

(1984) 07 KAR CK 0043
In the Karnataka High Court
Case No : W.A. No. 1905 of 1981

State Bank of Mysore

APPELLANT

Vs

R. Shammanna

RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Government of India Act, 1935 — Section 240 (3)
Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 19.10,
19.12, 6 (3)

Citation : (1984) ILR (Kar) 738 : (1984) 2 KarLJ 318 : (1985) 1 LLJ 297

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

Hakeem, J.—This Writ Appeal is preferred against the order dated 16th October, 1981 passed by the learned single Judge in W.P. No. 6240 of 1978 quashing the order dismissal of the respondent. The learned Judge has reserved liberty to the appellant-Bank to pass a fresh order against the respondent after issuing a show cause notice with a copy of the Enquiry Officer's report.

2. Briefly stated, the facts of the case are as follows :

The respondent was a manager in one of the branches of the appellant-Bank at the relevant point of time. The internal audit of the Bank showed some irregularities said to have been committed by the respondent. On that count he was placed under suspension with effect from 26th May, 1972. On 2nd March, 1974 a notice was issued to him to show cause as to why disciplinary proceedings should not be taken on the alleged misconduct.

3. In the meanwhile, it appears, a criminal case was instituted against the respondent and two others under the provisions of the prevention of Corruption Act, before the special Judge, Bangalore, on the specific charge that the respondent has misappropriated a sum of Rs. 1,500/- out of the funds of the Bank. The special Judge, by his order dated 30th November, 1974 acquitted the respondent of that charge. However, the departmental enquiry proceeded against

him by framing as many as thirteen charges.

4. The Enquiry Officer, after considering the evidence produced and the written submissions filed by the parties, came to the conclusion that out of the thirteen charges framed against the respondent ten charges were held proved and the rest were held not proved. There upon, the Bank called upon the respondent by a show cause notice why he should not be dismissed from service. On 29th October, 1977, the respondent submitted his reply interalia stating that there was no evidence in proof of the charges and to hold him guilty. He also pathetically pleaded that in any event, having regard to his excellent service record in the past, the proposed penalty was not justified. However, the Bank by an order dated 8th December, 1977 dismissed the respondent from service.

5. After the receipt of the order of dismissal, the respondent with the intention of filing an appeal requested the Bank to furnish a copy of the rules or standing orders which governed the disciplinary proceedings against him. He also asked the Bank to intimate him the authority to whom the appeal should be preferred. In reply thereto, the Bank enclosed an extract of the relevant portion of the Bipartite settlement (hereinafter referred to as the Rules) reached between the management of the Bank and its workmen. The Bank also stated therein that in the absence of statutory rules the said Rules were being applied for holding the disciplinary proceedings against supervisory staff. The Bank further informed the respondent that no appellate authority was specified but if an appeal was received, it would be placed before the Executive committee of the Bank for consideration.

6. The respondent alleged that it was for the first time, by the aforesaid letter of the Bank that he came to know about the Rules under which the disciplinary proceedings were conducted against him. He then moved this Court under Art. 226 of the Constitution challenging the Validity of the order of his dismissal.

7. The learned single Judge allowed the writ petition quashing the dismissal order. He held interalia, that the Rules of the enquiry were statutory and the requirement of giving a second opportunity was mandatory. The second opportunity to show cause against the proposed penalty should be a reasonable opportunity and not an empty formality. The respondent had no such reasonable opportunity since the Bank did not furnish him a copy of the enquiry report. He also held that the disciplinary authority did not properly consider the various conventions raised by the respondent. With these and other reasons, the learned Judge quashed the dismissal order. He, however, reserved liberty to the Bank to issue fresh show cause notice to the respondent enclosing thereto a copy of the Enquiry Officer's report and to pass an order after considering the reply, if any, submitted by him.

8. The Bank has preferred this writ appeal.

9. Mr. Shantharaj, learned counsel for the Bank has at the out set contended that the Rules governing the disciplinary proceedings against the cadre of officers to

which the respondent herein belonged, have no statutory force and are only a part of the Bipartite settlement, which are applicable to the category of "workmen" of the Bank. He also contended that the second opportunity by way of show cause notice against the proposed penalty cannot be demanded under the principles of natural justice and therefore, there was no question of furnishing a copy of the enquiry report to the respondent. He further urged that even otherwise there was no contravention of the Rules governing the enquiry as the Bank was under no obligation to voluntarily furnish a copy of the enquiry report and the respondent, if he wanted it, could have demanded it under Rule 19.10. No such demand was ever made by the respondent. Apart from that, the respondent has not made out that he was prejudiced for want of a copy of the enquiry report and in his long reply to show cause notice, he did not make any grievance about such prejudice. Hence, it is not open for the respondent to raise that contention for the first time in this Court to invalidate the proceedings which according to the learned counsel, were held in accordance with the Rules.

10. Mr. H. R. Venkatramanaiah, learned counsel for the respondent sought to support the order of the learned single Judge. He also urged that even if the Rules regulating the enquiry are not statutory, they are binding as between the management and the officers and the workmen. Under the Rules second opportunity is a must and it must be a reasonable opportunity. He further contended that the Rules require that a hearing should be given to the delinquent officer and not a mere opportunity to show cause against the proposed penalty. Since no hearing was afforded to the respondent, the penalty imposed cannot be sustained.

11. To appreciate these contentions it is necessary to refer to the relevant provisions of the Rules.

"Rule" 19.1. In supersession of paragraphs 18.20, 18.24 and 18.28 of the Desai Award, a person against whom disciplinary action is proposed or likely to be taken shall, in the first instance, be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view the following shall apply.

19.6. An employee found guilty of gross misconduct may : (a) be dismissed without notice; or (b) be warned or ensured, or have an adverse remark read against him; (c) be fined; or (d) have his increment stopped; or (e) have his misconduct condoned and merely be discharged.

19.10. In all cases in which action under clauses 19.4, 19.6 and 19.8 may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date on which the proceedings are held the name of the employee proceeded against, the charge or charges, the evidence, if any, tendered, by the said employee, the finding or findings, with the grounds on

which they are based and the order passed shall be recorded with sufficient fullness, as clearly as possible and such record of the proceedings shall be signed by the officer who holds them, after which a copy of such record shall be furnished to the employee concerned, if so required by him in writing.

19.12. The procedure in such cases shall be as follows :

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry sufficient time being given to him to enable him to prepare and give his explanation as also to procure any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry to cross-examine any witnesses on whose evidence the charge rests and to examine witness and produce other evidence as his defence. He shall also be permitted to be defended.

(i) (x) by a representative of a registered trade Union of Bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade Union of Bank employee on the aforesaid date, by a representative of a registered trade Union of employees of the bank in which he is employed;

OR

(ii) at the request of the said Union by a representative of the State Federation or All India Organisation to which such Union is affiliated;

OR

(iii) with Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(c) In awarding punishment by way of disciplinary action the authority shall take into account, the gravity of the misconduct, the previous record. If any, of the employee and any other aggravating or extenuating circumstances that may exist.

(e) An enquiry need not be held if -

(i) the misconduct is such that even if proved the Bank does not intend to award the punishment of discharge or dismissal; and

(ii) The Bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct; and

(iii) The employee makes a voluntary admission of guilt in his reply to the aforesaid show cause notice.

However, if the employee concerned requests a hearing regarding the nature of punishment such a hearing shall be given."

12. At the outset we may point out that it is not necessary to examine whether the Rules have no statutory force. At any rate, it cannot be urged and in fact, it was not urged that the Rules are not required to be followed in the disciplinary proceedings taken against the erring officials. In fact, the Management itself has admitted that the said Rules governed the enquiry proceedings against the respondent.

13. Mr. Shantharaj did not dispute that the opportunity to be afforded to the respondent to show cause against the proposed punishment should be a reasonable opportunity and not an empty formality. It is indeed a correct and proper submission. Since such an opportunity is a reasonable opportunity, what then constitutes a reasonable opportunity presents no problem for decision.

14. In *State of Assam and Another Vs. Bimal Kumar Pandit*, the Supreme Court while explaining the scope of second opportunity contemplated under Art. 311(2) of the Constitution observed :

"In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the public officer is entitled to show cause not only against the action proposed to be taken against him, but also against the validity by the correctness of the findings recorded by the enquiring officers and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in dispute."

15. In *Uttar Pradesh Government Vs. Sabir Hussain*, the Supreme Court while considering a similar question under S. 240(3) of the Government of India Act, 1935, observed :

"It is to be noted that the section required not only the giving of an opportunity to show cause, but further enjoins that the opportunity should be "reasonable". What then is "reasonable opportunity" within the contemplation of S. 240(3) ? How is it distinguished from an opportunity which is not reasonable ? The question has to be answered in context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it.

As pointed out by this Court in *State of Gujarat v. Teredesai*, the entire object of supplying a copy of the report of the enquiring officer to satisfy the punishing

authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. If the enquiry officer had also made recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. The requirement of reasonable opportunity, therefore, would not be satisfied unless the entire report of the enquiry officer including his views in the matter of punishment are disclosed to the delinquent servant. Thus the broad test of "reasonable opportunity" is, whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage or in the alternative, to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him."

16. It will be therefore seen that when a second or final show cause notice is required to be given before the imposition of penalty, the delinquent employee, to whom such a notice is issued, is entitled to say that the finding recorded is not based or justified on the evidence on record, that in any event the punishment proposed is excessive. To raise these contentions, it is necessary that he must be made aware of the incriminating evidence collected against him and considered by the enquiry officer with his final views in the matter. That could be satisfied only if the report of the enquiry officer is furnished to the delinquent officer while serving the show cause notice. In the instant case, it is admitted that the respondent was not given a copy of the report of the enquiry officer, which is a necessary requirement of a reasonable opportunity. We, therefore, agree with the learned Judge that the penalty imposed was vitiated by not furnishing a copy of the enquiry report to the respondent. The prejudice to the respondent, in the circumstances, is evident and apparent.

17. Mr. Shantharaj, however, contended that the respondent could have asked for a copy of the report and in the absence of any such request, the Bank was not bound to furnish him a copy of the enquiry report. Reliance was placed on the decision of the Supreme Court in the State of Uttar Pradesh Vs. Om Prakash Gupta, and in particular the following passage at page 683 :

"Further it was open to the respondent to ask for a copy of that report when he was asked in 1949 to show cause against the proposal to dismiss him. He did not do so nor did he object to the noticed calling upon him to show cause why he should not be dismissed, on the ground that he had not been supplied with a copy of the report made by the enquiry officer"

We do not think these observations are of much assistance to the case on hand. There a summary of the report of the enquiry officer had been given to the delinquent employee. It was not made out that summary did not contain all the relevant facts and circumstances taken into consideration as well as the conclusions reached by the enquiry officer and the recommendations made by

him. Besides, the decision does not support the contention urged for the Bank to the effect that when a provision requires that a reasonable opportunity should be given to the delinquent employee to show cause against the proposed punishment, non-giving of enquiry report would not vitiate the final order.

18. Apart from that, there is greater illegality in the procedure followed by the disciplinary authority against the respondent. Sub-rule (a) to Rule 19.12 of the Rules reads :

"He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him."

This sub-rule envisages something more than mere opportunity to be afforded to the respondent. It requires a hearing to be given. The difference between mere opportunity and hearing is explicit. There may be fusion between the two, but there should not be a confusion between the two concepts. Opportunity may be extended to hearing, but hearing cannot be condensed or limited to mere opportunity to file objections or representations. "Hearing" means, ordinarily an opportunity of being heard, that means personal hearing. It is also clear from Rule 19.12. (e) of the Rules, which provides :

"However, if the employee concerned requests a hearing regarding the nature of punishment such a hearing shall be given."

19. Similar word "hearing " appearing in sub-rule (3) of rule 6 of the Karnataka Acquisition of Land grant of House Sites Rules 1972 came for consideration before this Court in Patel Munireddy v. Dy. Commissioner, Bangalore (1976(2) KarLJ 168) to which one of us (Jagannatha Shetty, J) was a party, While interpreting the said word, it was observed :

"Sub-rule (3) positively states that the Assistant Commissioner shall hear the objector and the Block Development Officer. "Hearing" in the context is "personal hearing" and not mere opportunity to file objections If the right to be heard is to be a real right and is worth anything it must carry with it a right in the person to know the case which is made against him. He must know what materials have been collected, what defence has been given and what statements or reports have been made affecting his rights. He must be given a fair opportunity for correcting or contradicting any relevant statement prejudicial to his view. These principles appear in all the cases right from the celebrated judgment of Lord Loveburn L.C. in Board of Education v. Rice (1911 A.C. 179).

20. This crucial aspect appears to have escaped the notice of the disciplinary authority. The show cause notice issued by the disciplinary authority against the proposed penalty asked the respondent to file only the representation. The respondent has not been afforded an opportunity of being heard. When the rules governing the conducting of enquiry specifically provide that a hearing shall be given to the delinquent employee, he ought to be given a fair hearing and failure to give such a hearing would vitiate the order of penalty. The order against the

respondent therefore cannot be sustained.

21. In conclusion that have reached, it is unnecessary to consider whether, the disciplinary authority has considered the various contentions raised by the respondent in his reply to his show cause notice.

22. In the result the appeal fails and is dismissed. No costs.