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Court : Delhi

Decided On : Nov-08-1968

Reported in : 5(1969)DLT599

Judge : S.K. Kapur, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal No. 210B of 1966

Appellant : Basant Kumar Jain

Respondent : Union of India and ors.

Advocate for Pet/Ap. : S.N.Chopra,; Madan Bhatia and; Prakash Narain, Advs

Judgement :

S.K. Kapur, J.

(1) In the year 1961 the petitioner was employed as an Upper Division Clerk (Cashier) in the Directorate of Inspection (Research, Statistics and Publication), Government of Indian New Delhi. In July 1961 the office of the Statistician disposed of waste paper by inviting tenders. It was sold to two tenderers, Nand Lal and Ram Dev, and the purchasers removed the same from the premises of the Statistician's office after weighment on 22nd July, 1961, 27th July, 1961, and 28th July, 1961. It is alleged by the petitioner in paragraph 6 of the petition that on 27th

July, 1961, the duty of supervising the weighment was assigned to J. N. Talwar and Ajit Singh, two of the clerks in the Statistician's office, and a statement of sale in the prescribed form was duly prepared according to the instructions. In paragraph 7 the petitioner says that J. N. Talwar had to go away for a short while in the course of weighment and requested the petitioner to be present at the site of weighment during his absence. It is also claimed by the petitioner that it was no part of his duty to supervise the weighment and no such duty was assigned to him by any authority by any order written or verbal and he only agreed to be present at the site of weighment in order to oblige colleague for a short while during the latter's absence. In the counter-affidavit, paragraph 6 has not been denied. Paragraph 7 of the petition has not been admitted and it is stated there in that:-

'THE usual practice, however, was that the Establishment Clerk, the Store Clerk and the Cashier were to work as a team in the matter of disposal of forms and cards. The petitioner was the Cashier at that time.'

(2) From the reading of paragraphs 6,7,8 and 9 of the petition and the replies thereto in the counter-affidavit it appears that the duty of supervising the weighment was assigned to J. N. Talwar and Ajit Singh. That is so because paragraph 6 of the petition has not been denied in the counter-affidavit and while not admitting paragraph 7 the deponent speaks therein about the usual practice but does not say that the duty to supervise weighments was assigned to the petitioner. The petitioner alleges that one Bal Krishan, a clerk in the Statistician's office, demanded on 27th July, 1961, a sum of Rs. 50.00 from the purchaser threatening that unless the payment was made he would report to the authorities that there had been an under-weighment of the waste paper but the purchaser declined to meet the demand; that on 28th July, 1961, the matter was referred to Shri Pillai, the Statistician; that fearing the consequences Bal Krishan filed a complaint on 29th July, 1961, in which he involved the petitioner as well as J. N. Talwar and Ajit Singh; that a fact finding inquiry into the said complaint was conducted by Shri K. D. Bannerjee, the then Deputy Director of Inspection (an officer superior in rank and status to the Statistician), that during the course of the inquiry the statements of witnesses were recorded; that the petitioner was informed of the proposal to take action against him and of the supporting allegations that he was afforded an

opportunity of defense and that eventually the petitioner was administered a warning in writing asking him to be more careful and diligent in future in the discharge of his duties.

(3) The position taken up by the respondents in their counter affidavit, on the other hand is that on 28th July, 1961, the purchasers of the waste paper reported verbally to the Statistician that on 27th July, 1961, a thin built gentleman turned up at the public 'Dharam Kanta' where the trucks loaded with the paper were being weighed and threatened that unless he was paid Rs. 60.00 as illegal gratification he would report about the under-weighment of the paper sold to them; that the late Shri S. P. Jain, after getting a factual report on the matter, decided to file the complaint but later on the then Director of Inspection ordered that the case should be handed over to the Special Police Establishment for investigation, that after receiving the report of the S.P.E. a warning was issued to the petitioner by the then Deputy Director of Inspection; that Shri Bannerjee was not the authority empowered to make appointments and, consequently, incompetent to administer the warning and, therefore, it was decided that a departmental inquiry should be held; that Shri K. D. Bannerjee conducted a preliminary inquiry with a view to framing charges against the petitioner and two others; and that it then came to light that the petitioner had been working in a private firm for about 5 to 6 years. As a result of all this a regular inquiry was conducted against the petitioner and on 27th July, 1962, the Disciplinary Authority served two charges on his alleging violation of rules 3 and 12 of the Central Civil Services (Conduct) Rules, 1955. The said two charges read-

Charge I:-

'THAT the said Shri B. K. Jain while functioning as one of the officials placed in charge of weighing of waste paper Statistician (I.T.) on 22-7-61 allowed under-weighment of the quantity of waste paper sold, even when this was brought to his notice by some of the persons who had been watching the weighing operations, he did not make any attempt to stop under-weighment. He thus (a) Intentionally and with malafide motive caused loss to the Government and (b) failed to discharge his duties properly. He thus violated Rule 3 of the Central Civil Services

(Conduct) Rules, 1955.'

Charge II:-

'THAT while functioning in the aforesaid office the said Shri B. K. Jain, actively engaged himself in service with private firms without having obtained any prior permission or approval of the prescribed authority.

He thus failed to abide by the provisions of Rule 12 of the Central Civil Services (Conduct) Rules, 1955.'

(4) The 2nd respondent was appointed as an Inquiry Officer and made his report dated 15th July 1964, holding that both the charges against the petitioner stood proved. The Disciplinary Authority the third respondent though differed with some of the reasonings adduced by the Inquiry Officer, agreed with his conclusion and imposed a penalty on the petitioner withholding his three future increments. The memorandum dated 27th July, 1962 (Annexure 'B' to the petition) shows that the inquiry was initiated under rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, but the punishment awarded was a minor one as provided in rule 13(11) of the said Rules. The petitioner has by this writ petition challenged the legality of the findings of the Disciplinary Authority and the punishment imposed by it.

(5) Mr. Som Nath Chopra, the learned counsel for the petitioner, mainly based his case on the violation of rules of natural justice. He contended that:-

(A) though the inquiry commenced on 7th February, 1963, yet the Inquiry Officer recorded the statements of the complainant Bal Krishan, Nand Lal, Ram Dev, Munshi Jiwan Dass and a representative of Messrs Multan Waste Paper Stores before the commencement of the inquiry at the back of and without the knowledge of the petitioner and the Inquiry Officer used the said statements in arriving at his decision;

(B) the Inquiry Officer summoned on his own initiative on 30th January, 1963, certain receipt books belonging to the public 'Dharam Kanta' at which the waste paper was alleged to have been reweighed on 27th July, 1961, by the purchaser

and used the same incoming to an adverse conclusion against the petitioner about the under-weighment in spite of the fact that the books were neither proved nor was the proprietor of the public 'Dharam Kanta' called in evidence;

(C)the Inquiry Officer brought the statements of the witnesses including the statement of Bal Krishan, recorded at the petitioner's back, on record and asked the petitioner to cross-examine the witnesses. The statements recorded earlier were nto even read out at the hearing; and

(D)the Inquiry Officer addressed a demi-official letter on 31st November, 1963, to Shri P. S. B. Pillai, Statistician, enquiring from him whether he had deputed the petitioner to supervise the weighments on 27th July, 1961. Shri Pillai in reply wrtoe that (a) he had nto given any specific instructions to the petitioner but had verbally directed the Assistant Statistician to supervise the weighments and (B). The usual practice was that the Establishment Clerk, the Store Clerk and the Cashier were to work as a team in the matter of disposal of forms and cards annually and the petitioner was a Cashier at that time. The said Shri Pillai was never called in evidence so that the petitioner had nto opportunity to cross-examine him and all this happened in spite of the fact that Shri Pillai was himself the Disciplinary Authority and had to consider and accept or reject the report of the Inquiry Officer.

(6) Regarding the recording of the statements at the back of the petitioner, the respondents say in their counter-affidavit :-

'WHEREVER any statements of witnesses had been recorded earlier in the absence of the charged person, those statements were, in the course of inquiry, read out and were confirmed by the witnesses in the presence of the charged person who was given all reasonable opportunities to cross-examine such witnesses..It will thus be seen that even if there was any defect in the manner of recording the evidence of witnesses, this was subsequently cured by calling the 'witnesses in the presence of the charged person, by reading out the statements, if any, made by them earlier, by getting their confirmation of their respective statements and by allowing ample opportunities to the charged person for cross-examining such witnesses.....,.....'

'THE Inquiry Officer had not relied upon any evidence, whether collected in the course of the inquiry or before the inquiry, without confronting to the charged person and without giving ample opportunities to the charged person to cross-examine the persons who had made these statements. Wherever any documentary evidence had been collected either before or in the course of inquiry, that too was confronted by the inquiry officer to the charged person.'

(7) The counter-affidavit has been filed by Shri M. S. Nadkarni, Director of Inspection, and the statements made then in have been verified as true and correct 'to the best of my information as derived from the official Government records.....' No counter-affidavit has been filed by the Inquiry Officer. Although there was a gap of a few days when the case was first argued and the day when the arguments concluded, but the official records were not made available in Court so that I could not verify as to what actually transpired at the inquiry. I must, however, make it clear that I find no reason to doubt the affidavit of the Director of Inspection and must, therefore, proceed on the assumption that the statements of the witnesses were read out at the inquiry and the petitioner given an opportunity to cross-examine them. It was, however, not disputed on behalf of the respondents that the petitioner was asked to cross-examine the witnesses as soon as their statements recorded earlier were read out and confirmed by them. It is in the light of these circumstances that I have been called upon to decide whether or not there has been any violation of the rules of natural justice.

(8) Mr. Chopra drew my attention to State of Mysore and others v. Shivabasappa Shivappa Makapur,⁽¹⁾ on which the respondents rested their case. In that case it was held that though normally the examination of the witness takes place in the course of the proceedings before the party charged but it would make no difference 'when a witness is called, the statements given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him.' It was further held-

'to require in the case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on

bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them.'

(9) Mr. Chopra then relied on *M/s Kesoram Cotton Mills Ltd. v. Gangadhar and others* (2) In that case their Lordships of the Supreme Court decided:-

'It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient: (see *New Prakash Transport Co. Ltd., v, New Suwarna Transport Co. Ltd.*, (3), but where in domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading to statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement, in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries 'in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore we should expect a domestic

inquiry by the management to be of this kind. Even, so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in Shivabasappa's case (4). The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic enquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the tribunal though for different reasons that the inquiry did not comply with the principles of natural justice.'

(10) As I have said earlier, the original records were not made available to me to verify the position. The petitioner alleges that the previous statements were not even read out at the hearing though he was allowed to cross-examine the witnesses. The respondents maintain that those statements were read out and confirmed by the witnesses in the presence of the petitioner. I am, however, unable to say as to whether or not the copies of the statements recorded at the back of the petitioner were made available to him. In the counter-affidavit there is no assertion that copies of all the statements were made available to the petitioner though it is stated that 'copies of most of the statements had already been given to the charged persons'.

(11) What emerges from the reading of the aforesaid two decisions of their Lordships of the Supreme Court is this : The rules of natural justice do not demand

strict compliance with the procedure obtaining in regular courts of law and the technical rules of evidence do not apply to such proceedings. The Courts have in each case to see whether or not the rules of natural justice have, in substance, been complied with in the long established constitutional sense and the charged person has proper opportunity to cross-examine the witnesses. Mr. Prakash Narain said that actually the petitioner had cross-examined the witnesses at length. That cannot be decisive because if the petitioner had not been given an opportunity to assimilate the statements of the witnesses, lengthy cross-examination cannot be equated to an effective cross-examination. Mr. Prakash Narain also contended that *M/S Kesoram Cotton Mills Ltd., case (2)* was confined to the industrial matters and the principles laid down therein should be confined only to inquiries against workmen. In my opinion, Mr. Prakash Narain is not right in his contention. The heart of the problem in all such cases is : Has sufficient opportunity been given to the charged person There may be nothing wrong in the previous statement being merely read at the inquiry, confirmed by the witness and the charged person given an opportunity to cross-examine him. The question to be seen would be not one of form but of substance, namely, did that procedure substantially comply with the requirements of the natural justice and did the charged person get proper and effective opportunity of cross-examining the witness concerned By a logical compact between law and justice the rules of natural justice stand like a rock between our erring men and their wrongful dispensation of justice and, therefore, each decision must be tested in the light of its own facts. The petitioner is a layman, copies of all the statements were not made available to him, and it is admitted that though the statements of the witnesses were read yet the petitioner was called upon there and then to cross-examine them. Can then it be said that the petitioner had the opportunity to assimilate the examination-in-chief, which may have been quite lengthy, and effectively cross-examine the witnesses The rule as to the opportunity to assimilate the evidence with a view to cross-examining the witness applies as much to an industrial worker as to another person not having the training of a lawyer. May be, that otherwise a well read and experienced person, though not trained as a lawyer, is able to assimilate the examination-in-chief of a witness within a few minutes that it may take to be read. In that case the demands of

justice may stand satisfied. Yet, in the case of a person of the type of the petitioner it may be difficult to say that he could assimilate the statements-in-chief there and then and effectively cross-examine the witnesses. My answer, therefore, must be that having regard to the fact of this case, there had been no due inquiry. If the copies of the statements had been made available to the petitioner a day or two earlier, the petitioner could have had no grievance, but, I think that in the circumstances of this case the petitioner's grievance is legitimate.

(12) Mr. Prakash Narain then relied on rule 16 of the Civil Services (Classification, Control and Appeal) Rules and said that only a minor penalty having been imposed on the petitioner he could not insist on a regular inquiry as under rule 16 action may be taken only by giving the charged person an opportunity of making representations without recording any evidence. That does not, however, solve Mr. Prakash Narain's problem. The inquiry was initiated under rule 15 and it cannot, therefore, be said that a person would in the situation make the same self-contained representation alone under rule 16. I need not, however, deal with the question raised by Mr. Chopra that even in an inquiry under rule 16 the charged person can insist on cross-examining the witnesses whose statements are sought to be used.

(13) In the result, the petition is allowed and the order of the Disciplinary Authority dated 15th July, 1964, is quashed. It will, however, be open to the respondents to hold a fresh inquiry in accordance with law. There will in the circumstances, be no order as to costs.

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