

(1994) 12 DEL CK 0064

In the Delhi High Court

Case No : Civil Writ Petition No. 3555 of 1991

Pushpa Gupta

APPELLANT

Vs

Chairman and Managing Director, Engineers India Ltd. and
Another

RESPONDENT

Date of Decision : 03-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 AD 63 : (1994) 56 DLT 735 : (1994) 31 DRJ 691 : (1995) 1 LLJ 1023

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : N.N. Keshwani, Raj Birbal, Saurabh Anand Prakash, D.R. Nigam, Poonam Lao and S. Bharti, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) The petitioner questions the order of her removal from service consequent upon a disciplinary enquiry.

(2) The petitioner was serving as a Private Secretary in the Engineers India Limited (hereinafter referred as "respondent company" for the sake of convenience). It is a public sector undertaking of the Government of India. Petitioner joined as a typist in December 1965 in the pay scale of Rs.130- 300. She was promoted as a steno- typist in September 1970 and was further promoted as a stenographer in January 1973. In January 1982 she was promoted as a Private Secretary. According to the petitioner on 19.5.1989 she went to see a friend, Mrs. Kapahi in the Administrative Wing of the company and at that time she was manhandled and insulted by one M.M.Lal, who was the Deputy General Manager (Administration), near the entrance of the 4th floor. Petitioner protested and a few representatives of the Union came to her rescue and demanded Explanation from the said officer Lal. Petitioner lodged a complaint against Lal and as a counter-blast petitioner was kept under

suspension by the management on 2.6.1989. Subsequently, she was served with a charge sheet and an enquiry was held. The petitioner sought the assistance of co-workers who were mainly the office-bearers of the Union but none came forward to help her in the enquiry. In the circumstances the petitioner sought permission to take the assistance of an outsider, which was refused. On the basis of the material collected at the domestic enquiry wherein several witnesses were examined by the management, a finding was given against the petitioner that she was responsible for a riotous behavior and other charges. Petitioner filed an appeal to the first respondent without any success.

(3) According to the respondents, petitioner lodged a false complaint against Lal and actually it was the petitioner who instigated others leading to a riotous behavior and Therefore, disciplinary action was taken against the petitioner.

(4) The substance of the charges against the petitioner can be summarised thus: On 19.5.1989 at about 2.40 P.M. petitioner was going away from the seat of Smt. Adarsh Kapahi, who was a Junior Assistant Grade I in the Administration Department Lal noticed the presence of the petitioner on the 4th floor hall in his department and asked the petitioner the purpose of her visit/presence in the Administration Department. Instead of answering the question petitioner challenged the authority of Lal to make such enquiry. Lal told her that he wanted to ascertain the purpose of her visit to the Administration Department and thereafter he proceeded towards the seat of one R.B.Kapoor, Manager (Administration). After a short-while the petitioner followed Lal and started shouting and misbehaved with him, and used derogatory and indecent language, hurled insults and disrupted the office work. The further incidence could be conveniently narrated in the words stated in the charge-sheet served on the petitioner which reads thus:

"AROUND 4.30 P.M. on the same day, you went to the office of Sh. M.M.Lal and joined Sh. R.C.Naithani, Sh. Rakesh Rohtagi, Shri S.P.Khurana, Sh.K.P.Singh who were already present there. You started making baseless accusation against Shri Lal, shouting and using insulting and derogatory language and demanded unqualified apology from him for his alleged misbehavior towards you. You persisted with unruly behavior, insulted and threatened Sh. Lal and disrupted normal working of the office till 5.10 P.M. When Shri Lal left the office you incited other employees present there to accompany you to Shri Lal's residence to insult him in the presence of his family members/neighbours. Again around 5.15 P.M. on the same day when Shri Lal was leaving the Company premises accompanying Shri R.C.P. Chaudhary, General Manager (Engg.) in his car, you along with some other employees stopped the car. You again used offending language against Shri Lal. You also tried to get into the car threatening to accompany Shri Lal to his residence and expose and insult him before his family members and neighbours. Despite repeated requests of Shri R.C.P.Ghaudhary, General Manager (Engg.) not to create a scene, you allowed the car to leave only after detaining it for about half an hour."

(5) The respondent company appointed K. Satyanarayna, General Manager (Refineries) as the Enquiry Officer to go into the charges, after the company found it not possible to accept the Explanation of the petitioner in answer to the charge sheet. The main defense of the petitioner was that Lal misbehaved with her and outraged her modesty and she lodged a complaint against Lal and instead of proceeding against Lal who is a high officer of the company, disciplinary action was proposed against her. She denied the incidents attributed to her. Petitioner by a letter dated 11.7.1989 addressed to the Enquiry Officer asked him to furnish her the documents relied upon by the Administration for initiating action against her and also the list of witnesses proposed to be produced as well as any written statement by any of the witnesses, if obtained, to be given to her. While concluding the request she stated as follows:-

"Ire iterate that the cited witnesses by the prosecution and the relied upon documents on which the charges have been framed may kindly be furnished to me before the first date of enquiry".

(6) In another letter the petitioner pointed out that all the relevant papers/statements of the witnesses as recorded during the course of preliminary (fact finding) enquiry have not been supplied to her despite her repeated requests. She also pointed out that she contacted a few employees of the Organisation including R.C.Naithani and they have all declined to stand as Assisting Officer for reasons best known to them. Therefore, the petitioner sought permission to take assistance of an employee/person (other than a lawyer) outside the company so as to afford her a reasonable opportunity to defend herself in the matter. The petitioner repeated her request for the statements of the witnesses examined in the preliminary enquiry/fact finding enquiry and the report of the said Enquiry Officer. She also sought copies of the charge sheets issued to others who were also charged similarly for the riotous behavior. Petitioner was told that the list of the witnesses Along with records/documents will be produced by the Presenting Officer at the time of Enquiry. However, her request for permission to take the assistance of an outside employee was refused. Regarding other documents it was pointed out that the Fact Finding Enquiry was ordered by the Competent Authority to ascertain whether prima facie case for initiating disciplinary action existed. The present enquiry is being conducted to look into charges leveled against her and the report of the Fact Finding Enquiry was not being relied upon in the present enquiry, as such the same was not required to be given to her. Similarly, the charges pertaining to other employees were held to be not relevant and consequently, they were not furnished. The petitioner reiterated her request for the permission to engage an outsider even though the rules of the company did not permit to do so.

(7) The petitioner was informed by a letter dated 13.9.1989 that no documents have been relied upon by the management and Therefore, no document was furnished to the petitioner and because it was a domestic enquiry she was not permitted to take assistance of an outsider.

(8) Petitioner has produced a few letters written to her by them as stating that they cannot assist her in the enquiry. One such letter is by B.D.Madan, Senior Secretary and another is from R.C.Naithani, who is the General Secretary of the Association. He said in his letter that being the General Secretary he has to negotiate with the management over various issues and further that he was a co-accused in this case Along with the petitioner and K.P.Singh, S.P.Khurana and others and Therefore, it was difficult for him to assist the petitioner. One Bhatnagar wrote that he was not experienced in domestic enquiries. Another person by name N.Kumar stated that since a Senior Administrative Officer is involved in the case he cannot render assistance to the petitioner.

(9) The Enquiry Report (Annexure K) dated 17.12.1990 shows that the proceedings were held on several dates and the petitioner was present throughout and that after the completion of the presentation of the case by the Presenting Officer when petitioner was invited to start her case she gave a letter stating that she does not want to produce any witness nor to cross-examine in defense. She also stated that she had no brief to submit in the case because she had not taken part in the enquiry for want of any assistance of a defense helper or of the records, and that she would seek justice in the Court of Law if any punishment is given to her. The report also shows, that the petitioner had objected to the examination of Lal on the ground that the petitioner had lodged a complaint against him earlier. Anyhow he was examined. The Enquiry Officer gave a finding upholding the charges. One of the witnesses examined by the management was Ms. Adarsh Kapahi. Another witness was one Manmohan Singh. Both of them stated that provocation for the whole incidence at 2.40 P.M. on 19.5.1989 was due to Lal's questioning the petitioner the reason for her presence in the Administration Department and remarking that if there Was no work for her there talking to the staff would waste their time. They asserted that Lal never touched the petitioner's person nor was he impolite to her. They also stated that initially the petitioner did not mention anything about Lal having touched or man- handled her; instead she was seeking an apology from him for enquiring from her the reason for her presence in the Administration Department. Manmohan Singh stated that he saw the petitioner following Lal into Kapoor's cabin. Ms. Kapahi stated that she heard petitioner's raised voice from Kapoor's cabin and went there to bring her out. The witnesses asserted that the petitioner used abusive language and insulted Lal. It is unnecessary to refer to the details of the statements made by other witnesses all of whom substantially corroborated these main statements of Kapahi and Manmohan Singh.

(10) The first impression, from these facts, is that the petitioner did not examine anyone in support of her defense that the Disciplinary proceedings were initiated as a counter-blast to her complaint against Lal and she did not adduce any evidence in support of her allegation that Lal misbehaved with her. The best evidence would have been the evidence of Ms. Kapahi, but Kapahi did not support this version anywhere.

(11) The enquiry report was accepted by the second respondent who was the Disciplinary Authority. He has given detailed reasons and thereafter the petitioner filed an appeal to the first respondent. In the opening part of the appeal the petitioner stated that Lal had humiliated her and hurt her and when she reported against Lal through Union leaders of the department, "the .entire process of taking up my complaint was reversed and instead of making him an accused officer I was victimised and served with chargesheet for major penalty alleging that I tried to insult a senior officer of the company and caused disruption of work in the office". The petitioner further stated that she requested for two things - (i) Help of a defense assistance; and (ii) Copies of the statements recorded during the preliminary enquiry, in order to conduct effective cross-examination of the witnesses, and prepare a cogent and forceful defense. In another part of the appeal memo she stated as follows: "I would like to ask you. Sir, a simple question (1) if there was no cause of complaint against Mr. M.M.Lal why at all there was this hue and cry in the office. The incident of Mr. Lal hurting my modesty the union persons S/Shri R.C.Naithani, S.P.Khurana, Rakesh Rohtagi and K.P.Singh who in sympathy for me surrounded Mr. Lal and demanded him to tender apology after ascertaining the happening which occurred on 19.5.1989. The agitation of the Union workers was curbed and suppressed by the Management/Administration served them charge-sheet but were later on let off with simple warnings on the condition that they will not agitate for holding an enquiry against Mr. M.M.Lal, so they refused to help me for which even the administration in their letter cited under reference has admitted. In these circumstances, had the administration been fair and unbiased, they could have allowed me the help of an outside (not a legal practitioner) to bring out the truth under their discretionary power". By refusing this, the administration has denied me a reasonable opportunity to defend myself against these baseless charges. On the other hand, the case of the administration was presented by the highly qualified officers. This is not fair. If the department is represented by a qualified officer, I should have also been provided with the assistance of a defense helper. In spite of quoting so many authorities for providing the statements of the employees recorded during the course of fact finding enquiry, I was not allowed any access to those documents. This is against the fundamental principles of Natural Justice and all can none of fair play, justice and enquiry." While in the prayer part of the appeal memo petitioner said that because she was not allowed the help of a defense assistance and she was not allowed to have the copies of the statements recorded in the fact finding enquiry the disciplinary enquiry was vitiated and that the proceedings against her were malafide.

(12) By an order dated 30.7.1991 the first respondent rejected the appeal. In his order he stated that the petitioner raised two points- (a) that she was not allowed the help of a defense assistant from outside which could have been provided at the discretion of the Enquiry Officer; (b) that she was not allowed to have the copies of the statements recorded in the fact finding enquiry as demanded by her. Thereafter the first respondent held that there was no

provision for permitting the petitioner to take the assistance of an outsider. However, she could have taken the assistance of any co-employee. It was further held that no document was relied upon by the management and Therefore, question of furnishing the copies of statements recorded at the preliminary enquiry/ fact finding enquiry need not be furnished to the petitioner.

(13) The learned counsel for the petitioner advanced the following contentions:-

(i) Denial of documents to the petitioner, which the petitioner relied for her defense, vio later the cardinal principles of natural justice. The petitioner was denied the copy of the complaint lodged by Lal against the petitioner and copies of the statements of the witnesses recorded in the Preliminary enquiry were not furnished to her. Similarly copy of the preliminary enquiry report was also not furnished to her. Copies of the charge sheets served on the co-delinquents also should have been furnished to the petitioner. (ii) Denial of the assistance of a "defense helper" to the petitioner when the department was represented by an experienced Senior Manager to conduct the enquiry resulted in the violation of the principles of natural justice. (iii) While other co-delinquents were let off leniently, imposition of a major penalty of removal from service against the petitioner is discriminatory and vocative of Article 14 of the Constitution. The action initiated against the petitioner and removing her from service are vitiated by malafides.

(14) The learned counsel for the respondent raised a preliminary objection. According to the respondent the petitioner is a workman and there is an effective remedy provided against the removal from service, provided under the provisions of Industrial Disputes Act. Invocation of the writ jurisdiction, Therefore, is not proper.

(15) Before considering the preliminary objection, it is necessary to refer to the respective contentions to make this order self-contained.

(16) Mr. Keshwani, the learned counsel for the petitioner contended that the entire proceedings started after the petitioner lodged a complaint against Lal and "thereafter Lal gave a written complaint against the petitioner. The present proceedings actually germinated out of the complaint given by Lal against the petitioner. Copy of the said complaint had not been given to the petitioner and it was given only at the time of hearing of the writ petition, at the instance of the Court. But this apart, the statements recorded or information collected at the preliminary investigations before preparing the charge sheet against the petitioner were denied to the petitioner inspire of the petitioner seeking their copies specifically. The petitioner relied on several decisions in support of his contention - Jug Raj Singh v. The Delhi Administration, Delhi and others 1970 Slr 400; M.G. Sharan and Others Vs. State of Bihar and Others, , State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., Tirlok Nath v. Union of India and Others 1967 Slr 759 . Learned counsel for the respondent on the other hand contended that none of these documents were relied upon against the petitioner and in no way those documents were relevant. Learned counsel referred to a few

decisions - Krishna Chandra Tandon Vs. The Union of India (UOI), J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, . The learned counsel for the respondent also pointed out that the management may have to furnish a document at the most, which is relevant for the defense of the delinquent. None of the documents referred by the petitioner has any relevancy to the defense pleaded by her. The specific defense pleaded by the petitioner was that the proceedings initiated against her was a counter-blast to the complaint lodged by the petitioner against Lal that Lal had misbehaved with her. Petitioner has not even led prima facie evidence to prove her allegations Constituting her defense.

(17) The learned counsel for the respondents pointed out that petitioner was a "workman" as defined in the Industrial Disputes Act and referred to a few other provisions of the said Act to contend that a workman removed from employment has an effective remedy to challenge the removal, under the Act.

(18) Mr. Keswani, contended that the petitioner was not a "workman" and there was no such concept under the employment of the respondent company; the learned counsel further contended that assuming the petitioner was a "workman", she is entitled to invoke the writ jurisdiction to challenge her removal from service, because, the enquiry was in contravention of principles of natural justice and that the petitioner was discriminated by treating her differently from others who were also charged with a similar misconduct.

(19) Mr. Keswani relied on the Rules of the Company which govern the employees of the company; the Rules do not refer to the term "workman"; Therefore, according to him petitioner was not a workman. I consider this a strange argument. Whether provisions of the Industrial Disputes Act govern the petitioner, depends on the nature of her employment and the definition of the said term found in the said Act.

(20) Petitioner, admittedly was a "Private Secretary". She has not enumerated her functions. Nowhere in her writ petition she has asserted that she was employed "mainly in a managerial or administrative capacity." It is the nature of the functions and the responsibility attached to the particular "employment that attracts the definition of "workman" under the Industrial Disputes Act. Section 2(s) of the Industrial Disputes Act reads thus: "Section 2(s) -: "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express, implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led that dispute, but does not include any such person:- (i) Who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or (ii) Who is employed in the police service or as an officer or employee of a prison;-or (iii) Who is employed mainly in a managerial or

administrative capacity; or (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature." On the face of it clauses (i) & (ii) are not applicable to the petitioner. As to clauses (iii) & (iv), she has not averred that she was discharging any kind of managerial or administrative functions. The functions and responsibilities of a private secretary are well known. Essentially, a private secretary is a person attached to a responsible officer, with the duty to arrange his official functions; a private secretary has to maintain confidentiality in respect of the matters he or she comes across. When compared to other subordinate employees, a private secretary has the advantage of having direct access to the boss and has to carry out the directions issued by the said boss. I have not come across any instance where a private secretary functions in a managerial or administrative capacity.

(21) In the counter affidavit filed by the respondent there is an assertion that petitioner was a "workman"; in the rejoinder to this, petitioner has not explained as to how she can claim the status of a "non-workman". The definition of the term "employee" in the Rules of the Company is entirely irrelevant, here.

(22) An individual workman can raise an "industrial dispute" consequent upon his or her removal from service. On a reference of such a dispute to the Industrial Tribunal (or the Labour Court), the Tribunal may examine the entire records. The management, if it so chooses may lead further evidence to justify the action taken by it. The reference of such a dispute is beneficial to both the workman and the management.

(23) In *Hariba v. K.S.R.T.C.*; 1983 (XI) Llj 76, a learned Judge of Karnataka High Court elaborately considered this aspect and held that writ jurisdiction could not be extended to entertain the challenges to the removal from service, when the workman has an effective remedy of raising an industrial dispute. The learned Judge held at page 82: "In a petition under Article 226, the High Court cannot do, what the Tribunal is required and competent to do, vide (2) & (4) above. All that the High Court can do, if it comes to the conclusion that there has been procedural defect is to set aside the order of dismissal or removal, as a result of which the petitioner gets reinstated into the service and he would also become entitled to apply before the Industrial Court u/s 33(0(2) of the Act for payment of salary from the date of dismissal to reinstatement consequent to the order of this Court and the Corporation would become liable to pay the salary, unless it is in a position to prove that the workman had been gainfully employed elsewhere, in which event a proportionate deduction in payment of arrears of salary could be claimed. The dispute however, does not come to an end and the Corporation would have the powers to institute a de novo inquiry, if it considers the gravity of the charge is such that a de novo inquiry is called for." Again at para 11 it was held:

"APART from this even from the point of view of the workman, the remedy

provided u/s 10 of the Act is certainly a better and more effective remedy, in that the workman also would have full opportunity of adducing rebuttal evidence before the Industrial Court and would have the benefit of an independent Judicial Officer of the rank of a District Judge to appreciate the evidence and record a finding instead of a person appointed by the management to hold an enquiry. Further, even if the workman is found guilty of the charge framed against him, in view of the wide powers conferred u/s II-A of the Act on the Industrial Court presided over by a judicial officer, he would have the benefit of adjudication even regarding the quantum of penalty as that would also be scrutinised judicially and if the Industrial Court comes to the conclusion that the penalty imposed in a given case is disproportionate to the gravity of the charge proved, it could modify the penalty. Thus both from the point of view of having an opportunity of proving the innocence of workman as also on the question of convincing the Industrial Court that the penalty imposed was disproportionate to the gravity of the charge, the workman concerned would have very effective opportunity before the Industrial Court. "

At page 84 the learned Judge summarised: "The result of the discussion may be summed up as follows: Whenever a workman employed in an industry is dismissed or removed from service and the workman desires to challenge the legality of such action of the management of an industry, on grounds of violation of procedure, as regulated by the prescribed rules or rules of natural justice, the workman should resort to the remedy available u/s 10 of the Industrial Disputes Act and a petition under Article 226 should not be entertained, notwithstanding the fact that the industry is under the management of a statutory Corporation or body, which is an "authority" falling within the definition of the word "state" as defined in Article 12 and amenable to the writ jurisdiction of this Court under Article 226 of the Constitution. This was approved by a Division Bench of the same Court in *Sreeramulu (B). v. Karnataka State Road Transport Corporation and others*; 1984 (2) LIn 864. -

(24) In *Vial Contract Workers Association (R) & Another v. Visvesaraya Iron and Steel Ltd.*; 1990(2) Cur L.R. 700, I had an occasion to apply the same principle. At page 701 it was held:

" WRIT Court's discretion has to be exercised with reference to the facts of individual cases. Existence of an effective alternative forum under Law, is one of the main factors to be considered, while refusing the exercise of writ jurisdiction; possibility of delay by the said alternative, statutory forum has to be ignored as irrelevant. Rarely we come across a right sought to be enforced, which cannot be brought within the purview of one or the other valuable fundamental rights enshrined in Article 14, 19 or 21 of the Constitution. The statutory rights created by welfare legislations like Industrial Disputes Act, are traceable to the requirements of fair procedure before affecting the right to livelihood, which is sought to be enforced as an ingredient of Article 21 of the Constitution. When the employer is the State or its instrumentality, the arbitrariness behind the denial of

employment can also be attacked as violative of Article 14 of the Constitution. In other words, the employees of the State and its instrumentalities, can always ignore the existence of statutory remedies, to enforce those rights, and invoke Article 226 of the Constitution of India, if the contention of petitioners is to be accepted."

Further it was held:

"THE age old dictum is - "if the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can normally be resorted to for that purpose" (Maxwell on Interpretation of Statutes - 11th edn. page 382). When the legislature has thought it fit to create new forums to enforce the rights created by it, this Court (specially while exercising the constitutional jurisdiction under Article 226) should respect the legislative wisdom; frequent by-passing the statutory forums would be indicative of the suspicion as to the competence of such statutory forums, which is not at all conducive to the proper functioning of statutory bodies entrusted with judicial powers. The purpose of law enforcement (which is part of this Court's jurisdiction) includes recognition of competence in the bodies created by the statute. As I have already observed, the delay in the disposal of cases by these statutory bodies, by itself cannot be a ground to bypass them and approach this court directly, avoidance of delay has to be achieved by other means."

(25) The fact whether principle of natural justice was violated or not depends upon the examination of the entire disciplinary proceedings. Whether any prejudice was caused to the petitioner has to be proved by her. It is not possible in all cases to apply the principle of natural justice in abstract.

(26) In K.L. Tripathi Vs. State Bank of India and Others, , the court observed at page 281:

"SO whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence."

Again at page 282, the Court held:

"IN the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth."

(27) Petitioner has invoked Article 14 of the Constitution. Here, again, burden is

on her to prove discrimination or victimisation. These also depend on proof of relevant facts.

(28) The powers of the Labour Court are quite wide; the power includes a power to interfere with the quantum of the punishment also.

(29) The present case involves the conduct of the petitioner. She has not examined herself before the Enquiry Officer. She did not lead any evidence. Her participation was confined to her presence and raising a few objections. No genuine attempt was made by her to dislodge the evidence adduced by the Company. Prima facie, it is not possible for this court to hold that the enquiry was vitiated. I uphold the preliminary objection. The writ petition is rejected.