

State Vs. Gopinath Shukla

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Court : Madhya Pradesh

Decided On : Jul-18-1964

Reported in : (1967)ILLJ335MP

Judge : P.V. Dixit, C.J. and ; K.L. Pandey, J.

Appellant : State

Respondent : Gopinath Shukla

Judgement :

P.V. Dixit, C.J.

1. This Letters Patent Appeal against a decision of Shiv Dayal, J., arises out of a suit filed by the respondent, Gopinath Shukla, against the State of Madhya Pradesh and the Inspector-General of Police for a declaration that the order passed by the Inspector-General of Police on 25 January 1955 removing him from service was illegal, null and void, and for the consequential relief of reinstatement in service. The suit was decreed by the Civil Judge, Class I, Jabalpur, and the appellants were directed to take back the plaintiff-respondent in service from the date of his removal therefrom. The judgment and decree of the trial Court were upheld by the Second Additional District Judge, Jabalpur, in an appeal preferred by the State against the decision of the trial Court. The State then preferred a second appeal in this Court which was dismissed by Shiv Dayal, J.

2. Briefly stated, the plaintiff's case was that he was a confirmed sub-inspector of police in the police force of the State; that when he was holding the post of station-house officer at Barhi in tahsil Murwara, district Jabalpur, a departmental enquiry was held against him on the charges of

(a) burking of an offence of rioting and a case under Section 325, Indian Penal Code, in August 1952, while holding the post of station-house officer, Barhi, and

(b) receiving Rs. 250 at Jabalpur as a bribe from one Sukhdeoprasad of Nadawan (police station Barhi) for screening him from prosecution for an offence under Section 325, Indian Penal Code, and also for showing him the favour of prosecution of Bharlas who were alleged to have assaulted Sukhdeoprasad;

that Sri N. M. Joshi who conducted the enquiry found both the charges established, and it was on the basis of his report that the Inspector-General of Police passed an order on 25 January 1955 removing him from service; that the enquiry officer did not conduct the departmental enquiry according to the procedure laid down in the general book circulars with regard to the holding of departmental enquiries; and that he did not allow him, that is, the plaintiff, to engage a lawyer and did not furnish him with certified copies of relevant documents and did not also permit him to examine certain witnesses and conducted the enquiry violating the rules of natural justice.

3. The defendants denied the plaintiff's allegation that the departmental enquiry was held in an irregular manner and caused him prejudice. They pleaded that the grant of permission to the plaintiff to engage a lawyer in the departmental enquiry was purely a discretionary matter resting with the enquiry officer and no prejudice had been caused by the refusal of the permission. The general allegation of the plaintiff that he was not given certified copies of the relevant documents was not denied. It was, however, averred that there was no provision for supplying certified copies of documents and the plaintiff was permitted to inspect all the relevant documents and take copies and notes of the documents and that he did actually inspect all the documents and took copies and notes of the same. The plaintiff's allegation that he was not allowed to examine certain witnesses and was also not allowed to cross-examine certain witnesses examined in the departmental enquiry

were refuted, and it was added that as the plaintiff had not stated in the plaint the manner in which the provisions of the Constitution or of any rules and regulations had been contravened in the conduct of the departmental enquiry, no specific reply could be given to his general allegation that the departmental enquiry was not held in accordance with the procedure laid down in the police regulations, general book circulars and Civil Services (Classification, Control and Appeal) Rules.

4. On the pleadings of the parties the trial Court framed several issues. Some of the issues were found against the plaintiff; but the finding of the trial Court on the main issues was in favour of the plaintiff. It was that he was prejudiced in the conduct of his defence in the departmental enquiry as he was not allowed to be defended by a lawyer and certified copies were not supplied to him; and that the departmental enquiry was in violation of the provisions of Article 311 of the Constitution of India. The learned civil Judge decreed the plaintiff's claim. In first appeal, the Additional District Judge also took the view that the rules of natural justice were violated in the departmental enquiry inasmuch as the plaintiff was not allowed to be defended by a lawyer and he was not supplied with certified copies of documents. It must be stated that neither the civil Judge nor the Additional District Judge expressed the opinion they did about the non-supply of copies of documents with reference to any particular document.

5. In second appeal our learned brother Shiv Dayal, J., held that the plaintiff did not make any specific grievance in the plaint that he was prejudiced in his defence or that a reasonable opportunity of defending himself in the departmental enquiry was not given because of the refusal of permission to engage a lawyer and the question whether refusal to give permission to engage a lawyer, which was a discretionary matter, would amount to failure to give a reasonable opportunity within the meaning of Article 311 of the Constitution would depend on the facts and circumstances of each case; and that in the present case the plaintiff had neither pleaded nor proved facts and circumstances showing that prejudice had been caused to him by the refusal. On this view, he disagreed with the finding of the Courts below that the plaintiff had been prejudiced in his defence as he was not allowed by the enquiry officer to appear through a lawyer. The learned single

Judge further held that on 24 November 1952 the plaintiff had made an application (Ex. P. 6) before the enquiry officer for being supplied with copies of documents mentioned therein and that this application was admittedly rejected by the enquiry officer and the rejection of this application amounted to denial of the reasonable opportunity contemplated by Article 311. In support of his conclusion the learned single Judge relied on the Supreme Court decision in *State of Madhya Pradesh v. Chintaman Waishampayan* A.I.R. 1961 S.C. 1923, but he did not proceed to consider whether in the light of the Supreme Court decision in *Chintaman* case (vide supra) the plaintiff was entitled to copies of all the documents mentioned by him in his application dated 24 November 1952.

6. After hearing learned Counsel for the parties we have reached the conclusion that this appeal must be dismissed. The sole question that arises for determination in this appeal is whether as required by Article 311(2) of the Constitution the plaintiff was given a reasonable opportunity of showing cause against the charges levelled against him and the punishment imposed upon him. There is now to be found ample guidance in the numerous decisions of the Supreme Court as to how to decide the questions whether a civil servant who has been dismissed, removed or reduced in rank was given the reasonable opportunity contemplated by Article 311(2) of defending himself against the charges and the punishment meted out to him. The basic decision is the decision in *Khem Chand v. Union of India* 1959-1 L.L.J. 167, where the reasonable opportunity envisaged by Article 311(2) has been explained. Das, C.J., summarized the content of the reasonable opportunity thus (p. 175):

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority,

after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

In this summary, the Supreme Court emphasized the importance of giving an opportunity to the civil servant to defend himself by cross-examining the witnesses produced against him. The right of hearing and of cross-examination is thus fundamental to any departmental enquiry in which the rules of natural justice are applicable; and if denial of copies of relevant documents results in the curtailment of the effectiveness of that right, then there is a denial of the reasonable opportunity envisaged by Article 311(2) of the Constitution.

7. On the question of the applicability of the rules of natural justice to enquiries conducted by tribunals the Supreme Court has, after pointing out that the Evidence Act has no application to enquiries conducted by tribunals, observed in *Union of India v. T.R. Varma* 1958-II L.L.J. 259 at 264:

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

8. The question whether a civil servant proceeded against is entitled to get, for the purpose of cross-examining witnesses produced against him in the departmental enquiry, copies of statements that might have been made by them in a preliminary enquiry held before the commencement of the formal departmental enquiry has been considered by the Supreme Court in *State of Madhya Pradesh v. Chintaman* A.I.R. 1961 S.C. 1923 (vide supra). In that case Chintaman Walshampayan, a sub-inspector of police against whom a departmental enquiry was held on some charges, was not given copies of prior statements of two witnesses who were examined in the departmental enquiry and whose statements had been recorded earlier in a preliminary enquiry. He also wanted a copy of the application on the

strength of which the preliminary enquiry was started against him. The Supreme Court held that he should have been furnished with these copies and that failure to supply them made it almost impossible for Chintaman to submit the principal witnesses produced against him in the departmental enquiry to an effective cross-examination and that in substance deprived him of a reasonable opportunity to meet the charges against him. Distinguishing the case of *Dr. Tribhuwan Nath v. State of Bihar* : AIR1960 Pat116 , where the Patna High Court held that the delinquent public officer was not entitled to a copy of the report made by the anti-corruption department as a result of a confidential enquiry against him as it did not form part of the evidence before the enquiry Commissioner who held the formal departmental enquiry and was not relied upon by him, the Supreme Court made the following observations:

In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether the constitutional requirements of Article 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Article 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules, whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connexion is that the departmental enquiries should observe rules of natural Justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that

the procedure followed was not exactly in accordance with that which is observed in Courts of law.

* * *

It is hardly necessary to emphasize that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right 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.

9. This Court has also expressed in *Sharmanand v. Superintendent, Gun Carriage Factory* : AIR 1960 MP178 the view that the delinquent in a departmental enquiry should be given a reasonable opportunity to defend which includes not only a right to cross-examine the witnesses for the department but also to cross-examine them effectively; that it is not for the department to decide whether the statements would lead to an effective cross-examination but for the delinquent to use the statements for cross-examination in his own way; and that the previous statements of witnesses are an effective aid in cross-examination and denial to supply them must be treated as denial of giving an adequate opportunity to defend against the charge. It has further been pointed out in *Sharmanand* case : AIR 1960 MP178 (vide supra) that the delinquent is not entitled to demand copies of the statements of every witness who was examined in the preliminary enquiry, but that he can ask for copies of the previous statements of only those witnesses who are examined in the departmental enquiry; and that he also cannot demand a copy of the report made by the officer holding the preliminary enquiry if the report is not considered by the enquiry officer holding the departmental enquiry.

10. It is in the light of the principles laid down in the above cases that the question whether reasonable opportunity to defend himself was denied to the plaintiff-respondent because of the refusal of the enquiry officer to permit him to appear through a lawyer and because of his failure to supply copies of the documents enumerated by the plaintiff in his application dated 24 November 1952 has to be considered. On the question of representation through a lawyer the conclusion of

the learned single Judge that the refusal of permission to the respondent to appear through a lawyer did not result in the denial of a reasonable opportunity to him is undoubtedly right. But, in our opinion, the real justification for that conclusion is to be found not in the fact that the plaintiff did not aver or prove as to how he was prejudiced in his defence because of the refusal, but in the position that rules of natural justice only require an opportunity of being heard. There is, however, no obligation unless a statute or a statutory rule so provides that the hearing should be through a lawyer. The right of a party to a proceeding to be represented by counsel, wherever it exists, will be found to be given by the relevant enactment or rule. A Government servant in a departmental enquiry has no such right. Rule 55 of the Civil Services (Classification, Control and Appeal) Rules gives no right to the delinquent Government servant in an enquiry to appear by counsel. It no doubt says that the Government servant, if he desires to be heard in person, shall be so heard. The right to be heard in person means that he has no right to be heard through anybody but himself. Rule 15 of the circulars issued relating to departmental enquiries also says that the accused-officer shall not ordinarily be permitted to be represented by a legal practitioner. It no doubt further provides that where, however, the charges are of a complicated nature or other special cause is shown, the officer conducting the enquiry may allow such representation. The question whether the charges are or are not of such a complicated nature as to require representation by a legal practitioner is clearly a matter for the enquiry officer to decide in his discretion. The plaintiff-respondent did not aver or prove that he had applied for permission for being represented by a lawyer because of some special cause. Again, whether the special cause alleged was sufficient for the grant of permission is also a matter for the officer conducting the enquiry to decide in his discretion. There is thus no substance in the allegation of the plaintiff that the mere fact that he was not allowed to appear in the departmental enquiry through a lawyer in itself amounts to denial of reasonable opportunity of putting forward his defence. In *Qudratullah v. North-west Frontier Province* A.I.R. 1944 F.C. 72 the Federal Court rejected the contention of the delinquent officer that he was not given a reasonable opportunity of showing cause against his proposed dismissal within the meaning of Section 240 of the Government of India Act, 1935, inasmuch as he was not permitted to be represented by counsel. This decision

shows that 'reasonable opportunity of showing cause ' does not include representation by counsel.

11. In regard to the question whether the respondent was denied a reasonable opportunity of defending himself inasmuch as he was not supplied with copies of the documents enumerated in his application dated 24 November 1952, it must be stated at the outset that in the plaint the plaintiff made no averments at all that he had applied to the enquiry officer for being furnished with copies of certain specific documents; that those documents had a material bearing in the enquiry or that he needed copies of those documents for exercising his right of cross-examination of witnesses examined at the enquiry. He also never stated the reasons on which, according to him, the enquiry officer rejected his application and that because of this substantial prejudice had been caused to him. He did not even make any reference in the plaint to the application filed by him on 24 November 1952. This application was merely filed along with the plaint as a document relied on. He only averred in a general way that he was not allowed copies of the relevant documents. In this respect the plaintiff's allegations were vague and general and threw no light whatsoever on the documents, copies of which were said to have been refused to him. The appellant's reply to these general allegations was also in very general terms. It was pleaded by the appellants that there was no provision of supplying certified copies of documents and that

the plaintiff was permitted to inspect all the relevant documents and take copies and notes of the same.

Even in his evidence the plaintiff said nothing about the particular documents of which he wanted copies and the purpose for which he wanted them. The application which he made on 24 November 1952 was not put to him and he was not asked a single question about it. It was, however, put to Sri Joshi in cross-examination and he was asked whether he rejected that application. Sri Joshi replied saying that the application dated 24 November 1952, which the petitioner had made to the District Superintendent of Police, was forwarded to him and that he rejected the same as some of the documents were at one time in the custody of the plaintiff and he was in the know of their contents and as some were

confidential; and that the report of the preliminary enquiry, the case-diary and the information which Sukhdeoprasad gave to the District Magistrate about the demand of bribe and which led to a ' trap ' for catching the plaintiff in the act of accepting the bribe amount were confidential documents. It is also noteworthy that the report which Sri Joshi made at the conclusion of the enquiry was not even formally proved. This might have been because of the fact that the plaintiff never alleged that In his report Sri Joshi had relied on any of the documents of which he had no notice and copies of which were never supplied to him.

12. If the question whether there was a failure to give a reasonable opportunity to the plaintiff for defending himself against the charges by the omission of supply of copies of ' relevant documents ' were to be decided solely with reference to the allegations in the plaint, the evidence given by the plaintiff and the statements made by Sri Joshi as defence witness in his examination and cross-examination, then we would have had no hesitation in holding that the plaintiff had utterly failed to establish this complaint of denial of reasonable opportunity. But what has saved the situation for the plaintiff is an answer given by Sri Joshi to a question put by the Court. He said that the persons whom he examined at the enquiry had earlier given statements during the course of investigation and that the statements were reduced to writing and were Included in the case-diary. He also gave his opinion to the effect that the plaintiff did not get an opportunity of cross-examining the witnesses, examined during the course of the enquiry, with the help of their earlier statements recorded during the course of investigation. Leaving aside the opinion volunteered by Sri Joshi. it is clear that the statements of those persons who were examined at the enquiry had been recorded earlier during the course of investigation; and that copies of those statements were not given to the plaintiff-respondent. The present case thus falls within the principle laid down by the Supreme Court in *State of Madhya Pradesh v. Chintaman Waishampayan A.I.R. 1961 S.C. 1923* (vide supra); and, as held in that case, the plaintiff-respondent was clearly entitled to copies of the earlier statements of the witnesses who gave evidence before Sri Joshi. Those statements were relevant and if copies of those statements had been supplied to the plaintiff, they would have been of considerable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. As copies of those statements were

plainly not given to the plaintiff, it must be held that the enquiry conducted by Sri Joshi was not in accordance with rules of natural Justice and the plaintiff was denied a reasonable opportunity of defending himself against the charges. This conclusion is inescapable in the face of the answer given by Sri Joshi to the Court question and which answer cannot be ignored on the technicality of pleading. The Supreme Court has observed in *Kedar Lal v. Hari Lal* : [1952]1SCR179 that the Court should be slow to throw out a claim on the mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded.

13. For the foregoing reasons, our conclusion is that the learned single Judge was right in dismissing the State appeal.

14. In the result, this appeal is dismissed. In the circumstances of the case we leave the parties to bear their own costs of this appeal.