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**(1970) 07 GUJ CK 0006**  
**In the Gujarat High Court**  
**Case No : Spl. C.A. No. 1196 of 1966**

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| Piush Bhagabhai        | Vs | APPELLANT  |
| D.P. Joshi and Another |    | RESPONDENT |

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**Date of Decision :** 15-07-1970

**Acts Referred:**

**Citation :** (1971) 1 LLJ 466

**Hon'ble Judges :** J.B. Mehta, J

**Bench :** Single Bench

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## Judgement

1. The petitioner railway employee challenges in this petition the order of removal passed against him by the respondent No. 1 on January 17, 1966 and confirmed in appeal by respondent No. 2 on August 20, 1966. Mr. Zaveri challenges this order on three grounds :-

- (1) That there was no inquiry held in the presence of the petitioner and, therefore, the inquiry violates Art. 311(2) as well as the Statutory Rules 1712(2),
- (2) that there was no personal hearing given even at the second stage of inquiry even though it was asked for;
- (3) that the order was not justified on merits as extraneous consideration has influenced the authority.

As Mr. Zaveri should succeed on the first point, it would not be necessary to go into the others contentions of Mr. Zaveri. There is no dispute that no witness was examined in the presence of the petitioner at the inquiry before the competent authority. What was done was that prior statements were read over to the petitioner and he asked to cross-examine those witness who were kept present at the time of the inquiry. There is some dispute to whether the witness were present but we proceed on the assumption that the witness were kept present, because in question No. 8 in the inquiry it was in terms mentioned that the original statements were shown and he asked whether he wanted to cross-

examine any of these persons who were present there. The petitioner stated in reply that he had seen statements of those persons who had even given evidence against him and he did not know why they deposed against him. He did not require them for cross-examination.

2. Mr. Bhatt vehemently relied upon the decision of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, at p. 379. Their Lordships distinguished the decision in *Union of India (UOI) Vs. T.R. Varma*, , where it was held that the rules of natural justice require that a party should have an opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and he should be given an opportunity to cross-examine witnesses examined by the parties, and no material should be relied upon against him without being given an opportunity of explaining it. While explaining the observation "that the evidence of the opponent should be taken in his presence" their Lordships observe that in an inquiry held by a quasi-judicial body the rules of natural justice have to be observed. When the evidence was oral such rules would require that normally examinations of the witnesses should in its entirety take place before the party charged who would have the full opportunity to cross-examine him.

3. Their Lordships further held that the position is the same when a witness is called the statement given previously by him behind the back of the parties is put to him and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities; and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witness are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them. Their Lordships had also pointed out *Phulbari Tea Estate Vs. Its Workmen*, , where the admission in evidence of the prior statements was held to be no evidence in consonance with the principles of natural justice on the ground that during the enquiry the statements were brought on record but they were not put to the witnesses who were present nor had the copies thereof been given to the workmen. Finally, their Lordships pointed out at page 379 (of A.I.R.) that the purpose of 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. Their Lordship held that the procedure adopted was no violation of the rules of natural justice. Their Lordships also held that clause (8) of S. 545 of the Bombay Police Manual could not be held to be bad as contravening the rules of natural justice.

4. These decisions could not help Mr. Bhatt for two important reasons. When we turn to *Phulbari Tea Estate* case which has been distinguished by their Lordships

it is observed that what is held to be sufficient compliance with the rules of natural justice is only that procedure under which previous statement of the witness is first put to that witnesses and thereafter the delinquent against whom it is used is given an opportunity to cross-examine that witness. As explained by Chagla, C.J. in the observations relied upon by their Lordships in *State of Mysore Vs. S.S. Makapur*, it was one thing to make a statement behind the back of a person and it was entirely a different thing to make a statement in front of the Court or a domestic tribunal and in the presence of the person against whom serious charges were being made. That is why their Lordships held that most essential part of this procedure of utilising statement made at the back was that the witness must confirm that statement once again in the presence of the man and thereafter delinquent must have opportunity to cross-examine that witness. If this essential procedure is not fulfilled and the witness did not again confirm that statement, the procedure was clearly held to violate the principles of natural justice, as was done in *Phulbari Tea Estate* case. Therefore, even on the principle of natural justice, it is not sufficient merely to ask the man to cross-examine a witness on certain statement taken at the back of the concerned man. The concerned witness must be first asked to confirmed that statement in the presence of the delinquent and thereafter if an opportunity to cross-examine is given, the principle of natural justice would not be violated.

5. The other important reason which would apply in the present case is that the statutory rules in the present case have gone far beyond the ordinary principles of natural justice for making an inquiry still fairer to the delinquent concerned. The principles of natural justice are merely fair-play in action and the extend of those rules would depend always on the language of the statutory rules. A statutory rule may require a still fairer inquiry and in such a case where there is statutory rule it is immaterial whether the enquiry complies with the minimum principles of natural justice, for we cannot go by the minimum standard of fairness but only by the standard which a statutory rule enacts. So far as the present Rules 1712(1) and (3) are concerned they in terms require that all evidence shall be recorded in presence of the delinquent concerned. Therefore, unless the witness gave any statement in the presence of the delinquent, there would be no question of asking him to cross-examine a witness. In the absence of examination-in-chief in his presence there can never be any question of cross-examination Mr. Bhatt vehemently argued that the delinquent refused to avail of the opportunity of cross-examination of the witnesses concerned and he cannot now make any grievance. There was no question of the delinquent availing himself of the opportunity unless first the authorities complied with the mandatory statutory rule by examining in chief the witnesses concerned in the presence of the delinquent. If the authorities failed to comply with the mandatory rule which guarantees a fair inquiry in accordance with the principles of natural justice as laid down in the statutory rule, the inquiry must be held to be in flagrant violation of that rule.

6. Mr. Bhatt, whoever, argued that every breach of the rule would not vitiate the

inquiry. We are not to make too much fetish of the rules of justice and the material question is only whether the petitioner has been prejudiced. Though the petitioner himself has refused to cross-examine the witness, he could not contend that he was prejudiced. Mr. Bhatt future relied upon answer No. 16 where the delinquent had stated that he realised what was suggested to him and that he requested the authority to take sympathetic view of the case and that he would assure that no such thing would recur in future. He also requested for a transfer of as majority of persons were against him and he would not create any trouble at Kankaria. The suggestion which was made in question No. 16 was a to whether he realised that from the commitment of acts as alleged in the charge-sheet as established by the various statements, he felt that the charges were proved beyond doubt and he was guilty of them. The whole question was as if it was seeking an opinion of the witness. It could hardly be treated as an admission on his part. In fact when the very elementary principles of natural justice are violated in an inquiry the prejudice is inherent in the procedure adopted. The delinquent vehemently contends that he never committed the alleged misconduct. There was no admission at any stage by him. Therefore, this plea, that the delinquent admitted the misconduct and it was wholly immaterial whether the inquiry violated the principles of natural justice or not, could never be taken into account. The breach of this mandatory rule itself resulted in a serious prejudice to the petitioner as he has been sought to be removed without any inquiry worth the name. Therefore, I cannot accept Mr. Bhatt's contention that this is a case where the course of justice has not been deflected and no justice has been caused by violating the mandatory rule. As the first stage of the inquiry is vitiated, the removal order must be quashed right from the first stage of the inquiry.

7. In the result this petition is allowed by quashing the order of removal the petitioner which has been confirmed by the appellate authority as the petitioner has been removed without any inquiry in accordance with the relevant statutory Rule 1712. This petition is accordingly allowed with costs. It is further declared that the petitioner's services shall remain unaffected by the impugned order.