
(2013) 01 GUJ CK 0018
In the Gujarat High Court
Case No : Letters Patent Appeal No. 561 of 2003

K.G. Patel

APPELLANT

Vs

High Court of Gujarat and Another

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 10(2)

Citation : (2013) LabIC 1938

Hon'ble Judges : R.R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Jal Soli Unwala, for the Appellant;

Final Decision : Allowed

Judgement

R.D. Kothari, J.—The short question that arises in this appeal is that in a case wherein Disciplinary and Inquiry Authority are different and upon completion of inquiry, Disciplinary Authority takes a different view on conclusion than the conclusion reached by the Inquiry Officer on the charges or any of the charge, then what procedure is to be followed? In substance, the extent of applicability of the principles of natural justice, in such a situation, is in issue. The facts relevant for the present appeal are very few : Mr. K. G Patel, the then Civil Judge (J.D.) and J.M.F.C., Sanand, Ahmedabad (Rural) was dismissed from service by order dated 5.9.2002 (Annexure-G) in pursuance to conclusion reached in the inquiry. In the inquiry, there were six charges against him. All the charges were for indulging in corruption. The Inquiry Officer found that Charge Nos. 1, 4, 5 & 6 are not proved, while charge No. 2 was found to be proved and charge No. 3 was found to be partly proved. Then upon considering the report of the Inquiry Officer, Disciplinary Authority found that charge No. 6 is also proved from the material on record. The Disciplinary Authority gave show-cause notice, validity of which is in issue herein. The delinquent had then, made a representation. Thereafter, an order of dismissal, as stated above, came to be passed.

2. The appellant unsuccessfully challenged the order of dismissal in Special Civil

Application No. 485/2003. Being aggrieved by the order in Special Civil Application No. 485/2003, the appellant-petitioner has preferred the present appeal.

3. Heard Mr. Jal S. Unwala, learned advocate for the appellant, Mr. Shalin N. Mehta, learned counsel for respondent No. 1 and Mr. Utkarsh Sharma, learned A.G.P. for respondent No. 2-State.

4. Learned advocate Mr. Unwala for the appellant has briefly referred the facts as stated above and has drawn the attention of the Court to the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, .

5. Learned counsel Mr. Shalin Mehta for respondent No. 1 has submitted that in the facts and circumstances of the present case, no interference is called for.

6. Learned A.G.P. Mr. Utkarsh Sharma for respondent No. 2 has supported the order of dismissal passed against the appellant.

7. In Bagde's case (supra), the appellant was Additional District and Sessions Judge at Amrawati, Maharashtra. There were two sessions cases pending before him of one accused. The said accused therein had made complaint before the High Court, pursuant to which inquiry was held against the appellant. The charge against the appellant in the inquiry was that he had demanded Rs. 10,000/- from the accused at the residence of one Doctor for acquitting the accused. The Inquiry Officer had found that charge was not proved. However, the Disciplinary Authority had disagreed with the said finding and had taken the view that the appellant be removed from service.

8. Accordingly, the appellant was dismissed from service and he had unsuccessfully challenged the dismissal order before the High Court. Before the Supreme Court, inter alia, a plea of violation of natural justice was raised in the following manner:--

It was next contended by learned counsel for the appellant that the Disciplinary Committee, which had disagreed with the findings recorded by the Enquiry Officer and had held that the charges against the appellant were proved, had acted in violation of the "principles of natural justice" inasmuch as it did not give an opportunity of hearing at the stage when it developed the inclination that the findings recorded by the Enquiry Officer were not acceptable and were liable to be reversed. It was further contended that the findings of the Enquiry Officer, which were based essentially on an appreciation of the evidence recorded by him were considered by the Disciplinary Committee in the absence of the appellant without any notice to him and the Disciplinary Authority on a reappraisal of the evidence came to the conclusion that the charges against the appellant were established. The Disciplinary Committee thus having taken a decision, proceeded thereafter to issue a notice to the appellant to show-cause why he should not be dismissed from service and a recommendation to that effect be not made to the Governor. It was also contended that Disciplinary Committee had already made

up its mind and it was only in respect of the proposed punishment that a notice was issued to the appellant. Consequently, the appellant, it is contended, was denied an adequate opportunity of hearing which should have been afforded to him before taking a decision that he was guilty of the charges levelled against him. (Para-23).

9. Relying on the decision in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and other cases, the Hon''ble Apex Court has held as under:--

It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority, then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer, but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority. (Para-30).

10. In the present case, as in Bagde''s case (supra), the Disciplinary Authority did differ from the findings of the Inquiry Officer qua Charge No. 6. The Inquiry Officer had concluded that Charge No. 6 is not proved on account of "insufficiency of evidence", while the Disciplinary Authority had in its report (Annexure-F) so far as material for the present discussion has held as under:--

The inquiry report, Ex. 107 along with the relevant record was placed before the High Court and considering the evidence, a Tentative Decision was taken that charge Nos. 2 and 6 are fully proved and charge No. 3 is partly proved against the delinquent and he was not found fit to be retained in service, therefore, the High Court proposed to impose punishment of dismissal from service.

Thereafter the said tentative decision along with all the inquiry papers was placed on the table of the High Court for 48 hours for perusal and objection, if any, drawing the attention of all the Judges of the High Court well in advance. As none of the Judges raised any objections against the Tentative decision, a second show-cause notice along with the copy of the inquiry report and tentative decision was issued to the delinquent Mr. K. G Patel on 14.3.2002 to show-cause as to why he should not be dismissed from service.

Then show-cause notice was issued to the appellant-delinquent (Annexure-D), The relevant part is as under:--

...after considering the circumstances and facts emerging from the evidence on record of the Inquiry, the High Court has tentatively come to the conclusion that, the charges are proved against you for the reasons stated in the Tentative Decision. The High Court therefore, propose to issue show-cause Notice as to why you should not be dismissed from service.

You are, therefore, hereby called upon to show-cause within 15 days from the date of receipt of this notice, as to why the proposed action should not be taken against you....

11. Thus, the appellant-delinquent was called upon to show-cause as to why he should not be dismissed from service. It is true that in the written representation made by the appellant herein in response to the show-cause notice of Disciplinary Authority, he had advanced defence also on Charge No. 6. In a sense, therefore, it cannot be said that the appellant had no opportunity to make submissions qua Charge No. 6. In Bagde's case (supra), along with the show-cause notice, reasons for disagreement with the conclusion of the Inquiry Officer were supplied to the delinquent. However, the Disciplinary Authority had "...instead of forming tentative opinion, had come to the final conclusion that charges against the appellant were established...." In the present case also, it would be clear from the consideration by the Disciplinary Authority (Annexure-F) and show-cause notice (Annexure-D) relevant part is reproduced hereinabove that the Disciplinary Authority had arrived at the conclusion that Charge Nos. 2, 3 (partly) & 6 against the appellant-delinquent are established and in consequence thereof, the penalty proposed to be imposed was intimated to the appellant.

12. Again, in Bagde's case (supra), the Hon"ble Supreme Court has - inter alia laid down two important principles; one, that mere submission of findings to the Disciplinary Authority by the Inquiry Officer does not bring about the closure of the inquiry proceedings. The inquiry proceedings would come to an end only when the "conclusion" is reached by the Disciplinary Authority. Thus, pending the inquiry taking into consideration or altering the decision on the charge detrimental to the delinquent attracts the principles of natural justice. Secondly, it held that even if the rule does not specifically provide for a right of hearing, such "constitutional right" ought to be read in rule. It is important to note that Rule 9(2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 quoted in Bagde's case (supra), if read with Rule 10(2) of Gujarat Civil Services (Discipline & Conduct) Rules, it would appear that Gujarat Rule is not only almost *pari materia* with Maharashtra Rule the insignificant difference in language in Gujarat Rule is more closer to the need of observance of natural justice. In the present case, failure to call upon the appellant-delinquent to show-cause prior to recording the conclusion on Charge No. 6 violates the principles of natural justice.

13. Learned Senior Advocate Mr. Shalin Mehta has pointed out that in the present case, apart from Charge No. 6, there are also Charge No. 2 and Charge No. 3 (partly proved) against the appellant. On these two charges, findings of the

Inquiry Officer and of the Disciplinary Authority are consistent. Therefore, the impugned action of the Disciplinary Authority is possible to be upheld on that ground. This submission is not possible to accept. If the Disciplinary Authority had not differed from the findings of the Inquiry Officer on any of the charges, then the question would have been different. In the present case, decision of the Disciplinary Authority on the penalty proposed to be imposed is influenced and coloured by different conclusion on Charge No. 6. In other words, while Inquiry Officer had held that Charge No. 6 is not proved, the Disciplinary Authority, on the same set of evidence, has found that Charge No. 6 is proved. There is no yardstick or criteria to ascertain whether and to what extent the Disciplinary Authority had been influenced in its conclusion as to proposed penalty by taking a different view on the findings on Charge No. 6 in his tentative decision as to the penalty. It is not possible to deny that while considering appropriate penalty to be imposed, the Disciplinary Authority had, over and above Charge Nos. 2 & 3 (partly proved), had also been influenced by its decision on Charge No. 6.

14. Lastly, the learned advocate for the appellant had also drawn attention to *Lav Nigam Vs. Chairman and Managing Director, ITI Limited and Others*, . In that case also, the Inquiry Officer had recorded a finding in favour of the delinquent. However, the Disciplinary Authority had differed from the view taken by the Inquiry Officer. The delinquent was not given an opportunity of hearing while differing from the finding of the Inquiry Officer. Following *Bagde's case* (supra), the Court was pleased to allow the appeal of the delinquent.

15. To conclude, in cases wherein Disciplinary Authority and Inquiry Officer are different and upon completion of the inquiry, if Disciplinary Authority takes a different view than the conclusion reached by the Inquiry Officer on the charges or on any of the charges, then the proper procedure is to provide an opportunity of hearing to the delinquent by the Disciplinary Authority in respect of and to the extent it differs from the findings of the Inquiry Officer. The appeal is, therefore, partly allowed. The Disciplinary Authority is directed to issue show-cause notice to the delinquent qua Charge No. 6 and to proceed with the inquiry in accordance with law. Rule is made absolute to the above extent. No costs.