
(2008) 01 P&H CK 0165
In the Punjab And Haryana At Chandigarh

Jagdish Chander

APPELLANT

Vs

Uttari Haryana Bijli Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2008) 149 PLR 735

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to seek quashing of punishment order dated 1.2.2006, Annexure P-6, whereby the petitioner was dismissed from service and order dated 30.06.2006, Annexure P-9, whereby the appeal was dismissed.

2. The petitioner working as Store Attendant, was served with a charge-sheet dated 28.02.2002 contain twin charges, namely, stealing of 1200 plastic seals from the store and for remaining absent from duty for the specified period. The petitioner was earlier placed under suspension on 7.11.2001 for alleged charge of theft for which FIR was also registered.

3. After considering the reply to the charge-sheet submitted by the petitioner, an Enquiry Officer was appointed. On the basis of the enquiry report holding the petitioner guilty of the charges contained in the charge-sheet, a show cause notice was issued to the petitioner along with a copy of the enquiry report. The tentative decision to remove the petitioner from service was also communicated.

4. The petitioner did not file reply to the said show cause notice. An order of dismissal was passed by the competent authority on 01.02.2006. The appeal against the said order was also dismissed.

5. The primary ground of challenging the orders, Annexures P-6 and P-7, is that

the petitioner has been given combined show cause notice in respect of the findings on charges proved and the proposed punishment. It is contended that such procedure violates the principle laid down by Hon''ble Supreme Court in the judgment reported as Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., explained by a Division Bench of this Court in judgment reported as Jitender Singh v. State of Haryana 2006(3) SCT 352.

6. On the other hand learned Counsel for the respondents has relied upon Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 (hereinafter to be referred as the "Regulations"). It is contended that in terms of Regulation 7(6) of the Regulations, a Board employee is required to be supplied with a copy of the report of the Enquiry Officer and also be called upon to show cause against the particular penalty proposed to be inflicted upon him. Therefore, the show cause served is in tune with the Regulations. It is further contended that in any case, the petitioner has not shown any prejudice suffered by him on account of non service of second show cause notice which may warrant interference in the writ jurisdiction of this Court.

7. The allegation which has been proved against the petitioner is theft of 1200 plastic seals. Such theft of seals could led to theft of energy by breaking of meter seals by the consumers. The fact remains that after the conclusion of the inquiry, the petitioner has not submitted any reply to such show cause notice. Since the allegations against the petitioner have been held to be proved by the Enquiry Officer, it was incumbent upon the petitioner to submit his explanation in a reply to the show cause notice. Having failed to do so, it cannot be said that non service of second show cause notice violates the principles of natural justice.

8. We have reservation on the principle laid down by the Division Bench of this Court in Jatinder Singh's case (supra). In the aforesaid case, it has been held that the disciplinary authority is to furnish the report of the Enquiry Officer before concurring with the findings recorded by the Enquiry Officer and thereafter issue a show cause notice proposing punishment. The failure to serve notice in the said manner is against the law laid down by the Hon''ble Supreme Court.

9. In Karunakar's case (supra), it was held that right to make representation to the Disciplinary Authority against the findings recorded by the Enquiry Officer is integral part of the defence against the charges and it is breach of the principles of natural justice to deny the said right. It was also held that the law laid down in Union of India and others Vs. Mohd. Ramzan Khan, should apply to employees in all establishments whether Government or non-Government, public or private. The delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. In Karunakar's case (supra), the Court gave its opinion on the following seven questions:

(i) Whether the report should be furnished to the employee even when the

statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or against it?

(ii) Whether the report of the enquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan case will apply to all establishments ? Government or non- Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Mohd. Ramzan Khan case has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law preventing prior to November 20, 1990?

10. The above said questions arose in view of the judgment of Hon''ble Supreme Court in Mohd. Ramzan Khan's case (supra) wherein the point which arose for determination was whether with the alteration of the provisions of Article 311(2) under the Forty-Second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent has lost his right to be entitled to a copy of the report of inquiry in the disciplinary proceedings. It may be noticed that there was no question framed or answered in respect of a show cause notice of proposed punishment. At this stage, it may be relevant to reproduce the provisions of Article 311 (2) and (3), as in the original Constitution, reads as under:

311(2) 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:

Provided that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

11. The said clauses were substituted by Fifteenth Amendment effective from October 6, 1963. The said amended clause reads as under:

311 (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such 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:

Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

12. Thereafter came the Forty-Second Amendment of the Constitution under which the Sub-article (2) was amended in 1976. The said Article 311 (2) and (3) after amendment reads as under:

311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

13. In Mohd. Ramzan Khan's case (*supra*), it was contended that where in a situation, the Enquiry Officer furnishes a report with or without proposal of punishment, the report of the Enquiry Officer constitute an additional material which is to be taken into account by the Disciplinary Authority in dealing with the matter. In cases where punishment is proposed there is an assessment of the material and a tentative conclusion is reached for consideration of the Disciplinary Authority and that is one where the prejudicial material against the delinquent is all the more pronounced. After considering various judgements, the Court found that Forty-Second amendment has deleted the second stage of the inquiry which would commence with the service of a notice proposing one of the three punishments mentioned in Article 311(1) but deletion of the said part from the concept of reasonable opportunity in Article 311(2) does not bring about any material change in regard to requiring the copy of the report to be provided to the delinquent. The Court found that even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Enquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. It was held to the following effect:

15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report of the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated,

nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

14. It was the said conclusion in Mohd. Ramzan Khan's case (supra) which received the approval of the Constitution Bench case in Karunakar's case (supra). Under proviso to Article 311(2) of the Constitution, it is not necessary to give the delinquent an opportunity of representing against the penalty proposed. Such provision has not been found to be ultra vires. What has been found is that before Disciplinary Authority acts on the inquiry report, an opportunity is required to be granted to the delinquent against the findings recorded by the Enquiry Officer. The finding in Jitender Singh's case (supra) that the Disciplinary Authority is to first record the finding of guilt after giving show cause notice and thereafter a second show cause notice is required to be issued before inflicting punishment, in fact, is not borne out from the judgements referred to above and from the clear language of Article 311(2) of the Constitution. We are, thus, prima facie, of the opinion that the said judgment in Jitender Singh's case (supra) runs counter to the provisions of the Constitution, as interpreted by the Constitution Bench. But it is not necessary to delve further as the petitioner has not even pleaded or proved any prejudice in not serving the show cause notice. Therefore, in the absence of any iota of prejudice having been suffered by the petitioner, we do not find that the order passed by the Authorities can be said to be illegal, unwarranted or in violation of the principles of justice.

15. Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. S. Balakrishnan AIR 2001 SC 2400 has held that in the absence of any prejudice having been caused to the delinquent, mere non supply of inquiry report before inflicting the punishment, is not fatal to the proceedings. Similarly, in State of U.P. Vs. Harendra Arora and Another, it was held that non furnishing of inquiry report would not be fatal to the order of punishment unless prejudice is shown. The delinquent has to show that he has been prejudiced by non observance of the principles of reasonable opportunity and natural justice. The order passed in a disciplinary proceedings cannot ipso facto be quashed merely because a copy of the inquiry report has not been furnished to the delinquent officer but he is obliged to show that by non furnishing of such a report he has been prejudiced. In U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, , Hon'ble Supreme Court held that in all cases where enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Court should not mechanically set aside the order of punishment on the ground that the report was not furnished. It is only if the Court finds that the furnishing of the report would have made a difference to the result in the case that it should set aside

the order of punishment.

16. In N.T.C. (WBAB and O) Ltd. and Another Vs. Anjan K. Saha, , the grievance of the employee was that he has been denied an opportunity to show cause against the proposed penalty. The Court found that the principle in respect of supply of inquiry report is very well applicable to such situation as well.

17. In view of the above, we do not find any merit in the present writ petition. The same is hereby dismissed.