

(1995) 03 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 1859 of 1994

Kasinath Vaman Vandere

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 71 FLR 350 : (1996) 1 LLJ 73

Hon'ble Judges : G.R. Majithia, J;A.P. Shah, J

Bench : Division Bench

Judgement

A.P. Shah, J.—By this petition under Article 226 of the Constitution, the petitioner takes exception to the order of dismissal dated March 30, 1992 passed by the District Judge, Dhule.

2. Briefly, the facts giving rise to this petition are as follows :

On September 1, 1956 the petitioner was appointed as a Judicial Clerk in the District of Dhule. In 1985 the petitioner was then promoted as a Senior Clerk. Thereafter with effect from February 1, 1991 the petitioner was promoted to the post of Assistant Superintendent and posted in the Court of Civil Judge, J.D. and J.M.F.C. at Shahada where the petitioner served till June 1991. He was then transferred to the Court at Taloda and was working in that Court upto the date of cessation of his services.

3. On September 21, 1991, the District and Sessions Judge, Dhule, issued a chargesheet levelling therein the following ten charges against the petitioner :

(i) The 1st charge against the petitioner was that during his tenure at Navapur the petitioner did not account for the cash middleman property of Rs. 114/- received in August 1989 and when this lapse was brought to the notice of the petitioner with a request to make good the deficit amount, the petitioner deposited the said amount on March 2, 1990, and this amounted to criminal breach of trust.

(ii) The 2nd charge was based upon a confidential letter written by Mr. M. A. Sayeed, Presiding Officer, Shahada and the said letter allegedly showed that the petitioner was not performing his duties efficiently, diligently and promptly; that the petitioner failed to maintain good relations with his superior officer and subordinates; that the petitioner was avoiding his duties, that the petitioner was not concentrating on his work; that the petitioner's behaviour with the members of the staff was arrogant; that the petitioner was reported to be addicted to liquor and that the petitioner's integrity was reported to be doubtful. Thus, the petitioner's behaviour was in a manner unbecoming of a Government servant and he has failed to maintain absolute integrity of a Government servant and that his act and performance, as reported by the Presiding Officer, Mr. Sayeed, amounted to misconduct and misbehaviour on his part.

(iii) The 3rd charge was again based upon a confidential letter from the Presiding Officer Mr. Sayeed and the said letter allegedly revealed that at the time of payment of bhatta to witnesses, the petitioner used to demand money from them; that the petitioner was unnecessarily harassing the Policy Prosecutor and the Court Orderly attached to the Court; that the petitioner was in the habit of interfering with the official work of the members of the staff and used to behave with them in a dominating and arrogant fashion and thus the behaviour and the attitude on the part of the petitioner with the litigants, Police Prosecutor, Court Orderly and with the members of the staff amounted to misconduct and misbehaviour, unbecoming of a Government servant.

(iv) The 4th charge was that on May 22, 1991, the petitioner behaved in a rude and arrogant manner with the Presiding Officer, Mr. Sayeed.

(v) The charge No. 5 was that the petitioner presented a complaint on May 27, 1991 to the District & Sessions Judge, Dhule, making false allegations against the Presiding Officer Mr. Sayeed.

(vi) The 6th charge was that during his tenure at Shahada from February 1, 1991 to June 1991, the petitioner did not account for Rs. 18/- in V.P.R. No. 150/91 and thus the petitioner had committed criminal breach of trust in respect of the said amount though the said amount was deposited by him when the lapse was brought to his notice.

(vii) The 7th charge against the petitioner was that he remained absent without permission on July 26, 1991 and August 21, 1991.

(viii) The 8th charge was that the petitioner applied for transfer to Shahada directly to the District Judge instead of submitting the application through proper channel, i.e., through the Presiding Officer, Mr. Sayeed.

(ix) The Charge No. 9 was that the petitioner did not deposit Rs. 174/- by denying the responsibility for the loss of 17 library books.

(x) The 10th and the last charge was that the petitioner misbehaved with the sweeper Smt. Umanbai by urinating in the compound while she was working and

by offering her some amount.

4. In terms of the aforesaid charges, the District Judge, Dhule initiated departmental enquiry against the petitioner and appointed Mr. Gundecha, Civil Judge (Sr. dn.) Dhule as the Enquiry Officer. The enquiry was commenced on December 31, 1991 and the same was completed on March 24, 1992. The petitioner was to retire from service on March 31, 1992. The Enquiry Officer submitted his report on March 27, 1992. It was held by the Enquiry Officer that the charges against the petitioner that he was addicted to liquor; that he was of doubtful integrity and that he was harassing the Policy Prosecutor and the Court Orderly and was demanding money from the witnesses and litigants were not proved. The Enquiry Officer, however, held that the petitioner was found guilty of the other charges. In furtherance of the findings of the Enquiry Officer, the District Judge, Dhule passed the impugned order dated March 30, 1992 dismissing the petitioner from service.

5. On receiving the order of dismissal, the petitioner preferred an Administrative Appeal of this Court on May 12, 1992 alongwith the supplementary Appeal dated May 10, 1993, through the Registrar, High Court (A.S.), Bombay. By a letter dated January 25, 1994, the District Judge Dhule informed the petitioner that the High Court had dismissed the petitioner's Administrative Appeal. The petitioner applied for a certified copy of the order passed by this Court on his appeal. The Addl. Registrar (Legal), High Court (A.S.). Bombay informed the petitioner by his letter dated February 7, 1994 that the order passed on the petitioner's Appeal being of administrative and confidential nature, certified copy thereof cannot be supplied.

6. Mr. Kochar, learned counsel for the petitioner strenuously contended that the enquiry was conducted in total violation of the principles of natural justice. It was pointed out by Mr. Kochar that the District Judge, Dhule who was the disciplinary authority, did not furnish to the petitioner a copy of the findings and report of the Enquiry Officer. Mr. Kochar urged that a denial of the Enquiry Officer's report is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. Mr. Kochar relied upon a decision of the Supreme Court in Managing Director, ECIL, Hyderabad v. B. Karunakar 1993 II CLR 1129 in support of his submission. Mr. Kochar next contended that the enquiry was completed in haste as the disciplinary authority wanted to awarded punishment of dismissal while the petitioner was in service. Mr. Kochar brought to our notice the direction given by the disciplinary authority to the Enquiry Officer to complete the enquiry by March 13, 1992 as the petitioner was retiring on March 31, 1992 and urged that due to such direction the petitioner was not even permitted to examine the defence witness inspite of a specific request made by the petitioner in that behalf. Mr. Kochar also pointed out that even a simple requested by the petitioner for a short adjournment, as his Advocate Mr. Paranjpe was busy in some other Court, was turned down by the Enquiry Officer and the enquiry was declared as closed without hearing the arguments of the

petitioner's Advocate. Mr. Kochar also contended that the petitioner's requested for supplying copies of some material and important documents were erroneously rejected by the Enquiry Officer. It was next contended by Mr. Kochar that most of the charges are framed at the behest of the Presiding Officer, Mr. Sayeed during the period when the petitioner was working at Shahada. Mr. Kochar pointed out that on account of some minor issue the Presiding Officer got angry with the petitioner and threw a paper weight on him and his incident was brought to the notice of the District judge, Dhule by the petitioner by the petitioner by his letter dated May 22, 1991. However, instead of looking into the complaint of the petitioner, the entire blame has been shifted on him. Mr. Kochar contended that the petitioner has rendered unblemished service of 36 years and it was only at the fag end of his career he has been implicated with some false and trumped up charges. Mr. Kochar also took strong exception to the letter of the Additional Registrar (Legal) dated February 7, 1994 informing the petitioner that the petitioner's Appeal being of administrative and confidential nature, certified copy thereof cannot be supplied. Mr. Kochar also pointed out that the High Court has dismissed the petitioner's Administrative Appeal without assigning any reasons. According to Mr. Kochar it was obligatory for the appellate authority to pass a reasoned order dealing with the contentions raised by the petitioner in appeal. Mr. Kochar placed heavy reliance on the observation made by the Supreme Court in *Ram Chander v. Union of India & Ors.* 1986 II CLR 10.

7. Mr. Jahagirdar, learned counsel appearing for the respondents fairly conceded that in view of the clear pronouncement of the Supreme Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar (Supra)* it was obligatory on the part of the disciplinary authority to supply a copy of the report of the Enquiry Officer to the petitioner. However, Mr. Jahagirdar contended that it is not shown that any prejudice was caused to the petitioner by non-supply of the report of the Enquiry Officer and in any event, a fresh enquiry should be ordered from the stage of furnishing report. Then while dealing with the grievance of Mr. Kochar that the Enquiry Officer acted hastily and closed the enquiry without giving an opportunity of leading evidence and advancing arguments, Mr. Jahagirdar suggested that the matter can even be remanded back to the Enquiry Officer for affording a reasonable opportunity to the petitioner. Mr. Jahagirdar strongly refuted the contention of Mr. Kochar that the charges are false and trumped up. Mr. Jahagirdar also submitted that reasons are not required to be assigned by the Appellate Authority while confirming the order of the disciplinary authority. Mr. Jahagirdar finally contended that some of the charges against the petitioner are of a serious nature and, therefore, even if this Court comes to the conclusion that there was violation of principles of natural justice, the proper course would be to remand back the case of the Enquiry Officer.

8. We are given anxious thought to the submissions advanced at the bar and in our considered opinion, the order of dismissal of the petitioner cannot be sustained. In the first place, there is a clear breach of the principles of natural justice, as admittedly the copy of the enquiry report was not furnished to the

petitioner before the disciplinary authority took its decision. In *Managing Director, ECIL, Hyderabad v. B. Karunakar (Supra)*, the Supreme Court held that refusal to furnish copy of the Enquiry Officer's report to delinquent amounts to denial of reasonable opportunity. It was observed by the Supreme Court :-

"When the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

The Supreme Court also held that since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Keeping in mind the ratio of the said judgment, it cannot be disputed that there was denial of reasonable opportunity to the petitioner. In our opinion, the non-supply of the enquiry report has resulted in grave prejudice to the petitioner. Having regard to the nature of the charges and the manner in which the entire enquiry was conducted by the Enquiry Officer, we felt that furnishing of the copy of the enquiry report to the petitioner was absolutely essential for the petitioner in defending himself in the proceedings. To our mind, the failure of the District Judge to supply the report of the Enquiry Officer has caused serious prejudice to the petitioner.

9. We are also constrained to express our displeasure about the manner in which the enquiry has been conducted against the petitioner. On careful scrutiny of the record, we find considerable substance in the complaint of Mr. Kochar that the enquiry was completed in haste to total disregard even to basic rules of natural justice and fair play. It appears that on March 4, 1992, the District Judge sent a letter to the Enquiry Officer that he should complete the enquiry within ten days and submit his report on or before March 13, 1992 because the petitioner was due to retire on March 31, 1992. In his reply, the Enquiry Officer appears to have written to the District Judge that he will try to submit his report on or before March 24, 1992. It appears that on March 24, 1992, the petitioner filed two applications before the Enquiry Officer specifically requesting him to permit the petitioner to lead evidence of his witnesses and to make final argument in the enquiry. However, it appears that the Enquiry Officer has not even cared to deal with his applications and the same were not even recorded in the roznama maintained by the Enquiry Officer. It also appears that the petitioner's representative Mr. Paranjape's Advocate was busy in some court matters and, therefore, the request was made to the Enquiry Officer to grant a short

adjournment to enable the petitioner's Advocate to make submissions before the Enquiry Officer. However, even this request was turned down and the enquiry was declared as closed. We also filed some substance in the grievance of the petitioner that the copies of the relevant record were not made available to him inspite of repeated requested.

10. The next question, which naturally falls for our consideration, is whether we should accede to the request of Mr. Jahagirdar for remanding the case to the Enquiry Officer. To our mind, no useful purpose will be served by sending the case back to the Enquiry Officer. Admittedly, the petitioner stood superannuated on March 31, 1992. We have also carefully gone through the charges framed against the petitioner and the evidence produced in support of those charges. In our opinion, the most of the charges are absolutely of trivial nature and cannot form basis for an extreme penalty of dismissal. The charges relating to shortfall of certain amounts in middleman property are of 1989 and 1991. The amounts involved are Rs. 114/- and Rs. 18/- respectively. When this lapse was brought to the notice to the petitioner, he has deposited the said amounts. Moreover, we are satisfied that the petitioner cannot be solely held responsible for the deficit. Charge Nos. 5, 7 and 8 to the effect that the petitioner complained to the District Judge against the Presiding Officer and that he remained absent on two occasions without proper intimation and that he submitted his application for transfer directly to the District Judge, are highly technical. Some of the charges appear to have been framed against the petitioner only on the basis of confidential letters written by the Presiding Officer Mr. Sayeed. It appears that there was some friction between the petitioner and the Presiding Officer, which finally led to the disciplinary enquiry against the petitioner. It is required to be stated that Mr. Jahagirdar laid some emphasis on the charge No. 10 incorporating an allegation of misbehaviour with a female sweeper. We have carefully gone through the deposition of the sweeper and the other relevant record and we are prima facie of the opinion that the petitioner has been falsely implicated. The statement of the concerned sweeper is full of contradictions. Further, it appears that the sweeper has approached the Presiding Officer Mr. Sayeed only after the petitioner complained that she was not doing her work properly. We are saying so not with a view to reappraise the evidence, but to judge whether the circumstances justify the remand of the case to the Enquiry Officer. Further, what appears on record and which could not be disputed by the learned counsel for the respondents that the petitioner's service for 36 years was unblemished. We, therefore, do not feel it necessary to remand the case to the Enquiry Officer.

11. Before we conclude, we may make a brief reference to the submission of Mr. Kochar that the High Court ought to have passed a reasoned order while dismissing the petitioner's administrative appeal. Mr. Kochar brought to our notice a judgment of the Supreme Court in Ram Chander Vs. Union of India (UOI) and Others, and particularly the following observations made by the Supreme Court in paragraph 24 :-

"... Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal."

Though Mr. Kochar's submission requires some serious consideration, we do not wish to express any opinion on this issue, since as already indicated, we are inclined to set aside the order of dismissal on certain other aside the order of dismissal on certain other grounds urged by Mr. Kochar. In the result, Writ Petition succeeds. Rule is made absolute in terms of prayer clauses (a), (b) and (c). No order as to costs.

After we had pronounced the judgment and the order, learned counsel for the petitioner pointed out that since the petitioner has retired from service, a direction be issued to release his retiral benefits forthwith. The prayer is justified. We accordingly direct the respondents to take appropriate steps to release the retiral benefits to the petitioner expeditiously, preferably within three months from today.

Certified copy expedited.