
(1967) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 487 of 1966

Ghanshyamdas Srivastava

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-11-1967

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1968 MP 132 : (1968) JLJ 216 : (1968) 2 LLJ 264 : (1968) 13 MPLJ 14

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

The petitioner Ghanshyam-das Shrivastava, who was employed as a ranger in the Forest Department, seeks it writ of certiorari for quashing an order passed by the Government on 8th June 1966 dismissing him from service.

The applicant's dismissal was as a sequel to a departmental enquiry on charges of misappropriating Government money to the extent of Rs. 1200, proceeding on leave without obtaining prior sanction, failing to submit weekly diaries during certain periods, disobedience of the orders of the Divisional Forest Officer, Bastar Plantation Division, with regard to the construction of temporary labour shed, late submission of cash accounts and antedating certain payments. The initiation of the enquiry, the applicant's suspension and the appointment of an Enquiry Officer were all done by the Government. The charges in respect of which the enquiry was held were also authorized by the Government. The enquiry was held by Shri Ansari, Divisional Forest Officer, South Bastar Division. When the applicant was informed of the charges and of the appointment of Shri Ansari

as the Enquiry Officer. he raised an objection to the appointment of Shri Ansari as the Enquiry Officer on the ground that Shri Sur, Conservator of Forests, and Shri Kalia, Divisional Forest Officer, Plantation Division who were very friendly with each other, were not well disposed towards him and that Shri Ansari was a subordinate of Shri Sur. This objection was rejected by the Government. The petitioner then again moved the Government for appointment of another Enquiry Officer, this time saying that he wanted to examine Shri Ansari as a witness. The Government turned down this request as, according to it, it was wholly unnecessary to examine Shri Ansari. The Enquiry Officer first asked the applicant to attend the enquiry on 12th January 1965. When he failed to attend, he was directed to appear before the Enquiry Officer on 15th January 1965. This time also the applicant did not attend the enquiry and wrote back to the Enquiry Officer that as his request for the appointment of another Enquiry Officer was not granted and as Shri Ansari was not included "in the list of defence witnesses", he would not attend the enquiry. The Enquiry Officer again fixed a date for the commencement of the enquiry and asked the applicant to appear on 9th February 1965 and file his reply on or before that date. The petitioner again reiterated his objection to the appointment of Shri Ansari as the Enquiry Officer and ultimately wrote back to him that he was withdrawing from the enquiry.

The enquiry was, therefore, held *ex parte* against the applicant. The Enquiry Officer examined Shri Kalia, Shri Masa, Shri Ram Lal, Shri Shyam Singh, Shri Bhim and some other persons in support of the charges and gave a report to the Government that all the seven charges leveled against the petitioner had been *prima facie* established. On the basis of the Enquiry Officer's report, a notice was issued to the petitioner to show cause why he should not be dismissed from service. The applicant gave his reply which the Government did not find satisfactory. The Government also consulted the Public Service Commission. After considering the petitioner's reply and the advice of the Public Service Commission, the State Government found that all the charges except one, namely charge No. 7, had been fully established. In regard to charge No. 7 the Government came to the conclusion that it was partly proved to the extent that certain payments made to five persons were antedated. The Government, therefore, passed the impugned order dismissing the petitioner from service.

Having heard learned counsel for the parties we have reached the conclusion that this application must be dismissed. When the petitioner failed to appear before the Enquiry Officer although the enquiry was adjourned several times in order to enable him to appear and ultimately wrote back to the Enquiry Officer that he would not participate in the enquiry, he cannot now complain that no opportunity of hearing in respect of the charges was given to him at the enquiry. A Government servant who failed to avail himself of the opportunity afforded to him to show cause cannot complain that no opportunity was given to him. This is clear from the decisions of the Supreme Court in *Major U.R. Bhatt Vs. Union of India (UOI)*, and *P. Joseph John Vs. The State of Travancore-Cochin*, . The petitioner's apprehension that as Shri Ansari was a subordinate of Shri Sur and

as Shri Sur and Shri Kalia were friendly with each other and were not well disposed towards him, Shri Ansari would be biased against him. was altogether unfounded. There is nothing on record to show that Shri Ansari was personally interested in the enquiry or that there was personal hostility on his part in regard to the petitioner. If Shri Ansari was a subordinate of Shri Sur that did not make him a biased person who could not hold the enquiry against the applicant. Learned counsel was unable to show us how Shri Ansari was a material witness in the enquiry. The petitioner wanted to examine Shri Kalia also. But Shri Kalia was examined by the Enquiry Officer and if the petitioner had participated in the enquiry he could have cross-examined Shri Kalia. There is thus no ground whatsoever for holding that the petitioner's non-participation in the enquiry on the ground that Shri Ansari was biased or that he and Shri Kalia were not going to be examined was justified. In our opinion, in the circumstances narrated earlier, the Enquiry Officer had no other alternative but to hold the enquiry ex parte

Shri Dharmadhikaree, learned counsel for the applicant, urged that even if the petitioner did not take part in the enquiry held by Shri Ansari, still under Article 311(2) of the Constitution, as amended in 1963, the petitioner was entitled to a reasonable opportunity of being heard in respect of the charges by the Government and that this meant that he was entitled to adduce evidence before the Government to disprove the charges and also make a representation on the penalty proposed. It was said that the effect of amendment made in 1963 in Article 311(2) is that the disciplinary authority must itself hold the enquiry and that to appoint another person as an Enquiry Officer and to ask the delinquent officer to appear before him is not to give a reasonable opportunity of hearing contemplated by the amended Article 311(2).

We are unable to accept this contention. Article 311(2), as it stood before the amendment was in the following terms:

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him....."

After the amendment it reads thus:

"No such person as aforesaid shall be dismissed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges against him and where it is proposed, after inquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

* * * *"

The content and scope of the reasonable opportunity envisaged by Article

311(2), as it was before the amendment, was explained by the Supreme Court in *Khem Chand Vs. The Union of India (UOI)and Others*, In that case it was said that reasonable opportunity contemplated by Article 311(2) required that the Government Servant should be given an opportunity:

"(a).....to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based,

(b) ... to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence: and finally

(c)to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant."

In *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, it was held that in the matter of actual conduct of an enquiry, a disciplinary authority could act by officials duly deputed for the purpose and that delegation of the conduct of enquiry did not amount to delegation of the exercise of the disciplinary power itself.

In our judgment, the amendment made in Article 311(2) only clarifies the position that existed before the said article was amended. The new Article 311(2) makes it plain that there will be an enquiry stage at which a reasonable opportunity must be given to the delinquent officer of being heard in respect of the charges. It also says that if it is proposed after enquiry to impose on the delinquent officer any penalty, then he shall be given a reasonable opportunity of making representation on the penalty proposed. These are precisely the two opportunities which the Supreme Court said in *Khem Chand Vs. The Union of India (UOI)and Others*, the delinquent officer was entitled to under Article 311(2) as it stood originally. The words "but only on the basis of the evidence adduced during such enquiry" occurring at the end of the amended Clause (2) of Article 311 leave no doubt that the Government servant is not entitled to adduce fresh or additional evidence at the second stage. The second stage is confined to making a representation against the proposed punishment on the basis of the evidence adduced during the enquiry at the first stage.

In our opinion, the making of a representation on the penalty proposed at the second stage does not mean that at that stage the Government servant can canvass only the question of the quantum or nature of the punishment. At that stage the Government servant can also urge that the charges levelled against him have not been proved or established and that no penalty of any kind should be imposed on him or that on the findings reached at the enquiry the proposed

penalty should not be imposed on him. The right of making a representation on the penalty proposed would become meaningless and futile if the right is to be confined only to the quantum or nature of the punishment. It is thus plain that even at the second stage the delinquent Government servant is heard and has to be heard in respect of the charges which formed the subject-matter of investigation at the enquiry.

If, as we think, the delinquent Government servant is given a hearing at the second stage before the disciplinary and punishing authority in respect of the charges which formed the subject-matter of investigation at the enquiry then there can be no basis for contending that as at the second stage a representation is confined only to the quantum of nature of punishment, the disciplinary authority must necessarily itself hold the enquiry contemplated by the amended Article 311(2). The amendment made in Article 311(2) does not in any way dislodge the proposition laid down in Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, that the actual conduct of an enquiry can be entrusted by the disciplinary authority to any other official. The contention of the learned counsel for the petitioner that the enquiry held by Shri Ansari was in contravention of the amended Article 311(2) and illegal cannot be accepted.

For the foregoing reasons, this petition must be and is dismissed with costs. Counsel''s fee is fixed at Rs. 150. The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioner.