Sunil Kumar Banerjee

Vs

State of West Bengal and Others

Civil Appeal No. 1277 of 1975

(V. R. Krishna Iyer, O. Chinnappa Reddy,R. S. Pathak JJ)

26.03.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant, a member of the Indian Administrative Service, while working as Divisional Commissioner, North Bengal, was served on May 2, 1970, with a memorandum of charges and was informed by another memorandum to which a list of documents and witnesses was attached, that it was proposed to hold an enquiry against him under Rule 8 of the All India Services (Discipline and Appeal) Rules 1969, and that, if he so desired, the appellant could inspect the documents mentioned in the enclosed list. He was further informed that he should submit a written statement of defence within fourteen days from the date of completion of inspection. The appellant submitted his written statement of defence on June 9, 1970. On August 12, 1970 Shri A. N. Mukherjee, Commissioner for Departmental Enquiries, Vigilance Commission, West Bengal was appointed as Enquiry Officer to enquire into charges against the appellant. After completing the enquiry, the Enquiry Officer submitted a report giving his findings on the various charges. Charges Nos. 2 and 5 were held to be proved, charges Nos. 3 and 4 partly proved and charge No. 1 also proved but considered to be a technical omission rather than a serious lapse. The Vigilance Commission which considered the Enquiry Officer's report, found that charges Nos. 1, 2, 3 and 5 were fully proved and charge No. 4 partly proved. On April 6, 1971, the disciplinary authority namely the Government of West Bengal issued a notice to the appellant informing him that, on a consideration of the report of the Enquiry Officer they had come to the conclusion that charges Nos. 1, 2, 3 and 5 were fully proved and that charge No. 4 was partly proved and calling upon the appellant to show cause why he should not be reduced in rank. The Union Public Service Commission was then consulted and their advice obtained. According to the Union Public Service Commission charge No. 3 had not been proved while charge No. 1 was proved but was considered to be a technical irregularity and charges Nos. 2, 4 and 5 were partly proved. Thereafter the Government of West Bengal came to the final conclusion that charge No. 3 had not been proved, charge No. 1 had been proved but was only a technical irregularity and charges Nos. 2, 4 and 5 partly proved. On those findings the punishment which was imposed on the appellant was reduction 'from the stage of Rs. 2750 per month to the stage of Rs. 2500 per month in the scale of Rs. 2500-125/2-2750 with effect from the date of issue of the order'. This was, however, not be a bar to his earning increments from the stage of Rs. 2500 from the date of reduction to the lower stage. Aggrieved by the order of the government the appellant filed a writ petition in the High Court of Calcutta. A learned Single Judge of the High Court went into the matter in great detail, almost as if he was hearing a regular appeal, perhaps because one of the arguments urged before him was that there was no evidence to sustain any of the charges. The learned Single Judge found that charges Nos. 2, 3 and 5 were not proved, charge No. 4 was partly proved, charge No. 1 was proved but was only a technical irregularity. He was, however, of the view

that the punishment which was actually imposed on the appellant could be imposed in respect of charge No. 4 to the extent to which it was proved. He, therefore, dismissed the writ petition. On appeal under the letters patent a Division Bench of the Calcutta High Court came to the conclusion that charge No. 5 was proved charge No. 1 was proved but was a technical irregularity and charges No. 2 was partly proved. There was a difference of opinion on the question whether charge No. 4 was proved. Both the learned Judges agreed in dismissing the appeal.

2. The appellant who argued the appeal in person raised several contentions. He contended that though the enquiry was to have been held under All India Services Disciplinary Rules, 1969, it was in fact held under the All India Services (Discipline and Appeal) Rules, 1955, which had been repealed. He was thereby prejudiced and in particular he pointed out that he was not questioned with reference to the circumstances appearing against him as provided by sub-rule (19) of Rule 8 of the 1969 Rules. He was thus denied an opportunity of explaining the circumstances which weighed in the mind of the Enquiry Officer. The appellant also contended that the Vigilance Commissioner had no statutory status and he should not have been consulted by the government. He made a grievance of the circumstance that the report of the Vigilance Commissioner was not furnished to him though the ultimate findings of the government were based on the report of the Vigilance Commissioner. He further submitted that the Enquiry Officer was prejudiced against him and that he combined in himself the role of both prosecutor and judge. He further submitted that he was denied a reasonable opportunity of defending himself as important witnesses were not called so as to enable him to cross-examine them though the notings made by them in the files were relied upon against him. Some of the additional documents sought by him were not also made available. He was also not permitted to engage a lawyer.

3. There is no substance in the contention of the appellant that the 1955 Rules and not the 1969 Rules were followed. As pointed out by the High Court, in the charges framed against the appellant and in the first show because notice the reference was clearly to the 1969 Rules. The appellant himself mentioned in one of his letters that the charges have been framed under the 1969 Rules. The enquiry report mentions that Shri Mukherjee was appointed as an Enquiry Officer under the 1969 Rules. It is, however, true that the appellant was not questioned by the Enquiry Officer under Rule 8(19) which provided as follows :

The enquiring authority may, after the member of the services closes his case and shall if the member of the service has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.

It may be noticed straightway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established vide, K. C. Mathew v. State of Travancore-Cochin ((1955) 2 SCR 1057 : AIR 1956 SC 24 : (1956) 2 SCJ 213); Bibhuti Bhusan Das Gupta v. State of W. B. ((1969) 2 SCR 104 : AIR 1969 SC 381 : (1969) 1 SCJ 867). We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned Single Judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegation against him and dealt with

all aspects of the allegations in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19).

4. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material. One of the submissions of the appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

5. We find no basis for the contention of the appellant that there was a reasonable apprehension in his mind that the Enquiry Officer was prejudiced against him. Nor do we agree with the statement that the Enquiry Officer combined in himself the role of the prosecutor and the judge. It appears that when the preliminary report of investigation was considered by the Vigilance Commissioner with a view to recommend to the disciplinary authority whether a disciplinary proceeding should be instituted or not, the report of investigation was referred by the Vigilance Commissioner to Shri A. N. Mukherjee for his views and for the preparation of draft charges if institution of disciplinary proceedings was to be recommended. Shri Mukherji expressed his opinion that there was material for framing five charges and he also prepared five draft charges and forwarded them to the Vigilance Commissioner. The Vigilance Commissioner in turn forwarded the papers to the government who finally decided to institute a disciplinary proceeding against the appellant. Thereafter Shri A. N. Mukherji was appointed as Enquiry Officer. From the circumstance that Shri Mukherji considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot possibly be said that Shri A. N. Mukherji, when he was later appointed as Enquiry Officer constituted himself both as prosecutor and judge. Anybody who is familiar with the working of criminal courts will at once realise that there is nothing strange in the same Magistrate who finds a prima facie case and frames the charges, trying the case also. It cannot for a moment be argued that the Magistrate having found a prima facie case at an earlier stage and framed charges is incompetent to try the case, after framing charges. This was one of the circumstances on which the appellant relied to substantiate his allegation of apprehension of bias. The other circumstances were that he did not permit the appellant to engage a lawyers and that the allowed the Presenting Officer to introduce extraneous matters. The rules give a discretion

to the Enquiry Officer to permit or not to permit a delinquent officer to be represented by a lawyer. In the present case the appellant cross-examined the prosecution witnesses and also examined the defence witnesses. Thereafter when the matter was posted for arguments and was adjourned at least once at the instance of the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry Officer rejected the application noticing that it was made at a very belated stage. We think he was right in doing so. Nor is it possible for us to infer bias from the circumstance that the Enquiry Officer did not allow the appellant to engage a lawyer. We may mention that the appellant who himself presented his case before us argued admirably and with such clarity and precision as would have done credit to the best of advocates. We cannot conceive of any prejudice resulting to him by the denial of a lawyer. The other circumstance regarding extraneous matters being allowed to be brought in is also equality weightless and we need say nothing more about it.

6. There is also no substance in complaint of the appellant that necessary documents and witnesses were not called. All necessary documents were called and there is nothing in the record to suggest that the appellant wanted any particular witness to be called and the request was turned down. The grievance of the appellant is that if the officers who made the notings on the file in connection with some of the charges had been called, he would have been in a position to cross-examine them and elicit statements to substantiate his defence. We do not think that there is any reasonable basis in the record for such a submission. We find no force in any of the contentions raised by the appellant and having given our earnest consideration to all the contentions raised by him we dismiss the appeal, but, in the circumstances of the case, without costs. The appellant made a complaint before us that his pension and other retirement benefits have not yet been finalised though it is quite a considerable time since he voluntarily retired from service. Shri Mukhoty learned counsel for the State of West Bengal stated at the Bar that all steps would now be taken to finalise the matter. We hope the government will take immediate steps to redress forthwith this grievance of the appellant.

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