

(1999) 03 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 2058 of 1997

L.S. Seshadri

APPELLANT

Vs

Government Tool Room and Training Centre, Bangalore and
Another

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Citation : (1999) ILR (Kar) 2092 : (1999) 5 KarLJ 370

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri P.S. Rajagopal, for the Appellant; Sri S.N. Murthy, for the Respondent

Judgement

1. A litigant today, is not interested in a learned or a ponderous judgment. He is not interested in what Miller said in his Data of Jurisprudence are the "elegantia juris". He is only interested whether he has won or lost. Let me tell him the result of this petition, in a few sentences.

2. The truth is that every problem admits of only one right solution and it has to be winkled out of shell of irrelevancies. The relevant facts are, while working as an Administrative Manager (Incharge) in the Government Tool Room and Training Centre, hereinafter referred to as GTTC, he was served with a charge memo containing charges of misconduct as Administrative Manager during the period April 1994 to December 1995. The charge-sheeted officer had denied all the charges in the memo. The Enquiry Officer finds him guilty. Based on these findings, the Disciplinary Authority by his order dated 30-8-1996, dismisses the petitioner from the services of respondent organization. After filing an unsuccessful appeal before the Appellate Authority, the delinquent officer is before this Court, being aggrieved by the aforesaid orders.

3. Sri P.S. Rajagopal, learned Counsel for the petitioner contends that the enquiry proceedings are vitiated since they are initiated with mala fide intention. Secondly, it is stated that non-observance of ingredients of principles of natural

justice by the employer and the Enquiry Officer in the enquiry proceedings, has vitiated the proceedings.

4. Sri Somashekar, learned Counsel for the respondents, while resisting the reliefs sought in the writ petition, submits, that domestic enquiry proceedings came to be initiated against the delinquent officer for the serious acts of misconduct committed by him while working as Administrative Manager in the respondent organization and the proceedings were not initiated either with any vindictive motive or with any mala fide intention. Secondly, he contends that the enquiry proceedings were conducted in accordance with rules of natural justice, after affording reasonable opportunity to the delinquent officer to effectively participate in the enquiry proceedings. Therefore, he submits that the order framed by the Disciplinary Authority is justified.

5. The Disciplinary Authority had issued a charge memo dated 5-12-1995, which was served on the petitioner only on 4-1-1996. By a request letter dated 11-1-1996, the delinquent officer requested for extension of time to file his defence by pointing out that the time given to him in the charge memo to reply is too short and he would not be in position in the absence of relevant documents and more than that in view of his sickness to file his defence statement. Even before this reasonable request could be considered, petitioner receives a notice dated 16-1-1996 from the Enquiry Officer, fixing the date of enquiry on 24-1-1996. The Disciplinary Authority in turn directs him to submit his explanation before the Enquiry Officer at the time of commencement of the enquiry. Strange procedure, but they are by the Director, the most superior authority in the organisation.

6. The charge-sheeted officer demands for subsistence allowance which he is lawfully entitled to, to effectively participate in the enquiry proceedings. This is paid only after a direction by the Enquiry Officer. The request for supply of list of witnesses and the documents on which the management intends to rely on to substantiate the charges is also rejected. The delinquent officer requests the Enquiry Officer to permit him to take the assistance of any Government employee from other Government departments on the ground that his co-employee/officers are afraid of the Director as he has already taken repressive measures and terrorised the employees/officers, who are known to be close to him. This request is rejected by the Enquiry Officer only on the ground that the management objected to the request made by the delinquent officer. Then the delinquent officer objects to the participation of Sri Narayanappa, the Deputy General Manager, as the Presenting Officer in the enquiry proceedings on the ground that in the presence of the Deputy General Manager of the organisation, the witnesses may not say anything else than what is tutored to them by the employer. Even this demand is brushed aside by the Enquiry Officer, treating it as, most insignificant objection.

7. Then the charge-sheeted officer requests the Enquiry Officer to permit him to avail at least the assistance of legal practitioner to assist him in the enquiry

proceedings. This request is also rejected on the "usual" ground that since the Presenting Officer is not a legally trained person, the charge-sheeted officer cannot seek the assistance of legally trained person. In other words, he is asked to "take care of himself without the assistance of a co-employee and/or a legally trained person.

8. Then we come to the last plot of the drama of a pseudo enquiry proceedings. The charge-sheeted officer who is in the "dock" and "dark", requests the Enquiry Officer to summon some of the employees of the respondent organization as his witnesses. Even this request is rejected by the Enquiry Officer by his one sentence order by stating that "it is left to both the parties that they can bring witnesses on their behalf for their defence. Hence, summoning witnesses does not arise".

9. Having seen the vindictive attitude of the Disciplinary Authority and the pranks of the Enquiry Officer in the enquiry proceedings, can I hold that this is an impartial enquiry? Can I say that the Enquiry Officer was fair and just to the charge-sheeted officer? Lastly, can I hold this sort of enquiry is in accordance with rules of natural justice? Let me not answer it just now. Let me first notice the observations made by Supreme Court with regard to scope of judicial review in a departmental enquiry proceedings. The written words are intended to avoid confusion, is often the mother of that same confusion, but binding precedents compel the Judge for he must bow before it, whatever his own opinion, he must not read in by way of creation and he must not read out except to avoid patent nonsense or internal contradiction. The learned Judges of the Apex Court in the case of B.C. Chaturvedi v Union of India, were pleased to observe:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that findings must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry

of where the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

10. In view of the law declared by the Apex Court, it is not possible for me to decide who is right and who is wrong and on that I can venture no opinion, but exercising my discretionary jurisdiction, I can interfere, if the authority entrusted with the work of holding an enquiry has conducted the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry.

11. In the instant case employer has not provided any rules or regulations prescribing the mode of inquiry. Necessarily, I should find out, whether the enquiry proceedings were held in a manner consistent with the rules of natural justice.

12. In a departmental enquiry proceedings, the Enquiry Officer is an independent person rather he is the key person. On him depends whether the enquiry would be fair or impartial. He is expected to exercise his mind independently without being shackled by the dictates of the management, who has appointed him. He is expected to be fair and just to both the parties before him. He is expected to decide the issues raised before him with an open mind and after objectively and subjectively assessing the issues before him. He is also expected not to be influenced by the dictates, directions and instructions issued by his employer/management. In sum and substance he should be an independent person and should be in a position to decide the issue before him in a most just and fair manner by giving a fair opportunity to the accused person. What is fair opportunity depends on the facts and circumstances of each case. Where such opportunity is given, the proceedings are not open to attack, on the ground, that it is in violation of rules of natural justice.

13. In the present case, the delinquent requests for extension of time to file his reply to the charge memo. This is denied to him and he is directed to file it before the Enquiry Officer on the date of commencement of the enquiry proceedings. He is not even paid subsistence allowance during the enquiry proceedings and seems to have paid only after it is demanded and only when it was directed to be paid by the Enquiry Officer. The assistance of any other Government employee from other Government department is denied to him not because the rules or regulations which govern the respondent organization prohibits such facility but because the management objects to such demand. The assistance of legal practitioner is denied, only because the Presenting Officer is not legally trained person, though some of the charged have element of criminality attached to it. The Presenting Officer is not even changed, though it was brought to the notice of the Enquiry Officer, that the said Presenting Officer was instrumental in getting complaints filed against the delinquent before the jurisdictional police authorities, either by threatening with disciplinary action or by inducing with better service conditions. Lastly, when a request was made to

summon the employees of the management, as his defence witnesses, this request is rejected on the ground, it is for the parties to arrange for their witnesses. It is true that the Enquiry Officer has no power to summon witnesses but he has the authority to request the Director, to direct, the witnesses to appear before the Enquiry Officer. To expect the charge-sheeted officer to produce those witnesses on his own responsibility, is to reduce the opportunity offered to him to produce the defence to a farce and empty formality, especially in a case where the employees who are in their control and are terrorised by the employer.

14. Taking into consideration the genesis of the proceedings, and the absolute non-independent attitude of the Enquiry Officer, I am of the firm opinion that fair hearing was not given to the delinquent officer. Fair hearing has two justiciable elements. The first is that opportunity of hearing must be given and second is that the opportunity must be reasonable. This is expected to be scrupulously followed both by the Disciplinary Authority and the Enquiry Officer in a departmental enquiry proceedings, where the possibility of a person would be deprived of his liberty or property, to be subjected to pains or penalties or be affected by adverse consequences resulting from exercise of power or passing of an order. Where the opportunity of being heard is required to be reasonable, it does not in that event depend upon the sweet will of the authority concerned. The matter in such case being justiciable, it is judicially settled, that the question whether the opportunity given is reasonable or not, will be a matter for interpretation of the Court and not by the authority itself granting the opportunity. The Supreme Court in the case of *Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others*, , was pleased to observe:

"There can be no invariable, standard for reasonableness in such matters, except that the Court's conscience must be satisfied, that the person against whom an action is proposed has/had a fair chance of convincing the authority, who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in the reply, the request for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations in all other matters which keep the mind in coming to fair conclusion on the question".

15. Having noticed the useful observations made in *Bilgrami's* case, *supra*, in my view, the procedure adopted by the Disciplinary Authority and the Enquiry Officer does not inspire confidence in any reasonable person. In a matter of this nature, when something is obvious, when unfairness stares at you, when partiality is writ large on the enquiry proceedings, reference to catena of decisions on the

application of rules of natural justice is tiresome waste of time. In the instant case, an overall view of the facts pleaded, pleas made in the representations, and denial of those reasonable requests, it can safely be said, the requirements of natural justice was cautiously ignored and it was only a lip service done to the principles of natural justice by the Enquiry Officer. In a departmental enquiry proceedings, the emphasis is always "on fair procedure". Any action which is not taken after following fair procedure cannot be upheld and it requires to be set aside.

16. Since I intend to give relief to the petitioner on the second legal issue canvassed by learned Counsel for petitioner, I need not consider the first issue canvassed by the learned Counsel.

17. In the result, petition is allowed. Rule made absolute. The impugned order of the Appellate Authority and the Disciplinary Authority dated 30-8-1996 are quashed. Respondents are directed to reinstate the petitioner into service. Petitioner is entitled to all the benefits including monetary and service benefits. Liberty is also reserved to the respondents to continue the enquiry proceedings from the stage the defects are noticed by this Court if they really so desire and if it is worthwhile.

18. With these observations and directions, petition is disposed off. Ordered accordingly.