
(2012) 12 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : CWP No. 1027 of 2011-B

Mohinder Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-12-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 311(2)

Citation : (2012) 12 SHI CK 0006

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ranjana Parmar, for the Appellant; Vikas Rathore, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Justice Rajiv Sharma, Judge

1. Petitioner was appointed as Steno-Typist in the respondent-Department on 18.5.1995. A complaint was lodged by Shalu Devi against the petitioner on 9.7.1999 stating therein that the petitioner has contracted marriage with her on 15.9.1996. A daughter was borne out of the wedlock on 18.11.1997. However, he has abandoned her and contracted marriage with one Kanta Devi on 25.10.1997. The inquiry was completed and thereafter a show cause notice was issued to the petitioner on 20.7.2000. Petitioner filed reply to the same on 16.8.2000. He was removed from service on 30.11.2000. He assailed the removal order by way of O.A. No. 3912/2000 before the erstwhile Himachal Pradesh Administrative Tribunal. The same was dismissed by the Tribunal on 30.8.2001. He assailed the judgment dated 30.8.2001 by way of CWP No. 719 of 2002 before this Court. It was decided on 18.7.2008. The operative portion of the judgment reads thus:

In view of the above discussion, since the principles of natural justice were not followed, the order of dismissal of service of the petitioner from service passed

by the respondents as well as the order of the H.P. State Administrative Tribunal affirming the said order, are quashed accordingly. The respondents shall take further action by appointing an Inquiry Officer, who shall proceed with the case and shall conduct the proceedings afresh as were conducted on or after 1.6.2000 i.e. an opportunity shall be given to the petitioner to cross-examine Smt. Shalu who was examined, and thereafter, an opportunity shall be given to the petitioner to produce his defence witnesses. Needless to say that reasonable time shall be given to the petitioner to engage a defence assistant and efforts can be made to dispose of the inquiry at an early date, but reasonable opportunity shall be given to the petitioner in this regard. The petition is allowed accordingly with no order as to costs.

Respondents were directed to proceed with the matter and to conduct inquiry afresh as was conducted on or after 1.6.2000. An opportunity was to be given to the petitioner to cross-examine Shalu Devi and thereafter an opportunity was to be given to the petitioner to produce his defence witnesses. Thereafter, inquiry was conducted by the Inquiry Officer. A notice was sent to Shalu Devi for appearing before the Inquiry Officer for 9.10.2009. Shalu Devi sent a communication to the Inquiry Officer on 26.10.2009 that she has no connection with the petitioner. Thereafter, Shalu Devi was sent a notice on 5.11.2009. Notices were also issued for her appearance before the Inquiry Officer on 21.12.2009 and 23.12.2009. The Inquiry Officer concluded the inquiry on 4.6.2010. The copy of the same was supplied to the petitioner. Petitioner made representation to the inquiry report on 5.7.2010. A memorandum was issued to the petitioner on 16.9.2010 giving him an opportunity to make a representation against the proposed penalty. Petitioner assailed the memorandum dated 16.9.2010 by filing CWP No. 6254/2010. CWP No. 6254/2010 was decided by this Court on 4.10.2010. Thereafter, the judgment was brought to the notice of the competent authority. The disciplinary authority remanded the matter to the Inquiry Officer to conduct DNA test of Shalu Devi and petitioner vide notice dated 10.1.2011. Shalu Devi sent a communication to the Inquiry Officer on 24.1.2011 that she was not interested to pursue the matter and she wanted to withdraw the same. Thereafter, the Inquiry Officer passed the following order on 29.1.2011:

Charged official Shri Mohinder Singh and the Presenting Officer Shri Hari Krishan Sharma are present. The Defence Assistant is stated to have since been retired. The communication to this effect has been taken on record. Sh. Mohinder Singh has submitted an application stating that he had never represented to any authority for conduct of DNA test of Ms. Shallu Devi (D/O Jiwani Ram) or himself. Hence, the question of his giving consent for the same does not arise. A letter has also been received from Ms. Shallu Devi through speed post vide diary No. 2962 dated 28.1.11 that she had made the complaint against Shri Mohinder Singh under coercion which she takes back through this letter. She is not willing for the DNA test and she will not attend the enquiry on 29.1.2011. The letter has been taken on record. The charged official has requested for a copy of proceedings as well as letter of Smt. Shallu Devi which have been provided to

him.

2. The Inquiry Officer sent report to the Disciplinary Authority dated 4.2.2011 vide Annexure R- 1. The Disciplinary Authority after receipt of the inquiry report Annexure R-1 dated 4.2.2011 removed the petitioner from service vide order dated 26.2.2011. This Court vide judgment dated 18.7.2008 has specifically directed the Inquiry Officer to give an opportunity to the petitioner to cross-examine Shalu Devi. The fact of the matter is that despite various notices issued to Shalu Devi, she never appeared before the Inquiry Officer. Thus, petitioner could not cross-examine Shalu Devi. Shalu Devi, in fact, had informed the Inquiry Officer on 26.10.2009 and 24.1.2011 that she was not interested to pursue the matter further. She had also refused to present herself for DNA test. The Inquiry Officer has also given a finding that Shalu Devi has not attended the proceedings despite service of notices. The Inquiry Officer has also stated that cross-examination of Shalu Devi by the delinquent official was mandatory but despite opportunity she did not appear. However, surprisingly though Shalu Devi has never presented herself for cross-examination, the Inquiry Officer has found that the conduct of the petitioner living with a woman for 2 1/2 years and giving birth to a child and subsequently deserting them amounts to moral turpitude and it was unbecoming of a Government servant. The disciplinary proceedings were initiated against the petitioner on the basis of complaint filed by Shalu Davi on 9.7.1999. She has not presented herself before the Inquiry Officer for cross-examination, being the complainant. In these circumstances, the petitioner cannot be held guilty of unbecoming of a Government servant. The Inquiry Officer could not look into the statement made by Shalu Devi before the Investigating Officer deputed by the Superintendent of Police. The person, who has recorded the statement of Shalu Devi was also not examined to prove the statement. The Inquiry Officer has also taken into consideration the statements made by Jiwan Ram, Hira Lal and Ram Sain, which were recorded prior to 1.6.2000 by the Investigating Officer to enquire into the complaint of Shalu Devi. In view of this, the inquiry report is not in accordance with law. Effective cross-examination of witnesses is integral part of natural justice. This issue has become more important when this Court has specifically permitted the petitioner to cross-examine Shalu Devi vide judgment dated 18.7.2008. Petitioner had brought all these facts to the notice of the Disciplinary Authority after the judgment dated 4.10.2010 passed by this Court in CWP No. 6254/2010. The Disciplinary Authority without looking into the substance of the representation made by the petitioner has asked the Inquiry Officer to get the DNA test conducted of the petitioner and Shalu Devi. Shalu Devi has refused to undergo DNA test. The Disciplinary Authority has to go by the material which has already been brought on record during the course of inquiry. Even the matter was remanded by the Disciplinary Authority to the Inquiry officer to conduct DNA test on the petitioner and Shalu Devi. Complainant Shalu Devi has sent a letter to the Disciplinary Authority on 24.1.2011 not to press the complaint. In the absence of effective cross-examination of Shalu Devi by the petitioner, during the course of

disciplinary proceedings, he could not be found guilty by the Disciplinary Authority, but despite that the Disciplinary Authority has proceeded to remove the petitioner vide order dated 26.2.2011.

3. The entire departmental proceedings initiated against the petitioner are vitiated being violative of provisions of natural justice and total disregard to the evidence. The charges levelled against the petitioner have not been proved.

4. Their Lordships of the Hon'ble Supreme Court in Union of India (UOI) Vs. T.R. Varma, have held that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them. Their Lordships have held as under:

10. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., where this question is discussed.

5. Their Lordships of the Hon'ble Supreme Court in State of M.P. Vs. Chintaman Sadashiv Waishampayan have held that right to cross-examine the witnesses who give evidence against him is a very valuable right and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice. Their Lordships have held as under:

10. Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the enquiry officer was merely exercising his discretion, and as such it was not open to the High Court to

consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in *Dr. Tribhuwan Nath Vs. The State of Bihar and Another*, . In that case public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officer; and the enquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to nor relied upon by the Commissioner", said the High Court, "there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary order passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyar, J. has observed in *Union of India (UOI) Vs. T.R. Varma*, "stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them". It is hardly necessary to emphasise that the

right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Art. 136 we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in *Khem Chand Vs. The Union of India (UOI)and Others*, where this Court has emphasised the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him.

6. Their Lordships of the Hon"ble Supreme Court in *Union of India versus Sardar Bahadur, Lab. I.C. 627* have held that where the persons whose statements made in criminal trial against the delinquent were sought to be relied were in the city but were not produced and tendered for cross-examination of the delinquent, the Inquiry Officer was justified in refusing to act upon the copies of those statements. Their Lordships have held as under:

11. We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross- examination of the respondent. It was the duty of the appellant to have produced these persons whose statements were sought to be proved for the cross-examination of the respondent. In *State of Mysore v. S. S. Makapur*, this court said that the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the Statements relied on by the appellant. As there was no material before the Inquiring Officer to show that P. S. Sundaram mentioned in the cheque is P.S. Sundaram, the Deputy Secretary we think the High court was justified in holding that these charges had not been proved.

Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. Annexure P-15 dated 26.2.2011 is quashed and set aside. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.