

Inspecting Assistant Commissioner, Bombay and Others

Vs

Sharat Narayan Parab

Civil Appeal No. 4612 of 1993

(Sujata V. Manohar, D. P Wadhwa JJ)

12.11.1997

ORDER

1. The respondent at the material time was working as an Upper Division Clerk in the Income Tax Office, B-III Ward, Bombay. On 30-9-1980 he forcibly entered the cabin of one L. S. Pawar, Income Tax Officer of D-I Ward leading a crowd of 20 to 25 employees. There were accusations of assault on Pawar by him. It was alleged that he dragged Pawar out from his room by putting a knife on his chest and physically removed him from the office building and told him never to return. Pawar filed a complaint with the police station and ultimately the respondent was charge-sheeted under Sections 147, 149, 332 and 506 of the Indian Penal Code. The respondent along with two others was convicted by the Metropolitan Magistrate - 14th Court, Bombay by his order dated 23-6-1983. All the three were sentenced to suffer imprisonment for a period of two months and to pay a fine of Rs. 500.

2. The respondent was put under suspension and a memorandum was issued to him dated 2-7-1983 stating that since he was convicted his retention in public service had become undesirable and, therefore, the penalty of dismissal from service was proposed. The respondent made a representation. Ultimately by an order dated 18-8-1983 the respondent was dismissed from service.

3. The respondent had appealed from the judgment and order of the Metropolitan Magistrate. Ultimately by order dated 29-10-1983 the Additional Sessions Judge set aside the conviction and sentence against the respondent and acquitted him by giving him the benefit of doubt. Thereupon the appellants by an order dated 3-12-1983 set aside the order of dismissal from service. They, however, directed that a departmental enquiry should be held against the respondent. A charge-sheet was served upon the respondent and a departmental enquiry was held. After the Inquiry Officer submitted the report to the Disciplinary Authority the respondent was informed by the Disciplinary Authority by letter dated 6-8-1986 that they proposed to impose the penalty of dismissal from service on the respondent and asked the respondent to show cause. The Disciplinary Authority along with this letter forwarded a copy of the Inquiry Officer's report and his findings. Ultimately the Disciplinary Authority passed an order dated 9-9-1986 dismissing the respondent from service. The respondent filed an appeal. The Appellate Authority upheld the order of the Disciplinary Authority by its order dated 19-5-1987. From this order the respondent filed an application before the Central Administrative Tribunal, Bombay Bench. The Tribunal by its judgment and order dated 5-8-1992 has set aside the order of dismissal on the ground that the Disciplinary Authority had violated the principles of natural justice inasmuch as their letter asking the respondent to show cause against the punishment proposed to be imposed was in violation of the principles of natural justice since the authorities had already made up their mind. The present appeal is filed from the order of the Tribunal.

4. In the present case the inquiry was properly conducted by the Inquiry Officer. The respondent had participated in the inquiry and had been given proper opportunity to defend himself. The Tribunal has relied upon the decision in the case of Union of India v. Mohd. Ramzan Khan ((1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505 : AIR 1991 SC 471) and held that the inquiry report was not furnished to the respondent for the purpose of enabling him to file a representation against the findings of the Inquiry Officer although the inquiry report was given to him for the purpose of showing cause against punishment. The decision of the Disciplinary Authority is, therefore, vitiated because the Disciplinary Authority had made up its mind to hold the respondent guilty. This reasoning of the Tribunal cannot be sustained in view of the clear provisions of law set out by this Court in the subsequent case of Managing Director, ECIL v. B. Karunakar ((1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 GTC 704). This Court has held that the ratio of Ramzan Khan case ((1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505 : AIR 1991 SC 471) can only apply prospectively and it will not vitiate an inquiry already completed prior thereto. The present inquiry was completed long prior to Ramzan Khan case ((1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505 : AIR 1991 SC 471). Therefore, this part of the Tribunal's reasoning is unsustainable.

5. It is also urged on behalf of learned counsel for the respondent that the punishment was disproportionate to the charges. We cannot go into the question of punishment unless we are of the view that the punishment imposed is such that no reasonable person could ever have imposed such a punishment looking to the circumstances of the case. The present case is not one such case. Looking to the conduct which has been held by the Inquiry Officer as proved, the punishment imposed cannot be considered as unreasonable, much less grossly so.

6. In the premises the appeal is allowed and the impugned order of the Tribunal is set aside and the original application filed by the respondent before the Tribunal is dismissed. There will, however, be no order as to costs.