

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

+ **RSA No.52/2014**

% **26th July, 2016**

UNION OF INDIA & ANR.Appellants

Through: Mr. Ankur Chhibber, Advocate

versus

SHRI AMAR PAL SINGHRespondent

Through: Mr. Madan Gera, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the Union of India against the concurrent Judgments of the courts below; of the Trial Court dated 18.11.2008 and the First Appellate Court dated 11.7.2013; by which the courts below have decreed the suit of the respondent/plaintiff and directed his reinstatement as a Constable with the Central Industrial Security Force (CISF). The courts below have set aside the orders passed in the disciplinary proceedings directing respondent's dismissal from service. The Order of the Disciplinary Authority is dated 31.12.1993. Respondent/plaintiff had unsuccessfully appealed against the

order of the disciplinary authority before the appellate departmental authority and which appeal was dismissed by the Appellate Authority vide Order dated 4/5.5.1994. The charge against the respondent/plaintiff was that he along with constable R.S. Punia assaulted ASI T.C. Reddy, Post Commander whereby Sh. T.C. Reddy sustained injuries on his head and stomach. It has come out during the enquiry proceedings that the motive for the assault by the respondent/plaintiff along with constable R.S. Punia on ASI T.C. Reddy was that ASI T.C. Reddy had earlier reported that the respondent/plaintiff was sleeping on duty and which has resulted in disciplinary proceedings whereby a penalty of stopping of one increment was imposed on the respondent/plaintiff.

2. Two issues were argued before this Court. First was that whether the enquiry proceedings were against the principles of natural justice because documents along with the charge-sheet were not supplied to the respondent/plaintiff. The second issue which was argued was that the respondent/plaintiff was not provided with a defence assistant during the enquiry proceedings.

3. On the first issue concerned, both the courts below have held that the enquiry proceedings are violative of the principles of natural justice because the documents are found not to have been supplied to the respondent/plaintiff.

4. The following two substantial questions of law are framed for disposal of this second appeal:

(i) Whether the courts below have committed a gross illegality and perversity in holding that the principles of natural justice are violated on account of non-supply of the documents in the enquiry proceedings although the respondent/plaintiff did not ask for the documents during the enquiry proceedings after inspecting the documents and has also failed to plead and prove any prejudice on account of non-supply of documents and thereby there cannot be violation of the principles of natural justice in view of the judgment of the Supreme Court in the case of *State Bank of Patiala and Others Vs. S.K. Sharma, (1996) 3 SCC 364*?

(ii) Whether the respondent/plaintiff was entitled to be given a defence assistant by the employer/Union of India although the enquiry proceedings are of the years 1993-94 and the rule requiring providing of a defence assistant came into existence only in 2001?

5. Taking the second question of law first, it is seen that admittedly the rule requiring providing a defence assistant came into existence only in the year 2001 and whereas the disciplinary proceedings in the present case are of the year 1993-1994. In fact, the disciplinary proceedings culminated by the Order of the Disciplinary Authority dated 31.12.1993 and really therefore issue is of defence assistant being provided in 1993. Once there is no rule requiring provision of defence assistant at the relevant point of time when enquiry was

held, I do not think it is open to the respondent/plaintiff to argue that the defence assistant ought to have been provided by the appellant no.1/employer/Union of India. In fact, learned counsel for the respondent/plaintiff could not argue emphatically on this point realizing that the said rule requiring appointing of a defence assistant only came into existence in the year 2001 whereas the disciplinary proceedings were completed by 31.12.1993.

6. So far as the first question of law as to whether the principles of natural justice have been violated, it is found that there is no violation of the principles of natural justice and the courts below have wrongly arrived at a finding in this regard and which finding/conclusion is completely illegal and perverse. The reasons for the said finding being wholly perverse and illegal are as under:-

(i) Respondent/plaintiff had duly inspected the documents in the course of enquiry proceedings and never asked during the enquiry proceedings for supply of copies of the documents. In fact even in the grounds of appeal filed before the appellate authority, respondent/plaintiff did not raise any issue that he did ask for documents during the enquiry proceedings but the same were not supplied to him. Therefore, the courts below have erred in holding that there is violation of the principles of natural justice allegedly on account of non-supply of documents.

(ii) As per the ratio of the judgment of the Supreme Court in the case of *State Bank of Patiala and Others (supra)*, there are two types of cases in disciplinary proceedings. One is the case of no hearing or no notice and then this itself would result in setting aside of the departmental proceedings. The second case is when it is not a case of no notice or no enquiry proceedings but enquiry proceedings are held and the issue is of violation of only a facet of the principles of natural justice such as non-supply of documents etc. In case of violation of a facet of the principles of natural justice, the delinquent employee has to prove as to what prejudice has been caused to him. In the facts of the present case, it is seen that the respondent/plaintiff has not pleaded in the plaint/his pleadings nor proved as to how the respondent/plaintiff has been caused prejudice by non-supply of documents. Once there is no prejudice on account of non-supply of documents, and in fact it is found that the respondent/plaintiff did not demand documents because he had inspected the same during the course of enquiry and in which he only asked for a GD Entry dated 1.8.1993 which was shown to him and thus it cannot be held that there is violation of the principles of natural justice and hence the departmental proceedings are liable to be set aside. The relevant para of the judgment of the Supreme Court in the case of *State Bank of Patiala and Others (supra)* is para 33 and which reads as under:-

“33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in

view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departamental 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 waived 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. Karunakar*. 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(i). Finally counsel for the respondent/plaintiff argued that the decisions of the departmental authorities have arrived at perverse findings by assault by the respondent/plaintiff upon ASI T.C. Reddy and therefore the decisions of the departmental authorities are required to be set aside. Counsel

for the respondent/plaintiff has placed reliance on the answers given in the depositions of departmental witnesses Sh. Brij Mohan Parsad Pathak and Sh. M.P. Singh wherein in cross-examination these witnesses said that they did not see any blows in their presence being inflicted upon ASI T.C. Reddy.

(ii) Even this argument urged on behalf of the respondent/plaintiff carries no substance inasmuch as a departmental proceeding is not like a criminal case wherein a fact has to be proved beyond all reasonable doubt and in departmental proceedings a fact is proved by preponderance of probabilities. Obviously the witnesses, including the eye witness Sh. Brij Mohan Parsad Pathak did say that blows were not given in their presence, because it is not as if in every second of the 60 seconds of a minute and continuously for all the seconds for all the minutes when altercation was taking place that blows would be given. Assault means beating and causing hurt by aggression and blows and this aspect is duly proved in the departmental proceedings because the departmental witness Sh. Brij Mohan Parsad Pathak deposed that he found that out of the two assailants of ASI T.C. Reddy, one assailant being respondent/plaintiff was holding him from the shoulder. This witness Sh. Brij Mohan Parsad Pathak has clearly deposed that Sh. Amar Pal Singh with the other assailant constable R.S. Punia was doing "Maarpeet" i.e assault upon ASI T.C. Reddy and ASI T.C. Reddy was crying out in pain. Witness Sh. Brij Mohan Parsad Pathak has also deposed that he was warned by the

respondent/plaintiff that if he told about the incident to anyone then it would not be good for him. In my opinion, once two views are possible, and the departmental authorities having taken one possible and plausible view that assault took place causing injuries to ASI T.C. Reddy, it cannot be held by this Court that the findings of the departmental authorities are so perverse that this Court should interfere by setting aside the decisions of the departmental authorities.

8. In view of the above discussion, the substantial questions of law are answered in favour of the appellants and against the respondent/plaintiff by holding that there is no violation of principles of natural justice so as to set aside the disciplinary proceedings and that there is no violation of any law on account of respondent/plaintiff not being provided a defence assistant by the Union of India/employer. This second appeal is therefore allowed and the suit of the respondent/plaintiff is dismissed and the impugned Judgments of the courts below dated 18.11.2008 and 11.7.2013 are set aside, leaving the parties to bear their own costs.

JULY 26, 2016
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VALMIKI J. MEHTA, J