
(1997) 02 MAD CK 0117
In the Madras High Court
Case No : Writ Petition No. 11643 of 1996

Victor J.

APPELLANT

Vs

G.M., Rani Mangammal Transport Corporation

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Constitution of India, 1950 — Article 311
Government of India Act, 1935 — Section 240
Penal Code, 1860 (IPC) — Section 304A

Citation : (1997) 02 MAD CK 0117

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

1. By consent of both parties, the main writ petition itself is taken up for final disposal. The prayer in the writ petition reads as follows :

To issue a writ of certiorari after calling for the records of the respondent herein in his proceedings St. A1/840 dated July 25, 1996 and quash the same.

2. The case of the petitioner as seen from the affidavit is briefly stated hereunder :

The petitioner joined as Junior Engineer in Cholan Roadways Corporation on February 22, 1988. The said Corporation was later taken over by Rani Mangammal Transport Corporation, Dindigul. Respondent in the above writ petition and he was absorbed as Junior Engineer in the said Corporation on April 7, 1992. According to him, he was asked to go to Theni for checking the Corporation vehicles on January 30, 1996. While he was proceeding, to Theni, the driver of the lorry who belongs to Theni Division of the respondent Corporation, on seeing him informed that the lorry is not moving properly. The petitioner inspected the lorry and found certain defects. While he continued to drive the lorry for finding the defects, a pedestrian crossed the road from right side to left side. He sounded the horn and slowed down the speed. But the pedestrian, who crossed back to left side, hit on the vehicle and he died on the

spot. The police has registered a case u/s 304A of I.P.C., in Cr. No. 30 of 1996 on January 30, 1996. The criminal case is still under investigation. The petitioner was placed under suspension by the department and later the order of suspension was revoked and he rejoined duty on February 24, 1996. The petitioner was served with a charge memo on, February 27, 1996 asking him to submit his explanation to the charges. A departmental enquiry was conducted and the petitioner attended the enquiry. A show cause notice was issued to him by the respondent asking him why the punishment of dismissal cannot be awarded. At this stage the petitioner has approached this Court stating that he was not given an opportunity before a decision was taken by the disciplinary authority to impose a major penalty of dismissal from service. According to him, the action of the respondent is opposed to the principles of natural justice and in violation of Article 311 of the Constitution of India.

3. The respondent herein filed a counter-affidavit disputing the various averments made by the petitioner. In the counter it is submitted that the writ petition itself is not maintainable in law, since the same has been filed against the second show cause notice. After explaining the factual position, it is contended that the respondent Corporation concurred with the findings of the Enquiry Officer and proposed to dismiss him from service having regard to the gravity of the misconduct and after taking into account the past record of the employee which was also full of blemishes. A second show cause notice was issued on July 25, 1996 (impugned order) to the petitioner directing him to show cause as to why he should not be dismissed from service for the above said misconduct. It is also explained in the counter that along with the second show cause notice, copy of the Enquiry Officer's report, details of the past records and other proceedings were also enclosed so as to enable him to submit his reply to the said second show cause notice. Instead of submitting a reply to the second show cause notice, the petitioner approached this Court and obtained an order of stay.

4. In the light of the pleadings of the parties narrated above, I have heard Mr. R. Shanmugham, learned senior counsel for the petitioner and Mr. Jayaraman for the respondent.

5. Mr. R. Shanmugham, learned senior counsel has raised the following two objections :

(i) The respondent without giving any opportunity, has provisionally come to the conclusion that charges are proved and has decided to impose capital punishment of dismissal. The action of the respondent is contrary to the decision of the Supreme Court reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

(ii) The criminal proceedings and the present departmental enquiry relate to one incident, hence pending disposal of the criminal case departmental proceedings should not be proceeded with. In support of the above said proposition, he relied

on a decision reported in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, .

6. On the other hand Mr. S. Jayaraman, learned counsel appearing for the respondent, submitted that inasmuch as the petitioner was given a reasonable opportunity as per the Standing Orders of the respondent Corporation applicable to the petitioner, there is no error or illegality in the impugned order and prays for dismissal of the writ petition.

7. First I shall consider the first objection of the learned senior counsel, namely, issuance of show cause notice before taking a decision to impose punishment. In this case, when the petitioner was working as Junior Engineer in the respondent Corporation, on January 30, 1996 at about 8-50 p.m., near the place called Bommaiya Gowndanpatti, the petitioner took possession of the lorry from the driver and while he was driving the same, the lorry hit against a pedestrian who was crossing the road from right side to left side, which resulted in the death of the pedestrian. Thus, according to the respondent, the respondent (petitioner) without prior approval and unauthorisedly took the vehicle and drove the same resulting in the death of an individual and also caused loss to the Corporation. An explanation was called for from the petitioner as well as the driver in-charge of the said vehicle. Since the explanation was not Satisfactory, the respondent ordered an enquiry into the charges. In the domestic enquiry on the side of the management, one Thiru K. Kalimuthu was appointed as the Enquiry Officer. After full-fledged enquiry, the Enquiry Officer submitted a report to the respondent Corporation. The respondent Corporation after accepting the report of the Enquiry Officer, decided to impose a capital punishment, namely, removal from service. In those circumstances, by the impugned notice, directed the petitioner to submit his explanation if any. No doubt, the respondent Corporation also enclosed a copy of the enquiry report and the entire enquiry proceedings along with the impugned Order, in order to facilitate the petitioner to submit his explanation. At this stage, it is relevant to refer the leading Constitutional Bench decision of the Supreme Court reported in *Managing Director, E. C. I. L., Hyderabad v. B. Karunakar*, (supra). After considering the entire earlier case laws, the Constitution Bench of the Apex Court have held that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defending himself against the charges and the denial of the said right is a breach of the principles of natural justice. They have also held that it is only appropriate that the law laid down in *Union of India and others Vs. Mohd. Ramzan Khan*, go should apply to employees in all establishments whether Government or non-Government, public or private. This will be a case where there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rule requires an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority

records its findings on the charges levelled against him. Since the decision of the Apex Court referred above clearly has (sic) an answer for our question, I am hereunder re-producing the relevant conclusion arrived by the Supreme Court in the above said decision Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

"What emerges from the above survey of the law on the subject is as follows : Since the Government of India Act, 1935 till the 42nd Amendment of the Constitution, the Government servant had always the right to receive report of the Inquiry Officer/authority and to represent against the findings recorded in it when the Inquiry Officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the inquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the "reasonable opportunity" incorporated earlier in Section 240(3) of the G.O.I. Act, and later in Article 311(2) of the Constitution originally enacted. The right to receive the Inquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the 42nd Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the Inquiry Officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the 42nd Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some Courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to

award penalty on the basis of its conclusions. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusion. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the

disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the Inquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person an opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that had happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the Inquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

Hence it has to be held 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 with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges, is a

denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

8. The law laid down by the Apex Court in the above referred decision is squarely applicable to the facts of this case, as rightly pointed out by the learned senior counsel. In our case, the Enquiry Officer has submitted a report to the disciplinary authority. Thereafter, the disciplinary authority, after considering the said report, accepted the same in toto. The disciplinary authority on the basis of the report of the Enquiry Officer, decided to impose a capital punishment viz., removal from service as per the Standing Orders. The procedure adopted by the respondent Corporation is certainly contrary to the decision of the Supreme Court referred above. No doubt, the petitioner had ample opportunity before the Enquiry Officer. However, on receipt of the report from the Enquiry Officer, before taking any decision, a duty is cast on the respondent-management to send the entire copy of the report including the enquiry proceedings to the delinquent employee. After receipt of reply or explanation from the delinquent employee, it is open to the respondent to arrive at a decision regarding punishment as per the provisions of the Standings Orders. As rightly stated, a perusal of the impugned order clearly shows that the respondent after accepting the Enquiry Officer's report and after arriving at a decision that a capital punishment of removal from service has to be imposed on this case, notice has been sent to the petitioner calling upon him to offer his explanation with regard to the proposed punishment. It is the contention of the learned counsel for the respondent that along with the notice the disciplinary authority has also enclosed a copy of the report as well as the proceedings, hence, according to him, it is sufficient compliance of the provisions of natural justice. In the light of the decision of the Supreme Court referred above, I am unable to accept the argument of the learned counsel for the respondent. As observed by the Supreme Court, the right to make a representation before the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity, go against the charges, and if the same is denied, it would amount to breach of principles of natural justice. Irrespective of the nature of punishment whenever an enquiry is held, the delinquent employee should have the effect of the report of the Enquiry Officer before the disciplinary authority regarding his findings on the charges levelled against him. Hence, in view of the absence of such procedure, the conclusion arrived at by the respondent cannot be countenanced and the first submission of the learned senior counsel in this regard is well founded.

9. Secondly, the learned senior counsel submitted that till the disposal of the criminal case, the departmental proceedings should not be proceeded with for which he relied on the decision reported in *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*, (supra). The criminal case filed against him is for causing accident leading to the death of a pedestrian. In the departmental proceedings, apart from causing accident resulting in death of a pedestrian, the management has framed six more charges with reference to the Standing Orders. Hence, considering the charges levelled against him in the departmental proceedings

and the charge in the criminal case, I am of the view that the resent departmental proceedings is not a bar. No doubt, in the said decision, the Apex Court has held that "while there can be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case." The Apex Court has further held that "whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial, and that as we have already stated that it is there possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation." As already stated, in view of the facts available in our case, I am of the view that there is no bar in proceeding with the departmental proceeding simultaneously along with the criminal prosecution.

10. In view of my conclusion reached on the first submission made by the learned senior counsel, the impugned order is liable to be set aside. Accordingly, the writ petition is allowed and the impugned order dated July 25, 1996 is quashed. No costs.

11. Since the impugned order is set aside only on the ground that non-furnishing of the Enquiry Officer's report before taking a decision with regard to punishment by the respondent, I make it clear that after following the said procedure, it is open to the respondent to proceed further if they so desire. I also make it clear that if the petitioner employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled to. The reinstatement made as a result of the setting aside of inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding fresh inquiry from the stage of furnishing the report and no more, where such fresh enquiry is held.