CALCUTTA HIGH COURT

Monoranjan Das

Vs.

Commissioner

C.R. 1086 (W) of 1965

(A.K. Sinha, J.)

20.12.1968

ORDER

A.K. Sinha, J.

1. In this Rule the petitioner prays for quashing an order of his dismissal from service. Briefly, the facts set out are as follows:

2. The petitioner was a process server in the office of the Income Tax Certificate at No. 169, Lower Circular Road, Calcutta. While so working there he was criminally prosecuted for accepting illegal gratification from one Hiralal Ghosh, Accountant of a Firm E. R. Joseph and Co., at No. 9, Waterloo Street. On or about 21st April, 1961 the Investigating Officer made an application for discharge of the petitioner on the ground that no sanction of the petitioner's appointing authority could be obtained on the ground of insufficient evidence. The petitioner was accordingly discharged by the Chief Presidency Magistrate, Calcutta.

3. In the meantime a disciplinary proceeding was started. Charge-sheet was issued by the Collector, 24 Parganas charging the petitioner with "taking illegal gratification of Rs. 150/- from said Hiralal Ghosh of the said firm". The petitioner submitted his written explanation. Thereafter, an enquiry was held by Sri A. Sen, Deputy Collector and eventually a report was submitted recommending the petitioner's dismissal from service on a finding that the petitioner at least demanded illegal gratification from Hiralal.

4. Upon this report a second show cause notice was issued upon the petitioner by the Collector against his tentative decision of dismissal of the petitioner from his service on the basis that both demand and acceptance of illegal gratification were found to have been established by the Enquiring Officer and he accepted them. In response to this notice the petitioner again submitted an explanation. The Collector, thereafter, by an order dated 18th March, 1965 dismissed him from his service on a finding that the petitioner was guilty of acceptance of illegal gratification. An appeal was preferred to the Commissioner, Presidency Division, who, however, by his order dated 24th June, 1965 dismissed the appeal. That is how the petitioner felt aggrieved and obtained the present Rule.

5. Upon these facts several grounds were taken but I find that the Rule was issued only on two limited grounds viz., (B) and (C) of the petition.

6. In support of the first ground Mr. Acharya on behalf of the petitioner contended that the Enquiring Officer only found the petitioner guilty of demanding and not of 'accepting illegal gratification'. He drew my attention to the penultimate paragraph of the report of the Enquiring Officer to show that acceptance of illegal gratification by the petitioner was not proved but relying on "preponderance of probabilities" the Enquiring Officer concluded that Monoranjan must have demanded illegal gratification. That being so, it was contended that the petitioner could not be dismissed from his service on a finding by the Disciplinary Authority that he accepted illegal gratification. I cannot accept the contention. Admittedly, the charge against the petitioner was that "he took illegal gratification of Rs. 150/- only from Hiralal Ghosh, Accountant of the aforesaid firm". So, it was open to the Disciplinary Authority to inflict punishment of dismissal provided such a charge was established. It may be that according to the Enquiring Officer the evidence was not sufficient to conclude that such a charge of accepting illegal gratification was established but that by no means could prevent the Disciplinary Authority to come to his own conclusion and impose penalty accordingly. Whether or not the charge or charges levelled against the delinquent servant have been established is the ultimate concern of the Disciplinary Authority. He is to enquire into the charges as a quasi-judicial body. An enquiry for establishment of such charges by another Officer is permissible but it is open to the Disciplinary Authority either to agree or to differ from the findings that may be made by the Enquiring Officer. In case of disagreement, only thing required is that he would give an opportunity to the delinquent servant before he finally takes a decision that such of the charges as were found not to have been established by the Enquiring Officer were also proved. This is the view taken by the Supreme Court in *State of Assam v. Bimal Kumar*[1], While dealing with the scope, effect and implication of Article 311 (2) of the Constitution Gajendragadkar, J. observed inter alia (at pages 1614-1615, para 6):

> "In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute".

7. That being so, the Disciplinary Authority was quite competent to come to his own finding regarding these charges which according to Enquiry Officer were not established.

8. Mr. Acharya then contended in support of the next ground that no reasonable

[1] AIR 1963 SC 1612

opportunity was given to the petitioner inasmuch as the Collector did not give any indication in his second show cause notice that he disagreed with the findings of the Enquiring Officer and proposed to inflict punishment of dismissal of the petitioner on his own conclusion that charge of acceptance of illegal gratification was proved. What he did was that he accepted charge of illegal gratification as finding of the Enquiring Officer but the report of enquiry would at once reveal that this was patently erroneous. It was clear, therefore, that in issuing second show cause notice the Collector never applied his mind. This failure on the part of the Collector resulted in violation of principles of natural justice in the sense that the petitioner was deprived of a reasonable opportunity being given to make representation against any such proposed finding of the Collector and therefore, the entire disciplinary proceeding leading to dismissal of the petitioner was bad. On principle, I think, Mr. Acharya is right. It is open to the Disciplinary Authority either to accept the finding of the Enquiring Officer in its entirety or to disagree with such finding in respect of some or all of the charges. In case of such disagreement it is essential that this should be recorded expressly along with his tentative decision regarding these charges in issuing second show cause notice upon the delinquent servant. For, the rules and principles of natural justice demand that before the Government servant is punished, he must not only mow what the charges are but must also get an opportunity to show that such charges are not proved. So, if the Disciplinary Authority in spite of the report of the Enquiring Officer to the contrary, thinks that the impugned charges stand proved, there is no doubt that the delinquent servant must be told so expressly and should be given an opportunity at the second stage to show that such a finding made by the Disciplinary Authority had no foundation in fact. This seems to me to be essential procedure consistent with rules and principles of natural justice implicit in Article 311 (2) of the Constitution. Gajendragadkar, J. dealing with similar question though under different set of circumstances expressed himself in the very same decision, AIR 1963 Supreme Court 1612 (at p. 1615 para 8):

> "We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favor of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311 (2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favor of the delinquent officer on some issues and against him on other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the findings in their entirety, it is another matter; but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favor and proceeds to specify the nature of the action proposed to be taken on its conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the

> delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2), it is essential that the conclusion provisionally reached by the dismissing authority must, in such cases, be specified in the notice."

9. Then again, relying on this Assam case substantially the same view was adopted in a later decision of the Supreme Court reported in AIR 1964 Supreme Court 506. Subba Rao, J. while dealing with question as to infirmities of a second show cause notice for not mentioning the past records of the delinquent servant observed inter alia (at Page 510 Para 9) of the report:-

> "In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But, a comparison of Paragraphs 3 and 4 of the order of dismissal shows that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provision of Article 311 (2) of the Constitution as interpreted by Court."

10. Such being the position in law, it remains to be seen as to whether the petitioner did get a reasonable opportunity to show cause at the second stage. From the enquiry report it appears that the finding of the Enquiring Officer was that demand of illegal gratification of Monoranjan was proved but not the charge of acceptance of illegal gratification. In spite of this finding the Collector in issuing second show cause notice proceeded on the view that the charges of demand and acceptance of illegal gratification were held to have been proved by the Enquiring Officer and on accepting such finding he tentatively decided to dismiss the petitioner. This in my view, was manifestly erroneous. There cannot be any question of accepting a finding which really did not exist. In the instant case there was clearly a disagreement between the Enquiring Officer and the Collector so far as the charge of acceptance of illegal gratification was concerned but this was not expressly stated by the Collector nor any tentative decision following such disagreement was recorded in the second show cause notice. On the contrary, such a notice put the petitioner on a wrong track, for, the Collector told him that he wanted to dismiss on the charges which were held to have been proved by the Enquiring Officer. It is true that the petitioner submitted an explanation against the second show cause notice and this explanation was considered in detail and the Collector came to his own conclusion that the petitioner was guilty of acceptance of illegal gratification. It is also true that he preferred an appeal against the order made by the Collector which was dismissed but these facts by themselves could not cure the infirmities of the impugned notice at the second stage in giving reasonable opportunity to the petitioner. This, in my view, "clearly contravened provisions of Article 311 (2) of the Constitution."

11. Mr. Bose on behalf of the respondents, however, contended relying on a decision of the Supreme Court reported in *State of Orissa v. Bidya Bhusan*[2] that if the order of dismissal could be made on any finding on any of the charges, the Court could not consider whether that finding alone would have weighed with the Authority in dismissing the public servant. I fail to see how this case is of any assistance to the petitioner. What happened in this case was that in an enquiry held by the Tribunal against the petitioner Bidya Bhusan on two charges there being four specific heads under the first charge charging the respondents with having received illegal gratification and the single item on the second charge alleging possession of means disproportionate to his income, as a Sub-Registrar, it was held that four out of the five heads under the first charge of "corruption" and also the charge of possession of means disproportionate to the income were established and dismissal of the petitioner from service was recommended. Upon this report of the Tribunal the Governor of Orissa after consulting the Public Service Commission dismissed the petitioner from his service. The High Court of Orissa upon a writ petition made by Bidya Bhusan held that the findings on two of the heads under charge (1) could not be sustained and therefore, directed the Government of Orissa to decide whether on the basis of those charges the punishment of dismissal should be maintained or a lesser punishment would suffice. In that context, the Supreme Court held that the reasons which induced the Punishing Authority if there had been an enquiry consistent with the prescribed rules, were not justiciable nor was a penalty open to review by the Court In the instant case, the disciplinary proceedings at the stage of issuing second show cause notice suffered from vice of non-compliance with the rules and principles of natural justice consistent with the provisions of Article 311 (2) of the Constitution in the sense that the Disciplinary authority failed to state expressly that he differed from the findings made by the Enquiring Officer and further according to him, the petitioner was guilty of charge of acceptance of illegal gratification with the result that the petitioner was deprived of getting reasonable opportunity to make representation against the proposed order of dismissal. So, principle indicated in this case has no bearing to the question involved in the facts and circumstances of the present case. I, therefore, do not find any substance in the contention raised.

12. For the reasons, however, already given the only conclusion I come to is that the entire disciplinary proceeding from the stage of issuing second show cause notice culminating in the order of dismissal of the petitioner affirmed by the order of the Commissioner respondent No 1 suffers from serious infirmities and cannot be sustained as valid.

13. The result is, the petition succeeds. The entire proceedings from the stage of second show cause notice culminating in the order of dismissal affirmed by the respondent No. 1 are quashed. The Rule is made absolute to the extent indicated above.

14. I, however, make it clear that nothing in this judgment will prevent the Disciplinary Authority to issue a fresh second show cause notice and complete the disciplinary proceeding against the petitioner in accordance with law and take such decision as it is entitled to take.

15. There will be no order as to costs.

[2] AIR 1963 SC 779

16. Let a writ both in the nature of mandamus and certiorari issue accordingly.

Petition allowed.