

**Misra (V.D.) Vs. Collector of Central Excise**

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**Court :** Allahabad

**Decided On :** Jan-30-1962

**Reported in :** (1962)ILLJ671All

**Judge :** V.G. Oak J.

**Appellant :** Misra (V.D.)

**Respondent :** Collector of Central Excise

**Advocate for Def. :** Sri. Jagdish Swaroop

**Advocate for Pet/Ap. :** Sri. B.P. Srivastava

**Judgement :**

**V.G. Oak, J.**

1. This petition under Article 226 of the Constitution is directed against an order of removal from service.

2. The petitioner was employed as an inspector in the central excise department at Allahabad. There were various complaints against him. A preliminary enquiry was held into the complaints; and it was decided that there was a prima facie case against the petitioner. Formal charges were drawn up against the petitioner; and one Shankar held an enquiry into the charges. He concluded that certain charges were established against the petitioner. On receiving Shankar's report, the

Collector, Central Excise, Allahabad (hereafter referred to as the Collector) issued a notice to the petitioner to show cause why he should not be removed from service. The petitioner submitted his explanation to the Collector. The Collector was not satisfied with the explanation. He passed on 23 April 1959 an order removing the petitioner from service. The petitioner's appeal against the order of removal was dismissed by the Central Board of Revenue, New Delhi. Hence this writ petition for getting the order of removal quashed.

3. Charges were served upon the petitioner in two instalments. Annexure A to the affidavit is the first set of charges. Annexure E to the affidavit is the second set of charges. The last item of annexure E relates to a transaction, in which the petitioner is supposed to have accepted a sum of Rs. 30 from one Bechan as illegal gratification. The order for petitioner's removal is largely based on this transaction. Annexure M to the affidavit is the show-cause notice issued by the Collector to the petitioner. The notice was accompanied by Shankar's report, dated 1 July 1958. Annexure N to the affidavit is the petitioner's explanation before the Collector. Annexure O is the Collector's order, dated 23 April 1959 removing the petitioner from service. Annexure P to the affidavit is the order of the Central Board of Revenue dismissing the petitioner's appeal.

4. Sri Jagdish Swaroop appearing for the respondents pointed out that the Central Board of Revenue is located at New Delhi. I agree with Sri Jagdish Swaroop that this Court has no jurisdiction to quash the appellate order passed by the Central Board of Revenue, New Delhi. It was, however, suggested for the petitioner that this Court can quash the Collector's order without quashing the appellate order of the Central Board of Revenue, New Delhi.

5. Sri B.P. Srivastava appearing for the petitioner relied upon a decision by a Division Bench of this Court in *Abul Hasan v. Works Manager, Northern Railway* 1961--I L.L.J. 424. in that case Abul Hasan was discharged from service by the Works Manager at Lucknow. Abdul Hasan's appeal was dismissed by the Deputy Mechanical Engineer, New Delhi. It was held by the Division Bench that it was possible to quash the order of the Works Manager, Lucknow, without quashing the appellate order of the Deputy Mechanical Engineer, New Delhi.

6. The principle laid down in Abdul Hasan case 1961--I L.L.J. 424 (supra) fully applies to the facts of the present case. Here also we are dealing with administrative orders. So the principle of merger of decrees does not apply to such administrative orders. It cannot be said that the Collector's order completely merged in the order passed by the Central Board of Revenue. It is, therefore, possible to quash the Collector's order without interfering with the appellate order passed by respondent 2.

7. The main contention of Sri Srivastava was that the petitioner did not get a reasonable opportunity to defend himself before Shankar and before the Collector, Annexure F to the affidavit is an application, dated 13 August 1957 by the petitioner to the Collector for supplying certain documents. In annexure F, the petitioner requested for copies of the original complaint and copies of statement of witnesses. It is common ground that those documents were not supplied to the petitioner. Nor was the petitioner permitted to inspect those documents. Annexure 6 to the counter-affidavit is the reply sent by the Collector to the petitioner on 30 December 1957 on this point. The Collector gave two reasons for not disclosing the necessary information to the petitioner:

8. The first ground was that the enquiry officer was expected to base his decision on the evidence tendered before him during the oral enquiry.

9. Secondly, the petitioner would get an opportunity to cross-examine the witnesses appearing against him.

10. For these two reasons, the Collector declined to supply copies of the complaint and statements and also refused inspection of those documents. It is true that during the enquiry before Shankar, the petitioner did get an opportunity to cross-examine witnesses. But the petitioner did not possess a copy of Bechan's complaint and copies of statements of witnesses in support of the complaint for purposes of cross-examination. It was under those circumstances that Shankar gave his report, dated 1 July 1958 against the petitioner.

11. When the Collector served upon the petitioner a show-cause notice, the petitioner submitted his explanation. In annexure N, the petitioner repeated his

grievance in these words:

It will not be out of place if in this connexion I refer to my previous correspondence with the department. I was never shown or given any extracts from the very relevant record, that is, the complaint, alleged to be made by one Bechan....

12. It will be seen that the petitioner protested both before Shankar and before the Collector that the petitioner got no opportunity to examine Bechan's original complaint.

13. A similar situation came up for discussion in *State of Madhya Pradesh v. Chintaman* A.I.R. 1961 S.C. 1623. In that case Chintaman was dismissed from service after an enquiry. Chintaman moved a writ petition for getting the order of dismissal quashed. The decision of Madhya Pradesh High Court quashing the order of dismissal was upheld in appeal by the Supreme Court. Their lordships observed on page 1627 thus:

Failure to supply the said copies to the respondent made it almost impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge.

Again on page 1628:

Then as to the application on the strength of which the preliminary enquiry was commenced against the respondent, we agree with the High Court in holding that there was no justification for keeping back this document. Like the prior statements of Rajab Ali and Noor Bhai, this document also has been improperly characterized as secret and withheld from the respondent. If he had been given the documents which he had called for, the respondent would have been able to cross-examine the witnesses adequately, and in their absence he suffered from a handicap which in the result denied him a reasonable opportunity which is guaranteed to him under Article 311.

Finally on p. 1629:

If it appears that effective exercise of this right (cross-examination) has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice.

14. The enquiry held against the present petitioner suffered from a similar defect. The order of removal is largely based on the footing that the petitioner received illegal gratification from Bechan. The enquiry was started upon a written complaint lodged by Bechan. The petitioner was entitled to examine the original complaint of Bechan in order to find out the nature of the charge made by Bechan at the initial stage. Similarly, the petitioner was entitled to examine the statements of witnesses on this charge recorded by a certain officer at Bhadohi before a formal enquiry was started by Shankar. The petitioner was materially prejudiced by the refusal of the Collector to supply the necessary copies to the petitioner or to permit him to peruse those documents. In view of this infirmity in the enquiry, It must be held that the petitioner did not get a reasonable opportunity to show cause against the proposed punishment, as required by Article 311 of the Constitution.

15. Sri Jagdish Swaroop suggested that, whatever defect there might be in the enquiry before the Collector has been cured by the Central Board of Revenue. One of the grievances of the petitioner was that, two material witnesses were not forthcoming. Those witnesses were examined by the Central Board of Revenue. That defect may be said to be cured. But the defect discussed above has not been cured merely as a result of the examination of two additional witnesses before the Central Board of Revenue. So, even with the aid of the additional evidence recorded by the Central Board of Revenue, it cannot be said that there was proper compliance with Article 311. In view of noncompliance with Article 311 of the Constitution, the Collector's order is liable to be quashed.

16. As already pointed out, this Court has no power to quash the appellate decision of the Central Board of Revenue. Since the petition partly succeeds and partly fails, parties may be directed to bear their own costs. It will be open to the Collector to hold a fresh enquiry against the petitioner on the same charge after fully complying with the requirements of Article 311 of the Constitution.

17. The petition is partly allowed. The order of the Collector, Central Excise, Allahabad, dated 23 April 1959 (annexure O to the affidavit) is quashed. Parties shall bear their own costs.

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