

(1956) 12 AHC CK 0033
In the Allahabad High Court
Case No : Special Appeal No. 157 of 1956

Ranbir Singh

APPELLANT

Vs

Superintendent, Small Arms Factory

RESPONDENT

Date of Decision : 12-12-1956

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1957 All 274

Hon'ble Judges : Desai, J; Beg, J

Bench : Division Bench

Advocate : P.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Beg, J.—This is a special appeal against an order of a learned single Judge. It arises out of a writ petition filed by the appellant Sri Ranbir Singh against the respondent who is the Superintendent of the Small Arms Factory, Kanpur. Sri Ranbir Singh was a Machinist, Grade (C) in the Small Arms Factory, Kanpur, which is one of the Indian Ordnance Factories, under the Ministry of Defence, Government of India. His appointment to this post was made by the respondent,

2. On 5-1-1955 a verbal complaint was made against the appellant by the Supervisor. On the basis of this complaint, the appellant was served with a charge-sheet dated 5-1-1955, calling upon him to show cause against two charges, namely, (1) assaulting Shri S. Roy, Supervisor, and (2) causing cessation of work and thereby causing loss to Government,

3. Thereafter a Court of Enquiry was constituted by the respondent to try the appellant in respect of the charges framed against him. The said Court of Enquiry framed a charge against the appellant calling upon him to show cause against the two acts mentioned above. Witnesses were produced in the Court of Enquiry. After hearing the entire evidence of the witnesses, the Court of Enquiry submitted its report to the respondent.

Thereafter, the respondent passed an order dated the 16th March 1955, calling upon the petitioner to show cause why he should not be dismissed from service on charge No. 1 only. The actual order passed by respondent No. 1 at this stage which may be described as the second stage of the trial of the petitioner has an important bearing in this case and runs as follows:

"I have carefully examined the proceedings of Court of Enquiry held vide Office Order No. 2, dated 20-1-1955 and I consider that the charge at (a) of "Gross misconduct" as levelled in Charge Sheet No. 43/C/RS/IE, dated 5th January 1985 against you has been established as correct. You are, therefore, asked to "show cause" why you should not be dismissed from service."

Thereafter follow two other paragraphs giving the appellant seven days" time to submit his reply, and stating that if no reply was received within the aforesaid time, it would be assumed that Sri Ranbir Singh had nothing to say in the matter and the penalty proposed would be imposed forthwith.

4. On the 23rd March. 1955, the petitioner applied to the respondent to be supplied with a copy of the proceedings including the report of the Court of Enquiry to enable him to show cause against the aforesaid order of the respondent dated the 16th March, 1955. On the 24th March, 1955, the respondent passed an order that the appellant be supplied with the copy of the proceedings of the Court of Enquiry.

5. It appears that the appellant was supplied with the copy of the proceedings of the Court of Enquiry, but the copy supplied to him did not include a copy of the conclusions or the report of the Court of Enquiry. This omission to supply the copy of the report of the Court of Enquiry to the appellant has been made the main ground of grievance in the writ petition. It may be mentioned at this stage that the appellant did not make a grievance of this fact before the respondent at any stage, when the proceedings were going on against him.

On the other hand, he submitted a proper representation before the respondent. His representation was considered by the respondent, and, after giving due consideration to the said representation, the respondent on the 12th April, 1955, passed an order dismissing the appellant from service. Thereafter, the petitioner moved a writ petition in this Court on the 19th October, 1955 challenging the order of dismissal passed against him and praying that a writ in the nature of certiorari quashing the order of the respondent dated the 12th April, 1955, ordering the dismissal of the petitioner from Government service, or a mandamus, direction or such other order as this Court deemed fit reinstating the petitioner in his employment be issued by the Court.

6. This writ petition came up for hearing before a learned single Judge of this Court. It was dismissed by him on the 23rd March, 1956. Dissatisfied with the said order, the petitioner Sri Ranbir Singh has filed this special appeal.

7. Having heard the learned counsel for the appellant, we are of opinion that

there is no substance in this appeal. On behalf of the appellant it is argued that the omission to supply the report of the Court of Enquiry to the appellant constituted a contravention of the mandatory provisions of law, and the ignorance of the conclusions arrived at in the report of the Court of Enquiry has materially prejudiced the appellant. It is argued that, as a result of it, the order of dismissal passed by the respondent is vitiated.

Reliance in this connection is placed on Article 311(2) of the Constitution of India according to which no person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It may be mentioned at this stage that when a person is alleged to be guilty of certain acts of misconduct, and action in regard to it is proposed to be taken against him, ordinarily there are two stages of enquiry.

At the first stage, a charge is framed against the person asking him to show cause why he should not be found to be guilty of having committed the alleged acts or misdeeds of which he is charged. This gives an opportunity to the person charged to contest the matter on merits. If the authority trying the person heard the entire evidence relating to this aspect of the case, it gives its own finding in respect of the charges framed against the person proceeded against.

At the conclusion of this stage of enquiry, the authority gives its finding stating the charge or the charges which have been found to be proved against the person proceeded against. If no such charges are proved, no question of proceeding further with the trial arises. If any of the charges are proved, then the authority holding the trial comes to a definite finding in respect of the charge or charges which have been found to be proved against the petitioner. After this stage has been gone through the authority concerned then embarks on the second stage of the trial. At this stage, the person proceeded against is given notice of the action actually proposed to be taken against him.

According to Article 311(2), the person proceeded against should be given a reasonable opportunity of contesting this part of the case, it may be mentioned at this stage that what the person proceeded against is required to contest at this stage is not the merits of the charge which have already been gone into at the first stage of enquiry. All that is open to him at this stage is to show cause against the action which is proposed to be taken against him. The conclusion arrived at the first stage regarding the merits of the items of charges framed against the person is a final one, and it is not open to the person to reagitate the matter at the second stage.

As laid down in Article 311(2) itself, the person is only entitled to be given "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." What is reasonable opportunity must depend upon the particular circumstances of each case, in the present case, it seems to us that the requirements of law would be sufficiently met if the person proceeded

against was clearly informed about the result of the enquiry. i.e. the findings or the conclusions arrived at as a result of the enquiry.

It was not necessary for the authority concerned to state the reasons for arriving at those findings or to inform him about the credibility of the various pieces of evidence considered by the said authority or the relative value of the various pieces of evidence.

This matter should be considered to be closed as a result of the conclusions arrived at by the authority before which the evidence in the matter was produced. It is admitted in the present case that the second opportunity was given to the appellant . It is also admitted by the appellant that in this second opportunity a notice to show cause against the action proposed to be taken against him was given to the appellant. It is further admitted by the appellant that at this second stage, the order giving notice to the appellant specified the actual punishment that was proposed to be imposed upon him.

: The order clearly stated that the appellant was asked to show cause why he should not be dismissed from service. It is also admitted on behalf of the appellant that he was clearly informed about the exact item of the charge that was found proved against him. In fact, the order issuing the notice itself stated as follows:

"I consider that the charge at (a) of gross misconduct as levelled in charge Sheet -No. 43/C/ RS/IF, dated 5th January 1955 against you has been established as correct."

8. All that the report of the Court of Enquiry would have contained would be a discussion of the merits of the various pieces of evidence adduced in the case on behalf of the parties concerned or a discussion of the credibility of various witnesses. As we have already observed, the question of the merits of the charges cannot be agitated at this stage, and should be taken to have been closed.

Even if, therefore, the appellant had been given a copy of the report of the Court of Enquiry against him, it would not have been of any assistance at this stage of the case. All that he would need and which would be of assistance to him would be the result of the report of the Court of Enquiry, namely the conclusions arrived at by the Court of Enquiry with regard to the merits of the various charges which were framed against him. This was clearly done in the order of the 16th March, 1955.

9. Even supposing for a moment that the appellant was entitled to a copy of the report containing the findings, and there was any irregularity in the matter, we do not think that it is of such a nature as to vitiate the proceedings especially as the appellant does not appear to be prejudiced in any way. It is significant in this connection to note that the appellant himself did not consider the matter to be of any material Importance, because, after a copy of the proceedings of the Court

of Enquiry was supplied to him, he did not immediately after that or at any time during the source of the trial make a grievance to the effect that he should also have been supplied with the copy of the report of the Court of Enquiry.

There was nothing to prevent him from making an application to that effect. The failure on his part to make any such application farther indicates that at that stage he did not consider it necessary to have the said report in his possession, nor did he consider himself prejudiced by its absence.

10. On behalf of the appellant, it is argued before us that even at the second stage, the person proceeded against is entitled to reagitate the question of the merits of charges which are framed against him at the first stage of enquiry. We are unable to accept this contention of the learned counsel for the appellant. Reliance in this connection is placed by the learned counsel on a ruling of their Lordships of the Privy Council reported in AIR 1948 121 (Privy Council) .

We find that there is nothing in this case to support the above contention. In that case, a composite charge appears to have been framed against one Sri I. M. Lall, a member of the I. C. S. It is, therefore apparent that a separate second stage of the enquiry was not embarked upon at all. No separate notice calling upon the person proceeded against to show cause against the action proposed to be taken against him was issued against Sri I. M. Lall. No specification of the actual punishment proposed to be imposed upon the person proceeded against was given.

The only specification was hypothetical one which was made at the initial stage of the case when the charges were still unproved and the conclusions or findings of the authority trying Sri I. M. Lall had not been arrived at. In that stage of facts, their Lordships made the following observations:

"In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on." (P. 126, Col. 2).

11. It was further observed by their Lordships that the person proceeded against "would be entitled to represent against the punishment proposed as the result of the findings of the enquiry." All that this ruling lays down is that after the first stage is finished, the authority must come to a definite finding as to the merits of the charges, and it is only after a definite conclusion is arrived at in respect of this aspect of the matter that a notice showing cause against the action proposed to be taken should be issued against the person . concerned.

It nowhere lays down that at the second stage of the enquiry, the whole matter is reopened so that the person proceeded against is entitled to reagitate the whole matter. The interpretation suggested by the learned counsel appears to us to be quite unreasonable. Once the matter has been enquired into and the findings arrived at after giving full opportunity to the person proceeded against, it must become quite superfluous to give a further opportunity of contesting the

same matter. If this argument is accepted, it would lead to curious results. If the person proceeded against is allowed to reagitate the whole matter over again at the second stage, then there will never be any finality attaching to the findings arrived at as a result of the trial at the first stage.

If the whole matter is allowed to be reopened, then it might be that next time the enquiry authority might come to a different conclusion. It might hold that some of the charges found by it to be proved are not actually proved or vice versa. The purpose of Article 311(2) appears to be to enable the person proceeded against to know clearly the conclusions finally arrived at against him. The procedure suggested by the learned counsel will defeat this purpose.

12. For the above reasons, we are unable to accept the contention on behalf of the learned counsel. We see no substance in this appeal. We, accordingly, dismiss it summarily.