

State of M.P.

Vs

R. N. Joshi

Civil Appeal No. 5352 of 1990

(S. C. Agarwal, B. L. Hansaria JJ)

13.02.1996

JUDGMENT

HANSARIA J.

1. A departmental inquiry was held against the respondent while he was serving as Executive Engineer (Irrigation) on various charges relating to irregularities committed in the purchase of Gypsy huts, sluice gates, trapaulins and alkathene pipes meant for various relief projects started in Rajnandgaon District of Madhya Pradesh in the year 1973. The irregularities are said to have caused huge loss to the State. On denial of the charges, a Commissioner was appointed to hold the inquiry. He was one S. Mukherjee and he completed a major part of the inquiry. The case was thereafter taken over by one S.C. Vaish and he submitted his report finding the respondent guilty of all the charges. The disciplinary authority agreed with the finding and removed the respondent from service by order dated 9-10-1987. This was challenged before the Madhya Pradesh Administrative Tribunal, who by the impugned order has quashed the order being of the view that there was breach of natural justice during the course of the inquiry and there was non-application of mind to the evidence brought on record. The respondent has, therefore, been ordered to be reinstated in service with all back wages. An observation has, however, been made that if an occasion would arise for reconsideration, what has been stated in the order, would not be binding on the inquiry officer. The State has preferred this appeal under Article 136 of the Constitution.

2. Shri Verma, appearing for the appellant, strenuously contends that the conclusion arrived at by the Tribunal both relating to breach of natural justice and also relating to non-application of mind is not correct. It is submitted that the Tribunal itself having held that the instances of breach of natural justice mentioned in paragraph 16 - the same being (1) charges are vague; (2) copies of documents not supplied; (3) uncited witnesses examined without request; (4) unlisted documents admitted in evidence without request; (5) defence witnesses and documents not called; and (6) applicant was not examined as per Rule 14(18) of Rules of 1966 - were not established, as would appear from the discussion qua these instances in paragraphs 14 to 32, the conclusion of the Tribunal that natural justice was breached is not sustainable. Shri S.M. Jain, learned Senior Advocate appearing for the respondent, has, however, contended that violation of natural justice occurred after Shri Vaish had stepped into the shoes of Shri Mukherjee inasmuch as he heard arguments of the presenting officer at the back of the respondent. Shri Vaish having felt the need of detailed arguments, as would appear from what has been stated by the Tribunal in paragraph 49 of the impugned order, it was incumbent on Shri Vaish, says the counsel, to have the respondent before him when arguments were thereafter advanced by the presenting officer. What has been stated in this part shows that Shri Vaish had not conceded to further opportunity on the ground that delinquent officers (it may be pointed out that apart from the respondent some other officers including the Superintending Engineer had also faced

the inquiry) had addressed lengthy arguments.

3. According to us, there is no clinching material on record to show that the inquiry officer had heard any argument at the back of the respondent inasmuch as what has been stated in paragraph 49 in this regard is : "We would only say that even if the delinquent officers had addressed lengthy arguments the inquiry officer was wrong in hearing, if he did, the disciplinary authority behind the back of the applicant." This shows that the Tribunal was itself not sure if arguments were really heard at the back of the respondent. We are, therefore, not satisfied with the conclusion of the Tribunal that there was breach of natural justice.

4. As to the non-application of mind, we, however, agree with the Tribunal as it has illustrated how relevant material on record had not been considered by the inquiry officer or the disciplinary authority in finding the respondent guilty. These omissions, which are indeed material, have been pointed out in paragraphs 41 to 48 of the impugned order. Shri Verma was not in a position to satisfy us, on such an opportunity having been specifically given that what has been stated in this regard by the Tribunal is not founded on facts.

5. This takes us to the question of appropriate order to be passed in the facts and circumstances of the case. Shri Jain has urged that the order of removal cannot stand and should be set aside and the respondent must be reinstated in service, with liberty to the appellant to hold further inquiry by appointing a new inquiry officer and giving the respondent opportunity of bringing to his knowledge the materials on record which would establish his innocence. As against this, the contention of Shri Verma is that the respondent may not be put back in service because of serious charges framed against him. Learned counsel, however, agrees with the other part of the submission of Shri Jain. He has stated that the appellant would appoint a new inquiry officer soon, who would thereafter take steps as contended by Shri Jain. The further submission in this regard is that after the new inquiry officer's report becomes available, the disciplinary authority shall pass appropriate order and till then the removal order may be allowed to stand.

6. We have considered the rival submissions and, according to us, keeping in view the length of time (about one decade) which has already elapsed since the removal, the just and proper order to be passed would be to keep the appeal pending with us and require the appellant to appoint a new inquiry officer who, after hearing the respondent afresh, shall submit his report to this Court on the question whether the charges frames against the respondent stand proved in full or part or not at all; and we order accordingly. The appellant is directed to appoint a new inquiry officer within one month, who, after hearing the respondent, shall submit his report to this Court within two months thereafter.

7. The appeal shall be placed for further hearing after three months treating it as part-heard.