

J.A. NAIKSATAM
v.
PROTHONOTARY & SENIOR MASTER, HIGH COURT OF BOMBAY
AND ORS.

OCTOBER 7, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

Disciplinary proceedings—Disciplinary authority not agreeing with findings of Inquiry Officer—Opportunity of personal hearing—High Court employees—Demanding illegal gratification—Inquiry Officer found the employees not guilty of charge—Disciplinary authority disagreeing with the said finding and concluding that employees were guilty—Order of disciplinary authority furnished to employees and their explanation sought as to why penalty of dismissal from service be not imposed—Their explanation not accepted and order of removal from service passed—Plea that in the event of disciplinary authority disagreeing with findings of inquiry officer, delinquent employees should have been given personal hearing—Held, on facts, copy of tentative decision of disciplinary authority having been given to employees and they having furnished their detailed explanation, principles of natural justice have been fully complied with, and there is no infraction of rules nor is there any infirmity in the decision—Bombay High Court (Discipline and Appeal) Rules—rr.7 and 8.

Punjab National Bank and Ors. v. Kuni Behari Misra etc., [1998] 7 SCC 84 and Yoginath D. Bagde v. State of Maharashtra and Anr., [1999] 7 SCC 739, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4395 of 2002.

From the Judgment and Order dated 23.1.2001 of the Bombay High Court in W.P. No. 1441 of 2000.

V.N. Ganpule, Nitin S. Tambwekar, B.S. Sai, C.R. Iyer and Varinder Kumar Sharma with him for the Appellants.

- A U.U. Lalit, S.S. Shinde, Arun Pednekar, Prasenjit Keswani, Nitin Sangra, S.V. Deshpande and Mukesh K. Giri with him for the Respondents.

The following Order of the Court was delivered :

ORDER

- B Delay condoned in SLP (C) Nos.1243-1244 of 2003 and leave granted in both Special Leave Petition (c) No.1241 of 2003 and Special Leave Petition (c) Nos.1243-1244 of 2003.

- C These appeals have been preferred against the impugned final judgment of the Division Bench dated 22nd December, 1999 of the High Court of Bombay in the Writ Petitions filed by the two employees of the High Court of Bombay, who were dismissed from service. The appellants were working as senior translators in the office of the Chief Translator of the High Court. In July, 1997 one Ms. Vasanti Joshi, who was practicing as an advocate in the Bombay Courts filed a complaint alleging that the translators working in the office of the Chief Translator had been indulging in corrupt practices and for obtaining official translation of the documents these translators had been demanding illegal gratification. Pursuant to the complaint, the High Court directed an inquiry by the Prothonotary & Senior Master of the High Court and he examined some of the witnesses and based on the information collected by the Prothonotary & Senior Master, disciplinary proceedings were initiated against these two appellants.

- F An Additional Registrar of the High Court was appointed as an Enquiry Officer. The appellants were given opportunity to submit their written representations before the Enquiry Officer. The gist of allegation levelled against these two appellants was that Ms. Vasanti Joshi gave three documents in Marathi and one document in Gujarati for being translated into English and the appellants in both the appeals demanded a sum of Rs.650 and Rs.350 as bribe. The Enquiry Officer, after a detailed enquiry, found that these appellants were not guilty of the charge framed against them. The report was placed before the disciplinary authority and the disciplinary authority disagreed with the findings of the Enquiry Officer and came to the conclusion that these appellants were guilty of having demanded the illegal gratification from the complainant. A copy of the tentative decision was furnished to these appellants and they were asked to give explanation as to why the report given by the Enquiry Officer shall be accepted. Pursuant to that notice, the appellants H herein gave a detailed explanation and they prayed that the report of the

Enquiry Officer may be accepted and the proceedings be dropped against them. It may be mentioned that the appellants did not seek for a personal hearing at that juncture. After the receipt of the explanation, the disciplinary authority passed an order disagreeing with the report submitted by the Enquiry Officer and the copy of that order was furnished to the appellants and sought their explanation as to why they shall not be imposed with penalty of dismissal from service. The appellants again gave their explanation and the same was not accepted and they were removed from service. Aggrieved by the same, the appellants filed separate writ petitions and in the writ petitions the pleas raised by the appellants were not accepted by the court. However, the learned Advocate General, who appeared before the High Court of Bombay pointed out that the petitioners were entitled to file a review application against the imposition of penalty. The appellants thereafter filed a review application before the High Court and the same was dismissed on 28th March, 2000 by the then Acting Chief Justice of the High Court of Bombay. Aggrieved by the same, the impugned writ petitions were filed by the appellants, which were dismissed by the High Court, as stated earlier.

We have heard the learned senior counsel for the appellants and the learned senior counsel for the respondents. The counsel for the appellants raised a plea that there was no evidence on record to hold that the appellants were guilty of having demanded illegal gratification from the complainant-Ms. Vasanti. We have gone through the evidence available on record and the findings of disciplinary authority and we are satisfied that cogent and convincing reasons are given as to why the report of the Enquiry Officer was not accepted.

The learned counsel for the appellants contended that as per the Bombay High Court (Discipline and Appeal) Rules (for short 'the Bombay rules'), the appellants were entitled to get a copy of the report of the Enquiry Officer and they should have been heard before the same was accepted or rejected by the disciplinary authority. The contention was that by virtue of rule 8, according to the appellants' counsel, though the report of the enquiry officer was furnished, the appellants were not given an effective opportunity to place their arguments against this and it was contended that even before the issuance of show cause notice, and the disciplinary authority had made up his mind and had already taken a decision disagreeing with the enquiry officer and seeking an explanation from the delinquent officers was only an empty formality and there was thus serious violation of principles of natural justice.

A The relevant rule of the Bombay rules reads as follows:

“8. Action on the inquiry report :-(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority who shall thereupon proceed to hold the further inquiry according to the provisions of rule 7 of these Rules as far as may be.

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(2) The disciplinary authority shall if it is not the enquiring authority, consider the record of the inquiry and record its findings on each charge. *If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement.*

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(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties should be imposed on the High Court servant, it shall notwithstanding anything contained in rule 10 of these Rules on the basis of the evidence adduced during the inquiry held under rule 7 determine what penalty, if any, should be imposed on the High Court servant and make an order imposing such penalty.

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(4) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties should be imposed on the High Court servant, it shall-

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(a) Furnish to the High Court servant, a copy of the report of the inquiry held by it and its findings on each article of charge, or where the inquiry has been held by it and its findings on each article of charge, or where the inquiry has been held by an inquiring authority appointed by it a copy of the report, *of such authority and a statement of its findings on each article of charge expressly stating whether or not it agrees with the finding of the inquiring authority, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;* and

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(b) give to the High Court servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time

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as may be allowed such representation as he may wish to make A
on the proposed penalty on the basis of the evidence adduced
during the inquiry held under rule 7 of these Rules.

(Emphasis supplied)

(ii) The disciplinary authority shall after considering the representation, B
if any, made by the High Court servant determine what penalty, if
any, should be imposed on the High Court servant and make such
order as it may deem fit."

As per Rule 8 of the Bombay Rules, if the disciplinary authority is not C
agreeing with the reasons given by the enquiry officer it would be open to
the disciplinary authority to hold further enquiry in accordance with the
provisions of Rule 7 and Rule 8(2) shows that if the disciplinary authority
disagrees with the findings of the enquiry officer on any of the articles of
charge he shall record his reasons for such disagreement. Sub-rule 4(i)(a) of
Rule 8 of the Bombay rules further shows that the copy of the report of the D
enquiry officer and his finding on each article of charge together with brief
reasons shall be given to the delinquent employee. The rule further says that
the disciplinary authority shall give its reasons for disagreeing with the decision
of the enquiry officer. The counsel for the appellants contended that even if
the rule does not specifically say that the delinquent employee should be
given personal hearing when it disagrees with the enquiry officer, the same E
shall be read into the provision and the delinquent employee shall be given
an opportunity of personal hearing before a final decision is taken in the
matter. In this connection, reliance was placed on the decision of this Court
in the case of *Punjab National Bank and Ors. v. Kuni Behari Misra etc.*,
[1998] 7 SCC 84. In this case Court was interpreting the Regulation 7 of the
Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, F
1977. The said regulation states that the disciplinary authority if it disagrees
with the findings of the enquiry officer he can give his reasons for such
disagreement and can record its own findings if the evidence on record is
sufficient for that purpose. Even though the regulation did not contemplate
of giving a fresh opportunity to the delinquent employee, this Court, while G
interpreting the said regulation held that:

"The result of the aforesaid discussion would be that the principles of
natural justice have to be read into Regulation 7(2). As a result thereof,
whenever the disciplinary authority disagrees with the enquiry
authority on any article of charge, then before it records its own H

- A findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer.
- B The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

- C The same view was expressed by this Court in the case of *Yoginath D. Bagde v. State of Maharashtra and Anr.*, [1998] 7 SCC 739, and in paragraph 31 this Court has held:

- D "In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings records by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges
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are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

Relying on these decisions, the counsel for the appellants contended that after the receipt of the report from the enquiry officer, the disciplinary authority should have given notices to the appellants with its tentative conclusion and an opportunity be given to the delinquent before the report of the enquiry officer is reversed by the disciplinary authority. It was also argued that the appellants should have been heard by the disciplinary authority before such a decision was rendered. Even though the rule as such does not contemplate of giving an opportunity of being given to the delinquent appellants before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there shall be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision.

The counsel further contended that from the tentative decision it could be spelt out that the disciplinary authority had already taken a final decision in the matter and the details have been given therein and the opportunity which was given to the appellants was only an exercise in futility. We are not inclined to accept this contention. It is true that the disciplinary authority gave its reasons for disagreement with the report of the Enquiry Officer and the appellants had given their fullfledged explanation and if at all the disciplinary authority gave detailed tentative decision before seeking explanation from the appellants, it enabled them to give an effective representation and the principles of natural justice were fully complied with and it cannot be said that the appellants were not being heard in the matter.

Lastly, it was contended that the punishments imposed on the appellants are disproportionate as there was no evidence at all to prove that these appellants received any illegal gratification. It was prayed that the appellants are innocent and the drastic punishment of dismissal should not have been

A imposed on them. In view of the present day situation of rampant corruption in public life, the High Court rightly imposed the punishment of dismissal on erring officers. In the result, we are not inclined to interfere with the findings arrived at by the High Court as the High Court considered all aspects before imposing such a penalty on the appellants. The appeals are dismissed accordingly. No costs.

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R.P.

Appeals dismissed.