
(1985) 07 GUJ CK 0035
In the Gujarat High Court

Union of India (UOI) and Others

APPELLANT

Vs

N.N. Prajapati

RESPONDENT

Date of Decision : 18-07-1985

Acts Referred:

Constitution of India, 1950 — Article 133, 133, 311, 311

Citation : (1985) 2 GLR 1406

Hon'ble Judges : N.H. Bhatt, J;I.C. Bhatt, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—The two letters patent appeals are directed against the order of the learned Single Judge of this Court, our brother R.C. Mankad. J. who was pleased to allow the special civil applications challenging the orders passed by the respective respondents i. e. the Postal Department and the Surveyor General's Office. In the Letters Patent Appeal No. 38 of 1985, the employee was dealt with departmentally and punished with minor punishment; whereas the employee in the Letters Patent Appeal No. 125 of 1985 was dealt with departmentally and removed from service. The Special Civil Application No. 395 of 1985 is filed by an employee of the Postal Department who, at the close of the departmental proceedings, has been visited with punishment of reduction to lower time scale for a period of five years.

2. The learned Single Judge allowed the two petitions only on one ground, namely, non-supply of the inquiry officer's report by the disciplinary authority who extensively relied upon his assessment of evidentiary material, both oral and documentary, in the said report for the purpose of his reaching the particular conclusion of guilt. In both these cases the departmental inquiry was entrusted to the inquiry officer before whom evidence, oral and documentary, was led and who had on the close of the said inquiry proceedings, had submitted his detailed report to the disciplinary authority which forthwith proceeded to decide the matter without affording any opportunity of audience to the concerned petitioner-employee. Similar is the case in the substantive Special Civil Application No. 395

of 1985, the third matter in this group.

3. The Learned Counsel Mr. S.D. Shah appeared for the respective disciplinary authority in all the three matters. The gravamen of his submission was that after amendment in Article 311 of the Constitution of India, by which amendment the requirement of giving a second show cause notice at the conclusion of the first phase of the inquiry was dispensed with, the inquiry report assumed little importance and, therefore, the earlier judicial pronouncements of the Supreme Court and of this High Court which provided for the furnishing of such an inquiry report were no longer good law. In our view, this argument of Mr. Shah is unsustainable. It is no doubt true that the judgment of the Supreme Court was relied upon by the learned Single Judge, and also by me sitting as a Single Judge, in the case of *S. T. Dasadia v. Commissioner, Surat Municipal Corporation* 24(1) GLR 770. The cases are of time when Article 311 was not amended. However, the ratio decidendi of these cases is on a different plane altogether. When the disciplinary authority, who itself is not an inquiry officer conducting the departmental proceedings, sits to decide the question about the alleged guilt or default of the concerned employee, it is required to assess the entire material on its own and reach its own independent conclusion. We find that in all the three matters, more than once, the disciplinary authority has observed that it had considered the inquiry officer's report in the light of other materials (which he did not specify, but which only casually and loosely adverted to) and had ultimately agreed with the inquiry officer's conclusion. It specifically states that it concurred with the conclusion of the inquiry officer. So it is not in any way difficult to say that for a substantial part, if not wholly, the inquiry officer's report loomed large in the mind of the disciplinary authority for the purposes of reaching its conclusion. We reiterate that there is no discussion of evidence, both oral and documentary. It is only a verbal homage given to the material in a sentence or two. A bald statement has been made that other documentary evidence had been considered by it, but, however, in what manner it did is left conspicuously absent. When an authority, which is expected to act quasi-judicially bases its decision substantially, if not wholly, on the report of an inquiry officer which report obviously would contain his assessment of the material through his eyes and his angle and when by the very nature of things he would highlight the points which are appealing more to him and by human weakness would try to tone down the facets of arguments and pleas advanced by the delinquent, the disciplinary authority is expected to give report to the concerned delinquent and afford him an opportunity to have his say, may be in writing and not necessarily oral, as to the appreciation of the evidentiary material at the hands of the inquiry officer. If such a report which is substantially acting on the minds of the disciplinary authority in the process of its reaching the conclusion, is not furnished, one of the basic principles of natural justice stands violated. We, therefore, agree with the views of the learned Single Judge and hold that in the facts and circumstances of these three cases the concerned disciplinary authority had erred at law in not furnishing the alleged delinquents with the inquiry

officer's detailed report and therefore, its conclusion stood vitiated.

4. We are not to be understood to have stated that in all cases the report is to be given. If the report is not relied upon and the disciplinary authority on its own assesses the evidentiary material and reaches its conclusion the report is certainly not to be given, unless the delinquent demands it for his purposes. We, however, would hasten to add that if the disciplinary authority takes the report into consideration for the purpose of reaching its conclusion the furnishing of the report is indispensable, and any departure from this principle would strike at the roots of the conclusion itself.

5. In this connection Mr. S. D. Shah invited our attention to one judgment of the Andhra Pradesh High Court reported in 1983 (3) SLR 319 (324). This judgment does not fit in with the view of the Division Bench of this High Court to which I was a party. It is a judgment given by the Division Bench in the Letters Patent Appeal No. 295 of 1984 dismissed by us by a speaking order dated 24-7-1984. In that case, as it was in the case before the Andhra Pradesh High Court, the disciplinary authority disagreed with the conclusion reached by the Inquiry Officer but never afforded an opportunity to the delinquent to have the benefit of his assessment or his view of the evidentiary material contrary to the view of the inquiry officer who had held in favour of the delinquent. In such a case the inquiry officer's report favourable to the delinquent forms an important link in the armour of defence. The contrary view, therefore, of the Andhra Pradesh High Court, with respects does not commend itself to us.

6. Mr. Shah, however, leaned very heavily on our observations in that judgment in the Letters Patent Appeal No. 295 of 1984. There we have stated as follows:

The other observations of the learned Judge regarding giving of the Enquiry Officer's report even when one disciplinary authority agrees with the Enquire Officer's unwarranted in this case and is not to be treated as the ratio of the Judgment.

Mr. Shah wants this to mean the ratio of the Division Bench that if the disciplinary authority agrees with the inquiry officer, the copy of the report-is not lobe given. This is not the ratio there. The question was left open because the learned Judge had made certain observations which were not germane to the facts of the case and that is why that question was left open. We, therefore, hold that where an inquiry officer's report is made the whole or a substantive or substantial part of the material relied upon by the disciplinary authority for the purpose of reaching its conclusion regarding the guilt of the delinquent this report becomes an important document regarding which the delinquent must be afforded a reasonable opportunity of having his say in that regard, and if in such a situation the report is not given the important aspect of the principle of natural justice stands not complied with resulting into vitiation of the order of penalty. The result is that both the letters patent appeals stand dismissed with costs. The special civil application is allowed by quashing the order of penalty in question.

Rule is accordingly made absolute in that case with costs. The time granted by the learned Single Judge in these two letters patent appeals for completing the inquiry if restarted stands extended by the very period from today which was granted by the learned Single Judge.

7. At this stage Mr. Shah made an oral request for a certificate of fitness under Article 133 of the Constitution of India in all the three matters. As our view is based on the judgment of the Supreme Court in case of Central Bank of India Ltd. Vs. Prakash Chand Jain, , in the case of State of Gujarat Vs. R.G. Teredesai and Another, and the case of State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, , we do not think that any case is made out for a certificate. The oral request is, therefore, rejected. At this stage Mr. Shah requested that the interim order passed by this High Court should be continued for a period of five weeks to enable the authorities to approach the Supreme Court and seek appropriate orders. The request is granted. The situation that prevails today shall continue to operate for a period of five weeks from today with a warning that no further time will be given under any circumstance. It will be open to these appellants in the two matters and the respondent in the third matter to avail themselves of the ordinary copy of the judgment.

8. We hope that in the case of the delinquent In the Letters Patent Appeal No. 125/85, the authorities will consider whether after seven years of the ordeal of the delinquent they should reinitiate the inquiry from the stage from where it has been found to be vitiated, particularly when he was once removed, the appellate authority set aside the removal followed by reinstatement and suspension and followed by removal from service which was decided by the Single Judge of this High Court. The civil application stands disposed of in view of our judgment. Rule discharged in the Civil Application.