

(1957) 07 BOM CK 0007

In the Bombay High Court

Case No : Letters Patent Appeal No. 76 of 1954

Dadarao Shegoji Tidke

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 11-07-1957

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 226, 311(2)

Citation : AIR 1958 Bom 204 : (1957) 59 BOMLR 1236 : (1958) ILR (Bom) 343

Hon'ble Judges : Tambe, J;Mudholkar, J

Bench : Division Bench

Advocate : N.L. Abhyankar, for the Appellant; W.B. Pendharkar, Special Govt. Pleader, for the Respondent

Judgement

1. This is an appeal under the Letters Patent from an order of Mr. Justice Bhutt, in Miscellaneous Petition No. 252 of 1954, dismissing the appellant's Petition under Article 226 of the Constitution.
2. The appellant was a probationary Naito Tahsildar in the service of the State of Madhya Pradesh. On 29-2-1955 he was served with a copy of certain charges against him and was asked to show cause why disciplinary action should not be taken against him. He submitted his explanation in writing and he also asked for a hearing in person.
3. A departmental enquiry was then held against the appellant by the Deputy Commissioner, Amraoti. During the course of that enquiry, the appellant asked for inspection of certain records to which reference had been made in the charge sheet. He was allowed inspection of all the records except two. Further according to him, he was not given a hearing in person even though he had asked for and was entitled to it under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules.
4. After the completion of the departmental enquiry, the Deputy Commissioner

submitted his report to the Government. Thereupon, a notice in the following terms was served On the appellant.

Reg. A. D. 14-10-52.

"Government had ordered departmental enquiry against you on 6 separate charges and the Deputy Commissioner, Amraoti, was asked to conduct the enquiry. A copy of report of the Deputy Commissioner, Amraoti, dated the 15th September 1952 in respect of the enquiry is herewith supplied to you for information.

2. You are called upon to show cause within fifteen days from the date of receipt of this memorandum why you should not be dismissed from service....."

(Exhibit 5)

After the receipt of this notice, the appellant wrote a letter to the Government in which he stated-

I was given inspection of some of the records and when that was done I submitted my written statement on 14-6-1952 in which I requested Deputy Commissioner, Amraoti, for an opportunity to explain my case personally before the report is sent.

Since I desired that I should be personally heard I expected an enquiry to be held as contemplated by Rule 55 of the Rules in the Appendix to Part I. S. No. 13 of the General Book Circulars. No such enquiry was held. No witnesses were examined or cross-examined, no opportunity was given to me to prove my submissions and report dated 15-9-52 was sent by the Deputy Commissioner, Amraoti, to the Government without giving me a chance either to disprove the allegations or to prove my contentions. The Deputy Commissioner, Amraoti, has based his report dated 16-9-52 largely on the foundation of the comments of Shri K. W. Kathaley, Sub-Divisional Officer. Chandur, dated 22-6-52.

When I came to know that Shri K. W. Kathaley, sent his comments to Deputy Commissioner, Amraoti, I applied to Deputy Commissioner, for inspection of Shri Kathaley's comments. I was given inspection of the said documents.

I again expected that I would be called upon to attend some enquiry in a quasi-judicial form vide paras 11 and 12 Part 1, S. No. 13 G. B. C. No evidence was admitted or recorded.

Then I received suddenly without any prior idea whatsoever the memorandum under reference with a copy of the report of Deputy Commissioner, Amraoti, dated 15-9-52." He then made certain complaints about the failure of the Deputy Commissioner to give him an inspection of some of the records and made the following prayers :

(i) a proper enquiry be held and opportunity be given to him to prove his submissions, and evidence be recorded.

(ii) he may be permitted inspection of all the records referred to by Deputy Commissioner, Amraoti.

(iii) he may be personally heard;

(iv) he may be given opportunity after inspection of the records to show the unfortunate errors in the said report;

(v) he may be permitted assistance of a legal adviser for inspection of the records and such other matters; and

(vi) then he may be called upon to put in his defence.

This he sent on 28-10-1952. The appellant's request for personal hearing was rejected and thereupon he made a full representation to the Government on 19-3-1953 in which he dealt with the report of the Deputy Commissioner in full and set out all his grievances. Thereafter he received another communication from the Government dated 27-10-1953 (Ex. 11) which is in the following terms :

"Whereas a departmental enquiry was held against you on the six charges specified in the statement herewith attached.

And whereas the enquiring officer has held all the six charges proved against you.

And whereas on a perusal of the record of the departmental enquiry, the State Government are inclined to concur in the findings of the Enquiring Officer and have provisionally reached the conclusion that all the said charges are proved against you.

And whereas it appears to the State Government that your retention in the service is undesirable in public interests and accordingly they provisionally propose to remove you from the service.

NOW, therefore, as required by Article 311(2) of the Constitution, the State Government are pleased to call upon you to show cause within fifteen days of the receipt of this notice why you should not be removed from service. Any representation which you may desire to make will be taken into consideration. A copy of the report of the Enquiring Officer is enclosed herewith."

After receiving this communication the appellant sent the following reply :

"I have already submitted a detailed explanation on 14-6-53.

I have hardly anything to add especially because,

(i) no proper enquiry has been held,

(ii) I was not given inspection of the records to which reference is made by Deputy Commissioner. Amraoti, in his report;

(iii) Evidence has not been recorded. I was not asked to cross-examine any witness. In particular oral evidence of the then Sub-Divisional Officer (Shri

Kathaley) was necessary. I could have cross-examined him, had he entered witness box.

For the reasons. I respectfully submit that prejudice has been caused to me.

In the alternative. I pray that justice be tempered with mercy. My Inexperience and young age may be taken into consideration and I may be pardoned or lightly dealt with in case the Government comes to the conclusion that I am at fault " Ex. 12).

On 29-3-19M, the Government communicated to the appellant their decision to the effect that he was removed from service.

5. The petitioner's grievance is that he was not afforded a reasonable opportunity to show cause against the action proposed to be taken against him, as required by Clause (2) of Article 311 of the Constitution, His further grievance is, apart from the fact that he was not allowed to inspect the two records, no opportunity was given to him to cross-examine the Sub-Divisional Officer upon whose report the Deputy Commissioner has relied in his report. Further according to him he was not allowed to examine any witnesses in his defence even though in his statement dated 19-3-1953 and the letter dated 23-11-53, he had specifically requested that he should be permitted to examine them. Finally, his grievance is that he was entitled to be heard in person and that he was not so heard. According to Shri Abhyankar who appears for the appellant, this clearly shows that reasonable opportunity was not afforded to the appellant to show cause against the action proposed to be taken.

6. NOW, as regards the appellant's complaint that he was not given a reasonable opportunity to defend himself inasmuch as, though he had asked permission to cross-examine the witness on whom the Deputy Commissioner relied and to examine some witnesses in his own defence, the learned single Judge has observed that he was not entitled to claim such an opportunity after he was informed of the action proposed to be taken against him by the Government. The learned single Judge seems to be of the view that the question of being afforded a reasonable opportunity to defend oneself arises only at an earlier stage, i.e., when the departmental enquiry is to be held under the Civil Services Rules. In our opinion, this view is not in accord with Article 311(2) of the Constitution and is in conflict With the various decisions of the High Courts including that of this Court reported in State of Bombay Vs. Gajanan Mahadev Badley, , and the Privy Council decision in High Commissioner for India v. I M. Lall ATE 1948 PC 131 , which has been accepted by their Lordships of the Supreme Court in P. Joseph John Vs. The State of Travancore-Cochin, .

7. Now, when the Government ordered departmental enquiry to be held, they acted merely under the Civil Services Rules. Such an enquiry is essentially of a preliminary nature and is intended to satisfy the Government that the case is of a kind which calls for a disciplinary action. No doubt, even during such enquiry it is open to the person against whom such enquiry is held to have a full say and to

make a statement with regard to all the charges which are made against him and also to examine any witnesses in his defence. But it does not mean that if he falls to take part in that enquiry or to give his defence he is necessarily precluded from putting forward his defence or from examining witnesses or cross-examining such witnesses as may have been examined during the enquiry by the Enquiring Officer. An enquiry held under Rule 55 of the Civil Services Rules is not by itself sufficient to enable any action being taken by the Government against a Government servant, it is only after complying with the provisions of Article 311(2) that disciplinary action of the kind referred to in that Article can be taken by the Government. This matter has been dealt with by the Federal Court in *Secy, of State v. I. M. Lall* AIR 1945 FO 47 , and in the course of the Judgment the learned Chief Justice who delivered the opinion of the majority of the Judges has observed :

"It does however seem to us that the subsection requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of the action proposed but of the grounds on which the authority is proposing that the action should be taken, and that the person concerned must then be given reasonable time to make his representations against the proposed action, and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced if all Or any of the charges are proved, dismissal or reduction in rank will follow. This may indeed be sufficient in some cases. In our judgment each case will have to turn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed." .

These observations, as already stated, have met with the approval of their Lordships of the Privy Council in AIR 1948 121 (Privy Council) , where they have stated :

"In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute (Constitution Act 1935) gives the civil servant the opportunity for which Sub-section (3) makes provision."

Then, their Lordships added :

"Their Lordships should only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the finding of the enquiry."

This view of their Lordships of the Privy Council has met, as already stated, with the approval of the Supreme Court.

8. When a similar matter came up before this Court the learned Chief Justice who delivered the judgment of the Court in *State of Bombay Vs. Gajanan Mahadev Badley*, observed :

"Therefore, before the State can dismiss or even reduce a civil servant in rank, it is incumbent upon it to give the servant a reasonable opportunity of showing cause against the action the State proposed to take against him. It is well-settled" law that it is not sufficient under this sub-section for the Government merely to inform the servant that it proposes to pass a particular punishment and to ask him to show cause against that punishment.

The opportunity which the State has to furnish has to be a reasonable opportunity, and the Courts have held that a reasonable opportunity is only afforded to the servant when he can show cause not only against the punishment but also against the grounds" on which the State proposes to punish him. Therefore, it is not sufficient that the State should call upon the servant to show cause against the quantum of punishment intended to be inflicted upon him; the State must also call upon the servant to show cause against the decision arrived at by a departmental inquiry if that decision constitutes the ground on which the Government proposes to take action against the servant." p. 920 (of ILR, Bom): (at PP. 354-355 Of AIR).

(The underlining (here in " ") is ours).

This decision was followed by the same Division Bench in a case reported in *Dattatraya Mahadev v. Union of India* AIR 1955 NUC (Bom) 3843. That decision is that the opportunity, which the law requires should be given to the Government servant to show cause both against the punishment and the grounds, must be a real opportunity, an opportunity which would make it possible for him to persuade the competent authority to come to a different conclusion from the one at which he has tentatively arrived and it is from this aspect that the Court must consider whether the opportunity given to the dismissed servant was a reasonable opportunity. These decisions leave the matter beyond any doubt as to the right of the Government servant to persuade the authority concerned either by cross-examining the witnesses on whom reliance has been placed at an earlier stage or by examining witnesses in his

defence or by asking for both being permitted provided, as already stated, he had not availed himself of such an opportunity at an earlier stage. No doubt, the Deputy Commissioner has stated in his report that the appellant was asked whether he wanted to examine any witnesses but he said that he did not wish to examine any witnesses. That does not mean that he could not after service upon him of the second notice, claim to examine some witnesses in his defence. It may be mentioned that when the second notice was served he was not even asked whether he wished to cross-examine any witness. The appellant requested for a personal hearing. All his requests were turned down with the result that his say has not been heard in full by the Government.

9. We would also like to point out that even the enquiry has not been in conformity with the provisions of Rule 55 which among other things lay down :

".....At that Inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish....."

Upon the circumstances of this case, it would appear that it was necessary for the inquiring officer to examine the Sub-Divisional Officer as a witness inasmuch as the appellant had asked for a personal hearing and had not admitted several of the allegations made against him by the Sub-Divisional Officer. In the circumstances, we hold that the removal of the appellant from service was not according to law. Accordingly we quash the order of the State of Madhya Pradesh removing the appellant from service.

10. Costs will be borne by the respondent.

11. Order quashed.