

Indian Institute of Technology, Bombay

Vs

Union of India and Others

Civil Appeal No. 661 of 1991

(S. C. Agarwal, S. Ranganathan, N. D. Ojha JJ)

05.02.1991

ORDER

1. Leave granted.

2. We have heard the learned counsel for the appellant and respondent 3 who is the affected person and we proceed to dispose of the appeal.

3. The respondent, Shri V.M. Soundalgekar, was a Lecturer in the Department of Mathematics in the Indian Institute of Technology at Bombay. Disciplinary proceedings were instituted against him in 1981. A retired Chief Presidency Magistrate was appointed as an Enquiry Officer to conduct the enquiry. The Enquiry Officer submitted a detailed report to the Board of Governors on December 19, 1981. According to him, all the charges framed against the respondent stood proved. The respondent filed a writ petition but it was dismissed as the enquiry had been completed by the time the writ petition came up for hearing. Thereafter, the disciplinary authority, namely, the Board of Governors of the Institute, considered the report of the Enquiry Officer and accepted his findings. On March 6, 1982 a letter was addressed to respondent 3 intimating the decision of the Board of Governors and proposing a penalty of removal from service and calling upon him to show cause why such a penalty should not be imposed upon him. The respondent submitted a reply to the show cause notice, after considering which the Board of Governors, on August 2, 1982, came to the conclusion that the respondent should be removed from service. An appeal of the Visitor to the Institute, i.e. the President of India, also failed. Thereafter, a writ petition was filed by respondent 3 in the High Court. A Division Bench of the Bombay High Court, on October 10, 1990, delivered judgment setting aside the findings of the Enquiry Officer and quashing the order of removal passed by the disciplinary authority as well as the appellate order passed by the Visitor of the Institute. The Institute has come up in appeal before us.

4. It is pointed out by the High Court in its judgment that there were four points raised by the respondent before the court. Of these, one was rejected and the others were accepted by the High Court. Two of the points raised constitutes the basis for allowing the writ petition. These two points were :

(1) The petitioner had made an application to the Enquiry Officer that he should be permitted to engage the services of a lawyer. That application was summarily rejected by the Enquiry Officer.

(2) The final order imposing penalty is not a speaking or a reasoned order.

The question is whether these two grounds given by the High Court for allowing the writ petition are correct.

5. So far as the first point is concerned, the relevant rule - which is, Rule 14(8)(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, applicable to government servants - says that :

"14.(8)(a) The government servant may take the assistance of any other government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits."

In the present case, the Presenting Officer was admittedly not a legal practitioner. If, in spite of this, the respondent desired to have the services of a lawyer, he should have applied to the disciplinary authority for permission. He did not do so. The High Court has taken the view that the Enquiry Officer must have passed on the respondent's application for the services of a lawyer to the disciplinary authority and should not have disposed it of himself. We do not think that this approach is correct. The Enquiry Officer was entitled to consider the application to the extent of deciding the whether the Presenting Officer was a legal practitioner or not and he was entitled to reject the application since that was not so. The respondent was an educated person fully aware of the contents of the rule and if he desired the services of a lawyer on any other ground, he should have made an application to the disciplinary authority which he did not do. The Enquiry Officer cannot be blamed, in the circumstances of this case, for having rejected the respondent's application or for not having passed on the request to the disciplinary authority.

6. So far as the second point is concerned, it has been brought to our notice that the Enquiry Officer's report was accepted by the disciplinary authority i.e. the Board of the Institute. This was at its meeting held on February 10, 1982. Thereafter, a copy of the Enquiry Officer's report was sent to the respondent and he was asked to show cause why a penalty of removal from service should not be imposed on him. After considering the the reply filed by respondent, an order was passed on September 2, 1982 in which it was stated that the Board, after considering the reprot at its meeting held on August 2, 1982 and the reply of the respondent to the show cause notice, had arrived at the conclusion that there was no reason to alter the decision already taken by the Board regarding the penalty proposed to be imposed on the respondent. The High Court has taken the view that the Board should have passed a reasoned order. In the circumstances of this case, we are of the opinion that more detailed reasons were not necessary. The High Court has referred, in its judgment, to the decision of this Court in *Ram Kumar v. State of Haryana* [AIR 1987 SC 2043] pointing out that when by an impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss the evidence, reiterate the same findings and give the reasons for the findings. In our opinion, the principle of this decision will apply to the facts of this case particularly as the issue before the Board was a very short one as to whether the writing of certain letters by the respondent, which he admitted, constituted misconduct or not.

7. On behalf of the respondent, reference has been made to a decision of this Court in *Institute of Chartered Accountants of India v. L.K. Ratna* [(1986) 4 SCC 537]. In that case, dealing with the disciplinary proceedings under the Chartered Accountants Act, this Court observed towards the end of its judgment that the reasons of the Council for finding a member of the profession to be guilty of

misconduct should have been set out in the order of the Council. This decision was arrived at in the context of the provisions of the Chartered Accountants Act, 1949 whereunder the disciplinary authority is the Council of the Institute of Chartered Accountants and the disciplinary committee plays a subordinate role in accordance with the provisions of the Act. The conclusions arrived at by the disciplinary committee were only tentative and could not be regarded as findings. It was only the finding of the Council which was the determinative decision as to the guilt of the member and the Act required that such finding must be recorded. In the context of those provisions, it was held that it was desirable that the Council should give reasons for its findings that a member was guilty of misconduct. But this is not a general requirement to be insisted upon in all cases, as pointed out in Ram Kumar case [AIR 1987 SC 2043]. We are of the opinion that the decision of the Board of Institute cannot be faulted for not giving detailed reasons particularly when it was made quite clear that the Board accepted the findings as well as the punishment proposed by the Enquiry Officer.

8. For the reasons abovementioned, we are of the opinion that the High Court was in error in setting aside the findings of the Enquiry Officer, the order of removal and the appellate order therefrom. We set aside the order of the High Court and restore the order of the Board of Governors as well as the order of the Visitor to the Institute.

9. The appeal is accordingly allowed. We, however, make no order as to costs as the respondent is appearing in person.

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