
(1966) 08 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 397 of 1965

Ramshakal Yadav

APPELLANT

Vs

Chief Security Officer Railway Protection Force Bombay and
others

RESPONDENT

Date of Decision : 18-08-1966

Acts Referred:

Citation : (1966) JLJ 938

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : Gulab Gupta and M. Adhikari, for the Appellant; P.R. Padhye, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari by Ramshakal Yadav, who was employed as a Rakshak in the Railway Protection Force, Jabalpur, for quashing an order passed by the Assistant Security Officer, Jabalpur, on 6th October 1964 removing the applicant from service with effect from 8th October 1964.

2. The Petitioner's removal from service was as a sequel to a departmental enquiry held against him in May-1964 on the charge that on the night of 15th June 1963 while detailed for duty at Post No. 9, South Eastern Railway Platform, to guard the parcels, he helped Rakshak Govind Narayan Singh and another Rakshak Priyatam Singh in committing the theft of one bale of cloth and helped them from removing the same from the platform. The departmental enquiry was conducted by the Divisional Inspector, Railway Protection Force, Jabalpur. At the conclusion of the enquiry, he found the aforesaid charge prima facie established against the Petitioner and accordingly submitted his findings to the disciplinary authority, namely, the Assistant Security Officer. On 21st August 1964, the Assistant Security Officer issued a notice to the applicant stating that the charge framed against him had been found to be proved at the enquiry

conducted by the Divisional Inspector, Railway Protection Force, Jabalpur, and asking him to show cause why he should not be removed from service. The Petitioner gave his explanation which did not satisfy the Assistant Security Officer, and on 6th October 1964 the impugned order removing the applicant from service was passed by the Assistant Security Officer.

3. Learned Counsel appearing for the Petitioner, while assailing the order dated the 6th October 1964 of the Assistant Security Officer removing the Petitioner from service, first contended that it was invalid inasmuch as in the notice to show cause, which was issued to the applicant on 21st August 1964, it was nowhere stated that the Assistant Security Officer concurred with the conclusions reached by the Enquiry Officer. This contention is without any force. It is no doubt true that the notice issued by the Assistant Security Officer did not say that he concurred with the conclusions reached by the Enquiry Officer. But for that reason the notice given to the applicant cannot be treated as a notice which did not afford a reasonable opportunity to the Petitioner under Article 311 (2) of the Constitution. This is clear from the decision of the Supreme Court in *State of Assam and Another Vs. Bimal Kumar Pandit*, . In that case, it has been held that it is no doubt desirable that the dismissing authority should indicate in the second notice its concurrence with the conclusions of the Enquiry Officer before it issues a notice under Article 311 (2) of the Constitution, but the failure to so state expressly in the notice does not necessarily justify the conclusion that the notice given in that behalf does not afford a reasonable opportunity to the delinquent officer under Article 311 (2) and amounts to a contravention of that Article. According to the decision of the Supreme Court in *Bimal Kumar's* case (Supra), it is only when the disciplinary authority differs from the findings, either wholly or partially, recorded in the enquiry report that it is essential that the provisional conclusions reached by the disciplinary authority must be stated in the notice in order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2). In that case, it was also observed that when disciplinary authority purports to proceed to issue the notice after accepting the enquiry report in its entirety and a copy of the enquiry report is sent with the notice to the Officer concerned, then it should be obvious to the Officer that the findings recorded against him by the Enquiry Officer have been accepted. Here also, the Assistant Security Officer accepted the report of the Enquiry Officer in its entirety, and along with the notice which he issued to the applicant to show cause why he should not be removed from service, a copy of the Enquiry Officer's report was sent to the Petitioner, It cannot, therefore, be contended that on account of the omission in the notice to show cause to state that the Assistant Security Officer concurred with the conclusions reached by the Enquiry Officer, the Petitioner had no reasonable opportunity as required by Article 311 (2) of the Constitution.

4. It was then submitted that the departmental enquiry conducted by the Divisional Inspector started with a bias against the Petitioner and its proceedings were vitiated inasmuch as in the charge-sheet itself, which was issued to the

applicant, after the narration of the charge against the Petitioner it was stated that the punishment proposed to be imposed on him was one of removal from service. It was said that thus the Assistant Security Officer and the Divisional Inspector, who conducted the enquiry, had even before the commencement of the departmental enquiry prejudged the guilt of the Petitioner and reached a conclusion about the punishment to be given to the Petitioner. Learned Counsel relied on *Khem Chand Vs. The Union of India (UOI)and Others*, and *Ramnetra v. D. S. of Police* AIR 1965 J LJ 875: 1965 MPLJ 699. This contention also cannot be accepted. No doubt, in the charge-sheet issued to the applicant it was mentioned that the punishment proposed to be imposed on him was one of removal from service. But it is not reasonable to infer from this statement in the charge-sheet that the Assistant Security Officer or the Divisional Inspector, who held the enquiry, had already formed the view that the charge against the applicant was true and that he deserved the punishment of removal from service. The proper stage for intimating the proposed punishment to the delinquent officer is no doubt when the charge is found to be established at a departmental enquiry and the competent officer, after applying his mind to the gravity or otherwise of the proved charge, tentatively proposes to inflict a particular punishment (see *Khem Chand's case (supra)*; and AIR 1948 121 (Privy Council)). It was, therefore, wholly unnecessary to state in the charge sheet the "proposed punishment". But the mention of the proposed punishment in the charge-sheet did not vitiate the departmental enquiry and cannot in any way be taken as indicative of a bias against the Petitioner. It had not the effect of debarring the Enquiry Officer from finding after the enquiry that the charge against the applicant was not proved or preventing the Assistant Security Officer from absolving the Petitioner or proposing another punishment in the notice to show cause.

5. The decision of the Supreme Court in *Khem Chand's case (supra)* does not support the contention put forward by the learned Counsel for the applicant. The observation in that case that the delinquent officer must be given an opportunity to make his representation as to why the proposed punishment should not be inflicted on him and the proper stage for giving this opportunity is after the enquiry is over and after the disciplinary authority has, applying its mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments, that is, the punishment of dismissal, or removal from service; or reduction in rank, cannot be read as implying that even if this opportunity is given, if in the charge-sheet the proposed punishment was indicated, then it must be held that the Government servant had no reasonable opportunity of defending himself as contemplated by Article 311 (2) of the Constitution. Here, by the notice to show cause, which was issued to the applicant, the proposed punishment was communicated to the applicant. The decision in *Ramnetra Vs. District Superintendent of Police and Others*, is not in point here. In that case, it was because of the statement made by the Enquiry Officer, namely, that "D. E. is a

quasi judicial proceeding in which it is the duty of the presiding officer to act as Judge as well as prosecutor", that it was held that he exhibited lack of impartiality.

6. Lastly, it was submitted that the enquiry held by the Divisional Inspector was not fair; that it was conducted in a manner highly prejudicial to the Petitioner; and that the Assistant Security Officer passed the impugned order without applying his mind to the questions whether the charge against the applicant had been established and whether the Petitioner had been given a reasonable opportunity of defending himself against the charge. This contention must be given effect to. It is evident from the record that at the very commencement of the enquiry and before recording the evidence of any witness in support of the charge, the Petitioner was closely examined by the Enquiry Officer on 25th May 1964. One has only to read the questions put to the applicant by the Enquiry Officer during the course of that examination for coming to the conclusion that many of the questions put were as questions in cross-examination. At that examination, the Petitioner was inter alia asked to explain the statements of Priyatamsingh and Govind Narayan Singh against him who were not examined even at the enquiry which the Enquiry Officer commenced after examining the Petitioner. After this examination of the applicant, one Kashi Prasad was examined on 25th May 1964. Then on 26th May 1964 Dhall was examined, and on 1st June 1964 the statements of N. K. Shrivastva and S. L. Saxena in support of the charge were recorded. The Petitioner was again examined by the Enquiry Officer on 1st June 1964. Thereafter on 13th August 1964 the evidence of four more witnesses, namely, Mohammad Imran, Shyam Lal, Ranjit Singh, and Pannalal was recorded and the Petitioner was again examined by the Enquiry Officer on that date. An enquiry in which the delinquent officer is examined at the very commencement of it and thereafter several times as and when the evidence of witnesses is recorded cannot be held to be fair enquiry giving the delinquent Officer a reasonable opportunity of defending himself. This is plain from the decision of the Supreme Court in *Associated Cement Cos. Vs. Their Workmen* (1961) 2 JLJ 396. The material observations of the Supreme Court are to be found at page 400. They are-

The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workmen be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees

are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings.

These observations, which were made while dealing with domestic enquiries in industrial matters, apply with force to an enquiry against a Government servant. It must, therefore, be held that the elaborate cross-examination of the Petitioner at the very commencement of the enquiry and thereafter as and when the evidence of witnesses was recorded constitutes a serious infirmity in the enquiry held against him.

7. In finding that the charge against the Petitioner was established, the Enquiry Officer also took into account the statement which Priyatam Singh had made before Dhall S. I. P. F. Priyatamsingh was not examined at the departmental enquiry. The Enquiry Officer observed in his report that the Petitioner had said that his relations with Priyatamsingh were not strained and that consequently the statement which Priyatamsingh made to Dhall could not be said to be one made "out of prejudice" and, therefore, it was not found necessary to examine Priyatamsingh. The enquiry Officer was clearly not justified in relying on the statement of a person who was not examined at the enquiry.

8. The complaint that the Assistant Security Officer passed the order terminating the Petitioner's services without applying his mind to the material on record and to the question whether the Petitioner had a reasonable opportunity of defending himself, finds support in the order itself recorded by the Assistant Security Officer terminating the Petitioner's services. In that order he observed that the evidence of one Gendalal Dhannalal was also recorded, when this witness was not examined at all by the Enquiry Officer. On the question whether the charge against the Petitioner rested on the evidence of certain witnesses recorded in the absence of the Petitioner, the Assistant Security Officer said -

No reliance was kept on the statement if recorded in his absence. Only the statements recorded in his presence have been relied upon.

The observation of the Assistant Security Officer clearly shows that he did not at all take the trouble to scrutinize the material on record and to see whether the enquiry had been conducted properly and fairly so as to give a reasonable opportunity to the applicant to defend himself before passing the order that he did of terminating the Petitioner's services. In the present case, the order passed by the Assistant Security Officer terminating the applicant's services cannot, therefore, be sustained.

9. For these reasons, this petition is allowed and the order dated the 6th October 1964 passed by the Assistant Security Officer terminating the Petitioner's services is quashed. The applicant shall have costs of this application. Counsel's fee is fixed at Rs. 160. The outstanding amount of security deposit shall be refunded to the Petitioner.