

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 43/2000**

% **15th March, 2012**

S. GURMEET SINGH GROVER Appellant
Through: Mr. O.P. Saxena, Mr. Sanjay
Diwakar, Mr. Parikshit Mahipal,
Advocates.

versus

M/S. ENGINEER INDIA LTD. Respondent
Through: Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of this Regular Second Appeal (RSA) filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Appellate Court dated 05.08.1999 setting aside the judgment of the original court of the Civil Judge dated 07.10.1997. By the judgment dated 07.10.1997, the Civil Judge had decreed the suit of the appellant/plaintiff for declaration and damages and held that the appellant/plaintiff continued to be in service by setting aside the order of

dismissal passed by the disciplinary authority and the appellate authority. The Civil Judge directed the respondent/defendant to give the same punishment to the appellant/plaintiff as was given to one Mr. Virmani, involved in the incident.

2. The facts of the case are stated in the order of the disciplinary authority dated 01.02.1989, Ex. PW-1/6 and which read as under:

“Mr. G.S. Grover, Mr. Virmani, Mr. B.M. Sharma and Mr. D.L. Jindal were playing cards on Mr. B.M. Sharma’s table, at about 12.30 pm on 10th July, 1987. Because of some disagreement between Mr. Grover and Mr. Virmani over the counting of points, Mr. Grover got agitated and threw the pack of cards on the face of Mr. Virmani. Thereafter, he caught hold of Mr. Virmani’s hair with both hands and pulled them hard. In the process, a bunch of hair of Mr. Virmani got uprooted by the roots and came out in the hands of Mr. Grover. Mr. Grover then caught hold of Mr. Virmani and while pushing him, got his feet in the cord attached between the table and the chair on which he was sitting, and thereby tripped and fell on the top of Mr. Virmani and both fell down on the ground. There was a scuffle between the two of them on the ground. Due to Mr. Grover’s falling on the ground with Mr. Virmani, the impact of the fall dislodged his spectacles and turban and his spectacles during the course of this struggle got trapped upon and the glasses broke. Thereafter, Mr. Virmani got up and stood next to the file racks. Mr. Grover again attacked Mr. Virmani and gave him some blows. Mr. Virmani in defending himself grappled with Mr. Grover and held him for a while. During this fight Mr. T.S. Bhagat came to the two of them and advised them to stop fighting. However, Mr. Grover and Mr. Virmani did not disengage despite Mr. Bhagat’s advice. Mr. Bhagat there after left the scene of the incident. Mr. B.M.

Sharma then intervened and physically separated Mr. Grover and Mr. Virmani. Mr. Grover then picked up his turban and glasses and proceeded to the toilet. On coming back from the toilet, he again rushed towards Mr. Virmani and gave him some blows on the head and shoulder region. Mr. B.M. Sharma again intervened and separated the two. There after both of them were called by Mr. Bhagat to his room and were asked to give statements in writing about the incident, which was accordingly done by both of them. These two statements form part of the record. Mr. B.M. Sharma, on whose table the cards were being played was also asked to give a written statement which he did, and which also forms part of the proceedings. The injuries suffered by the two were:

(a) Mr. Virmani suffered two broken teeth which came out from the root. However, both the teeth though artificial were permanently implanted. A bunch of hair was uprooted from his head by Mr. Grover. He also suffered bruises on the elbow, knee and head region, which was administered first-aid by Mr. Kardam.

(b) Mr. Grover suffered a small scratch below the left eye. He also had his spectacles broken and his turban dislodged during the scuffle.”

3. In addition to the aforesaid facts, it is also necessary to mention that in the past also there were quarrels between the appellant/plaintiff and Mr. Virmani while playing cards in the office premises and which is also an aspect noted in another part of the order of the disciplinary authority Ex. PW-1/6.

4. That an enquiry was conducted and that the Enquiry Officer gave his

report is not in question. Further, that disciplinary authority accepted the report of the Enquiry Officer with its additional reasons, is also not disputed. And the fact that the departmental appeal was rejected by the appellate authority, is also not in question. The subject suit was however filed by the appellant/plaintiff seeking to set aside the orders of the disciplinary authority, in whose order the report of the Enquiry Officer merged, and the appellate authority.

5. The law with regard to challenge to orders passed by an Enquiry Officer and a disciplinary authority is well settled. A civil court does not sit as an Appellate Court over the findings and conclusions of a departmental Enquiry Officer/disciplinary authority. Unless there is violation of the principles of natural justice or the order in the departmental proceedings is perverse or there is any violation of the law or if the punishment is grossly disproportionate, the civil courts do not interfere.

6. The law with respect to departmental enquiries and the proceedings thereof is succinctly contained in the judgment of the Supreme Court in the case of *State Bank of Patiala Vs. S.K. Sharma, AIR 1996 SC 1669*. The principles have been crystallized in the headnote of the judgment and which principles have been extracted by both the trial court as also the Appellate Court. The relevant headnote of the judgment in *State Bank of*

Patiala (supra) reads as under:

“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature of (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.-Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a

provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To report, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle slated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment) keeping in mind the approach adopted by the Constitution Bench in *B. Kaninakar*. The ultimate test is

always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice/no hearing" and "no fair hearing", (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them

in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

7. A reading of the judgment in the case of *State Bank of Patiala* (*supra*) shows that there are two aspects of the principles of natural justice. One aspect is a complete violation of the rules i.e. a case of no notice or no enquiry, and in which case, on this ground itself punishment against the employee can be set aside. The second aspect of the principles of natural justice is violation of a facet of principles of natural justice. In case of violation of a facet of the natural justice, what has to be seen is that has there been a fair enquiry and what is the prejudice to the delinquent employee. In case prejudice is not proved, it cannot be said that there is any violation of the principles of natural justice. The matter can also be looked at from the point of view as to the requirement being a mandatory or directory requirement i.e. the first aspect stated above is a mandatory requirement and the second aspect stated is a directory requirement as long as there is a fair enquiry.

8. As is usual in challenges to the findings and the conclusions of a

departmental enquiry, various grounds, and most of which were general, were alleged on behalf of the appellant/plaintiff. However, the main grounds of challenge were:

- (i) The medical report with respect to the injury caused by the appellant/plaintiff to Mr. Virmani was not supplied to the appellant/plaintiff.
- (ii) The testimonies of the independent witnesses were recorded by the Enquiry Officer to the prejudice of the appellant/plaintiff.
- (iii) The findings and the conclusions of the Enquiry Officer and the disciplinary authority are perverse as without any reason the witnesses of the appellant/plaintiff were recalled for cross-examination.
- (iv) The order of dismissal of the appellant/plaintiff from services was hit by the principle of gross dis-proportionality of punishment as compared to the other actor in the incident Mr. Virmani.

9. All the aforesaid aspects have been dealt with by the Appellate Court in its exhaustive judgment. The Appellate Court of Ms. Manju Goel, ADJ (as she then was) has in fact noted that the reasonings of the Civil Judge are

considerably muddled and lacking in clarity. I cannot but agree to such observations of the Appellate Court as I myself had great difficulty in deciphering the jumbled up reasons given by the civil court.

10. So far as the issue of not giving of the medical report to the appellant/plaintiff, the Appellate Court has observed that the same cannot cause prejudice to the appellant/plaintiff inasmuch as the fact was that two teeth of Mr. Virmani were broken and which otherwise had come out/proved during the course of the departmental enquiry that though the teeth may be artificial they were permanently fixed. The Appellate Court has also observed, and rightly so, that departmental enquiries are not hidebound by the strict rules of the Evidence Act, 1872 and it has otherwise been established on record that there was assault on Mr. Virmani, in fact repeated assaults and the breaking of the teeth of Mr. Virmani and his being caused injuries.

11. On the aspect of recalling of the witnesses of the appellant/plaintiff for cross-examination, the Appellate Court has noted that though no reason has been given by the Enquiry Officer, absence of reasons in the order of the Enquiry Officer is not such a grave prejudice to the appellant/plaintiff for it being held that there is vitiation of the enquiry proceedings. On the aspect of “independent witnesses” the Appellate Court has noted that the

findings of the Enquiry Officer are not solely based on the evidence of the independent witnesses and, therefore, it cannot be said that there is such grave prejudice. Appellate Court also noted that there is no allegation of perversion or malice against the Enquiry Officer or the disciplinary authority. Issues of appreciation of evidence are not issues of perversity.

12. I may also at this stage state that though the Enquiry Officer did not give any detailed reasoning, the disciplinary authority has given detailed reasoning for imposing the order of punishment upon the appellant/plaintiff.

13. On the aspect of allegedly the appellant/plaintiff being meted out grossly disproportionate punishment as compared to the other dramatis personae Mr. Virmani, the disciplinary authority has observed as under:

“As to the relative guilt of Mr. Virmani and Mr. Grover I am of the view that:

(1) Both Mr. Virmani and Mr. Grover were to blame for playing cards on the premises of the office knowing fully well that they had quarrelled in the past.

(2) Mr. Virmani was guilty to the extent of making some provocative remarks against Mr. Grover.

(3) That Mr. Grover reacted in a manner which was wholly unworthy of an officer, more so while on duty within the office premises and assaulted Mr. Virmani and

repeated his assault causing serious injuries to Mr. Virmani in spite of the advise of his superiors.

(4) That if Mr. Grover had any grievance against Mr. Virmani he should have discontinued playing with him or in the alternative if he thought that the remarks made by Mr. Virmani were objectionable he should have made a report to his Head of Department. He had no justification whatsoever for acting so violently and assaulting his colleague an officer of the Company in the office premises.”

The Appellate Court therefore held and rightly so that the difference in punishment imposed upon two officials was justified and it cannot be said there is violation of doctrine of proportionality.

14. Merely because two views are possible on appreciation of evidence, does not mean that findings of the departmental enquiry are to be interfered with. Once one possible and plausible view is taken civil courts are loath to interfere. Sufficient evidence has come on record in the departmental enquiry to support the findings of facts and which cannot be interfered with.

15. A second appeal is entertained only if there is a substantial question of law i.e. a mere question of law is not enough and there has to be a substantial question of law. The Appellate Court in its exhaustive judgment has dealt with all the aspects, and I do not find any reason to interfere with the detailed judgment of the Appellate Court. Considering

the facts that there were fights in the past on account of playing cards in the office premises, violent repeated assaults were made by the appellant/plaintiff on Mr. Virmani who suffered grave injuries as compared to appellant/plaintiff who only suffered a scratch below his eye, the appellant/plaintiff refusing to disengage in spite of directions of his superior officers, besides the other findings, are such that there is no reason to hold that the orders of the disciplinary authority and the appellate authority are in any manner violative of the principles of natural justice or perverse or against the doctrine of proportionality.

16. In view of the above, the appeal being totally misconceived and there arising no question of law, and considering the fact that the respondent has been unnecessarily put to litigation for 22 years, I dismiss the appeal with costs of ₹ 20,000/-. Trial court record be sent back.

VALMIKI J. MEHTA, J

MARCH 15, 2012

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