

(1999) 08 DEL CK 0128
In the Delhi High Court
Case No : CWP. No. 2501/88

Jagjit Singh

APPELLANT

Vs

The Administrator of Delhi and others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Delhi School Education Act, 1973 — Section 8(3)
Delhi School Education Rules, 1973 — Rule 120

Citation : (1999) 5 AD 848 : (1999) 81 DLT 770 : (1999) 51 DRJ 184

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Ranjan Mukherjee, for the Appellant; Mr. Vinay Sabharwal, for the Respondent

Judgement

A.K. Sikri. J.

1. This writ petition has been filed by the petitioner against Judgment dated 8th March, 1988 passed by the Presiding Officer, Delhi School Education Tribunal, Delhi in Appeal No. 3/86 whereby the Tribunal dismissed the said appeal preferred by the petitioner against the punishment of dismissal imposed by the Respondent School pursuant to departmental enquiry conducted against the petitioner. Facts are mentioned in detail by the Education Tribunal in his Judgment and, Therefore, it is not necessary to state the facts in complete details here. Therefore, only those facts, which are relevant for determining the controversy, would be stated.

2. The petitioner was working as Trained Graduate Teacher (TGT) with Respondent No. 4 School, namely, DAV Secondary School, Delhi Cantt. Alleging grave and serious charges against the petitioner, the Charge-sheet was issued and the disciplinary proceedings were started. The petitioner filed writ petition being CWP. No. 2603/84 in this Court challenging the disciplinary proceedings. This writ petition was dismissed by Division Bench of this Court by order dated 26th February, 1985. Insofar as enquiry against the petitioner is concerned,

admittedly, the petitioner did not appear before the Enquiry Officer on number of dates and consequently ex-parte enquiry order held against him. The Disciplinary Authority gave the findings dated 22nd March, 1985 that charges were proved against the petitioner. On the basis of the said findings a show cause notice dated 8th April, 1985 was given to the petitioner. On receipt of the said show cause notice petitioner wrote letter dated 3rd May, 1985 wherein he stated that in order to give reply effectively to the said show cause notice he may be supplied statement of witnesses and other documents, the details of which he gave in the said communication dated 3rd May, 1985. Respondent No. 3 replied to the aforesaid letter dated 3rd May, 1985 by its letter dated 14th May, 1985 giving an opportunity to the petitioner to inspect the document personally in the office of the Disciplinary Authority on 25th May, 1985 as demanded by the petitioner vide his letter dated 3rd May, 1985. As per the version of the petitioner he was away to Bombay during this period and when he came back from Bombay on 8th June, 1985 he received letter dated 14th May, 1985. Accordingly, he addressed letter dated 10th June, 1985 to the Disciplinary Authority praying for inspection of the relevant documents. However, Disciplinary Authority replied vide its letter dated 22nd July, 1985 stating that the matter had already been referred to the Director of Education. It may be stated that according to the Respondent School when the petitioner did not turn up on 25th May, 1985 to inspect the record and failed to avail the opportunity the Disciplinary Authority decided to pass the penalty of dismissal on the appellant and accordingly referred the case for approval of the Director of Education, Delhi Administration. After the such approval was given by Director of Education, order of dismissal dated 30th October, 1985 was conveyed to the petitioner.

3. The petitioner challenged this order of dismissal by filing an appeal u/s 8(3) of the Delhi School Education Act and Rule 120 of Delhi School Education Rules before Delhi School Tribunal which was registered as Appeal No. 3/86. The appeal of the petitioner was heard and vide impugned judgment dated 8th March, 1988 the same was dismissed. The present writ petition has been filed against this judgment of the Delhi School Tribunal.

4. At the time of arguments counsel for the petitioner canvassed the following four submissions:

A. Along with show cause notice dated 8th April, 1985 a copy of the enquiry report was not supplied to the petitioner and, Therefore petitioner could not make any effective representation. Show cause notice dated 8th April, 1985 was, Therefore, an empty formality and as no opportunity was given to the petitioner to make effective representation against the show cause notice the entire action including resultant punishment of dismissal is violative of Rule 120(1)(c) of the Delhi School Education Rules and thus illegal.

B. A perusal of the show cause notice dated 8th April, 1985 shows that no proposed punishment was mentioned in the said show cause notice, which is mandatory requirement as per Rule 120(1)(d)(i) of the Delhi School Education

Rules, in the absence of such proposed punishment specified in the show cause notice, the show cause notice is again illegal and it also amounts to not giving proper opportunity to the petitioner to make his representation against the proposed punishment and Therefore, the impugned order dated 30th October, 1985 of punishment imposing the punishment of dismissal is illegal.

C. Next it was argued that the documents as demanded by the petitioner in his letter dated 3rd May, 1985 were not supplied to the petitioner and in the absence of these documents the petitioner could not make his representation and this also amounts to denial of principles of Natural Justice and vitiates the impugned dismissal order dated 30th October, 1985.

It is submitted by counsel for the petitioner that right to make representation is a statutory right conferred upon the delinquentment employee under Rule 120 of the Delhi School Education Rules, which has been denied to the petitioner due to aforesaid reasons. The petitioner has also relied upon the following judgments of the Supreme Court to buttress his arguments that in the absence of supply of documents, the entire proceedings are vitiated:

(i) Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, .

(ii) State of U.P. Vs. Shatrughan Lal and Another, .

D. It is also argued that Mr. R.S. Sishodia was biased against the petitioner who acted as Disciplinary Authority and petitioner objected to his appointment at the initial stage itself. Therefore according to the petitioner the proceeding are vitiated on this ground also.

5. I shall deal with the aforesaid contentions in the order in which they are stated above:

6. As far as non-supply of copy of the enquiry report along with show cause notice dated 8th April, 1985 is concerned, there appears to be no merit in the same. It would be significant to mention that after receipt of show cause notice dated 8th April, 1985 when the petitioner requested for supply of various documents in his representation dated 3rd May, 1985 (Listing as may as 15 documents) he never stated that the copy of the enquiry report was not received by him. Relevant para of the show cause Notice/Memorandum dated 8th April, 1985 is as under :

"The said Disciplinary Authority has prepared a final report of inquiry, charge wise and its findings on each charge are contained in the enclosed report dated 22nd March, 1985 .

7. It is highly unbelievable that on receipt of this Memorandum dated 8th April, 1985 when the petitioner would demand as many as 15 documents from the management to enable him to give effective reply he will not even say that he has not received copy of the enquiry report. Not only this even thereafter he

never stated that copy of the enquiry report was not supplied to him. Significantly even in the Memorandum of Appeal filed before the Delhi School Tribunal there was no grievance made to this effect. This point was not taken during arguments before the Delhi School Tribunal also and the perusal of the judgment shows that no grievance of this nature was at all made. It is for the first time that petitioner in his writ petition has alleged that he was not supplied the copy of the enquiry report along with Memorandum dated 8th April, 1985. For these reasons this contention of the petitioner cannot be accepted at all.

8. The second argument of the petitioner that proposed punishment is not mentioned in Memorandum dated 8th April, 1985 also does not hold any ground. Along with Memorandum dated 8th April, 1985 enquiry report was given which contains findings of the Disciplinary Authority itself. The last para of the said report clearly mentions that Disciplinary Authority has decided to impose major penalty under Rule 117(b)(iv) of Delhi School Education Rules, 1973 according to which petitioner should be dismissed from service which shall ordinarily be disqualification for future employment in any aided school. Thus this punishment having been specified in the findings/enquiry report which was enclosed along with Memorandum dated 8th April, 1985 and the petitioner was afforded opportunity to submit representation against the same. A perusal of Memorandum dated 8th April, 1985 along with findings would clearly show that petitioner was put to notice that Disciplinary Authority has proposed the punishment of dismissal from service and he was asked to submit his representation against the same. Therefore, I reject this plea of the petitioner as well.

9. Insofar as supply of documents to the petitioner is concerned, let me first refer to the relevant portion of the impugned judgment of the Tribunal showing as to how this point has been dealt with by the Tribunal:

"The appellant alleges that he denied opportunity of being heard. That neither due opportunity was afforded to attend the inquiry proceedings nor he was allowed inspection of record and supply of copies of relevant documents asked for by him, I find that the objection does not stand scrutiny. He did not attend despite information and knowledge of the inquiry hearings.

Next the Disciplinary Authority met on 22.3.85 and passed the findings on the charges standing against the appellant. It was unanimously agreed per the inquiry report that all the 12 charges stood proved and the delinquent deserved dismissal from School. A show cause notice to this effect dated. 8.4.85 with the copy of the inquiry report was served on the appellant to which he made a representation dated 3.5.85 which was found evasive and not convincing in its meeting on 10.5.85 by the Disciplinary Authority. He had also requested for the supply of evidence statements and documents. The Disciplinary Authority was of the view that he was not entitled to such copies now on the completion of the inquiry as of right but still they allowed him opportunity to inspect the inquiry record on 25.5.85 but he failed to avail the same. The appellant alleges to have

gone to Bombay on 16.5.85. On 25.5.85. the Disciplinary Authority decided to pass the penalty of dismissal on the appellant and accordingly referred the case for approval of the Director of Education Delhi Administration. It was after such approval that the impugned order dated 30.10.85 was conveyed to the appellant."

10. As far as participation in the enquiry is concerned, record shows that number of opportunities were given to the petitioner but chose not to appear. He showed his appearance only on 4th February, 1985 but left the venue of enquiry in a huff. Enquiry was conducted against him ex parte. Although petitioner contended before the Tribunal that ex parte enquiry conducted against him was not proper, this contention of the petitioner was not accepted and the Tribunal came to the conclusion that it is the petitioner who did not cooperate with the Disciplinary Authority and evaded the Disciplinary Proceedings by observing that :

"Apart from the above narration of the sequence of the inquiry proceedings, I have examined the entire proceedings to satisfy myself. Twice the proceedings were adjourned on appellants sending information of illness on 3.9.84 and 14.9.84 and was asked to appear next and produce medical certificate from the Doctor of Police Hospital but neither such certificate was produced nor he appeared on the next hearings on 11.10.84. 22.11.84 and 7.1.85. He though showed his appearance on 4.2.85 but left the venue of inquiry in a huff. I am fully satisfied that the appellant did not cooperative with the Disciplinary Authority and evaded the inquiry proceedings. The only inference flowing from all this is that the appellant had no defense to offer."

11. Significantly during the arguments in this writ petition petitioner did not press this point. This goes to show that it is the petitioner who did not attend the enquiry and the same was proceeded ex parte. The question of supply of documents has to be examined from this angle also. It was contended by Mr. Vinay Sabharwal counsel for the respondent that when the petitioner did not participate in the enquiry and did not demand documents at that time when enquiry was going on, ordinarily after the conduct of the enquiry he was not entitled to these documents which he demanded by his letter dated 3rd May, 1985 when the enquiry had been concluded and he was given show cause with Memorandum dated 8th April, 1985 giving him opportunity to represent against the findings/proposed punishment. Still he was given an opportunity vide letter dated 14th May. 1985 to come to the office of Disciplinary Authority and inspect the documents on 25th May, 1985. It is the petitioner who is to be blamed for not availing this opportunity also. When he did not inspect the documents on 25th May, 1985 nor sent any reply to the Memorandum dated 8th April, 1985. Disciplinary Authority decided to impose the punishment of dismissal and sent the file to the Directorate of Education for approval on 5th June, 1985. Entire record of the enquiry proceeding including all documents etc., was sent to Director of Education for this purpose. It is only thereafter that the petitioner wrote letter dated 10th June, 1985 alleging therein that he was away to Bombay

and, Therefore, requested for another opportunity to inspect the relevant documents. However, by that time the file had already been sent by the Respondent School to Director of Education and, Therefore, Respondent No. 4 had no option but to decline the request of the petitioner vide letter dated 22nd July, 1985. I may mention here that although petitioner referred to letter dated 10.5.1984 (1985) addressed to school stating that he was going to Bombay but it could not be proved that such a letter was ever received by respondent School. It may be mentioned that this letter is not filed along with the petition or the rejoinder but petitioner filed certain documents in this Court on 28.4.97 in which this letter is also included and it was not supported by any affidavit. Respondent School specifically denied having received such letter.

12. In view of the aforesaid position it would be said that Respondent No. 4 is at fault in not supplying or giving the inspection of the documents demanded by the petitioner.

13. The cases cited by the petitioner are not applicable to the facts and circumstances of this case and are clearly distinguishable. In the case of Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey & Ors., (supra) the charge-sheeted employee immediately after the issuance of charge-sheet wanted inspection of documents, which were not supplied to him not opportunity of inspection had been given to him. He had made request to the Enquiry Officer also during the enquiry proceedings. However, Enquiry Officer had replied stating that since he had already given the reply to the charge-sheet item wise, he was at liberty to inspect the documents at the time of final arguments. It is in this context that the Supreme Court held that the procedure followed by the Enquiry Officer was erroneous and in violation of Principles of Natural Justice as he should have given the opportunity for inspection and thereafter conducted the enquiry.

14. In State of U.P. Vs. Shatrughan Lal & Anr., (supra) the delinquent employee was issued charge-sheet after preliminary enquiry. He requested for copies of the said enquiry and copies of the statement of witnesses recorded during the preliminary enquiry, particularly, if those witnesses were proposed to be examined at the departmental trial. He was not given the same which act of the Management was found to be in violation of principles of Natural Justice. Relevant portions of the Judgment are reproduced below:

"Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, Therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in Kashinath Dikshita Vs. Union of India (UOI) and Others, wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-

supply of copies of those documents had not caused any prejudice to the delinquent in his defense.

Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the charge sheet to be relied upon as proof in support of articles of charges were not supplied to the respondent nor was any officer made to him to inspect those documents."

15. Thus both the aforesaid cases referred to supply of documents during the enquiry proceedings. In this case no such thing happened rather enquiry was concluded against the petitioner ex parte in spite of repeated opportunities to the petitioner and petitioner chose not to appear before the Enquiry Officer. He asked for inspection of documents only when he was given show cause notice and thus the case in hand relates to the supply; of documents after the enquiry was over. Even at this stage petitioner was given an opportunity to inspect the documents, which he failed to do so. Therefore, this argument of the petitioner also merits rejection.

16. Coming to the allegation of bias made by the petitioner against Mr. R.S. Sishodia, which argument was raised half heartedly, this argument is dealt by the Tribunal in great detail and it would be sufficient to quote the relevant portions of the judgment of the Tribunal as I agree with the same. The same are reproduced below:

"Shri R.S. Sishodia started functioning as an authorised officer of the School w.e.f. 25.5.1981 after taking charge of the School from one of the Managing Committees. This arrangement was duly upheld by the Lt. Governor, Delhi on dismissing the appeal of the then Managing Committee against the taking over of the School vide orders dated 27.11.81. This taken over arrangement was further upheld by the Hon"ble Supreme Court.

The appellant to start with makes grievance that Disciplinary Authority Chairman Sh. Sishodia was biased against him and he had objected against his at the initial stage. So the inquiry; conducted against him is not fair and legal. It is remarkable to note that Sh. Sishodia being the Area Education Officer where the respondent School falls, was appointed initially, by the Director of Education, Delhi Administration as the authorised officer in 1980 when the management trouble boiled up to such a pitch that the respondent School had to be put at 95% aid direct payment by way of disbursing salaries to its employees. Later on in May, 1981 the whole management of the School was taken over by the Education Department with Sh. Sishodia being the managing Authorised Officer appointed by the department. This taking over was challenged in the writ proceedings and the Hon"ble Supreme Court upheld this arrangement. So Sh. Sishodia was authorised officer for managing the respondent School affairs by virtue of his official placing and position. So he is not to have any axe to grind.

Let us examine what is the precise cause of complaint of the appellant against Sh. Sishodia. I fail to find any force in his objection. The burden of his attack is

that Sh. Sishodia had been supporting from the beginning Sh. S.L. Bhardwaj for the post of Vice Principal of the School, so he brands him partisan and opposed to him. He has not been able to allege anything by way of inimical personal relationship between the two or showing any occasion when and for which Sh. Sishodia came in clash with him. Whenever there are two contenders for a post, if a person acting as an umpire or appointing instrument in the scheme of things, on merits takes a decision, which is bound to favor one and go against the other, it cannot be a cause of accusing him of prejudice on the part of the losing party.

Admittedly Sh. Bhardwaj was officiating Principal since 1.5.74 and later Vice Principal since 1977, when the respondent School was downgraded to secondary level on introducing 10+2 scheme. It was only during the time of infighting among the groups of management that the appellant and some others had small interludes as Vice Principals in 1979-80 illegally at the cost of Sh. Bhardwaj who the senior-most P.G.T. (Post Graduate Teacher) in the School and was shortly restored the officiating position and subsequently selected regularly on merits w.e.f. 25.5.1983 by the Selection Committee under the DESR vide Annexure VII, VIII and IX of the return.

So this fact in itself cannot be taken as an act of bias if Sh. S.L. Bhardwaj was posted as Vice Principal by Shri Sishodia on merits in his official discharge of duties when he had to deal with the matter. The appellant has nothing else against Sh. Sishodia."

17. It was also stated by the petitioner that he is out of employment for last number of years as a result of the said punishment and that had he be in service, he would have been at the verge of retirement. He has already suffered a lot and keeping in view these aspects, respondent School may consider paying some compensation to the petitioner. This suggestion was not accepted by the Respondent School in view of the fact that charges for which the petitioner was dismissed were very serious in nature and no benevolence could be shown to the petitioner in view of such serious charges. A perusal of the findings shows that most of the charges proved against the petitioner are of serious nature, such as embezzlement of scouts & guides fund, misappropriation of other school funds and taking away vital school record. Taking into accounts the seriousness of the charges Disciplinary Authority was of the view that petitioner does not deserves any leniency. Therefore, it may not be possible to give an directions regarding compensation also in view of these facts.

18. No other point was canvassed before me.

19. For the reasons stated above. I uphold the judgment dated 8th March, 1988 passed by the Tribunal and dismiss the petition filed by the petitioner. There shall be no orders as to costs.