

(2007) 09 P&H CK 0064
In the Punjab And Haryana At Chandigarh

Parveen Goel

APPELLANT

Vs

Punjab Technical University and Others

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Citation : (2007) 09 P&H CK 0064

Hon'ble Judges : Ajai Lamba, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This petition seeks quashing of order dated 31.7.2007, Annexure P.2 and order dated 18.9.2007, Annexure P.7, debarring the petitioner from appearing for three semesters and cancelling his result of March/April 2007.

2. Case of the petitioner is that he was student of B.Sc (IT) 6th semester. He got reappear in two subjects for which he appeared on 28.3.2007. He was apprehended by the Flying squad official in a case of use of unfair means. He was not allowed to complete the said paper in violation of procedure laid down. He was allowed to reappear in the second paper. He was required to appear before the Unfair Means Committee on 12.5.2007, where he took the stand that when he started his paper, he found a slip lying below his table. To avoid misunderstanding, he picked up the same and handed over to the Class Supervisor. In that process, he was apprehended by the Flying Squad and he was not allowed to complete his paper. He sought summoning of Class Supervisor, which was not allowed. His result was cancelled and he has been debarred for three semesters. He shall now be eligible to appear again in September/October 2008. He filed an appeal before the Vice Chancellor which was not decided. He filed a writ petition, on which a direction was issued for taking of decision by the Vice Chancellor on or before 19.9.2007. The Vice Chancellor dismissed the appeal vide order dated 18.9.2007. The said order was posted on 19.9.2007 and received by the petitioner on 21.9.2007. He could not appear in the examination scheduled to be held on 20.9.2007.

3. Contention raised on behalf of the petitioner is that his appeal has been decided in a mechanical way without affording any opportunity of being heard and the order was in violation of regulations in as much as he was not allowed to complete paper.

4. We have considered the submissions made on behalf of the petitioner and perused the record.

5. It remains undisputed that slip was found from the petitioner by the Flying Squad, as stated in para 7 of the petition. The Unfair Means Committee asked the petitioner whether he wanted to cross-examine the Flying Squad official, who was duly examined before the Unfair Means Committee. Thus, the petitioner was afforded full opportunity which he did not avail. The petitioner did not put forward the plea that he had suddenly found a paper, which he was handing over to the Class Supervisor, which plea was raised as an after-thought. Though, the petitioner was not allowed to complete paper, the object of requirement being only to ensure that a candidate who may be found innocent later on, does not suffer prejudice, mere violation of the said rules where a candidate is not found innocent, can be of no consequence. There being sufficient material in the form of statement of Flying Squad official whom the petitioner refused to cross examine, it cannot be held that any prejudice has been caused to the petitioner. In these circumstances, we have not considered it appropriate to call for the record of the Unfair Means Committee to examine the matter further.

6. As regards the submission that personal hearing ought to have been given at the appellate stage, as held in the judgment of this Court in *Gulab Singh v. Maharshi Dayanand University, Rohtak* and Ors. 2005(1) SCT 111 ORS and judgment of Single Bench of Allahabad High Court in *Mohit Naman v. University of Allahabad* 1999 2 SCT 543 (ALL) we are of the view that even though, the appellate authority is expected to pass a reasoned order dealing with all the contentions and giving hearing to the candidate, such a requirement cannot be held to be inflexible. In *Union of India and another Vs. M/s. Jesus Sales Corporation*, , it was observed:

...The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or

application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved.

7. It is well-settled that principle of natural justice cannot be reduced to any hard and fast formula and put in a straight jacket. In *Ganesh Santa Ram Sirur Vs. State Bank of India and Another*, , the above view was reiterated in para 29 and thereafter, it was further observed:

30. Mr. Salve invited our attention to Para 17 of the Judgment in *State Bank of Patiala and others Vs. S.K. Sharma*, , which deals with the opinion of the House of Lords in United Kingdom. He also drew our attention to *S.L. Kapoor Vs. Jagmohan and Others*, and *Managing Director, ECIL, Hyderabad, Vs. Karunakar*, etc. etc., in paras 25, 26 and 28. The decisions relied on and cited above make one thing clear namely principles of natural justice cannot be reduced to any hard and fast formulae and as said in *Russel v. Duke of Norfolk* (1949) 1 ALLER 109, these principles cannot be put in a strait jacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in *Karunakar's* case (supra) should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.

31. On proportionately of punishment imposed, *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, . In the above case it was observed:

In *B.C. Chaturvedi Vs. Union of India and others*, , it was observed : 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

8. The same view has also been taken by the Hon''ble Supreme Court in earlier judgments. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , it was observed by the Apex Court as under:

As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R.55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation....

9. In Union of India (UOI) Vs. Jyoti Prakash Mitter, , it was observed by the Apex Court as under:

...But it is not necessarily an incident of the rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid....

10. In Union of India (UOI) Vs. G.R. Prabhavalkar and Others, , it was observed by the Apex Court as under:

...Mr. Singhvi, learned Counsel drew our attention to the decision of this court in N. Subba Rao etc. Vs. Union of India (UOI) and Others, , and urged that it is implicit in the said decision that there is an obligation on the Central Government to give a personal hearing to the officers concerned under the Act. We have gone through the decision carefully and we do not find any basis for this contention....

11. In State Bank of Patiala v. Mahendra Kumar Singhal, 1994 Suppl. (2) SCC 463 , it was observed by the Apex Court as under:

No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this court observed in F.N. Roy Vs. Collector of Customs, Calcutta,

12. In The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, , while holding that an affected person has to be afforded a fair opportunity of hearing, it was held by the Apex Court that the said principle was flexible. In para 32, it was observed as under:

...Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are:

(i) the nature of the subject matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) the need to take urgent action for safeguarding public health or safety or public interest, (ii) the absence of legitimate expectation, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, and (v) express legislation. There is also a situation which Prof. Wade and Forsyth term as "dubious doctrine" that right to a fair hearing may stand excluded where the court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play.

13. In view of above, we do not find any merit in this petition and the same is dismissed.