

(1966) 03 CAL CK 0009
In the Calcutta High Court
Case No : A.F.O.O. No. 283 of 1962

Prafulla Kumar Mazumdar

APPELLANT

Vs

Inspector General of Police and Others

RESPONDENT

Date of Decision : 22-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Police Act, 1861 — Section 7

Police Regulations of Bengal, 1943 — Regulation 882, 883, 884

Citation : AIR 1967 Cal 321 : (1967) CriLJ 738 : (1968) 1 LLJ 630

Hon'ble Judges : D.N. Sinha, C.J; A.K. Mukherjea, J

Bench : Division Bench

Advocate : Arun Kumar Dutta and Nanda Lal Pal, for the Appellant; B.C. Dutt and Suprakash Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, C.J.—In this case the facts are shortly as follows :

2. The petitioner appellant entered the Police service in 1940. Since 1952, he has been stationed in the district of Hooghly. On or about 30th November, 1956 a charge-sheet was served upon the appellant, a copy of which is Annexure "B" to the petition. The charges were somewhat serious and involved moral turpitude. The respondent No. 1, namely, the Inspector, District Enforcement Branch (1), was entrusted with the conduct of the enquiry. The Enquiring Officer held an enquiry which was conducted in the presence of the appellant, and on the 8th July, 1957 submitted his report, finding him guilty but recommending a lenient punishment. The Additional Superintendent of Police issued the usual show-cause notice asking the appellant to show cause why he should not be dismissed from service. The appellant was asked whether he wanted a personal hearing. The appellant showed cause and asked for personal hearing and was duly heard. Thereafter an order of dismissal was made dismissing the appellant from service. Against this order, the appellant filed an appeal before the respondent No. 3, the

Deputy Inspector General of Police, Hooghly, on or about the 20th August, 1957. Thereafter, the appellant by his letter dated the 19th September, 1957 prayed for a personal hearing. But this prayer was not granted, and on the 8th November, 1957, the appeal was dismissed by the Deputy Inspector General of Police, Hooghly. Thereafter, the appellant filed several memorial petitions which failed, and with which we are not concerned in this appeal. The only ground on which the Rule was issued is as to whether this rejection of prayer for a personal hearing in the appeal, was in accordance with law or not. So far as this point is concerned, the facts are not disputed. The appellant did ask for a personal hearing, but this prayer was refused. The question is whether in the facts and circumstances of this case the Deputy Inspector General of Police was bound to give a personal hearing to the appellant. The matter has been placed before us from two points of view. Firstly, as a violation of the rules of natural justice, and secondly, as an infringement of the provisions of the Bengal Police Regulations. So far as rules of natural justice are concerned, this has been the subject-matter of various decisions of the Supreme Court and so far as the circumstances of this case are concerned, the position may be said to be covered by the law as enunciated in the Supreme Court decision in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . Sinha, J. (as he then was) stated as follows:

"The next ground of attack against the order of the High Court, under appeal, was that the High Court had erred in coming to the conclusion that there had been a failure of natural justice. In this connection, the High Court has made reference to the several affidavits filed on either side, and the order in which they had been filed, and the use made of those affidavits or counter-affidavits. As already indicated, the rules make no provisions for the reception of evidence oral or documentary, or the hearing of oral arguments, or even for the issue of notice of the hearing to the parties concerned. The entire proceedings are marked by a complete lack of formality. The several authorities have been left to their own resources to make the best selection. In this connection, reference may be made to the observations of this Court in the case of *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, . In that case, this Court has laid down that the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions, In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the Appellate authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, is no ground for interference either under Article 226 or Article 227 of the Constitution."

3. It is, therefore, necessary to look into the rules and regulations which are applicable in the present case, so far as the proceedings are concerned culminating in the dismissal, of the appellant. The rules which are applicable are

the Police Regulations Bengal of 1943 as amended from time to time. These rules were made u/s 241 of the Government of India Act, 1935 read with the relevant provisions of the Police Act (V of 1861). The authority of these regulations are not challenged before us. The appellate authorities are enumerated in Regulation 882. It has not been disputed before us that the appeal lay to the Deputy Inspector General of Police. Regulation 883 lays down the procedure for filing an appeal and the time limit for doing so. It lays down as to what the application or petition of appeal should consist of and provides that such appeal should be preferred within 37 days of the date of receipt of the order by the appellant. The Regulation also provides that when the petition of appeal is transmitted, the service-book or roll and confidential report book should also be forwarded. Regulation 884 is in the following terms :

"884. The Inspector-General or the Deputy Inspector-General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings."

There are then provisions for memorials etc. but we are not concerned with that.

4. It was argued before us that the relevant provision is contained in Regulation 884 and there is an express mention therein that the appellant, if he so desires, must be granted a personal hearing. In our opinion, however, Regulation 884 has no application to the facts of this case. We are concerned here with an ordinary appeal and it is governed by regulations 882 and 883. Regulation 884 is a special provision whereby the Inspector-General or the Deputy Inspector-General may call for the records of any proceedings and pass such orders as they may seem fit. This provision is somewhat analogous to the provisions in the Indian Income Tax Act in which u/s 35 of the Act of 1922, the Commissioner of Income Tax could call for the records and suo motu make an order. In such a case, it is expressly provided that if the order is going to be to the prejudice of the person whose records have been called for, then he should be given a hearing. In the present case, no proceedings have been initiated under Regulation 884. The Deputy Inspector-General of Police never called for the records of the proceedings in order to pass an order. We, therefore, find that there is no provision in the regulations for giving a personal hearing in the case of appeals. So far as the original hearing is concerned, it is not disputed that the delinquent is entitled to a personal hearing. The point we have to consider is whether at every step, namely, appeal revision etc. a delinquent is entitled to be heard personally. This point has been laid at rest by the Supreme Court in *F.N. Roy Vs. Collector of Customs, Calcutta*, . In that case, the proceedings were before the Central Board of Revenue, that is to say, proceedings not in a Court of law as is generally understood. Sarkar, J. (as he then was) came to deal with this very point, namely, whether the appellant before the Central Board of Revenue could,

as a matter of legal right, say that he should be personally heard. The learned Judge stated as Follows :--

"It was then stated that the petitioner had not been given personal hearing of the appeal that he preferred to the Central Board of Revenue and the application in revision to the Government. But there is no rule of natural justice that at every stage a person is entitled to a personal hearing.*****"

5. The position, therefore, is as follows : So far as the rules of natural justice are concerned, the fundamental proposition is that a man should not be condemned unheard. The question is whether this means that he should be repeatedly heard at every stage of the proceedings. It is not even disputed that at the first stage he is to be heard and given every opportunity to defend himself. But once the proceedings have terminated, in what may be called the original proceedings, subsequent stages like appeals or revisions are in most cases governed by rules and regulations which are framed or according to practice. Upon the question as to whether a personal hearing is essential in these later stages, we have now the authority of the Supreme Court which says that the matter will be governed by the rules, but so far as the rules of natural justice are concerned they do not necessarily require that there should be repeated hearings at all stages, namely, appeals, revisions etc. Usually, at the stage of appeal or revision, the matter is decided on the record. What is urged is that this is entirely illegal and that in every case and at every stage of the proceeding, a person has the right to be heard personally. This is a position in law which has been negated by the Supreme Court. Our attention is drawn to a Bench decision of this Court in Bhagat Ram Baika Vs. Prabirendra Mohan Tagore and Others, . In that case what had happened was that the petitioner held a plot of land in Mouza Dhakuria in the suburbs of Calcutta. He made an application u/s 72 of the West Bengal Non-Agricultural Tenancy Act, 1949 for the conversion of the land into a tenancy to which the provisions of the Act would apply. That application was dismissed and the dismissal was upheld by the Commissioner. Thereafter an application was made to this Court. One of the points taken was that the Commissioner should have given personal hearing although the Act did not require that a hearing should be given. Chakravarti, C. J. held that where an appeal had been provided for in law, natural justice demanded that the appellant should be given a hearing before the appeal was dismissed, whether or not there was a statutory direction in that behalf. The cases cited by the learned Chief Justice, particularly the Supreme Court decision in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, dealt with proceedings in a Court of law. It is not clear whether the learned Chief Justice was confining his dicta to the case of a proceeding in a Court of law. It appears that finally, the learned Chief Justice did not grant any relief to the applicant. However, if it was intended to lay down a principle that rules or no rules, the rules of natural justice require that in every proceeding, whether in a Court of law or not, a personal hearing should be given at all stages, appellate, revisional or otherwise, then it must be held that this decision has been overruled by the Supreme Court in F.N. Roy Vs. Collector of Customs,

Calcutta, . I think, however, that the learned Chief Justice was confining himself to the proceedings in a Court of law. Be that as it may, so far as the circumstances of the present case are concerned, it appears to be completely covered by the Supreme Court decision in F.N. Roy Vs. Collector of Customs, Calcutta, . We must, therefore, hold that neither the regulations, nor the rules of natural justice, require a fresh personal hearing to be given at the appellate stage.

6. That being so, the only ground on which the Rule was issued fails and the appeal should be dismissed. The appeal is accordingly dismissed without any order as to costs.

A.K. Mukherjea, J.

7. I agree.