
(1983) 12 GUJ CK 0011
In the Gujarat High Court

S.R. Vaishnav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-12-1983

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1984) 1 GLR 458

Hon'ble Judges : S.A. Shah, J

Bench : Single Bench

Judgement

S.A. Shah, J.—The petitioner who was at the relevant time Superintendent of Central Excise at Bhavnagar challenges the order of his compulsory retirement passed by the Collector of Customs & Central Excise at Ahmedabad dated 21-7-1976 produced at Annexure-F, and the appellate order passed by the Government of India dated 22nd September, 1977 at Annexure-G on the ground that the same are violative of the principles of natural justice and also bad on merits.

2. The short facts of this petition are as under:

The petitioner was working as Superintendent of Central Excise at Bhavnagar, when he received a memorandum dated 4-11-1974 along with Articles of Charges and other relevant papers. The petitioner was charge-sheeted for three alleged delinquencies which are narrated in the order of the Collector at Annexure-F. Out of the three charges. Article III was not proved. So far as Charge-Article I is concerned the same has been proved partly to the extent of lack of devotion to duty, whereas the real charge mentioned in Article II is found to be proved.

3. The defence of the petitioner against these charges as reproduced by the competent authority, namely the Collector of Customs & Central Excise at page 67 is as under:

The departmental witnesses including Shri Bakshi, Assistant Collector and his

colleague Superintendent Shri Shillu were inimically disposed towards him and therefore their testimony ought not to be depended upon.

However, the competent authority has not believed the case of the petitioner that all these departmental witnesses were inimical towards him, and relying upon their evidence agreed that the finding of the Inquiry Officer that the charge contained in Article I has been partly proved and the charge contained in Article II has been fully proved, and therefore imposed punishment of compulsory retirement with effect from the date of service of the order. In appeal the Government of India appears to have passed a very laconic order confirming the finding of Collector of Customs and Central Excise.

4. Mr. Tripathi, learned Counsel for the petitioner, raised three contentions before me:

(i) The enquiry conducted by the Inquiry Officer was violative of the principles of natural justice and the petitioner was not given reasonable opportunity of submitting his defence and, therefore, the decision is bad.

(ii) That the Inquiry Officer has sent his report to the Vigilance Commission for its approval and/or recommendation and the competent authority, relying upon the recommendations and/or opinion of the Vigilance Commission, had passed the impugned order without furnishing copy of the recommendations of the Vigilance Commission, and in consequence thereof the order of the competent authority is violative of the principles of natural justice and not in accordance with Article 311 of the Constitution.

(iii) That the appellate order is laconic as no reasons have been given for confirming the order of the competent authority so much so that only the punishment is confirmed and not a word has been mentioned as to whether the finding given by the competent authority is accepted or not.

5. I will first deal with the second contention because the said point is covered by two decisions of this High Court which are binding to me. The petitioner has, in Para 21 of the petition, averred as under:

The petitioner submits that the act of the Inquiry Officer in forwarding his inquiry report through the Vigilance Commission was illegal.

The averments of the petitioner in Paragraphs 22 and 23 are as follows:

22. The act of the Vigilance Commissioner or Assistant Vigilance Commissioner or any other responsible officer of the Commission of making recommendation is also illegal.

23. The petitioner further submits that the copy of the Inquiry Report supplied to the petitioner by respondent No. 2 did not contain the copy of the above recommendation and that has adversely affected the case of the petitioner because there is no chance for the petitioner to make explanation to the said recommendation.

In reply to this averment of the petitioner, the relevant portion of the affidavit filed on behalf of the respondent No. 2 is reproduced below:

With reference to paragraph 21 of the petition, I am not able to understand the contention of the petitioner. However, I submit that the action of the Enquiry Officer in forwarding his report is legal.

This definitely suggests that the Inquiry Officer has sent his report to the Vigilance Commission. In para 26 of the affidavit-in-reply the deponent has stated as under:

With reference to paragraph 22 of the petition, I deny that the act of the Vigilance Commissions or the Assistant Vigilance Commissions or any other responsible officer of the Commission in making recommendation is illegal. I say that the Competent Authority came to its own conclusion having regard to the evidence on record of the enquiry.

Para 27 of the affidavit-in-reply also being very material is reproduced below:

With reference to paragraph 23 of the petition, I submit that the petitioner is not entitled to be supplied with a copy of the recommendation of the Vigilance Commission. I submit that the Vigilance Commission examines the report of the Inquiry Officer with reference to the evidence in record to ascertain and ensure that no injustice is done to the delinquent. I submit that the Disciplinary Authority, taken his own decision, after going through the report of the Enquiry Officer and the proceedings of the enquiry. I submit that the recommendation of the Vigilance Commission is only for assistance of the Disciplinary Authority and he makes up his own mind independently of the recommendation.

Paragraphs 25, 26 and 27 of the Affidavit-in-reply leave no doubt that the allegations of the petitioner that the report has been sent to the Vigilance Commission and that the Vigilance Commission has made recommendation and that that recommendation was sent to the competent authority, are amply proved.

6. In my opinion Mr. S.D. Shah, learned Counsel for the Central Government could not point out any provision in the rules enjoining the Inquiry Officer to send his report for recommendation of the Vigilance Commission. Under Article 311 of the Constitution of India the Collector of Customs is the only competent authority who can initiate proceedings and appoint an officer for making enquiry on his behalf as permitted under the rules. It is not permissible for the competent authority to take the recommendations or approval or concurrence of the Vigilance Commission. If either the Competent Authority or the Inquiry Officer does this, obviously such procedure would prejudice the petitioner. Not only that such illegal procedure appears to have been followed, but such recommendations of the Vigilance Commission, if made, copy thereof has not been given to the petitioner. This also violates the principles of natural justice inasmuch as the documents affecting the petitioner or his case are used without

giving copy thereof to the petitioner. It may be possible that the competent authority is not bound to take into consideration the recommendations of the Vigilance Commission, but as is seen from the human nature such recommendations, if any, may affect the final decision that may be taken by the Collector of Customs & Central Excise. In this view of the matter I am of the opinion that the procedure adopted by the Inquiry Officer and the recommendations if any made by the Vigilance Commission have clearly prejudiced the case of the petitioner. These are the steps which are violative of the principles of natural justice.

7. Mr. Tripathi, learned Counsel for the petitioner, relies upon the decision of this Court in Special Civil Application No. 403 of 1971, decided by A.D. Desai, J. (as he then was) on 6th September, 1972. The facts of that case were similar to that of this case. In the said case the petitioner had averred in para 26 of that petition that the Inquiry Officer had submitted the enquiry report through the Central Vigilance Commissioner, that the Commissioner had also sent his report or advice to the opponents and that the petitioner had not been supplied with the copy of the report or advice even though it was demanded. That was the case in which the petitioner who was working in the Department of Central Excise was removed by the Collector of Central Excise at Baroda. The moot point of law which was raised by the petitioner was that the report or advice of the Vigilance Commissioner cannot be said to be irrelevant. Non-supply of the copy of the said report resulted in violation of the rules of natural justice because the petitioner had no opportunity to represent against the proposed penalty mentioned in the report. The learned Judge, therefore, observed as under:

Now in the instant case the petitioner has established that the Central Vigilance Commissioner has submitted his report or advice, that the said report or advice was received by the disciplinary authority, that the same formed part of the record before him, that it constituted appropriate material for consideration and was considered before the impugned order was passed. The disciplinary authority did not deny the existence of the report or advice. The report or advice has been kept back with the result that the nature of the report or advice is not disclosed. The petitioner made repeated demands for the copy of the document but in vain. It is clear, therefore, that the impugned order is contrary to the rules of natural justice, cannot be sustained and the inquiry proceedings are vitiated from the state of show-cause notice relating punishment.

In view of the aforesaid finding the learned Judge had set aside the order of removal.

8. Mr. Tripathi, learned Counsel for the petitioner also relied upon the decision in the case of A.K. Roy Choudhury v. Union of India and Ors. 22 G.L.R. 1153. In the aforesaid case a Central Government employee who was working as Divisional Engineer, Telegraphs at Bhavnagar was compulsorily retired from service by way of penalty, which was challenged by the petitioner in that case on various grounds. One of the grounds on which the said order of punishment was

challenged was that the Inquiry Officer had submitted his enquiry report to the Government of India through the Chief Vigilance Commissioner and the petitioner reasonably believed that the Chief Vigilance Commissioner made endorsement on that report itself or on a separate paper along with the enquiry report and that endorsement contained comments or his opinion on the question of the subject-matter of the report. It might have also contained his recommendations. These comments or opinion or the recommendations were never brought to the notice of the petitioner. He was kept in dark about it. This amounted to violation of the principles of natural justice. N.H. Bhatt, J. in para 5 of his judgment observed as under:

5. From what has been quoted above, it is clear that the comments and opinion of the Central Vigilance Commission were taken into account by the disciplinary authority. It cannot do for the Department to say that as these comments and opinion and recommendations are confidential in character, they are not to be brought to the notice of the delinquent concerned. In judicial or quasi-judicial enquiries, there is nothing that can be said to be confidential. Any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. It is well nigh possible that the Central Vigilance Commission might have given its own reasons and expressed strong opinion against the petitioner. It is equally well nigh possible that some other record also might have been made available to the Central Vigilance Commission in the form of earlier confidential records of the employee concerned. The opinion of an august body like the Central Vigilance Commission would obviously carry great weight with the disciplinary authority in reaching a final conclusion. At any rate, the possibility of such an influence cannot be negatived.

With the above observation he concluded that:

In this view of the matter, I find that the impugned order, Annexure-D, cannot be allowed to stand. On this short ground, I declare that the impugned order Annexure-D, is bad at law and is inoperative.

Both these authorities cited by Mr. Tripathi clearly show that if the Inquiry Officer sends his enquiry report to the Vigilance Commission and if the opinion or recommendation of the Vigilance Commissioner or any Officer of that Organisation is not communicated to the delinquent-petitioner it will definitely prejudice his case. Such action would be contrary to the principles of natural justice. I am, therefore, of the opinion that the aforesaid action of the Inquiry Officer in sending his report to the Vigilance Commission and non-supply of the report, comments or recommendation of the Vigilance Commission has prejudiced the petitioner's case and a reasonable opportunity of demolishing such report has not been given to the petitioner, which has resulted into denial of reasonable opportunity violating the principles of natural justice. Therefore, the decision rendered by the competent authority and the appellate decision ;tre liable to be struck down.

9. So far as the first contention of the petitioner regarding non-supply of certain documents and bias of the Inquiry Officer are concerned, it is not necessary to decide the same because the petitioner will get an opportunity for agitating his grievance before the competent authority since I am quashing and setting aside the decision of the competent authority.

9.1. So far as the last contention of the petitioner that the order of the appellate authority is laconic is concerned, it is obvious that the appellate authority has not discussed the merits of the case at all. The appellate authority has not confirmed in specific terms the decision of the competent authority. It appears that the appellate authority has merely considered the quantum of punishment though detailed memorandum of appeal with numerous contentions raised therein was filed before the Appellate Authority. The decision of the appellate authority, therefore, suffers from the said infirmity. Since I am setting aside the decision of the competent authority, the decision of the appellate authority shall have also to be set aside.

10. In view of the aforesaid reasons I find that the impugned order at Annexure-F passed by the Collector of Customs & Central Excise, at Annexure-F cannot be allowed to stand. I, therefore, set aside the impugned order at Annexure-F and the appellate order at Annexure-G as ineffective and inoperative. However, I make it clear that it will be open to the disciplinary authority to issue fresh notice about the enquiry report together with additional material, if any, that the disciplinary authority is likely to take into account while assessing the merits or demerits of the matter. As the impugned order of compulsory retirement is quashed, it follows that the petitioner will be deemed to be in continuous service till the date of his retirement. Rule is accordingly made absolute with no order as to costs.