Kashinath Dikshita

Vs

Union of India and Others

Civil Appeal No. 2571 of 1977

(M. P. Thakkar, R. S. Pathak JJ)

15.05.1986

JUDGMENT

THAKKAR, J. –

1. Validity of the impugned order of dismissal is in issue.

2. The scope of the inquiry whether the impugned order of dismissal (Dated June 11, 1969) is null and void is restricted to two facets. Whether the principles of Natural Justice were violated by the respondents by refusing to supply to the appellant (1) copies of the statements of the witness examined at the stage of preliminary inquiry preceding the commencement of the inquiry and (2) copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the appellant (Who was holding the post of Superintendent of Police, Bijnor, Uttar Pradesh). Such is the position having regard to the fact that this Court (Per Bhagwati, J. (as he then was) and Kailasam, J. as per order dated October 25, 1977) whilst granting special leave, has so restricted the scope of the appeal in the following terms :

> Special leave granted limited only to the question whether there was any violation of Article 311 of the Constitution in regard to the documents and the statement of witnesses referred to in the affidavit of the petitioner dated February 12, 1977

3. As many as eight charges, charges of serious nature, were levelled against the appellant who was at the material time holding the post of Superintendent of Police. The appellant was exonerated of all the charges except and save charges 1 and 2 and charges 8 partly.

The particulars of the charges were set out in the statement of allegations accompanying the charge-sheet (Dated April 3, 1962). The appellant challenged the impugned order of dismissal from service in the High Court on a number of grounds. The High Court repelled all the contentions and dismissed the writ petition. It is not necessary to advert to these contentions inasmuch as the controversy has now been narrowed down to one central issue viz. whether there has been violation of principles of natural justice by reason of :

> (i) failure to supply copies of the statements of witnesses recorded ex parte at the pre-enquiry stage; and
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> (ii) the failure to supply copies of the documents on which reliance was placed by the Department to establish the charge before the enquiry commenced.

4. The following facts are not in dispute :

> (1) The appellant had requested for the supply of the copies of all the statements made by the witnesses at a pre-enquiry stage as also for copies of the documents on which reliance was placed in support of the charges levelled against him, as per his letter dated April 21, 1962 (Annexure XI of the Writ Petition) addressed to the Chief Secretary.
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> 2) The request made by the appellant was in terms turned down by the Disciplinary Authority as per his letter dated July 25, 1962 (Annexure XIX of the Writ Petition).
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> 3) The Disciplinary Authority granted permission to the appellant to inspect the copies of the statements and documents in question, if he so desired.
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> 4) The request made by the appellant for being accompanied by his stenographer to whom he could dictate notes based on his inspection was in terms turned down by the Disciplinary Authority, though the appellant was told that he himself could make such notes as he desired on the basis of the inspection made by him.
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> 5) The aforesaid copies of the statements of the witnesses and the copies of the documents have not been supplied to the appellant till the conclusion of the departmental proceedings.
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> 6) In all as many as 38 witnesses were examined in the course of the departmental proceeding and as many as 112 documents were produced to substantiate the eight charges levelled against the appellant.

5. Preliminary objection : The learned counsel for the respondents have raised a preliminary objection. It has been contended that no point was made before the High Court that the enquiry was vitiated by reason of the failure to supply the statements made by the witnesses at the pre-inquiry stage and the failure to make available the copies of the documents sought to be used against the appellant in order to establish the charges. It is no doubt true that this point has not been discussed in the judgment rendered by the High Court. Even so the preliminary objection must be overruled for two good reasons. Firstly, as will be presently shown the averment made on behalf of the petitioner that the point was in fact argued before the High Court has not been specifically controverted. And secondly, after taking into account the respective affidavits, this Court has granted special leave permitting the appellant to raise this point (in fact the special leave is restricted only to this point).

6. What transpired at the stage of special leave : Way back in 1977 a notice was issued by this Court to the respondents to show cause as to why special leave to appeal should not be granted to the appellant when the matter came up before this Court for grant of special leave. In response to the said notice, the respondents have filed their counter-affidavits. The relevant portions of the affidavits extracted hereunder show that while the appellant has categorically asserted that the point was raised in the Court, the respondents have not been able to controvert the said statement in the affidavit in reply and deny the said allegation. The appellant had stated in his affidavit (Dated October 27, 1975 sworn by the appellant) as under :

> That the High Court has also omitted to consider the contention urged on behalf of the petitioner that there has been violation of the principles of natural justice

> inasmuch as the Board of Inquiry has placed reliance on certain documents which had not been disclosed to the petitioner during the course of enquiry.

In the counter-affidavit (Dated September, 1976 sworn by Shri Subodh Nath Jha, Deputy Secretary to Government of Uttar Pradesh) the respondents have not been able to specifically controvert the averments made in the affidavit, as will be seen from the following passage :

> The regarding the contents of paragraph 20, the deponent has to say that Division Bench of the High Court considered every aspect of the matter and observed :
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> A perusal of the report of the Board of Enquiry revealed that is has taken great pains to discuss the entire prosecution and defence version and given detailed reasons for arriving at the conclusion. The order of dismissal passed by the Government of India is also a well considered order. We are satisfied that the petitioner was afforded a reasonable opportunity to substantiate his case and get a fair hearing. The contention, that there has been a violation of Article 311 of the Constitution, has as such to be rejected.

7. The appellant in his affidavit (Dated November 8, 1976 sworn by the appellant) has stated as under :

> I was present in the Court at the time of the hearing of the writ petition before the Division Bench of the High Court and my counsel, Shri Shanti Bhushan had argued that there was denial of reasonable opportunity to the petitioner as a result of denial of copies of the documents and statements referred to in the Memo of Charges.

8. In the counter-affidavit (Dated November 29, 1976 swrorn by Shri Ravi Shankar, UDC, Appointment Section 3, U.P. Civil Secretariat, Lucknow) the respondents have not been able to specifically controvert the aforesaid averment made in the affidavit, as would be seen from the following passage :

> That regarding the contents of paragraph 4, the deponent has to submit as under :
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> (e) That in reply to this sub-para it is stated that the Hon'ble High Court has discussed at length the various pleas and arguments placed on behalf of the petitioner and after due consideration, dismissed the writ petition filed by the petitioner.

It is thus abundantly clear that the point was raised in the High Court, but the High Court has failed to deal with the question. As discussed earlier, apart from the position which emerges from the affidavits, the fact remains that this Court has permitted the appellant to raise this point when the special leave was granted. (In fact this is the only point on which leave has been granted.) It is therefore futile to contend that the appellant is not entitled to urge this point in support of his appeal. The preliminary objection must therefore fail.

9. Was there refusal to supply copies ? An examination of the record clearly shows that even though the appellant had in terms demanded copies of the documents and statements in question the disciplinary authority had turned down the request. On December 3, 1963, the appellant had moved the Board for copies of documents and statements in question. In the application made by the

appellant, he has made the request in this behalf in the following terms :

> 1. That he has not so far been supplied with copies of the documents cited in evidence and of the statements made by persons named as witnesses on the eight charges framed against me by the first party vide Annexures I and II to G.O. No. CR-70/II-A-1962, dated April 3, 1962 from Mukhya Sachiva, Uttar Pradesh.
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> 2. That to prepare himself for cross-examination of the witnesses for rebuttal of prosecution evidence and for adduction of evidence in my defence, the applicant has to make a careful and detailed study of the said documents and statements.
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> 3. That it is only after such a careful study of documents and statements that the applicant shall be able to decide on the names of the witnesses to be examined in my defence and on the nature of documentary evidence to be adduced in defence.
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> #4. * * *##
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> Prayer
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> (1) That true copies of all the documents cited in evidence on the eight charges against the applicant be kindly supplied to him as early as possible.
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> (2) That in the case of each statement the place, date and time of the recording of statement and the name, designation and capacity of the officer recording statement be kindly indicated.
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> #4. * * *##

10. This application was unceremoniously rejected by the Board on December 20, 1963 (Page 139 of the SLP paperbook :

> Please refer to your application No. KND/BI-2, dated December 3, 1963 regarding copies of documents and statement cited in evidence.

The Baord of Inquiry regrets that it is not possible for them to accede to your request since you have already been allowed by government an access to the relevant official records for the purpose of preparing your written statement as provided under sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules, 1955.) It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him. The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies how can the concerned employee prepare his defence cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible ? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the

disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question : "What is the harm in making available the material ?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from communication dated July 25, 1962 from the disciplinary authority to the appellant :

> The government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specify documents, from out of those inspected by you, the request will be considered on merits in each case by the government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the government could be obtained for the same.... As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevance to the charge, so that orders of government could be obtained.

Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk.

11. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit (Page 309 of the SLP paperbook) has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.

12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed this documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments,

he would have needed the copies of the documents. So also he would have needed the copies of the document to enable him to effectively cross-examine the witnesses with reference to the contents of the document. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.

13. The appellant relied on Tirlok Nath v. Union of India (1967 SLR 759 (SC)) in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

> Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Office to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.

Reliance has also been placed on State of Punjab v. Bhagat Ram ((1975) 2 SCR 370 : (1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335) and State of U.P. v. Mohd. Sharif ((1982) 2 LLJ 180 : (1982) 2 SCC 376 : 1982 SCC (L&S) 253) in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in State of Punjab v. Bhagat Ram ((1975) 2 SCR 370 : (1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335) by this Court as under : (SCC p. 156, SCC (L&S) p. 19, paras 6, 7 and 8)

The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

14. In view of the pronouncements of this Court it is impossible to take any other view. As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the applicant has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment of the High Court is set aside. The impugned order of dismissal dated November 10, 1967 passed against the appellant is quashed aside. We further declare that the impugned order of dismissal is a nullity and nonexistent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on January 31, 1983. Taking into account the facts and circumstances of this case and the time which has elapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the charges in question. We therefore direct the State Government not to do so.

15. The appeal is allowed accordingly with costs throughout.

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