

Chandrama Tewari

Vs

Union of India (Through General Manager, Eastern Railways)

Civil Appeal No. 146 of 1981

(E. S. Venkataramiah, K. N. Singh JJ)

18.11.1987

JUDGMENT

SINGH, J. –

1. The short question which arises in this appeal is whether the disciplinary proceedings taken against the appellant resulting in his dismissal are null and void as the Enquiry Officer failed to comply with the principles of natural justice in holding the enquiry. The question relating to the non-compliance of principles of natural justice is founded on the grievance that a copy of paper No. 5 although mentioned in the memo of charges was not supplied to the appellant, and that he was not permitted to inspect the same. A learned Single Judge of the High Court has answered the question against the appellant. Hence this appeal.

2. The appellant was posted as fireman at Mughalsarai in Northern Railway in May 1964. On May 28, 1964 coal lying at Pusauli Station was fraudulently removed by some person giving out his name as Shambhu Tiwari. A criminal case was registered, but on account of absence of reliable evidence, a final report was submitted. It appears that during the preliminary enquiry held by the department it was found that Chandrama Tewari, the appellant had removed the coal lying at Pusauli Station posing himself as Shambhu Tiwari, a coal contractor. On completion of the preliminary enquiry a charge-sheet was issued to the appellant on February 6, 1967. The appellant filed reply to the charges denying the same. An Enquiry Officer was appointed before whom evidence was recorded and the appellant was afforded full opportunity of cross-examining the witnesses. The Enquiry Officer submitted his report holding the appellant guilty of charges framed against him. The punishing authority accepted the enquiry report and issued orders on June 27, 1969 dismissing the appellant from the service. The appellant filed a civil suit in the trial court for a declaration that the punishment of dismissal awarded to him was illegal and unconstitutional mainly on the ground that the enquiry had been held in violation of the principles of natural justice and he was denied reasonable opportunity of defence. A number of other grounds were also raised in the suit which need not be adverted to as the controversy now is confined to the question of violation of the principles of natural justice alone. The trial court decreed the appellant's suit on January 31, 1974. The decree of the trial court was confirmed in appeal by the District Judge by his order dated November 2, 1974. On a second appeal being filed by the Union of India the High Court set aside the judgment and decree of the subordinate courts on the findings that the appellant had been afforded reasonable opportunity of defence and there was no violation of any of the principles of natural justice in the enquiry.

3. Learned counsel for the appellant Shri M. K. Ramamurthy contended that the memo of charges issued to the appellant expressly mentioned that paper No. 5 was proposed to be relied by the

Department against the appellant but in spite of demand being made by the appellant a copy of that document was not supplied to him nor was he permitted to inspect the same. In the absence of that document the appellant was handicapped in cross-examining Shri A. C. Das, Dy. S.P., S.P.E. He further urged that failure to supply the copy of paper No. 5 was in violation of the principles of natural justice rendering the proceedings, resulting in the order of dismissal, void. He placed reliance on decisions of this Court in *State of M.P. v. Chintaman* [AIR 1961 SC 1623], *Tirlok Nath v. Union of India* [1967 SLR 759 (SC)], *State of Assam v. Mahendra Kumar Das* [(1971) 1 SCR 87 : (1970) 1 SCC 709], *State of Punjab v. Bhagat Ram* [(1975) 2 SCR 370 : (1975) 1 SCC 155 : 1975 SCC (L&S) 18], *State of U.P. v. Mohd. Sharif* [AIR 1982 SC 937 : (1982) 2 SCC 376] and *Kashinath Dikshita v. Union of India* [(1986) 3 SCC 229 : 1986 SCC (L&S) 502].

4. We have given our anxious consideration to the submissions made on behalf of the appellant and we have further considered the aforesaid authorities referred to by the learned counsel for the appellant but we do not find any merit in the appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

5. In *State of M.P. v. Chintaman* [AIR 1961 SC 1623], the respondent who was a police officer was dismissed from service on certain charges. The High Court of Madhya Pradesh quashed the order of dismissal on the finding that the enquiry was held in violation of the principles of natural justice inasmuch as the statement of witnesses recorded in the preliminary enquiry were not supplied to the concerned officer as a result of which he could not effectively cross-examine the witnesses produced before the enquiry officer. This Court while upholding the view taken by the High Court, observed that the departmental enquiries should observe rules of natural justice. The court referred to the observations of Venkatarama Aiyar, J. in *Union of India v. T. R. Verma* [1958 SCR 499 at 507 : AIR 1957 SC 882 : (1958) 2 LLJ 259] :

.....stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

Relying on the aforesaid observations the court held that right to cross-examine witnesses who give evidence against a delinquent officer is a very valuable right and if effective exercise of that right is prevented by the enquiry officer by not giving to officer relevant document to which he is entitled, the enquiry cannot be said to have been held in accordance with the principles of natural justice. In *Tirlok Nath v. Union of India* [1967 SLR 759 (SC)], it was held that if a public servant facing enquiry was not supplied copies of documents it would amount to denial of reasonable opportunity. In that case the statement of witnesses recorded during the investigation of the criminal case registered against the delinquent officer prior to the departmental proceedings had not been supplied to him, as a result of which the delinquent officer was pre-judged in his defence at the enquiry.

6. In *State of Assam v. Mahendra Kumar Das* [(1971) 1 SCR 87 : (1970) 1 SCC 709], dismissal of a police sub-inspector in pursuance of a disciplinary enquiry held against him had been set aside by the High Court on the ground that the enquiry officer had during the course of the enquiry consulted the Superintendent of Police, Anti-Corruption Branch and had taken into consideration certain material gathered from the Anti-Corruption Branch, without making the said material available to the sub-inspector. On appeal by the State of Assam this Court held that it was improper for an enquiry officer during the conduct of an enquiry to collect any material from outside sources and in not making that material available to the delinquent officer. The court observed that if the enquiry officer collects material behind the back of the delinquent officer and such material is relied upon by the enquiry officer without being disclosed to the delinquent officer, the enquiry proceedings would be vitiated. After making these observations this Court recorded a finding that the enquiry officer had not taken into consideration the material contained in the records of Anti-Corruption Branch, and therefore failure to supply the material of the Anti-Corruption Branch to the delinquent officer was of no consequence and it could not vitiate the enquiry. The court set aside the order of the High Court on the finding that there had been no violation of principles of natural justice.

7. In *State of Punjab v. Bhagat Ram* [(1975) 2 SCR 370 : (1975) 1 SCC 155 : 1975 SCC (L&S) 18], copies of statement of witnesses recorded during investigation and produced at the disciplinary enquiry in support of the charges framed against the delinquent officer were not supplied, instead a synopsis of the statements had been supplied to him. This Court upheld the order of the High Court on the finding that it was unjust and unfair to deny the government servant copies of statement of witnesses recorded during investigation and produced in support of the charges leveled against the government servant. In the absence of the copies of the statement of witnesses the government servant could not have opportunity of effective and useful cross-examination of the witnesses produced during the disciplinary enquiry. The court observed that synopsis of statement did not satisfy the requirement of giving the government servant a reasonable opportunity. Same view was taken by this Court in *State of U.P. v. Mohd. Sharif* [AIR 1982 SC 937 : (1982) 2 SCC 376], as in that case also copies of the statement of witnesses recorded at the preliminary enquiry were not furnished to the delinquent government officer, as a result of which the delinquent officer could not effectively cross-examine the witnesses before the enquiry officer.

8. In *Kashinath Dixita v. Union of India* [(1986) 3 SCC 229 : 1986 SCC (L&S) 502], this Court set

aside the order of dismissal of a police officer on the finding that during the departmental proceedings the officer concerned was not supplied the copies of statements made by the witnesses at a pre-enquiry stage and also the copies of the documents on which reliance was placed in support of the charges, in spite of specific request being made by the officer. The court held that the order of dismissal was violative of Article 311(2) inasmuch as the officer had been denied reasonable opportunity of defending himself. While setting aside the order of dismissal the court observed that whether or not refusal to supply copies of documents or statements has resulted in prejudice to an officer facing the departmental enquiry depends on the facts of each case. After making this observation the court examined the circumstances of that case and concluded that since 38 witnesses were examined against the officer and a large number of documents were relied upon against him and (sic) the disciplinary authority should have supplied the copies of the statement of witnesses recorded during the preliminary enquiry as well as the copies of the documents. We are in agreement with the view taken in this decision.

9. It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

10. In the instant case there is no denying the fact that a copy of paper No. 5 as mentioned in the charge-sheet was not supplied to the appellant and he was not permitted to inspect the same. It appears that paper No. 5 was the report submitted by the Special Police Establishment in respect of the criminal case of theft of coal, in which final report had been submitted. After submission of final report in the criminal case disciplinary enquiry was initiated against the appellant. Paper No. 5 (the report) was, however, not considered or relied on by the enquiry officer in recording findings against the appellant. We have perused the copy of the report of the enquiry officer furnished to the court by the appellant but we do not find any reference to paper No. 5 therein. The enquiry officer has not either referred to nor relied upon that report in recording findings on the charges framed against the appellant. In this view the report (paper No. 5) was not a material or relevant document and denial of copy of that document could not and did not prejudice the appellant and there was no violation of principles of natural justice. The appellant's grievance that in the absence of report he could not effectively cross-examine Shri A. C. Das, Dy. S.P. of Special Police Establishment, the investigating officer, is not sustainable. A copy of the statement as recorded by the enquiry officer has been placed before us by the appellant on a perusal of the same we find that Shri A. C. Das, (sic) cross-examined at length in detail. His examination-in-chief is confined to one page while his

cross-examination runs into six foolscap typed pages. The appellant has failed to point out as to how he was prejudiced. In our opinion the appellant was not handicapped in cross-examining Shri A. C. Das; his grievance that he was not afforded reasonable opportunity of defence is without any merit.

11. In view of the above discussion we hold that the High Court was right in holding that the enquiry was fair and the principles of natural justice had not been violated. The appeal fails and is accordingly dismissed. There will be no order as to costs.

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