

Commissioner of Income Tax and Others

Vs

Rabindra Nath Chatterjee

Criminal Appeal No. 1847(N) of 1974

(V. R. Krishna Iyer, P. S. Kailasam, A.D. Koshal JJ)

16.11.1978

JUDGMENT

Krishna Iyer, J. -

1. A brief narrative of the facts which have led up to this appeal by special leave is all that is necessary in the light of the disposal we propose to make.

2. An employee of the Income Tax Department in Calcutta (a peon) was suspended for misconduct and an inquiry was started against him under the Relevant Rules in the Central Civil Service (Classification, Control and Appeal) Rules, 1965. The Inquiry Officer served notice of the relevant charges, seven in number, and gave an opportunity to the respondent-employee to defend himself. He engaged the services of one Mukherjee in whose presence two witnesses were examined. The prosecution thereupon concluded the examination of their witnesses. Thereafter Shri M. Mukherjee who had been assisting Shri Chatterjee, the respondent, resigned from Government service on October 1, 1967 and took up legal practice. Thus, Shri Chatterjee, the respondent, lost the services of Shri Mukherjee who had become an advocate unless under Rule 14(8) the concerned departmental authorities allowed him the services of a legal practitioner. The respondent repeatedly requested for permission to engage the services of Shri Mukherjee. This appears to have been very reasonable because Shri Mukherjee had already been conducting the defence of the respondent, and it was in the middle that he had resigned and become an advocate. He had watched the prosecution witnesses and was, therefore, in a much better position to cross-examine and adduce defence evidence than any other new representative from the department. However, despite repeated requests, the departmental authorities concerned refused the permission. In consequence, there was no further cross-examination of the prosecution witnesses and no defence evidence was adduced. The Inquiry Officer concluded his inquiry on that footing and reported that the respondent was guilty of six charges. The disciplinary authorities issued show-cause notice. Whereupon the respondent again requested that he be permitted to inspect the documents, but on a reconsideration of the materials in the report, the disciplinary authorities came to the conclusion that there was no violation of rules or natural justice in the course of the inquiry and held the respondent guilty. He visited him with a penalty of removal from service.

3. Thereupon, the respondent moved the High Court under Article 226 of the Constitution challenging the validity of the order, removing him from service on the ground that it was violative of natural justice; that he should not have been denied the services of one whom he had engaged to defend him and who was familiar with the case. Under Rule 14(8) - a provision in implementation of the rules of natural justice - it was contended that Shri Mukherjee's services should have been permitted. However, the learned single Judge dismissed the writ petition and an appeal to a division

bench followed. The two Judges on the Bench having disagreed, the matter was placed before a third judge who agreed to hold that there was a violation of natural justice and set aside the order of removal from service.

4. This Court had directed that the suspension would continue but that half the salary would be paid to the respondent. On hearing the parties, we are satisfied that there is no ground to interfere with the judgment of the High Court. We think that, it would have been reasonable for the Inquiry Officer to have permitted Shri Mukherjee to have continued to defend the respondent notwithstanding his having become an advocate. Indeed that has led to all these consequences.

5. We, therefore, agree with the High Court and affirm the judgment under appeal but think that the charges being old, it is necessary to dispose them of by an early inquiry. In this view, we make the following directions :

(a) the respondent will continue under suspension but draw the monthly amount at the rate of Rs. 100 per month as directed by this Court until final orders in the inquiry are made;

(b) the inquiry will continue from the stage at which it was on September 12, 1967;

(c) the inquiry will continue from that stage and the respondent will be allowed to engage the services of Shri M. Mukherjee to defend him. He will not be allowed to protect the inquiry on the score that he is not able to secure the services of Shri Mukherjee. We give him two months' time for engaging the said lawyer to defend him. In case Shri Mukherjee is not available within two months, the respondent must be content with any other representative from within the department he may choose. He should do this within one month thereafter, the whole object being that the inquiry should not be delayed;

(d) the Inquiry Officer after giving a fair opportunity to the respondent will proceed with the inquiry from that stage and conclude it within reasonable time. Thereafter, in compliance with the rules in this behalf, the disciplinary authority will pass final orders.

6. On these terms, we dismiss the appeal. The respondent will be paid Rs. 1,000 by way of costs.

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