

(1992) 07 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 298 of 1988

Ambalal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1992) 2 WLN 41

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—In the aforesaid petition, the validity of the impugned Orders Ex. 5, Ex. 8 and Ex. 9 dated 21st October, 1980, 6th June, 1981 and 22nd October, 1982 are in issue.

2. By the impugned Order Ex. P/5 dated 21st October, 1980 the petitioner was removed from service by the order of the Collector, Chittorgarh. The order was affirmed on appeal by the Board of Revenue vide Ex. P/8 dated 6th June, 1981 and thereafter by the Governor vide order Ex. P/9 dated 22nd October, 1982.

3. The scope of the enquiry is whether the impugned order of dismissal is null and void on the ground of breach of principles of natural justice, committed by the respondents by non-supply to the petitioner, the copy of the statements of the witnesses examined at the stage of preliminary enquiry.

4. Following facts are well established on record that:

The petitioner was served with a chargesheet levelling charge of illegal gratification on the basis of preliminary enquiry report submitted to the Disciplinary Authority. This is clear from the order Ex. P/5. The petitioner has made specific averment in the petition in Para 6 that before 11th September, 1978, the petitioner had made requests for supplying him copies of the

statements of allegations recorded during the course of preliminary enquiry but the same was refused on the ground of non-availability in the Court of Sub Divisional Officer, Pratabgarh. It was again averred in Para 8 that the petitioner on receiving a notice under Article 311(2), submitted an application for supplying the copies of the statement of witnesses. Not only this, the petitioner before that date on which the enquiry was conducted, requested the respondent No. 2, Collector, Chittorgarh for supplying him the copies of the statements of witnesses but the petitioner was told that the statement of the witnesses recorded during the course of preliminary enquiry are not on record and, therefore, without cross-examining witnesses effectively, the statement of prosecution witnesses were recorded.

5. These averments have not been specifically controverted. The respondents in their return to these averments stated that supplying of the copies of the statements of allegations recorded during the course of preliminary enquiry was not necessary nor the non-supply of these witnesses during the course of regular enquiry were recorded in the presence and hearing of the delinquent official who had an opportunity to cross-examine the witnesses. It is wrong to say that the copies were not supplied to the petitioner, all the copies were made available to him as per rules. No specific denial of fact mentioned in Para 8 was also made. In reply to Para 8, the respondent No. 3 has specifically stated that it is not necessary to supply the copies of the statement of allegations recorded during the course of enquiry to the petitioner under the Rules and that the witnesses whose statements were recorded in the presence of the petitioner after giving him full opportunity.

6. Ignoring the grammatical omissions in the pleadings, the stand of respondent appears to be clear that copies of the statement recorded during preliminary enquiry were not required to be given to the petitioner under the Rules. He was given copies of those documents which were required to be given under the rules and that since the petitioners were permitted to cross-examine the witnesses during the course of regular enquiry, the non-supply of copies of those witnesses recorded during the preliminary enquiry did not affect the petitioner's right.

7. It is true that the said preliminary investigation report was not relied on either by the first enquiry officer or by the Disciplinary Authority for establishing guilt of the petitioner, therefore, the statements which have come on record during the course of preliminary enquiry were not required to be disclosed to the delinquent officer as a matter of course. But it cannot be said that even if the delinquent officer required copies of the earlier statements of witnesses recorded during the course of preliminary enquiry, when those witnesses were being examined during the regular enquiry and earlier statements were not supplied to him, no breach of natural justice was caused or that the petitioner was given reasonable opportunity of being heard.

8. There are certain documents which are even if not relied by the enquiry officer to support the charges against the delinquent, such documents are nevertheless

required by the petitioner to defend his case. It may be noted that the disciplinary authority has recorded in his order of punishment that the charges were framed on the basis of the preliminary enquiry conducted against the petitioner. During the course of preliminary enquiry for the purpose of arriving at a prima facie finding to frame charge statement of certain witnesses were examined and when those very witnesses were produced by the prosecuting agency for supporting the charges, the earlier statement recorded by those very witnesses during preliminary enquiry were very much relevant for the purpose of giving an opportunity to the petitioner for carrying out effective cross-examining to defend himself.

9. It hardly needs be emphasised that earlier statement of a witness is relevant evidence for the purpose of cross examining the witness about the truth of statement that is being made presently.

10. In the aforesaid circumstances, it was only desirable that the petitioner ought to have been furnished with copies of the statements of the witnesses, so as to give him proper and reasonable opportunity to defend himself.

11. The aforesaid conclusion of mine finds support from the decision in *The State of Punjab Vs. Bhagat Ram*, wherein a case, the delinquent was supplied a synopsis of the witnesses examined during investigation but was not supplied with the full copies of the sets. The Court observed as under:

A synopsis does not satisfy the requirement of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity to cross-examine the witnesses unless the statements are given to him he will not be able to have an effective and useful cross-examination.

12. This view was again reiterated in the case of *Kashinath Dikshita Vs. Union of India (UOI) and Others*, wherein their Lordships after referring to the earlier decisions of the Supreme Court concluded as under:

Where the Govt. refused to its employee, who was dismissed, the copies of the statements of the witnesses examined at the stage of preliminary enquiry preceding the commencement of the enquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Govt. failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Article 311(2) inasmuch as the employee has been denied reasonable opportunity of defending himself.

13. In the aforesaid circumstances, it must be held that petitioner has been

denied reasonable opportunity to defend himself.

14. In the result, the impugned order of dismissal must be held to have been made in violation of principle of natural justice, inasmuch as, the petitioner was denied adequate and fair opportunity of defending himself. Consequently, the order passed in appeal and review are also not sustainable.

15. Accordingly, the writ petition is allowed. The impugned orders Ex. P/5 dated 21st October, 1980, Ex. P/8 dated 6th June, 1981 and Ex. P/9 dated 22nd October, 1982 are quashed. There shall be no order as to costs.