

(2002) 09 DEL CK 0168
In the Delhi High Court
Case No : CWP 7483 of 2000

Union of India (UOI) and Others

APPELLANT

Vs

Chander Singh

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 14, 21, 311
Evidence Act, 1872 — Section 58

Citation : (2002) 09 DEL CK 0168

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Chandrina Shah and Viraj R. Datar, for the Appellant; Sant Lal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—This writ petition has been filed by the petitioner herein for setting aside a judgment and order dated 15th September 2000 passed by the Central Administrative Tribunal, Principal Bench, in OA 427/98 whereby and whereunder the Original Application filed by the respondent herein questioning an order dated 30th September 1996 in terms whereof he was compulsorily retired from service by way of punishment and the order of the appellate authority dated 26th February 1997 rejecting his appeal was dismissed.

2. The factual matrix of the matter is as under:

3. The petitioner was a postman. A report was published in daily newspapers with photographs showing thousands of letters unattended on the road. Upon enquiry, it was revealed that the respondent was entrusted to deliver the said bag of mails. Upon further enquiry, it was revealed that the respondent had been carrying on such practice for about two years. He was, Therefore, placed under suspension and a disciplinary proceeding in terms of Rule 14 of the CCS (CCA) Rules 1965 was initiated. On 29th September 1996, a written statement of

defense was submitted by him wherein he admitted his guilt and lapse in clear and unequivocal terms. On the basis of his admission, the afore-mentioned punishment was imposed. The petitioner preferred an appeal there against which was dismissed by an order dated 26th February 1997. The Original Application was filed by the petitioner questioning the afore-mentioned order.

4. The learned, inter alia, proceeded on the basis that despite the fact that the respondent has made a confession about his guilt, no punishment could have been imposed without initiating the disciplinary proceedings. The learned Tribunal observed:

"8. We have gone through the respondents" reply and find that beyond merely stating that the relevant rules have been followed by them and denying the contentions of the applicant in general terms and referring briefly to the statement of a couple of witnesses (who had not been cross-examined), the respondents have not come out with anything that could convince us that the requirements of natural justice were properly and fully met in this case and that the relevant rules forming part of the CCS (CCA) Rules were consciously and effectively followed in letter and in spirit. In our view, the least that could have been done by the respondents was to allow the applicant to cross-examine the persons whose written statements were heavily relied upon and accepted in support of the charge memo, and to show to him the bags and other articles found on the spot. As a result, the departmental proceedings, in our view, suffer from the various weakness and deficiencies point out by the applicant and in the circumstances, we do not find it possible to sustain the punishment order nor consequently the appellate authority"s order."

5. In the afore-mentioned situation, the Original Applicant was allowed in part directing reinstatement of the respondent with liberty to the petitioner herein to conduct departmental proceedings in terms of the Rules.

6. Having heard the learned counsel for the parties, we are of the opinion that the impugned order cannot be sustained.

7. A full fledged enquiry in terms of Rule 14 is required to be conducted when the charges are denied, but if a delinquent officer makes an unequivocal admission of his guilt, no departmental proceedings need be initiated.

8. The unofficial English translation of the statement of defense of the respondent is in the following terms:

"Humbly stated that I am giving this reply in reference to your charge leveled vide your letter No. F. 1-29/96 dated and 17-9-96. I request with folded hands that may be excused for the mistake which occurred inadvertently. I future I will not commit any mistake even if I may have to carry any amount of work load. I request your honour with folded hands that I have six small children. Taking pity on them and me I may be excused. I will serve the public whole heartedly and there will not be by sort of complaint to the department.

Sd- Chander Singh

Postman

Date: 26-9-96

English translation is made by me.

Sd/-

[Sant Lal (Advocate)]"

9. Having regard to the fact that the petitioner admitted his guilt, the afore-mentioned punishment was imposed. Before the appellate authority, for the first time the respondent raised a question that he made the said statement on a threat given by the ASPOS to the effect that he shall be handed over to the police. The appellate authority, in terms of his order dated 26th February 1997 disbelieved the said story stating:

"I have gone through the appeal. There was no coercion/threat on the part of the Disciplinary Authority at any state. The official himself gave a statement in his own handwriting. Any type of enquiry is not necessary in such cases whose charge have been admitted by the official in the preliminary state itself. Enquiry becomes necessary when the charge has been denied.

More over, if we have a look at the fact, there is no doubt that a lenient view has already been taken by the Disciplinary Authority, though the Disciplinary Authority have themselves recorded in the punishment order that severe punishment of dismissal would have been more appropriate."

10. In the afore-mentioned situation, we are of the opinion that the learned Tribunal committed an illegality in passing the impugned order.

11. Having regard to the provisions contained in Section 58 of the Evidence Act, a fact admitted need not be proved.

12. The learned counsel for the petitioner, however, submitted that the purported confession of the respondent was obtained by coercion. Such a contention, as noticed hereinbefore, was raised by the petitioner for the first time before the appellate authority. The learned Tribunal did not go into the afore-mentioned question and passed the impugned judgment on a wrong premise as it failed to consider that unless a finding of fact is arrived at to the effect that the afore-mentioned confession of the respondent was obtained by coercion or undue influence, no illegality can be said to have been committed by the petitioner in acting upon the same.

13. In K.L. Tripathi Vs. State Bank of India and Others, , It has categorically been held that compliance of the principles of natural justice will depend upon the facts and circumstances of each case. It was held:

"32. The basic concept is fair play in action administrative, judicial or quasi-

judicial. The concept of fair play in action must depend upon the particular facts, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but an Explanation of circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specifically when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached to disputed facts but only an Explanation of the facts, absence of opportunity to cross-examination does not create any prejudice in such cases."

14. In *State of U.P. Vs. Harendra Arora and Another*, the apex court, relying upon various decisions including *K.L. Tripathi v. State Bank of India*, (supra), held that non-furnishing of a copy of the enquiry report had not caused prejudice to the delinquent officer particularly when he had not raised this question before the Tribunal and filed an effective show cause reply even in absence of any enquiry report nor was it complained in this show cause reply that the delinquent had not been served with a copy of the enquiry report. Thus, in the aforementioned case, despite the decision of the apex court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, it was held that the respondent had not been prejudiced by non-furnishing of the enquiry report.

15. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, *K.L. Tripathi v. State Bank of India* (supra) was again followed and the law was stated in the following terms:

"Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala and others Vs. S.K. Sharma*, . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of Madhya Pradesh and others*,

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of "admitted or indisputable facts leading only to one conclusion"

referred to above, there has been considerable debate on the application of the theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta v. Union of India* (1996) 6 SCC 237 referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord, Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be pre-judging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions state by Chinnappa Reddy, J. in *S.L. Kapoor Vs. Jagmohan and Others*, , namely, that on the admitted or indisputable facts, only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued."

16. In *Hari Pada Khan Vs. Union of India and others*, it was held:

"5. The doctrine of principle of natural justice has no applicant when the authority concerned is of the opinion that it would be inexpedient to hold an enquiry and that it would be against the interest of security of the Corporation to continue in employment the offender-workman when serious acts are likely to affect the foundation of the institution. In *Union of India and Another Vs. Tulsiram Patel and Others*, , a Constitution Bench of this Court upheld the validity of the similarly provisions under Article 311 of the Constitution. Recently, in SLP (C) No. 11659 of 1992 the matter had come up before this Court on 13-11-1995, where the validity of a pari materia provision was questioned. This Court upheld the validity stating that the above clause will operate prospectively.

6. A contention has been raised by Mr. Krishnamani that in *Tulsiram Patel* case (supra) this Court had upheld the validity of the rule subject to the principle of natural justice. It is needless to mention that the principle of natural justice requires to be modulated consistent with the scheme of the rules. It is settled law that the principle of natural justice cannot supplant but can supplement the law. In that view of the matter, the rule having been made to meet specified contingency the principle of natural justice by implication, stands excluded. We do not think that the rule is ultra virus of Articles 14 and 21 as stated earlier."

17. Principles of natural justice, it is trite, are flexible in nature. In *Khaitan (India) Ltd. and Ors. v. Union of India and Ors.* 2 1992 CLTHC 478, the law has been stated in the following terms:

"11. 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, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, . 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."

18. In this view of the matter, the impugned judgment cannot be sustained. It is set aside accordingly. The writ petition is allowed. However, in the facts and circumstances of the case, there shall be no orders as to costs.