

(2005) 03 DEL CK 0049

In the Delhi High Court

Case No : WP (C) 7761 of 2003 and CM 13378/03 and 331 of 2004

Kundal Lal

APPELLANT

Vs

Indian Red Cross Society and Another

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) 119 DLT 72 : (2005) 81 DRJ 124 : (2006) 1 SLJ 261

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : V.K. Shali and Sonia Arora, for the Appellant; N.K. Kaul and Anish Dayal, for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In this Writ Petition it has been prayed that the Order dated 24.6.2002 imposing punishment of forfeiture of one increment with cumulative effect as well as the transfer of the Petitioner from the National Headquarters to Arakonam, Tamil Nadu be quashed; the Order dated 3.9.2000 terminating the services of the Petitioner be quashed and the Petitioner be reinstated with all consequential benefits.

2. The first incident which has been narrated in the petition and relied upon pertains to the Respondent's Memorandum dated 15.5.2002, bringing to the notice of the Petitioner that he had been "arrogant and indecent", and "rude and defiant" in his behavior to his superior, Colonel A.S. Budhiraja. Thereafter, by Memorandum dated 30.5.2002 other alleged misconducts were brought within the scope of the Inquiry. In my view it would be superfluous to go into the details for the reason that the Petitioner has admitted all these charges, attributing his misbehavior to mental strain due to domestic problems. He had expressed his regret and had requested that he be given another chance. The Letter/Order dated 24.6.2002 was passed in this background. Exercising leniency, it was decided to forfeit one increment with cumulative effect and his suspension was revoked. The Petitioner was simultaneously transferred and posted as a LDC to

Arakonam Warehouse. He was further informed that his behavior and performance would be watched closely at Arakonam Headquarters and that if there was any further recurrence of misconduct it would be viewed seriously and action would be taken against him. By letter dated 1.7.2002 the Petitioner had been directed to vacate the official accommodation within one month.

3. Mr. Shali, learned counsel for the Petitioner, has contended that the transfer was, Therefore, obviously in the nature of a punishment; that a transfer is not a permissible punishment; and that this Order stood vitiated on the application of legal principle of double jeopardy.

4. The Petitioner had addressed a letter dated 26.7.2002 praying therein that he was prepared to join duties at Arakonam Headquarters provided he is paid a sum of Rs.21,000/- from his Provident Fund Account. The request was acceded to. By the Respondents letter dated 5.8.2002 the Petitioner was informed that since he was not obeying the Orders, his services were liable to be terminated on 8.8.2002. However, by his letter dated 9.8.2002 the Petitioner informed the Respondent that he has purchased a railway ticket to join duties at Arakonam Warehouse but could not undertake the journey because of ill-health. Keeping in view the Petitioner's resolute failure to report for duty at Arakonam the Secretary General of the Respondent eventually terminated the employment of the Petitioner with effect from 3.9.2002. Mr. Shali has contended that as no Inquiry has been conducted and the Petitioner was not given adequate opportunity to show cause, principles of natural justice have been violated, thereby creating sufficient ground for quashing of the Orders. It should be emphasised that so far as the transfer Order is concerned the Petitioner had not remonstrated against it. On the contrary he had applied for and obtained the sum of Rs.21,000/- from his Provident Fund Account, and had purchased a railway ticket to undergo the journey. In his letter dated 26.7.2002 he has stated that "I am prepared to join my duty at Arakonam Warehouse forthwith provided I am sanctioned and given non-refundable advance of Rs.21,000/ from my P.F. Account as a special case to enable me to join duty at Arakonam soon". By letter dated 5.8.2002 the Respondents called upon the Petitioner to Show Cause why his services should not be terminated with effect from 8.8.2002, by way of a Final Notice. In its subsequent letter dated 7th/8th August 2002 the Respondent found the Petitioner's Explanation unsatisfactory. Nevertheless they granted further time up to 12th August to the Petitioner to report for duty at Arakonam. His dismissal/termination Order was passed even later, on 3.9.2002. The Petitioner was given a long rope, but he chose to hang himself with it. Principles of natural justice take effect only where a miscarriage of justice occurs, as is perceived by the Petitioner himself at the relevant time. If it is raised later on, because of legal advice, the complaint loses almost all its sting. As the Petitioner had all along expressed his willingness to abide by and comply with the transfer Order, I do not consider it appropriate or necessary to go into the question of its alleged illegality or of it being contrary to the principles of natural justice.

5. In *State of U.P. Vs. Harendra Arora and Another*, the Hon^{ble} Supreme Court was concerned with the non-supply of the Inquiry Report to the delinquent officials, on whose behalf it was pleaded that the principles of natural justice have been violated. This is how the Court dealt with the issue:

Turning now to the facts of the case on hand, it has to be seen whether the non-furnishing of the enquiry report the delinquent officer has suffered any prejudice. Undisputedly, after submission of enquiry report the State Government sent a show cause notice to the delinquent pursuant to which he had shown cause and Disciplinary Authority after considering the said show cause, passed the order of dismissal. It is not stand of the respondent that in absence of the enquiry report he could not submit an effective show cause before the order of dismissal was passed. Neither from the order passed by the Tribunal nor the High Court it would appear that the respondent had raised this point there that he could not file an effective show cause in the absence of enquiry report nor it has been stated that in the show cause reply it was complained that the delinquent had not been served with a copy of the enquiry report. From these facts, it is not possible to hold that the respondent has been prejudiced by non-furnishing of enquiry report.

6. The application for the principles of natural justice have been considered in great detail in *Canara Bank and Others Vs. Shri Debasis Das and Others*, where the question of non-supply of the Inquiry Report had also been raised. The Apex Court took into consideration the fact that at no stage had the employee pleaded prejudice and, Therefore, there was no violation of principles of natural justice.

7. In *Nagar Palika, Natar Vs. U.P. Public Services Tribunal, Lucknow and Others*, , the grievance that had been raised was that an opportunity to inspect the records had not been given . The Court after keeping into perspective the judgment in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , found no infirmity with the procedure since repeated opportunities and reminders for this purpose had been given but remained unutilised. Nevertheless in *Narayan Rao Vs. The State of Andhra Pradesh*, , documents had not been produced by the Police Officer concerned with the result that the accused persons did not have all necessary information for proper conduct of the defense. There can be no gainsaying that where a procedure has been set down by statute it must be adhered to, more so where criminal proceedings are concerned. Even in those circumstances the Court found that non compliance with statutory procedure would not have the result of vitiating the proceedings. The Court, however, cautioned that if it is shown in a particular case that the omission had caused prejudice to the accused then the Court should interfere in the matter. Therefore, it is not proper to fall back on an alleged violation of natural justice as an afterthought or based on legal advice. There can be no injustice where none has been perceived or felt by the person concerned.

8. A reading of the impugned Order also leaves no manner of doubt that the only punishment that was inflicted on the Petitioner was that of the withholding of

increment. The transfer was ordered keeping the exigencies of services in view and merely because a warning had been issued to the Petitioner that he should conduct himself properly, that decision does not transform itself into a punishment. This is especially so since the charges that had been leveled against the Petitioner are of a serious nature, and the punishment imposed manifested a lenient attitude towards him. In the event, the Petitioner has only abused this leniency, as he has failed altogether to report for duty and has filed this Writ Petition only when ejection proceedings in respect of the staff quarters had been initiated against him by the Management. It is beneficial to reproduce this extract from the decision of the Apex Court in *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, :

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration.....

9. Very recently by Judgment dated 22.2.2005 in *Mahindra and Mahindra Ltd. v. N.B. Narvade etc.* the Hon"ble Supreme Court had opined that the dismissal of a Workman for use of abusive language towards his superior justifies the termination of his employment. It took note of the fact that the Workman had been chargesheeted earlier and in spite of the gravity of his offence, he was dealt with leniently, thereby making the accusation of vindictiveness wholly unjustified.

10. Mr. Shali has contended that there is a clear and significant distinction between the dismissal and termination of employment and that they cannot be viewed as synonymous of each other. It is his contention that the employment of the Petitioner has been terminated and this is beyond the power of the Secretary General who can only pass orders of promotion, demotion, suspension, dismissal and withholding of earned increment of the staff. I find no merit, whatsoever, in this submission. There is no justification for drawing a distinction between the dismissal and termination of services; Neither is Article 311 of the Constitution attracted nor has any statutorily defined distinction applicable to the Respondent been brought to my notice. In some precedents a distinction has been drawn between this legal nomenclature; termination of service has been to connote an end of service either by flux of time or superannuation etc., whereas dismissal

has negative and punitive attributes. If semantics have to be one into, since the Secretary General has the power to dismiss an employee, then such power would always include the less stringent and detrimental decision of termination of service. No precedent has been shown by learned counsel for the Petitioner in this regard. Even if these terms deal with different situations in strict legal parlance, an employer such as the Secretary General of the Indian Red Cross Society, can scarcely be expected to be aware of it.

11. It has also been contended that since the dismissal/termination Order has been issued by the Secretary General, she has transgressed the principles of natural justice inasmuch as she has been a judge in her own cause. The rude behavior, to which the Petitioner has pleaded guilty, had not originated against the Secretary General but was related to the conduct of the Petitioner with Colonel Buddhiraja. Reliance has been placed on the extracted provision of Central Civil Services (Classification, Control and Appeal) Rules to buttress the argument that the failure to hold an Inquiry vitiates the termination/dismissal Order:

14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation.-Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

12. Adequate opportunities were given to Show Cause against the proposed action and the findings of the Inquiry Officer were against the Petitioner. In view of his admission of guilt, and his prayer for leniency, this matter stood closed. Thereafter, the Petitioner had obeyed the transfer Order. An Inquiry is instituted with a view to determine the disputed question of facts. At no point of time has it been in contention that the Petitioner had obeyed the transfer Order. He had been granted/afforded an opportunity to Show Cause against the termination of his services but he had avoided service, and had on particular date, refused to accept the Notice. It would be a travesty of law to expect the Management to carryout a full-fledged Inquiry even in these circumstances. The Hon'ble Supreme Court has rendered the following opinion in Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, which is

apposite in the circumstances of this case:

"16. Now what are the requirements of principles of natural justice, which are required to be observed? These are: (1) a workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just...

17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are : (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the tribunal will proceed; the tribunal should not act on irrelevant evidence or shut out relevant evidence; if the tribunal consists of several members they all must sit together at all times; the tribunal should act independently and should not be biased against any party; its action should be based on good faith and order (sic) and should act in a just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

18. The Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his Explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no Explanation of his absence from duty and did not report for duty within 0 days of the notice as required in clause 16 of the Bipartite Settlement."

13. A Preliminary Objection concerning the maintainability of the present Writ Petition has been raised. However, in view of my findings on the merits of the case I think it unnecessary to deal with this Objection.

14. The Petition is devoid of merit and is dismissed.