

(2015) 06 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : CWP No. 2366 of 2014

Anu Rana

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : (2015) LabIC 4101

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : D.K. Bhatti and Nimish Gupta, for the Appellant; A.K. Sood, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.—By medium of this petition, the petitioner has prayed for the following reliefs:

"(A) Issue a writ, order or direction especially in the nature of Certiorari for quashing the charge-sheet dated 28.8.2012 (Annexure P-7) and the Enquiry report dated 27.4.2013 (Annexure P-8) thereby quashing the order dated 15.7.2013 (Annexure P-11) whereby an order of punishment was passed prematurely even without receiving the reply to the show cause notice and order dated 6.8.2013 (Annexure P-14) awarding the punishment of compulsory retirement and order 17.1.2014 (Annexure P-16) issued by respondent No. 2 whereby the said respondent while confirming the punishment imposed by the Disciplinary Authority has dismissed the appeal filed by the petitioner in a summary and cursory manner by ignoring the facts, documentary and legal submissions made therein;

(B) Direct the respondents to reconsider the orders dated 15.7.2013, 6.8.2013 and 17.1.14 Annexures P-11, P-14 and P-16 respectively and absolve the petitioner of the illegal and wrong charges leveled by the respondents against the petitioner with mala-fide intentions besides the same is arbitrary and

disproportionate to the alleged misconduct;

(C) Direct respondent authorities to maintain status quo ante with regard to the services of the petitioner as it exists prior to the issuance of the suspension order dated 2nd March, 2012 during the pendency of the present petition in the interest of justice and fair play;

(D) In alternative the respondent may be directed to consider the case of the petitioner at par with Smt. Reksha Devi who is similarly situated and has punished with much lesser punishment as per the provisions of clause 6 (e) and (f) of MoU dated 19.4.2002."

2. It is not in dispute that the petitioner was proceeded against departmentally. Vide show cause notice dated 15.7.2013 the Disciplinary Authority had asked the petitioner to explain as to why the proposed penalty may not be imposed upon her within seven days from the date of receipt of this letter.

3. Surprisingly vide an administrative order of the same day i.e. 15.7.2013, the petitioner was informed that she has been awarded the following consolidated punishment:--

"Be compulsorily retired with superannuation benefits i.e. pension and/ or Provident Fund and Gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment as per provisions of clause No. 6(c) of MOU dated 10.4.2002.

The above punishment is inflicted upon Mrs. Anu Rana with immediate effect."

4. In this background, the question which would require consideration, therefore, is as to whether at the time of issuance of show cause notice and passing of impugned order, the requirements of natural justice have been complied with, because non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It is here that the action of the respondents is required to be tested on the touchstone of justice, equity, fair play and in case the decision is not based on justice, equity and fair play, then the decision cannot be allowed to stand.

5. In this connection, the decision in S.L. Kapoor Vs. Jagmohan and Others, AIR 1981 SC 136 : (1980) 4 SCC 379 : (1981) 1 SCR 746 is relevant. In paragraph 16 of the judgment, their Lordships have held as follows:

"..... In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based if it is furnished in a casual way or for some other purpose. We do not suggest the opportunity need be a "double opportunity" that is one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded

against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met...."

(Emphasis added)

".....In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

(Emphasis supplied)

6. In *Wade and Forsyth* -- "Administrative law", the learned Authors have said thus :--

"A proper hearing must always include a "fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view". Lord Denning has added :

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."...."

(Emphasis supplied)

7. In *De Smith, Woolf and Jowell's* --Judicial Review of Administrative Action, under the caption "Duty of adequate disclosure", it is said thus :--

"If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interests he must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision; indeed, at least in some circumstances [here will be a duty on the decision maker to disclose information favourable to the applicant, as well as information prejudicial to his case. If material is available before the hearing, the right course will usually be to give him advance notification;.....

If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is *prima facie* unfairness, irrespective of whether the material in question arose before, during or after the hearing.,,....."

8. The very purpose of issuance of a show cause notice is to enable the delinquent to show how the report submitted by the Inquiry Officer is factually/legally incorrect. It is a serious business and cannot be taken lightly and the respondents owed a duty to act fairly.

9. The record reveals that the show cause notice was issued only to demonstrate that the principles of natural justice were complied with, but as a matter of fact it is proved that the same was a farce and an empty formality because the proposed penalty and the impugned order imposing penalty, are issued on the same very day i.e. 15.7.2013. This renders the show cause notice illusory and an empty ritual and above all an idle formality.

10. The punishment of compulsory retirement as imposed upon the petitioner is a serious business and could not have been taken lightly. In order to justify the action taken to compulsorily retire the petitioner, the authority concerned had to act fairly and in complete adherence to the rules apart from following the basic principles of natural justice and fair play.

11. It is well settled that a disciplinary authority while acting in exercise of its statutory power acts as a quasi judicial authority and must therefore act fairly and must act with an open mind while initiating a show cause proceeding. The show cause proceedings is meant to give a person proceeded against a reasonable opportunity of making his objection against the penalty indicated in the notice.

12. Justice is rooted in confidence and justice is the goal of a quasi- judicial proceeding also. If the functioning of a quasi- judicial authority has to inspire confidence in the mind of those subjected to its jurisdiction, such authority must act with utmost fairness.

13. It is well settled that justice should not only be done but should be seen to be done. This principle was reiterated by the Hon"ble Supreme Court in S.L. Kapoor's case (supra), wherein the Hon"ble Supreme Court has held as follows:--

"24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

"The distinction between justice being done and being seen to be done has been emphasised in many cases.....

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgement in R. v. Home Secretary, Ex. P. Hosenball, (1977) 1 WLR 766, 772, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he

went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice."

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the Court is concerned not with a case of actual injustice but with the appearance of injustice, or possible injustice. In *Altco Ltd. v. Sutherland*, (1971) 2 Lloyd's Rep 515 Donaldson J. said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result, It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In *R. v. Thames Magistrates' Court, ex. p. Polemis*, (1974) 1 WLR 1371, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

"It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: "Well, even if the case had been properly conducted, the result would have been the same". That is mixing up doing justice with seeing that justice is done (per Lord Widgery C. J. at P. 1375)."

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied Justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

14. When the respondents had issued a show cause notice and granted time to file reply to the same, then the respondents could not have turned around on the same day itself and passed the impugned penalty. The respondents were bound to act fairly, justly and reasonably. The right to impose penalty carriage with a duty to act justly.

15. Having observed so and without going into the other contentions raised in this petition, I am of the considered opinion that impugned order of penalty dated 15.7.2013 (Annexure P-12) cannot be sustained and the same is accordingly quashed and set-aside. The respondents are, however, at liberty to pass fresh order, that too, after issuing a show cause notice and after affording an opportunity of hearing to the petitioner.

16. The petition is disposed of in the aforesaid terms, leaving the parties to bear their own costs.