconduct is established the question of final punitive action either of dismissal or removal has to be considered.

9. Unlike as in Article 311 of the Constitution, Section 124(2) does not in terms mention two stages of a departmental enquiry for misconduct against an employee. Even so, the nature of an enquiry with an object to dismiss an employee is such that a full and fair reasonable opportunity must be given to be him to meet the charges. The second proviso to Section 124(2) provides in unmistakable terms that before passing any order of dismissal or removal a notice has to be given to the employee to show cause against the proposed action. The action of dismissal or removal cannot be proposed, in all fairness, unless the tribunal had reached a conclusion about the guilt after making a proper enquiry giving the employee a reasonable opportunity to defend.

10. In the instant case, apart from giving the show-cause notice, no other communication was made to the appellant except the order of dismissal. This is clear case where the reasonable opportunity envisaged under Section 124(2) has not been afforded to the appellant for making an effective representation to establish his innocence. It is easy to see that the summary order of dismissal must have been influenced by the allegations appertaining to the incident of August 15, 1967 for which, we understand, even a criminal case was instituted against the appellant. That criminal case, we are told, ended in acquittal of the appellant and others on June 10, 1970. At any rate the said incident being included in the articles of charge against the appellant he did not have any opportunity whatsoever to establish his innocence when he had clearly denied the allegations even in his interim reply.

11. The principles of natural justice are clearly ingrained in the provisions of Section 124(2). It is a clear case where the provisions of Section 124(2), which are of a mandatory character in a departmental enquiry have been violated the order of dismissal. The High Court, therefore, should have accepted the petition of the appellant under Article 226 of the Constitution and quashed the order of dismissal.

12. Although in the ordinary course it would have been open to be authority to institute a fresh enquiry on his reinstatement, after the order of dismissal has been set aside, we are clearly of opinion that this is not a case where that procedure should be permitted. For one reason the appellant was dismissed in December 1967 and he has been out of employment for over eight years. He has also not many years to serve. Besides, the serious allegations regarding the incident of August 15, 1967, which, according to us, must have influenced the authority to pass the order of dismissal, have not been found to be established in a judicial trial. While, therefore, quashing the impugned order of dismissal, which we hereby do, we direct that the appellant shall be reinstated in service with immediate effect and there shall be no further enquiry to the allegations forming the subject-matter of the charge against him. The period of absence shall be treated as leave without pay so that appellant will not lose continuity of his service.

13. In the result the judgment of the High Court is set aside and the appeal is allowed with costs.

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