

(1961) 07 CAL CK 0025
In the Calcutta High Court

Joydeb Haxra Choudhry

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-07-1961

Acts Referred:

Citation : (1962) 1 LLJ 468

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows: In 1954, the petitioner was appointed as a lower division clerk in the audit section of the office of the Conservator of Forests, at Darjeeling. On 22 November 1954, he was warned by the Conservator of Forests for being absent on 9 November 1954 which had not been declared a holiday owing to pressure of work. The petitioner protested against the warning. In February 1955, he was served with a charge-sheet to which he replied. On 5 February 1955, he was called into the chamber of the Conservator of Forests where Sri T.K. Mitra, District Forest Officer, Darjeeling and K.C. Ray Choudhury, District Forest Officer, Working Plans Division were present. There, a certain incident happened. The Conservator of Forests thereupon drew up charges against him and dismissed him on that very day. On 11 February 1955, there was an appeal to Government. In August 1955, the appeal was allowed and a fresh enquiry was directed. A fresh charge-sheet was issued by Sri T.K. Mitra, The petitioner, however, objected to this charge-sheet, since Sri T.K. Mitra was personally connected with the incident in question. Upon that, the charge-sheet was dropped and one K.C. Ray Choudhury was appointed as the enquiry officer. He served a charge-sheet. The petitioner thereupon protested against the drawing up of charges by K.C. Ray Choudhury, as he was not the punishing authority. Upon this, the new Conservator of Forests himself drew up certain charges, which were three in number. Along with these charges, statements of allegations in support of the charges were supplied. The petitioner submitted his explanation. He declined to cross-examine the witnesses but desired to be heard in person. He himself did not produce any witnesses. The

enquiring officer submitted his report on 17 July 1956. The report was based on the statements, copies of which had already been supplied to the petitioner. The Conservator of Forests considered the evidence and the written defence of the petitioner and issued a second show-cause notice asking him to show cause why he should not be removed from service. It is admitted that no copy of the report of the enquiring officer was given to the petitioner. A copy of the second show-cause notice is annexure A to the petition at p. 38. In this show-cause notice, the charge is specified and the petitioner was told as to whether he has been found guilty or not, and the particulars of the recommendations of the enquiring officer have been stated therein, although not the reasoning. The punishing authority, however, gives his reasoning for agreeing with the recommendation of the enquiring officer. The petitioner showed cause. The answer that he gave was a very short one. In that answer, he merely said that, since he had been reinstated once, it proves that the charges could not be substantiated. He referred to Article 72 of the Bengal Civil Service Rules, Part I, and put forward the argument that since he had been charged and dismissed and then reinstated, he could not again be punished on such charges. No complaint was made that the copy of the report had not been supplied. Thereupon, on 30 November 1956, an order of removal was passed by the punishing authority. The petitioner thereupon appealed to the Government. In the appeal, no ground was taken that the petitioner had not been supplied with a copy of the report. The petitioner took various grounds and upon hearing the same, the appeal was allowed in part. The order of removal was set aside and the petitioner was reinstated conditionally. He was to start from the bottom of the scale by way of punishment. Thereupon, he made a further memorial to the Minister-in-charge and that was rejected. Thereafter, in January 1959, the present rule had been issued.

2. The short point taken in support of this application is that the second show-cause notice was not accompanied by a copy of the report. That, ordinarily a copy of the report should be supplied to the delinquent in order to enable him to show cause against the notice proposing to punish him, is not disputed. This point has been dealt with by me in *Jatindra Nath Biswas v. R. Gupta* 1958 C.W.N. 123 at 132. This principle is based on the leading case of *High* AIR 1948 121 (Privy Council). In that case, the respondent, who had been a member of the Indian Civil Service, instituted a suit against the Secretary of State for India, challenging the validity of an order purporting to remove him from the Indian Civil Service. Two reports had been relied upon for his dismissal. The first one was by Mr. Anderson, Commissioner, Rawalpindi Division, who had been appointed to hold the departmental enquiry. Mr. Anderson examined the respondent, in course of which the respondent pleaded guilty to the first two charges. Without any further examination of the witnesses, Mr. Anderson made his report on 9 August 1938. This report was not disclosed to the respondent. Government thereafter appointed Mr. F.L. Brayne, Commissioner, Rural Construction, Punjab, to complete Mr. Anderson's enquiry. Mr. Brayne made a report, but this report was also not disclosed to the respondent. It was held that

in a departmental proceeding, the charges must be clearly indicated. The evidence on which those charges are put forward should be made clear, and the proposed punishment should be intimated. Each case will turn upon its own facts. It was held on the facts of that case, that the proper procedure was not followed and Lall did not have an adequate opportunity to defend himself. The matter was farther explained by the Supreme Court in the case of Khem Chand Vs. The Union of India (UOI)and Others, , where Das, C.J. said as follows:

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. That in our judgment involves in all cases where there is an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank, that the person concerned shall be told in full, or adequately summarized form, the results of that enquiry, and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction of rank.

3. Thus in AIR 1948 121 (Privy Council) , the reports were never disclosed at all, while in Khem Chand Vs. The Union of India (UOI)and Others, , it was stated that it would be sufficient to give an abbreviated pr?cis of the report so as to convey to the delinquent, as to what the report consisted of. In both these cases, it was pointed out that every case should depend on its own facts. The supply to the delinquent of the report is not a matter of a statutory rule, but is in conformity with the rules of natural justice. The rules of natural justice require that the delinquent should be put in a position to defend himself. Coming to the facts of this case, we find that the enquiry was not a very elaborate one. So far as the petitioner was concerned, he refused to call any evidence and more or less the case was decided on statements of witnesses, all of which statements had been supplied to the petitioner. When it came to showing cause, the petitioner did not have the slightest difficulty in submitting his explanation, which consisted more or less of one single point, namely that having been once charged and exonerated, a further proceeding was not possible. He did not complain that without the copy of the report, he was not put in ft position to defend himself,

4. Next, we. find that be preferred an appeal, in which diverse grounds were taken, tooth of facts and law. Here again, he did not take this point, but was content to press his appeal on other grounds. The appellate authority actually dealt with those grounds and gave him partial relief. He then went up further with a memorial and even then he did not take up this point, it is only in this application, and in the demand for justice preliminary thereto, that this point has been taken up. In my opinion, considering the facts of this case, this plea should

not be allowed. The petitioner himself felt no difficulty in defending his case without a full copy of the report. It is not as if the existence of the report was not disclosed to him or suppressed from was knowledge. It was disclosed to him and the results embodied therein were set out. In an investigation of this description, where the case was decided on the statements of witnesses which were all supplied to the petitioner, I cannot see that the rules of natural justice were violated, if the petitioner himself never felt himself at a loss to defend his case, and in fact he not only contested the show-cause notice but also filed an appeal and a memorial, wherein also, he never stated that he had any difficulty in defending himself without a full copy of the report. It is now too late to urge this ground in a writ application. I must not be taken to hold in this; case that a report of a departmental enquiry should not be disclosed, or copies not supplied to a delinquent; but it is not a vital defect. if the delinquent himself never feels the need of it, and is willing to contest the case without a complete copy and upon a mere synopsis of it.

5. The result is that on the facts of this particular case, I do not think that sufficient reasons have been shown for my interference. The application is dismissed. The rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.