

The Chief Engineer (Highways and Rural Works) and Another
Vs
A. Chengalvarayan

APPELLANT
RESPONDENT

Bench : Division Bench

V. Ramaswami, J.—On certain allegations of corruption, disciplinary proceedings were initiated against the respondent and the matter was referred to the Tribunal for Disciplinary Proceedings for a detailed enquiry. The Tribunal framed four charges. All of them related to incidents of corruption. After a detailed enquiry the Tribunal held that Charges 1, 2 and 4 had been established and recommended that the respondent might be dismissed from service. A show cause notice against the proposed punishment of dismissal was thereupon issued by the Chief Engineer (Highways) who was the appointing authority, enclosing a copy of the enquiry report and after considering the explanation submitted by the respondent, in his proceedings, dated 12th February, 1970, the Chief Engineer dismissed the respondent from service. Against the order of dismissal of the Chief Engineer, the respondent filed W.P.No.681 of 1970. The main attack on the validity of the order at that stage was that only a portion of the report of the Disciplinary Tribunal was sent to the respondent and that the portion relating to the recommendation of the Tribunal on punishment was not sent to him. That writ petition was allowed by this Court on the ground that not furnishing that portion of the report of the Tribunal for Disciplinary Proceedings relating to the punishment amounted to a denial of opportunity and following the decision in State of Gujarat Vs. R.G. Teredesai and Another, , the order of dismissal was held to be illegal. However, the Court gave liberty to the Government to proceed with the matter from the stage of issue of a notice to show cause against the proposed punishment after furnishing, to the respondent a copy of the

recommendations of the Tribunal. When the matter again went for fresh consideration, the Chief Engineer issued a fresh show cause notice communicating the recommendations of the Tribunal and obtained the respondent's explanations. Since the Chief Engineer felt that the finding on charge I by the Tribunal for Disciplinary Proceedings required reconsideration, he forwarded the explanations of the respondent along, with the finding and recommendations of the Tribunal to the Government under Rule 10(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, hereinafter referred to as the Rule, for passing final orders,, after pointing out the discrepancy in relation to the first charge. The Government noticed that the same point that was raised by the Chief Engineer relating to charge I was also raised before,, and noticed by, the Tribunal during the course of the enquiry, that after consideration of the same, the Tribunal had come to the conclusion that charge I was also proved and that the finding of the Tribunal could not be said to be perverse or unreasonable. Since, the proposed punishment was one of dismissal from service, as contemplated in Rule 18(1)(b) of the Tamil Nadu Public Service Commission Regulations, the Government consulted the Tamil Nadu Public Service Commission for its views in the matter. The Commission held that charges 2 and 3 had been established and that for the proved charges of corruption, the delinquent deserved the punishment of dismissal from service. Accordingly, the Commission had advised the Government that the delinquent may be dismissed from service. Thereafter, accepting the advice of the Tamil Nadu Public Service Commission, the Government in G.O.Ms. No. 1793, Public Works Department, dated 22nd November, 1973, dismissed the respondent from service with effect from the date of that order. The respondent filed W.P. No.6580 of 1973 praying for the issue of a writ of certiorari to quash the Government order dismissing him from service. That writ petition was allowed by the learned single Judge on the ground that the impugned order was passed on the basis of the recommendations of the Public Service Commission and of the Chief Engineer (both of which were made after the petitioner (respondent herein) had sent his reply to the last show cause notice), without those recommendations having been communicated to the petitioner (respondent herein) and without his having been asked as to what he had to say to them. "The procedure, according to the learned Judge contravened one of the principles of natural justice, namely, that nobody shall be condemned unheard. In the words of the learned Judge.

In taking into consideration the recommendations made by the Chief Engineer and the Public Service Commission, the Government used against the petitioner (respondent herein) material which he had no knowledge about and to which he was never asked to plead. He was thus condemned unheard in relation to the material used against him. Such a course is not open to the Government....

(Italics is ours).

In support of this view, the learned Judge also relied on the decision of the Supreme Court reported in *State of Gujarat Vs. R.G. Teredesai and Another*, . It

is against this order. the present writ appeal has been filed by the Government.

2. In. relation to disciplinary matters a civil servant has both a constitutional (guarantee and a right to the adherence of the principles of natural justice. Under Article 311(1) of the Constitution of India, he could not be dismissed or removed by an authority subordinate to that by which he was appointed. Under Article 311(2) as it stood at the relevant time.

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

The Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, prescribes the procedure to be followed by the Tribunal in holding the enquiry against a delinquent officer. After the enquiry has been completed, under Rule 9 of the rules the Tribunal shall "send its findings and recommendations to the Government together with its opinion, in cases where acquittal is recommended, whether the officer concerned is fully exonerated or not for the purpose of Sub-rule (2) of Fundamental Rule 54". There is no dispute in this case that the first part of Article 311(2) relating to the enquiry held by the Tribunal and sending of the reports of the Tribunal giving its findings and recommendations, has been followed. After the earlier writ petition was allowed, the petitioner was issued a notice to show cause against the proposed punishment of dismissal enclosing a report in full of the disciplinary Tribunal including its recommendations relating to punishment. The respondent-delinquent officer also had submitted his explanation or objections to the report of the Enquiry Officer and the proposed punishment. It is at this stage, the Chief Engineer felt that the finding of the Tribunal relating to charge I required reconsideration. Rule 10 of the Rules prescribes the procedure to be followed in regard to the passing of final orders in cases enquired into by the Tribunal. The relevant portion of Clause (a) of Rule 10 of the Rules reads as follows:

(a) In cases enquired into by the Tribunal, the Government shall be the authority competent to impose a penalty in cases relating to:

(i) Gazetted Officers,

(ii) Non-Gazetted Officers whose cases are referred to the Tribunal along with cases relating to Gazetted Officers because the cases are inter-connected or because the officers are jointly involved; and

(iii) Non-Gazetted Officers who belong to different departments but are jointly involved or whose cases are inter-connected.

3. In cases where it is proposed to impose any of the major penalties, the

Government shall arrive at provisional conclusions in regard to the penalty to be imposed and supply the person charged with a copy of the report of the Tribunal and he shall be called upon to show cause within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Clause (6) of Rule 10 of the Rules states:

In cases relating to Non-Gazetted Officers enquired into by the Tribunal excepting those referred to in Rule 10(a)(ii) and (iii) above, the report of the Tribunal, along with the records, shall, on receipt by the Government, be transmitted to the Head of the Department concerned for passing final orders. If the Head of the Department on consideration of such report agree with the Tribunal's findings, the Head of the Department shall arrive at provisional conclusions in regard to the penalty to be imposed, supply the person charged with a copy of the report of the Tribunal and call upon such person to show cause within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be duly taken into consideration before final orders are passed by the Head of the Department.

The proviso to Clause {b) of Rule 10 of the Rule reads as under:

Provided that if, for sufficient reasons, the Head of the Department disagrees with the whole or any part of the Tribunal's findings or recommendation he shall state his reasons for such disagreement and shall submit the case to the Government for passing final orders. Thereupon, the procedure indicated in Clause (a) shall apply.

It is in view of this provision that when the Chief Engineer considered that the finding on charge I required reconsideration, he forwarded the entire-records including the explanation of the delinquent officer to the Government for passing final orders. As already stated,, the Government did not agree with the Chief Engineer for the reason that the Tribunal had taken those matters which were pointed out by the Chief Engineer into consideration, while considering the evidence and submitting the report and that the finding of the Tribunal could not be said to be perverse or unreasonable. In these circumstances, the first question for consideration is whether the report of the Chief Engineer while forwarding the papers under Rule 10(b) proviso, should have been sent to the delinquent officer and his explanation called for before the Government passes final orders. In the decision relied on by the learned single Judge which was also pressed into service by the learned Counsel for the respondent in the appeal, the Supreme Court considered the question as to whether, in a case where the Enquiry Officer was not required to make any recommendation about the punishment which was to be imposed on the delinquent officer on the charges against him which had been found to have been proved, but, in fact, recommended a particular penalty or punishment to be-imposed, in the light of his findings or conclusions, that portion of the recommendation relating to penalty or punishment also should be communicated to the delinquent officer

and his explanation called for. The Supreme Court held that "such recommendation formed part of the record and constituted appropriate material for consideration of the Government" and that, therefore, it should not be withheld from the delinquent officer.

The Supreme Court further observed:

The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent 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 has 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 a 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.

It may be seen from this judgment that the decision related to the report of the Enquiry Officer, i.e., the report of the Tribunal for Disciplinary Proceedings, in this case. Whether the procedure is under Rule 10(a) or Rule 10(b) of the Rules, the Rules also contemplate the furnishing of a copy of the report of the Tribunal for Disciplinary Proceedings, while calling upon the delinquent officer, to show cause against the particular penalty proposed to be inflicted. The second part of Clause (2) of Article 311 of the Constitution refers to a reasonable opportunity being given to the delinquent officer of making representations on the penalty proposed. It is with reference to this provision, the Supreme Court made the observations that the entire report of the Enquiry Officer including the views in the matter of punishment is to be disclosed to the delinquent officer.

4. Mr. P. Chidambaram, the learned Counsel for the respondent, contended that when the proviso to Rule 10(b) is invoked by the Chief Engineer, his report or comment shall be deemed to be an enquiry report relating to the disciplinary proceedings and that irrespective of whether his comments were in his favour or against him, the delinquent officer is entitled to be served with a copy of such report or comments in order to afford him an opportunity to give his explanation on the basis of such report. The Rules when they refer to a copy of the report of the Tribunal to be supplied to the delinquent officer when a show cause notice against the particular penalty proposed is to be issued, did not and could not include a report or comment of the Chief Engineer, when he forwarded the papers to the Government for final orders under Rule 10(b) proviso. The Chief Engineer was not a Tribunal for disciplinary proceedings and the report of the Tribunal is entirely different from that of the Chief Engineer. The only consideration in such circumstances, therefore, is whether any of the principles of natural justice have been violated in not sending a copy of the Chief Engineer's report to the delinquent officer and calling for an explanation from him. The principles of natural justice cannot be looked at in the abstract as

simply requiring every form of report or paper to be furnished to the delinquent officer. It is only if the report or the recommendation contained any material against the delinquent officer and if that is going to be taken into account by: the Government, then only the report or the recommendation has to be supplied and his explanation called for. In fact, in the portion extracted from the judgment appealed against, we have already emphasised this aspect when the learned Judge has used the words that "the Government used against the petitioner (respondent herein) material which he had no knowledge about and to which he was never asked to plead." The Chief Engineer's report, if at all, was in favour of the delinquent officer and he had only requested the Government to reconsider the finding of the Tribunal on charge I, on the ground that the Tribunal had not taken into account certain aspects. In not forwarding the copy of the Chief Engineer's report in such circumstances, the Tribunal had not violated any of the principles of natural justice.

5. The decision reported in *State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another*, cited by the learned Counsel for the respondent, arose out of a suit filed by a dismissed civil servant for a declaration that the order of dismissal passed by the Inspector General of Prisons, Saurashtra, was illegal and void on the ground that it contravened the provisions of Article 311(2) of the Constitution. After an enquiry into certain charges, the Enquiry Officer made a report and on the basis of which the plaintiff was called upon to show cause why he should not be dismissed from service. The notice stated that the charges framed against him and in particular the charge of having accepted illegal gratification have been established to the satisfaction of the Government and that therefore he was called upon to show cause why the punishment of dismissal from service should not be inflicted upon him. The plaintiff submitted his explanation, but in spite of the same he was dismissed from service. One of the contentions of the plaintiff in the suit was that he was not furnished with a copy of the enquiry report and that, therefore, the order of dismissal was illegal. The Government contended that there was no duty to supply a copy of the report of the enquiry officer. While overruling this objection of the Government and upholding the decision of the High Court on this point, the Supreme Court observed:

It seems to us that the High Court came to a correct conclusion. The plaintiff was not aware whether the enquiry officer reported in his favour or against him. If the report was in his favour, in his representation to the Government he would have utilised its reasoning to dissuade the Inspector General from coming to a contrary conclusion, and if the report was against him he would have put such arguments or material as he could to dissuade the Inspector General from accepting the report of the Enquiry Officer. Moreover, as pointed out by the High Court, the Inspector General of Prisons had the report before him and the tentative conclusions arrived at by the Enquiry Officer were bound to influence him, and in depriving the plaintiff of a copy of the report he was handicapped in not knowing what material was influencing the Inspector General of Prisons.

It was this passage which was relied on by the learned Counsel for the respondent. We are unable to see any assistance from this passage in support of the submission of the learned Counsel for the respondent that irrespective of the fact whether the report of the Chief Engineer was in his favour or against him, the respondent was entitled to be supplied with a copy of the same and his objections or explanations called for. As already stated, we are on the question of observing the principles of natural justice at the stage when the Chief Engineer submitted his report and unless the report is considered to contain any material against the delinquent officer, there was no legal necessity for the Government to supply a copy of the same and call for the respondent's explanation.

6. The decision in *Uttar Pradesh Government Vs. Sabir Hussain*, was one rendered u/s 240(3) of the Government of India Act, 1935. That decision also related to the report of the Enquiry Officer and the need for furnishing the entire report to the delinquent officer when calling for his explanation to show cause against the proposed punishment and, therefore, it could not be of any assistance on the point now in issue. But we may quote certain observations in that judgment which are useful for considering the point in issue in this case. In paragraph 13 of the judgment, we find the following passage:

What then is "reasonable opportunity" within the contemplation of Section 240(3)? How is it distinguished from an opportunity which is not reasonable? The question has to be answered in the context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it.

Again in the same paragraph, we find the following observations:

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.

As we have stated earlier, the report of the Chief Engineer, if at all, was in favour of the delinquent officer and no material in it which was against the delinquent officer was relied on by the Government so as to invalidate the impugned order of Government and, therefore, the order of the Government is not vitiated on this ground.

7. The next question for consideration is whether the impugned order of the Government is vitiated by non-service of the recommendations of the Public Service Commission and calling for an explanation on that report from the delinquent officer. Under Article 320(3) of the Constitution, the State Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity, in eluding memorials or petitions relating to such matters, and it shall be the duty of the

Public Service Commission to advise on any matter so referred to them. The proviso to Clause (3) of Article 320 states that the Governor of a state as respects the services and posts in connection with the affairs of a State may make Regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. In exercise of the powers under Article 320 and all other powers enabling, the Tamil Nadu Government have published the Tamil Nadu Public Service Commission Regulations, 1954. Under Regulation 18(b) among others where the Government proposes to pass an original order imposing a punishment of dismissal from service of any State Government servant it shall consult the Service Commission. The Commission's recommendations or advice had been held to be directory in nature in *Major U.R. Bhatt Vs. Union of India (UOI)*, . The Supreme Court observed:

In *State of U.P. Vs. Manbodhan Lal Srivastava*, , this Court held that Article 320(3)(c) of the Constitution of India (which is substantially the same as Section 266 of the Government of India Act) is not mandatory and that it does not confer any rights on the public servant, and the absence of consultation or any irregularity in consultation does not afford him a cause of action in a Court of law. It was also held that Article 311 of the Constitution is not controlled by Article 320. The content of the protection afforded to civil servants u/s 240, Clause (3) of the Government of India Act was the same as afforded by Article 311 of the Constitution, to civil servants.

What is relevant to be noted here is that the Supreme Court had categorically held that Article 311 of the Constitution is not controlled by Article 320. Therefore, the reasonable opportunity contemplated under Article 311 does not cover the furnishing of the advice of the Service Commission to the delinquent officer for offering his remarks on such advice or recommendation. In fact, the stage at which the consultation with the Public Service Commission is provided itself shows that it is only of recommendatory nature and no right could flow to a delinquent officer on the basis of such report. Further, in this case factually the Public Service Commission has not disagreed with the Tribunal on charges 2 and 4. So far as the punishment is concerned, it had not proposed any higher punishment than that recommended by the Tribunal. In the circumstances, the report of the Commission also could not be stated to be against the delinquent officer. We are therefore unable to agree with the learned Counsel for the respondent that on the ground of non-supply of Commission's report, the impugned order of dismissal is vitiated. No other point is urged in this appeal.

8. The writ appeal is allowed. The order of the learned Judge is set aside and the writ petition is dismissed. The rule nisi is discharged.

There will be no order as to costs.