(1965) 12 SC CK 0038

Supreme Court of India

Case No: Appeal (civil) 757 of 1964

Mafatlal Naraindas Barot		APPELLANT
	Vs	
Divisional Controller, State Transport Corporation and Another		RESPONDENT

Date of Decision: Dec. 13, 1965

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 311

Citation: AIR 1966 SC 1364 : (1966) 1 LLJ 437 : (1966) 3 SCR 40

Hon'ble Judges: P. B. Gajendragadkar, C.J; V. Ramaswami, J; P. Satyanarayana Raju, J; M. Hidayatullah, J; K. N. Wanchoo, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Satyanarayana Raju, J.
This appeal, by special leave, is against the judgment and order of the High Court of Gujarat at Ahmedabad, dated May 28, 1963, dismissing in limine an application filed by the appellant under Art. 226 of the Constitution.

2. The facts material for the purposes of this appeal may be briefly stated. The appellant was a permanent employee of the State Transport Corporation, Gujarat, hereinafter referred to as the Corporation. At the material time he was employed as a Writer in the Visnagar Depot of the Corporation in Mahasana District. On January 15, 1962, the appellant applied to the Divisional Controller, State Transport, Mahasana, for leave for 15 days on the ground that he had to attend to his "personal work". On January 16, 1962, he was transferred from Visnagar to Ambaji where there was a vacancy in the office of the Depot Manager. On January 31, 1962, a formal order transferring the appellant from

Visnagar to Ambaji was passed, and he was directed to join duty at Ambaji.

3. On that date, the appellant applied for extension of leave on medical grounds but his request was refused by an order, dated February 15, 1962. He was directed to report for duty at Ambaji within 48 hours of the receipt of notice failing which, he was warned, he would be removed from service. On March 3, 1962, the appellant wrote a letter to the Divisional Controller intimating him of his inability to join duty as he was still not well. To this letter, he enclosed a medical certificate.

4. By an order, dated March 9, 1962, the services of the appellant were terminated with effect from January 16, 1962, on the ground of long absence. The appellant made a representation to the Divisional Controller on March 17, 1962 and thereafter preferred an appeal to the General Manger of the Corporation. Both of them were rejected. A further appeal preferred by him to the appellate Committee was also unsuccessful. The Committee held that the leave applications of the appellant were made only with a view to evade joining duty at Ambaji.

5. The appellant applied to the High Court of Gujarat under Arts. 226 and 227 of the Constitution, impleading the Divisional Controller as respondent, for the issue of writ of certiorari to quash the order for dismissal. His petition was dismissed in limine on May 28, 1963. On June 17, 1963, the appellant applied for a certificate to appeal to this Court but it was refused. Thereafter, he applied for special leave and that was granted by this Court.

6. It may be stated at the outset that the respondent is an autonomous statutory Corporation formed under the provisions of the Road Transport Corporations Act, 1950. It is not disputed that the appellant could not invoke the provisions of Art. 311 of the Constitution.

7. The short question for determination in the appeal is whether the appellant was entitled to an opportunity to show cause against the proposed punishment as required by regulation No. 61 of the Regulations which govern the service conditions of the employees of the Corporation. It is admitted that no charge was framed against him nor was he given an opportunity to show cause.

8. It is contended for the respondent that though the order of termination referred to long absence as the cause of termination, the termination itself was not by way of punishment and the only right of the appellant was to two months" pay in lieu of notice under regulation No. 61, that assuming that the termination was by way of punishment, the appellant, as would be evident from the correspondence and the circumstances of the case, had been given an opportunity to show cause and that there was in fact and in substance compliance with the rules of natural justice.

9. We may, at this stage, read the relevant regulations which admittedly govern the service conditions of the employees of the Corporation. Regulation No. 61 provides as

follows :

"The service of an employee, who does not hold a permanent appointment in State Transport or a lien on a permanent appointment in any Government Department form which he is transferred, are liable to be terminated by the Competent Authority by giving a calendar month"s notice or a calendar month"s pay in lieu :

Provided that the services of casual workers and part-time workers may be terminated without any notice;

Provided further that a permanent employee of State Transport shall be entitled to 60 days" notice or 60 days" pay in lieu."

10. Clauses 38, 40 and 4(b) of Schedule A to the Regulations provide :

"38. Irregular attendance, absence without leave and without reasonable cause and absence without permission."

40. Failure, without sufficient cause, to report when directed, for duty, on the part of an employee to whom the leave he has applied for is refused."

"4 (b). A person against whom action is proposed to be taken for any act of misconduct, shall be provided with a copy of the charge or charges as well as a statement of allegations that have been made against him, and over which enquiry is being held."

11. Clause 3 defines two classes of offences named acts of misconduct and minor lapses and delinquencies, respectively and sub-clause(ii) of clause 3 states inter alia that the misconducts are those specified in Schedule A.

12. Regulations 38 and 40 provide that irregular attendance, absence without leave and without reasonable cause and failure, without sufficient cause, to report, when directed, for duty amount to acts of misconduct. Clause 4 (b) is specific and clear. Under that clause, it is obligatory on the part of the respondent, to give the appellant a reasonable opportunity to show cause, by providing him with a copy of the charge or charges, as well as the statement of the allegations that have been made against him. Admittedly, the respondent did not frame a charge against the appellant nor conduct any enquiry.

13. It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows what the charges levelled against him are and the allegations on which such charges are based. In our judgment, the appellant was entitled to an opportunity to show cause against the action

proposed to be taken against him.

14. The order of termination passed against the appellant is bad in law since it contravenes the provisions of clause 4 (b) of the Regulation and also the principles of natural justice. In all the circumstances of the case, we are satisfied that the impugned order must be quashed. A writ of certiorari will accordingly issue quashing the order of dismissal, but this will not preclude the respondent from making a fresh enquiry against the appellant after giving him reasonable opportunity to show cause as provided under clause 4(b) of the regulations.

15. The appeal is accordingly allowed, but there will be no order as to costs.

16. Appeal allowed.