
(2001) 07 AP CK 0147

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1167 of 2000

The Chief General Manager, S.B.I. and Others

APPELLANT

Vs

R. Sambamurthy

RESPONDENT

Date of Decision : 01-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2001) 07 AP CK 0147

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : K.Srinivasa Murthy, for the Appellant; Y. Venkata Sastry, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Whether non supply of a copy of the investigation report which formed the basis for holding a preliminary enquiry violates the principles of natural justice, is the question involved in this writ appeal.

2. The fact of the matter lies in a very narrow compass. The respondent - writ petitioner was working with the State Bank of India as an Officer. He was charge-sheeted on certain allegations. He also submitted his reply on 27.10.1993.

3. Before a regular enquiry could commence, he made an application for furnishing certain documents allegedly which have not been furnished to him. The Enquiry Officer appointed for conducting the enquiry into the alleged misconduct committed by the writ petitioner found him guilty and submitted a report on 11.3.1997. The disciplinary authority imposed the punishment of removal of service where against the writ petitioner preferred a departmental appeal which was also dismissed on 29.1.1998.

4. The respondent - writ petitioner questioned the said order by filing the writ petition.

5. The question which was raised before the learned single Judge was as to whether by reason of non supply of an investigation report which was said to be the basis of issuing the charge sheet, the petitioner has been prejudiced. Before the learned single Judge, a plea was taken to the effect that the said document is a privileged document. Rejecting the said contention, the learned single Judge held that by reason of non supply of the said document, the petitioner has been greatly prejudiced.

6. Mr. K. Srinivasa Murthy, learned counsel appearing on behalf of the appellants inter alia has submitted that as the said report was not relied upon by the disciplinary authority, the petitioner cannot be said to have been prejudiced thereby. In any event, it had not been shown as to how the petitioner has been prejudiced. Before the learned single Judge as also before us, reliance has been placed by the learned counsel on State Bank of Patiala and others Vs. S.K. Sharma, .

7. Mr. Y. Venkata Sastry, learned counsel appearing on behalf of the respondent on the other hand would submit that no privilege could have been claimed by the appellants herein in relation to the said document. The learned counsel would contend that the respondent - writ petitioner has certainly been prejudiced by non supply of the investigation report as the findings of the preliminary enquiry were based thereupon. Reliance in this connection has been placed on STATE OF U.P. V. SHATRUGHAN LAL, 1998 (5) SLR 43.

8. It stands admitted that investigation was made prior to the issuance of charge sheet against the writ petitioner- respondent. Such charge sheet was issued inter alia on the basis of the said investigation report. In para 10 of the counter affidavit, it is stated:

Further, it is submitted that the Investigation Report is a privileged document and the custodian of the report had claimed privilege. As such, it could not be made available to the petitioner. The disciplinary authority had thoroughly analysed the investigation report and only after he was satisfied that there was a prima facie case, he decided to charge sheet the petitioner, initiating the disciplinary proceedings against him. The charge sheet served on the petitioner is a reflection of the lapses / irregularities which were brought out in the report of the investigating Officer and as such not making available the report would not amount to denial of a reasonable opportunity to the petitioner. It is submitted that as there was apprehension of the petitioner tampering with the documents, witnesses and other evidences, he was relied after handing over emergency charge to his successor and transferred from Payakraopet and later on placed under suspension, after satisfying that there was a prima facie case for initiating disciplinary action against the petitioner. Hence, the claim of the petitioner that he was not given a reasonable opportunity cannot be accepted as tenable.

9. It is not in dispute that the said investigation report was used only for the purpose of framing of charges. It is also not in dispute that the charges were

framed by the disciplinary authority on his prima facie satisfaction that a case has been made out for initiation of disciplinary proceedings.

10. It is one thing to say that certain documents had been made use of for the purpose of holding a preliminary enquiry so as to arrive at a prima facie finding as to whether a regular disciplinary proceedings are required to be initiated or not, but, it is another thing to say that the essential document which had been made use of by the disciplinary authority for forming an opinion that the delinquent Officer is guilty of the charges, has not been furnished.

11. The learned single Judge proceeded on the basis that as the disciplinary authority had arrived at a prima facie conclusion that a regular departmental proceedings should be initiated, it was incumbent upon it to furnish the said document.

12. The decision in SHATRUGHAN LAL's case (supra) on which reliance has been placed by Mr. Venkata Sastry stands absolutely on a different footing. Therein the investigation was made for certain purposes viz., enabling the disciplinary authority to form an opinion.

13. It is not a document whereupon the charges are based although the same might have been used by the disciplinary authority for arriving at a satisfaction that a prima facie case has been made out. The claim of privilege might have been rightly or wrongly made, but, if there has been substantial compliance to the principles of natural justice, it would be for the delinquent Officer to show that he has been prejudiced by reason of non supply of a particular document. Before initiation of a disciplinary proceeding, an employer must be prima facie satisfied that the employee committed some misconduct. There are cases where rules provide for holding such preliminary enquiry, but, in this case, it has not been shown that holding of such preliminary enquiry was mandatory.

14. The purpose of holding such preliminary enquiry has been stated in Champaklal Chimanlal Shah Vs. The Union of India (UOI), in the following terms:

"It is well known that Government does not terminate the services of a public servant, even a temporary servant, without reason; nor is it usual for Government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case, there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his product or his suitability for the job and / or his work. The same may apply to the reversion of

a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and / or conduct of a temporary servant may arise on complaint against him. In such cases, two courses are open to Government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/ or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Art.311 (2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action is to be not taken against him. An enquiry Officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and this enquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant".

15. Reference may also be made to *Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen*, . In *Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta and Others*, , it was observed that when a preliminary enquiry is held for framing the charges, it will not be rendered irregular for violation of the principles of natural justice inasmuch as depending on the result of such enquiry, the department will take action where the principles of natural justice would have to be complied with. Yet again in *Mohammad Sharif Khan Vs. Onkar Singh and Others*, , it was observed that such an enquiry for the purpose of framing of charges can also be held by an expert committee.

16. The doctrine of principles of natural justice has undergone a sea-change. In *STATE BANK OF PATIALA V. S.K. SHARMA*, (supra) the Apex Court keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee enunciated, inter alia, the following principles:

(a) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/ regulations/ statutory provisions governing such enquiries should not be set aside automatically.

(b) A substantive provision has normally to be complied with and the theory of substantive compliance or the test of prejudice would not be applicable in such a case.

(c) In case of violation of a procedural provision, it is to be seen whether it falls

under "no notice", "no opportunity" and "no hearing" category. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice. If it is found that a delinquent employee has been prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/ or the order of punishment. If no prejudice is established to have resulted therefrom, no interference is called for. There may, however, be certain procedural provisions which are of a fundamental character, whose violation by itself is proof of prejudice. The Court may not insist on proof of prejudice in such cases.

(d) In case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the stand point of substantive compliance. The order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(e) In case of violation of procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be former, then it must be seen whether the delinquent employee has waived that requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent employee has not waived it, then the Court or Tribunal should make appropriate directions including the setting aside of the order of the punishment.

(f) Where the enquiry is not governed by any rules/ regulations/ statutory provisions and the only obligation is to observe the principles of natural justice, the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule. In the case of former, the order passed would undoubtedly be invalid or one may call it "void" or a nullity. But in the latter case, the effect of violation has to be examined from the standpoint of prejudice.

17. In *KHAITAN (INDIA) LTD. v. UNION OF INDIA*, 1999 (2) CAL 478, a Division Bench of Calcutta High Court to which one of us (Satyabrata Sinha, C.J.) was party, observed:

Assuming for the sake of argument that violation of the principles of natural justice has taken place, and thus, this court may exercise its jurisdiction under Article 226 of the Constitution of India, a question would arise as to whether keeping in view the facts and circumstances of the case it would entertain the writ application.

The concept of principles of natural justice has undergone a radical change. It is not in every case, that the High Courts would entertain a writ application only on the ground that violation of principles of natural justice has been alleged. The apex court, in *State Bank of Patiala and others Vs. S.K. Sharma*, has clearly held

that a person complaining about the violation of the principles of natural justice must show causation of a prejudice against him by reason of such violation. The apex court has held that the principles of natural justice, may be said to have been violated which require an intervention when no hearing, no opportunity or no notice has been given. Reference in this connection may also be made to *Managing Director, E.C.I.L. v B.Karmakar*, reported in AIR 1994 SC 1076. The question as to the effect of non-grant of enough opportunity to the learned counsel for the appellant by the Commission to meet the allegations made in the supplementary affidavit requires investigation. As to what extent the appellant has suffered prejudice would be a question which would fall for a decision of a Higher Court. Where such a disputed question arises, in the considered opinion of this court, a writ application will not be entertain only because violation of natural justice has been alleged and more so, in a case of this nature where such a contention can also be raised before the Highest Court of India. A distinction has to be borne in mind between a forum of appeal which is presided by an administrative Body and the apex court as an appellate court."

18. This aspect of the matter has been considered by a Division Bench of this Court in *CH. ANITHA V. STATE OF ANDHRA PRADESH*, 2001 (2) ALD 358 and also by another Division Bench of this Court in *V. Rajamalliah Vs. High Court of A.P.* and another, wherein it was observed:

.... As quite often said and reiterated by the Courts, procedure is hand-made of justice and it is essentially meant to advance justice. It is not the case of the petitioner that on account of this departure in the procedure, the petitioner could not effectively cross examine the witnesses produced on behalf of the disciplinary authority. If that was the case, he ought to have made complaint to the Enquiry Officer in that regard or before the disciplinary authority or before the High Court on administrative side. Though the fact of the Enquiry Officer examining the petitioner in the first instance was stated in the Memorandum of Appeal before the High Court, no prejudice on that count was pleaded in the Memorandum of Appeal.

Recently, the Supreme Court in *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, held that when from the admitted or indisputable facts unauthorized absence becomes unrefutable, not giving a notice to show cause cannot be considered as prejudicing the employee.

19. In *Vijay Kumar Nigam (dead) through LRs. Vs. State of M.P. and others*, it was held:

The main ground was that the report of the preliminary enquiry conducted against him before initiating departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view, quite rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent Officer and it does not form any foundation for

passing the order of dismissal against the employee.

20. In *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, it was held:

Learned counsel for the petitioner sought to contend that the petitioner has not committed any misappropriation and that he was forced to deposit the money. We cannot accept the contention in view of the fact that the petitioner himself had deposited the amount. It is then contended that the preliminary enquiry was not properly conducted and, therefore, the enquiry is vitiated by principles of natural justice. We find no force in the contention. The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance.

21. In *N.C. Padmanabhan Vs. Board of Directors and others*, it was observed:

While putting forth the third contention, the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in *State Bank of India and others Vs. D.C. Aggarwal and another*, . I should state at the threshold that this decision was cited before the Court in support of the contention out of the context and without any relevance. It goes without saying that if the disciplinary authority makes use of any undisclosed material against the delinquent, on that count itself, the disciplinary proceedings will be vitiated. In that judgment, the report of the Central Vigilance Commissioner was made use of against the delinquent without furnishing the report to the delinquent. In the instant case, the disciplinary authority has not based any reliance on the report of the Vigilance Commissioner.

22. In *Secretary to Government of Tamil Nadu Vs. D. Subramanyan Rajadevan*, it was held:

There is no such principle of natural justice that before holding a regular departmental enquiry the disciplinary authority itself should hold a preliminary enquiry by first drawing up a charge memo and then calling for the written statement of defence before taking a decision to hold a regular departmental enquiry.

23. The decision of the Apex Court in *SHATRUGHAN LAL's case (supra)* was rendered in a different fact situation. In that case, some documents were sought for before a reply could be given. In answer to the charge sheet the said documents could have been the basis of his defence. Those documents were relied upon in the charge sheet. In that situation, the Apex Court observed:

Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the charge sheet to be relied upon as proof in support of articles of charges were not supplied to the respondent nor was any offer made to him to inspect those documents.

24. In the instant case, as noticed hereinbefore, the investigation report which was made use of only for the purpose of prima facie satisfaction of the disciplinary authority was not relied upon at all by way of proof in support of the articles of charges.

25. In Kashinath Dikshita Vs. Union of India (UOI) and Others, the delinquent Officer therein sought for the statements made by the witnesses at the pre-enquiry stage. In that case records had clearly shown that the statements, which had been relied upon were denied and even an application was filed for furnishing the copies of the documents and the statements in question which were cited in evidence. It was in that fact situation, it was observed:

This application was unceremoniously rejected by the Board on December 20, 1963. It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him.

The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a Government servant is facing a disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him.

(underlining is ours).

26. Even where certain document asked for by the delinquent is not supplied despite a direction to that effect by the Enquiry Officer having regard to the conduct of the delinquent Officer, it may be held that he was not seriously prejudiced with the non supply thereof. Reference in this connection may be made to SYED RAHIMUDDIN V. DIRECTOR GENERAL, CSIR 2001 AIR SCW 2388.

27. It is therefore clear that the documents are required to be supplied to the delinquent Officer only when he requires the same to meet the charges and not otherwise. In the view we have taken, we are of the opinion that the learned single Judge erred in allowing the writ petition. For the reasons aforementioned, the impugned judgment cannot be sustained. However, it is seen that several questions were sought to be raised before the learned single Judge. But the learned Judge did not think it necessary to decide the same. Having regard to the findings aforementioned, we are of the opinion that the interest of the justice demands that the matter be remitted back to an appropriate Bench for consideration of the merits of the matter on other points not considered by the learned single Judge.

28. The impugned judgment is therefore, set aside. The writ appeal is accordingly, allowed. No costs.