

(1995) 11 GUJ CK 0010
In the Gujarat High Court
Case No : S.C.A. No. 5117 of 1986

Vaghela M.M.

APPELLANT

Vs

National Textile Corporation (Gujarat) Ltd. and Another

RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Conduct, Discipline and Appeal Rules, 1974 — Rule 23

Citation : (1995) 11 GUJ CK 0010

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Advocate : Girish Patel, for the Appellant; H.B. Shah, for the Respondent

Judgement

1. The petitioner herein, a Harijan and Scheduled Caste person, being B. Com., LL.B., LL.M., worked as Labour Officer in the Rajnagar Textile Mills, a unit of respondent-Corporation. As the petitioner was not keeping well he had to remain on leave frequently and for a long period. According to the say of the petitioner he had applied for leave on most occasions and his leave applications were never refused. Except a Memo of warning issued in the year 1985, the petitioner received no other Memo or warning in respect of his absence. On or around October 5, 1985 the petitioner was charged with five articles of charges based on long absence and irregular attendance on the part of the petitioner. One Mr. S. K. Ghosh, the Production Manager of Rajnagar Textile Mills was appointed as Enquiry Officer. On conclusion of the inquiry on or around May 12, 1986 the petitioner came to know on reliable information that his services were likely to be terminated. It is his positive case that he has not been furnished with copy of the Report of the Inquiry Officer. It is under such circumstances that the petitioner has challenged the apprehended termination including the disciplinary proceedings with a prayer that his termination might be stayed. The Notice was first issued and then the petition came to be admitted by an order dated October 14, 1986. In Affidavit-in-Reply a positive case has been set up by the respondents inter alia asserting that since the petitioner was Labour Officer he

was required to take decision regarding disciplinary matters in respect of about 2000 workmen and since he was remaining absent for a long duration and since his attendance was irregular, regular disciplinary inquiry was conducted and after he was given sufficient opportunity to defend himself he was removed from service by an order dated September 16, 1986 passed by the Chairman cum-Managing Director of the respondent Corporation. It is this order which is now the subject-matter of challenge in this petition.

2. At the hearing of this petition a Note dated September 11, 1986 issued by the Secretary of the concerned Unit of the respondent-Corporation along with the communication dated May 30, 1986 addressed by the Inquiry Officer to the Disciplinary Authority, viz. the Chairinan-cum-Managing Director, enclosing therewith the inquiry report, have been placed on record with an admitted fact that copy of the report of the Inquiry Officer and the Note have not been supplied to the petitioner before passing the order of penalty and with an admitted fact that no second show-cause notice has been issued to the petitioner.

3. It is in the back-drop of the aforesaid fact situation that the submissions made on behalf of the rival parties might be considered.

4. Mr. Patel, learned Advocate appearing on behalf of the petitioner seeks to challenge the impugned order of penalty of petitioner's removal from service on four different grounds. The grounds which relate to the very decision of the Inquiry Officer may first be considered.

5. It has been submitted that the petitioner has presented the cause of his sickness before the Inquiry Officer and the Inquiry Officer has not taken into consideration that cause. It is in this respect that the observations of the Inquiry Officer would require to be noted. On internal page No. 5 of the Report the Inquiry Officer has stated that the evidence of Shri Vaghela (petitioner herein) is simply bare word and therefore, it cannot be relied upon. On the other hand the documentary evidence produced by Shri Bipinbhai Shantilal Shah from the establishment register clearly proves that Shri M. M. Vaghela had remained absent without prior sanction and the perusal of the extract from the establishment register clearly shows that by and large Shri Vaghela had not attended his duties. The extract from the] establishment register produced in the evidence of Head Time Keeper shows that Shri Vaghela had remained absent as per the following particulars :

----- Month/year No. of									
days	Month/year	No.	of	days	absent	without	prior	sanction	
----- 1 2 3 4									
----- 8/82 - 7/84 31									
9/82 - 8/84	13	10/82 - 9/84	5	11/82	6	10/84	22	12/82	14
11/84	3	1/83	15	12/84	1	2/83	3	1/85	6
3/83 - 2/85	24	4/83 - 3/85	14	5/83	2	4/85	29	6/83	15
5/85	5	7/83	24	6/85	21	8/83	22	7/85	24
9/83	3	8/85	27	10/83	23	9/85	30	11/83	18
10/85	30	12/83	23	11/85	31	1	2	3	4
1/84	31	12/85	12	2/84	23	1/86	-		

It has been observed that the above evidence has not been challenged at all and, therefore, from the columns mentioned in the above table it has been clearly established that Mr. Vaghela (petitioner herein) committed the charged acts of misconduct attracting the penalty under the NTC (G) Ltd. Conduct, Discipline and Appeal Rules, 1974.

6. On a look at the report of the Inquiry Officer the Inquiry Officer has focused his attention on the whole evidence presented to him. This Court, therefore, cannot go into the manner of appreciation of evidence by the Inquiry Officer. In my opinion the Inquiry Officer's Report is not vitiated on this ground.

7. The next ground of attack against the report of Inquiry Officer is that the petitioner was not permitted to adduce medical evidence of the doctor who treated the petitioner. Mr. Girish Patel, learned Counsel appearing for the petitioner, however, fairly concedes that no application for examining the doctor was given by the petitioner. Hence there is nothing on record to show that the application of the petitioner or the prayer of the petitioner for examination of the doctor has been rejected. It may be that the petitioner might have fallen ill on some occasion. However, there are particulars of unauthorised absence and over staying of leave clearly made available to the petitioner and were quite within the knowledge of the petitioner. Hence I am not satisfied about this submission made on behalf of the petitioner. Even on this ground it cannot be said that the Inquiry proceeding or the Report of the Inquiry Officer would stand vitiated. The result is that the report of the Inquiry officer would hold good.

8. Mr. Girish Pated, learned Advocate appearing for the petitioner has made grievance about the petitioner having not been given second show-cause notice or a show-cause notice with regard to proposed punishment and the petitioner having not been supplied with the copy of the Inquiry Report before the penalty has been imposed upon the petitioner. While making reference to the decision in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , Mr. Patel fairly conceded that the deadline that has been fixed by the Honourable Supreme Court for Application of principle regarding supplying of the Inquiry Officer's report is prospective, that is to with effect from November 20, 1990. It has been held by the Honourable Supreme Court that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its Conclusions with regard to the guilt or innocence of the employee concerned. A denial of the Inquiry Officer's Report would amount to denial of reasonable opportunity to the employee to show his innocence and would amount to breach of principles of natural justice. The delinquent employee will be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject and the copy of the inquiry report is to be furnished even when the punishment imposed is other than the major punishment. It is the right of the employee to have the report to defend himself effectively, and he

would not know in advance whether the report is in his favour or against him. Hence it will not be proper to construe his failure to ask for the report as a waiver of his right. Thus, even where the employee asks for the report or not, the report has to be furnished to him. The principle although on account of the 42nd Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the Inquiry Officer's report along with the notice to make representation against the penalty, whenever the Inquiry Officer is other than the disciplinary authority and the report of the Inquiry Officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice, came to be laid down in Union of India and others Vs. Mohd. Ramzan Khan, . The Apex Court held that it would be appropriate that the said law should apply to employees in all establishments whether Government, or non-Government, public or private. The Supreme Court, however, said that this law should be applied with effect from November 20, 1990 on which date Mohd. Rainzan's case (supra) was decided. Hence, the Supreme Court in B. Karunakar's case (supra) held that such law would apply prospectively with effect from November 20, 1990.

9. It is, therefore, clear that the submissions made by Mr. Patel for applying the aforesaid principles would not apply to the present case as the impugned order was passed much before November 20, 1990. Mr. Patel, however, tried his submission on a reference to a circular which is admittedly not the statutory instruction. The same is at Annexure F. It is in the form of a confidential letter addressed by the Director of the Corporation to the General Manager of all the Units of the Corporation. Clauses F & G of this circular would read as under :

(f) A second show-cause notice should be issued to the delinquent employee to explain the reasons as to why the proposed penalty should not be imposed on the delinquent employee.

(g) Final decision of the case shall not be communicated to the employee immediately.

10. Mr. H. B. Shah, learned Advocate, however, referred to the subject of this letter. The subject of this letter reads as under :

Sub : Discipline - Discharges - Dismissals of Employees of the mill units.

Mr. Shah submits that on a bare reading of the whole letter including the subject the instructions are not the statutory instructions and even though it might be observed that such instructions would be binding on the Corporation although they are confidential they relate to the award staff that is to say, the workmen of the mill units and not to the officers like the petitioner. In my opinion, there is a great deal of substance in the submission of Mr. H. B. Shah if one peruses the

text of the letter which clearly indicates that the letter was issued pursuant to a large number of cases decided by the Labour Court as well as the Industrial Court in respect of the employees of the Mill Units. Hence merely based on the aforesaid circular/communication/letter the argument with regard to supply of copy of the Inquiry Officer's report and giving of second show-cause notice cannot be accepted.

11. The last ground of attack against the impugned order of penalty is that extraneous material has entered into the decision of the Disciplinary Authority in imposition of penalty. Mr. Patel made a reference to the Note dated September 11, 1986 which has been made available during the course of hearing of this matter. The 4th paragraph of this Note would read as under :

"In the findings, the Enquiry Officer has mentioned that Shri M. M. Vaghela, Labour Officer, Rajnagar Textile Mills, is held to be guilty of the articles of charges given to him. The Vigilance Officer of the Corporation has also studied the case and has recommended the major penalty "removal from service which shall not be a disqualification for future employment" as mentioned in the C.D.A. Rules 23(f)."

This Note has been addressed by the Secretary of the concerned Unit of the Corporation to the Disciplinary Authority. It is not clear whether there was written report or whether there was oral communication from the Vigilance Officer to the Secretary who has written this Note. The fact remains that there is a recommendation of the Vigilance Officer of the Corporation for imposition of major penalty of removal from service with disqualification for future employment and it cannot be said that this recommendation has not worked with the Disciplinary Authority in arriving at the decision of penalty of removal from the service which would not amount to a disqualification for future employment. Mr. H. B. Shah, learned Advocate appearing for the Corporation submitted that the recommendation of the Vigilance Officer would be neither here nor there and the Managing Director who was the Disciplinary Authority might have agreed with or might not have agreed with the recommendation. He also tried to distinguish the decision of the Apex Court in the case of State Bank of India and others Vs. D.C. Aggarwal and another, relied upon by Mr. Patel for the petitioner would not apply. With respect to the learned Counsel Mr. H. B. Shah appearing for the respondent the decision of the Apex Court in State Bank of India's case (supra) would clearly apply to the facts of the present case. In the case before the Supreme Court the question that was for consideration has been set out in the opening part of the Report as under :

"Can Disciplinary Authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent is the only issue, of substance, which arises for consideration in this appeal, filed by the State Bank of India against the judgment and order of the High Court of Punjab and Haryana."

The Supreme Court has after setting out the facts observed that Law on "natural justice" is so well settled from series of decisions of the Apex Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that Courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by the Apex Court. It has been further observed that procedural fairness is as much essence of right and liberty as the substantive law itself. Negating the submission that the report of Central Vigilance Commission was privileged document, it has been ruled that non-supply of Central Vigilance Commission recommendation which was prepared behind the back of the respondent without his participation, and one does not know on that material which was not only sent to the Disciplinary Authority, but was examined and relied, was certainly violative of procedural safeguard and contrary to just and fair inquiry. It has been held that taking action against the employee on Confidential Document which is the foundation of the order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. The Supreme Court also held that the submission of "no prejudice" was illfounded. Accordingly the decision of the High Court in favour of the employee was upheld on the ground that non-supply of the report of Central Vigilance Commission resulted in vitiating the order of penalty.

12. In my opinion whether there is a report from the Vigilance Officer or not, although it is not clear whether there was a written report or not, recommendation of the Vigilance Officer is placed in black and white by the Secretary of the concerned Unit in his communication addressed to the Disciplinary Authority. This is clear violation of "natural justice" as said by the Supreme Court. Hence, the impugned order of penalty would deserve to be set aside.

13. It is next submitted by Mr. Girish Patel, learned Advocate for the petitioner that the penalty is grossly disproportionate. However, I do not propose to consider this submission on the proportionality of the penalty since the matter is being relegated to the Disciplinary Authority for his consideration on the question of penalty. It will be open to the petitioner to submit before the Disciplinary Authority the cause and the nature of his sickness only in respect of the penalty to be imposed. It will also be open to the petitioner to forego backwages if thought fit for inviting lesser penalty. It will be open to the Disciplinary Authority to consider the recommendation of the Vigilance Officer as displayed in the Note of the Secretary if no separate report has been placed before him. If a separate report (of the Vigilance Officer) is placed before the copy of such report shall be supplied to the petitioner. In any case the petitioner would be given opportunity of being heard in the matter of penalty.

14. Hence, following order is passed :

The impugned order of penalty of removal from service without attaching disqualification of future employment is hereby set aside and the matter is relegated to the Disciplinary Authority for imposition of appropriate penalty after giving opportunity to the petitioner as aforesaid. The whole exercise shall be completed within a period of three months from the date of receipt of the writ of this direction.

15. Rule is made absolute in the aforesaid terms. No order as to costs.