

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

Date of decision: 24th January, 2012

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W.P.(C) 7338/2011

SATYADIN MAURYA

..... Petitioner

Through: Mr. Shanker Raju, Adv.

Versus

DIRECTORATE OF EDUCATION & ORS Respondents

Through: Ms. Purnima Maheshwari, Adv. for
R-1.

Ms. Rekha Palli & Ms. Punam
Singh, Advs. for R-2&3.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

A.K. SIKRI, ACTING CHIEF JUSTICE (ORAL)

1. The petition impugns Rule 120(1)(d)(ii) of the Delhi School Education Rules, 1973 as *ultra vires* to the Constitution of India.

2. The petitioner was an employee of respondent No.3 Air Force Bal Bharti School. He was on 28th May, 2009 charged with, inspite of being married, having an illicit relationship with another married woman. An

inquiry was held against the petitioner. As per the report of the Inquiry Officer, the charge stood proved against the petitioner. Thereafter the Disciplinary Authority, after considering the record of the inquiry proceedings formed an opinion that a major penalty of removal from service, which shall not be a disqualification for future employment in any other recognized private school be imposed on the petitioner and served notice dated 13th January, 2011 under Rule 120(1)(d)(ii) of the Rules giving 15 days' time to the petitioner to represent against the same. The petitioner submitted his reply; however that did not find favour with the Disciplinary Authority which vide order dated 27.01.2011 imposed the punishment as proposed.

3. Section 8(3) of the Delhi School Education Act, 1973 provides remedy of appeal to the Delhi School Tribunal against such an order. However, instead of preferring the statutory appeal, present writ petition is filed and the *vires* of the aforesaid Rule is also challenged. Rule 120 reads as under:

120. Procedure for imposing major penalty. – (1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefor;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall:—

(i) *furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;*

(ii) *give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;*

(iii) *on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;*

(iv) *after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings, and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegations charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.*

(2) *No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.*

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal.

4. Mr. Shanker Raju learned counsel for the petitioner submits that Rule 120 (1) (d), in so far as requires the Disciplinary Authority to, immediately after receiving the report of the inquiry and even before giving a chance to the charged employee to represent thereagainst, form an opinion as to the penalty if any to be imposed, amounts to pre-judging the matter and is violative of the principles of natural justice and is contrary to the decision taken by the Supreme Court in ***Managing Director, ECIL, Hyderabad Vs. B. Karunakar*** (1993) 4 SCC 727. He has specifically referred to the following discussion in the said judgment:

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second

right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

30. *Hence the incidental questions raised above may be answered as follows:*

(i)

(ii)

(iii)

(iv) *In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly."*

5. The contention of Mr. Shanker Raju learned counsel for the petitioner is totally misconceived. We have to bear in mind the context in which the aforesaid decision in *Managing Director, ECIL, Hyderabad*

(supra) was rendered by the Apex Court. The Apex Court was considering the impact and effect of first proviso to Article 311(2) (after the 42nd Amendment). It is a matter of common knowledge that Article 311 of the Constitution, deals with civil servants in the employment of Union of India or the State. Article 311 of the Constitution of India, as it originally stood, *inter alia* provided that no government servant shall be dismissed from service or removed or reduced in rank except after holding an inquiry into the allegations for which chargesheet is to be served. In case, the charges were proved, Article 311 of the Constitution of India further provided that before imposing punishment, it was incumbent upon the Disciplinary Authority to give show cause notice to the delinquent employee stating the penalty which Disciplinary Authority had in mind. What it implied was that even before a particular punishment is imposed, the Disciplinary Authority was supposed to indicate the same in the show cause notice and the chargesheeted employee had a right to make his representation and convince the Disciplinary Authority that the punishment proposed should not be imposed. This was thus a provision which was in favour of the employees. By the 42nd Amendment to the Constitution, this provision

was done away with. After this amendment, there was no need to give any show cause notice for proposed penalty. It is in this context, the question arose as to whether any show cause notice of any nature whatsoever is required to be given to the employee before imposing the penalty. The Supreme Court held that such a show cause notice would be mandatory as the same would be in conformity with the principles of natural justice irrespective of the amendment in the first proviso of Article 311(2) by 42nd Amendment. It is in this context and discussing this aspect that the observations aforesaid were made by the Supreme Court.

6. Thus what follows from the aforesaid judgment is that the Supreme Court was considering the effect of the 42nd Amendment to the Constitution whereby Article 311 of the Constitution of India was amended and came to the conclusion that in consonance with the principles of natural justice, still there would be requirement to serve upon the delinquent employee a copy of the inquiry report and give him an opportunity to make the representation against the findings recorded by the Inquiry Officer and thereafter take a decision whether to accept the

findings of the Inquiry Officer or not. That would not mean that if there is a provision in any other law, Statute or Rules which still exists for affording an opportunity even against the proposed penalty, that becomes bad in law. As pointed above, it was a provision which was made in favour of the employee, though the same is taken away insofar as position under Article 311 of the Constitution of India qua civil servants is concerned. However such a provision available under Rule 120(1)(d)(ii) supra to the employees of School cannot be said to be contrary to the provisions of the Constitution.

7. We are not convinced with the argument of Mr. Shanker Raju learned counsel for the petitioner that merely because punishment is proposed in the show cause notice, the Disciplinary Authority can be said to have pre-judged the matter or that the same results in the representation thereagainst being considered with a closed mind or infructuous. The opinion formed at that stage is a tentative opinion formed only on the basis of the record of the inquiry proceedings and subject to the consideration of the representation by the employee thereagainst. Formation of the said

opinion does not stop the Disciplinary Authority from forming another opinion or changing the earlier opinion after considering the representation of the employee. Rather, such a provision is favourable to the employee and cannot be treated as bad in law. Rule 120(1)(d) gives a right of hearing to the employee not only during the inquiry but also at the stage when those findings are considered by the Disciplinary Authority. The formation of a tentative opinion by the Disciplinary Authority and communication thereof to the employee enables an employee to know exactly how the Disciplinary Authority has perceived and what inferences have been drawn from the record of inquiry i.e. what is playing in the mind of the Disciplinary Authority and to respond thereto and point out the defects and defaults in such perceptions and deductions drawn by the Disciplinary Authority from the record of inquiry. The Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra* (1999) 7 SCC 739 had occasion to consider a provision similar to Rule 120, contained in Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and held that where the Inquiry Authority has found the delinquent employee guilty of the charge framed and the Disciplinary Authority agrees with that

finding, there arises no difficulty; the difficulty arises only where the Disciplinary Authority disagrees with the findings of the Inquiry Authority. It was further held that the opinion formed by the Disciplinary Authority before issuance of the notice, as required to be given under Rule 120(1)(d)(ii), is a tentative opinion and not a final opinion. In the facts of that case, it was held that the Disciplinary Authority had formed a final opinion before hearing the delinquent employee in that case and for this reason the order of dismissal was set aside. However the Apex Court did not hold such a Rule to be bad and rather held that where an opportunity of hearing is given to the delinquent employee before taking a final decision in the matter related to findings against the delinquent employee, the principles of natural justice stand complied.

8. Rule 120(1)(d) expressly provides for giving to the delinquent employee notice of the opinion formed and action proposed to be taken and calling upon him to submit his representation against the proposed action and for “determining” the penalty if any to be imposed only after considering such representation of the delinquent employee. The

procedure laid down leaves no manner of doubt that the opinion to be formed on consideration of the record of the inquiry is a tentative opinion and the final “determination” of guilt and penalty if any to be imposed is to take place only after considering the representation of the employee. Such a procedure is found to be fair and merely because a tentative opinion is required to be formed to enable cause to be shown thereagainst, cannot be said to be a violation of principles of natural justice and rather such a procedure subserves the said principle.

9. The petitioner has also not stated as to which provision of the Constitution is violated by Rule 120. The rule cannot be treated as *ultra vires* the judgment of the Supreme Court that was rendered while interpreting an altogether different provision.

10. That apart, we are informed by Ms. Rekha Palli learned counsel appearing for the respondent School that prior to the notice dated 13.01.2011 (*supra*) also, the petitioner was served with the copy of the inquiry report vide covering letter dated 07.07.2010 (placed at page 50 of the paper book as Annexure P-6). On going through the said notice, it

becomes clear that the petitioner was given opportunity to make representation thereagainst as well by 21.07.2010. Thus, when we see the facts of the present case, the grievance of the petitioner even on merits is unfounded. Here the petitioner was first given copy of the report along with opportunity to make representation and which opportunity he availed by submitting reply dated 16.07.2010; it is only thereafter that the tentative opinion was formed and yet another opportunity was granted to the petitioner under Rule 120(1)(d)(ii) to make representation against the proposed penalty as well. We fail to understand as to how the petitioner can feel aggrieved of such action of the School whereby he is given opportunity two times before the punishment was imposed.

11. We thus find no merit in this writ petition which is accordingly dismissed insofar as challenge to the *vires* of Rule is concerned. However since the remedy of statutory appeal to the Tribunal is provided to challenge the order of punishment, it would be open to the petitioner to approach the Tribunal. We may however take note of the contention of learned counsel for the respondents that even before the petitioner had

approached this Court by the present writ petition, the limitation period for filing the appeal had lapsed. We make it clear that as and when such appeal is filed, it would be open to the respondents to contest the same as time barred and even to contest the application for condonation of delay, if filed.

No order as to costs.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 24, 2012

‘gsr’