

**(1961) 02 MP CK 0023**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 248 of 1960**

Nandkishore Jugalkishore

APPELLANT

Vs

Commissioner, Jabalpur Division and Others

RESPONDENT

**Date of Decision : 17-02-1961**

**Acts Referred:**

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

**Citation : AIR 1962 MP 15**

**Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J**

**Bench : Division Bench**

**Advocate : Y.S. Dharmadhikari, for the Appellant; H.L. Khaskalam, A.G.A., for the Respondent**

## **Judgement**

Pandey, J.—This petition under Articles 226 and 227 of the Constitution is directed against an order dated 4 June 1960, by which the Commissioner, Jabalpur Division (respondent 1) found the petitioner, clerk in the District Office, Jabalpur guilty of (i) misappropriating a sum of Rs. 33/- and (ii) fraudulently drawing that sum again for payment of a bill and dismissed him from service.

2. On 10 February 1959, a charge-sheet together with the statement of allegations and a forwarding memorandum directing the holding of a departmental enquiry, all signed by the Collector, Jabalpur (respondent 2), were served on the petitioner and he was directed to submit his reply to the two charges within seven days to the enquiring officer, R.C. Shrivastava. On 16 February 1959, the petitioner applied for copies of certain documents (Annexure O. The enquiring officer however directed, perhaps in order to save time, that the petitioner should be allowed to inspect the documents. It would appear that even then he was not allowed to inspect all but one of those documents and, On 12 March 1959, he complained in writing to the enquiring officer (Annexure D). Thereafter the enquiry was completed and a report was submitted. On 1 June 1959, the Collector, agreeing with the enquiring officer, provisionally came to the conclusion that the two charges were established against the petitioner and

issued a notice calling upon him to show cause why he should not be dismissed. On receiving the petitioner's reply dated 20 June 1959, the Collector passed the following order:

"I have perused the record of the case very carefully and have also heard Shri Soni. It will be seen that Shri Soni had made some statement before me. This statement was of great importance in the decision of this case and the enquiring officer should have examined me. The case is therefore remanded for further enquiry. The enquiring officer will also look into the application of Shri Soni about making available to him certain documents for defending his case. His request on each point should carefully be considered and orders passed thereon."

3. On remand, the enquiry was taken up by B.S. Arora, who directed on 30 September 1959 that the documents, which had not been shown to the petitioner, be made available to him for inspection. The petitioner protested saying that he needed the documents for submitting his reply to the charges and for cross-examining witnesses (Annexure D. The Collector was then examined and a fresh report exonerating the petitioner of the two charges but finding him guilty of gross negligence in the discharge of his duties was submitted. Since the Collector had appeared as a witness in the enquiry, the report was sent to the Commissioner but not before the Additional Collector, Jabalpur, in his forwarding note dated 30 January 1960, considered the evidence led against the petitioner and recorded his opinion that the two charges were clearly proved and that, in view of the charges and the reprehensible conduct of the petitioner, he did not deserve to be continued in service.

4. Having recorded his provisional conclusion that the two charges were proved, the Commissioner issued the usual notice calling upon the petitioner to show cause why he should not be dismissed. In his reply dated 30 March 1960, the petitioner pointedly urged that he was not given a reasonable opportunity to defend himself inter alia on the following grounds:

(i) Copies of covering note sheets of vouchers Ex. P-1 and Ex. P-2 were not supplied.

(ii) Copies of documents mentioned in the application dated 12 March 1959 were not supplied. Even inspection of those documents was not given before completion of the enquiry.

(iii) The enquiry was remanded to strengthen the case against the petitioner by the evidence of the Collector. Even so, no opportunity was afforded to rebut the evidence which he gave against the petitioner.

The Commissioner, without considering any of these points, found, on merits, that the two charges were proved and passed the impugned order.

5. Having heard the counsel, we are clearly of opinion that this petition must be allowed for the reason that the petitioner was denied a reasonable opportunity of defending himself. Before we consider that aspect of the matter, we may notice

two other points canvassed in support of the petition. It was urged, we think with much justification, that the Collector, who subsequently appeared as a witness in the enquiry on the basis of facts, which came to his knowledge before its commencement, could not have dealt with it at all. In our opinion, the Collector should have realised from the start that he was likely to be a witness in the enquiry and should have therefore refrained from functioning as the authority competent to award punishment, as he actually did between 10 February 1959 and 22 August 1959. By acting in that manner, he clearly violated the rules of natural justice and disregarded all canons of fair play. However, this manifest infraction of the rules ceased to be material when it was subsequently realised and rectified by sending the enquiring officer's report to the Commissioner for determining the petitioner's delinquency and for punishing him, if necessary.

The second point argued was that the Additional Collector, not being the enquiring officer, had no authority to record his own opinion to the prejudice of the petitioner before forwarding the papers to the Commissioner. We think that this is not unusual where similar matters are dealt with by a hierarchy of officers. Also, the petitioner was not prejudiced because the Additional Collector based his opinion upon the evidence led in the enquiry and, when a notice to show cause was subsequently given to the petitioner, a copy of that opinion was made available to him.

6. As indicated earlier, the petitioner asked for copies of a number of documents not only for replying to the charges framed against him but also for cross-examining witnesses to be examined in the enquiry. The enquiring officer considered the request to be reasonable and directed that the petitioner should be permitted to inspect the documents. Even so, as shown, he was not allowed to inspect nearly all those documents before all the witnesses, excluding the Collector, had been examined. The consequence was that he was prevented from effectively cross-examining them. In this connexion, it may be pointed out that two most material documents were the vouchers Ex. P-1 and Ex. P-2 which were produced to show that the petitioner dealt with two sums of Rs. 33/- each and he asked for the covering note-sheets of those vouchers, which, according to him, contra-indicated that position.

In *Union of India (UOI) Vs. T.R. Varma*, the Supreme Court pointed out that the rules of natural justice required that a party should be given the opportunity of cross-examining the witnesses produced against him. The importance of giving him an opportunity to defend himself by cross-examining such witnesses was emphasised in *Khem Chand Vs. The Union of India (UOI) and Others*, . In a recent case, *The State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan*, (Civil Appeal No. 630 of 1957 D/- 1-11-1960; (AIR 1961 SC 1623), the following observations were made :

"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."

Since, in this case, the petitioner was denied the right of effectively cross-examining the witnesses produced against him in the sense indicated above it must be held that he was denied a reasonable opportunity of meeting the charges framed against him.

7. The further grievance that the petitioner was not afforded an opportunity to rebut the evidence of the Collector, who was examined after the close of the enquiry, is equally well founded. It may be that a request for such opportunity was not made immediately after the evidence of the Collector was recorded. But the petitioner brought this matter to the notice of the Commissioner in the reply to the show cause notice issued by him. It is not correct that if such a request is made at that stage, it cannot be considered. In *Khem Chand Vs. The Union of India (UOI )and Others*, at p. 1097: (AIR 1958 SC 300 at P. 307) the Supreme Court observed:

"In short the substance of the protection provided by rules, like Rule 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in Section 240(3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Article 311(2) so as to convert the protection into a constitutional safeguard".

In *Waishampayan's case*, Civil Appeal No 630 of 1957, D/- 1-11-1960 : (AIR 1961 SC 1623) (cit. sup.), the Supreme Court again pointed out:

"There is no dispute that under Article 311(2) the respondent is entitled to have a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Article 311(2) had been afforded to the respondent in the present case".

In the circumstances of the instant case, it is not possible to resist the conclusion that there was another violation of the rules of natural justice in that the petitioner was not given an opportunity of adducing all relevant evidence which he wished to produce.

8. In view of the above-mentioned infirmities in the enquiry, the Order of dismissal of the petitioner, which the Commissioner passed on 4 June 1960, is quashed. The petitioner shall have his costs from the respondents who shall bear their own costs. The security amount shall be refunded. Hearing fee Rs. 50/-.