Radheshyam Saini Vs State of M.P. and others

Writ Petition No. 17409 of 2003

Court: Madras High Court

Date of Decision: Sept. 4, 2008

Citation: (2009) 121 FLR 167

Hon'ble Judges: R.S. Jha, J

Bench: Single Bench

Advocate: R.K. Verma, for the Appellant; Om Namdeo, G.A., for the Respondent

Final Decision: Allowed

Judgement

R.S. Jha, J.

The Petitioner has filed this petition being aggrieved by order dated 21.9.1999, whereby the punishment of lowering down to

the minimum of the scale for two years with no future adverse consequence has been imposed upon him, and the order dated 15.3.2001 whereby

the appeal filed by the Petitioner against the order imposing punishment has been dismissed.

2. The case of the Petitioner, before this Court, is that the Petitioner, who at the relevant time was working as a Warder in District Jail, Sagar was

served with a charge-sheet on 30.1.1991 pursuant to which an enquiry was conducted against him and ultimately order dated 13.1.1995 was

passed against him imposing a punishment of dismissal from service. The appeal, preferred by the Petitioner, against the aforesaid order was also

dismissed by order dated 19.10.1995 and, therefore, the Petitioner being aggrieved filed a petition before the Madhya Pradesh State

Administrative Tribunal which was registered as O. A. No. 881/95. This petition was ultimately allowed vide order dated 19.11.1997 by

recording a finding that the disciplinary authority who had issued the charge-sheet to the. Petitioner was biased and, therefore, the impugned order

of punishment was vitiated on account of violation of the principles of natural justice.

3. The operative part of the tribunal''s order is in the following terms:

11. In view of the aforesaid judgment the grievance of the applicant regarding bias of the Respondent No. 4, was considered who issued the

charge-sheet and after considering the finding of the enquiry officer and considering the reply of the applicant passed the order of punishment (Ann.

A/7). The same is violative of principles of natural justice. The complaint made by the applicant was of serious nature against the Respondent No.

4, and subsequently after the complaint one more additional charge No. 7 was framed by him which goes to show that the Respondent No. 4 was

biased against the applicant. In the facts and circumstances of the case the Respondent No. 4, ought to have kept-aloof himself in the inquiry

against the applicant. The order of dismissal was passed by the Respondent No. 4, who was biased against the applicant. Therefore, the impugned

punishment (Ann. A/7) is in violation of principles of natural justice. No person could be a judge of his own cause and no witness could verify that

his testimony was true. Any person who had a personal stake in the enquiry must have kept himself aloof from the enquiry. Thus the order of

dismissal (Ann. A/7), the order passed by the appellate authority (Ann. A/9), are liable to be quashed. 12. In view of the above it is not necessary

to consider other grounds raised by the parties. Accordingly, the application is allowed and dismissal order (Ann. A/7) and appellate order

(Ann.A/9) are hereby quashed and the applicant be reinstated with backwages for 3 years as the case was not delayed due to any fault of the

Respondents. The Respondents are free to make further enquiry in accordance with law if so desired. No order as to costs.

4. As the Tribunal, while allowing the petition, had observed that the Respondents would be free to make further enquiry in accordance with law,

the Respondent-authorities chose to proceed with the enquiry further and, thereafter, passed the impugned order dated 21.9.1999, on the basis of

the inquiry report submitted in the enquiry and on a scrutiny of the Petitioner''s reply thereto, by imposing a punishment of lowering down to the

minimum of the scale for a period of two years with no future adverse consequence. The appeal filed by the Petitioner, against this order of

punishment, also suffered dismissal by order dated 15.3.2001, hence this petition.

5. It is submitted by the learned Counsel for the Petitioner that once the Tribunal had recorded a conclusion that the disciplinary authority was

biased and had quashed the impugned order of dismissal from service, the entire proceedings conducted against the Petitioner pursuant to the

charge-sheet issued to him on 30.1.1991 stood quashed and, therefore, in case the Respondent authorities wishes to proceed further against the

Petitioner, they should have issued a fresh charge-sheet conducted a fresh enquiry and thereafter passed appropriate orders in accordance with

law after following the procedure prescribed by Rules 14 and 15 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. The

Petitioner further submits that the Respondent authorities did not issue any show cause notice to the Petitioner subsequent to the order of the

Tribunal and did not give him any opportunity to submit his response before the subsequent disciplinary authority and directly passed the impugned

order dated 21.9.1999 and, therefore, the procedure adopted by the Respondents being contrary to the rules as well as the principles of natural

justice, the impugned order deserves to be quashed. The Petitioner has also submitted that the appellate authority while considering the Petitioner''s

appeal has not applied its mind to the facts and documents on record and has not given any reason for affirming the order of punishment but has

dismissed the Petitioner''s appeal simply on the ground of limitation and, therefore, the impugned order of the appellate authority also deserves to

be quashed.

6. The learned Government Advocate appearing for the Respondents, submits that the Tribunal, while allowing the previous petition filed by the

Petitioner had granted liberty to the Respondent-authorities to proceed further against the Petitioner and as the Tribunal, by the impugned order,

had found fault only with the order of punishment passed by the disciplinary authority and had not made any comments in respect of the enquiry,

the Respondent authorities took up proceedings from the stage of submission of the enquiry report and considering the enquiry report and the reply

of the Petitioner which had already been filed, the impugned order of punishment dated 21.9.1999 has been passed and, therefore, no fault can be

found with the procedure adopted by the Respondent-authorities.

7. I have heard the learned Counsel appearing for the parties at length. From a perusal of the order passed by the Tribunal it is apparent that the

Tribunal had allowed the application and had quashed the order of dismissal as well as the order of the appellate authority rejecting the Petitioner''s

appeal and had directed his reinstatement and had also awarded backwages for three years. While doing so, the Tribunal had, in the end,

observed that the Respondents were free to make further enquiry in accordance with law if they so desire. Apparently, the Tribunal had not

remitted or remanded the matter back to the Disciplinary Authority for taking up proceedings from the stage of submission of the enquiry report.

8. In view of the aforesaid facts and circumstances, in case the Respondent authorities wish to make further enquiry, they were required to issue

fresh notice to the Petitioner and thereafter take up further proceedings. The authorities could not have proceeded further from the stage of

submission of the enquiry report without issuing any notice to the Petitioner treating the case to have been remitted or remanded by the Tribunal.

9. As is apparent from a perusal of the facts and documents on record, the Respondent-authorities did not issue any show cause notice to the

Petitioner informing him that the authorities propose to make any further enquiry and simply on the basis of the enquiry report submitted in the

previous proceedings issued a notice proposing to impose punishment upon the Petitioner. Apparently, the Respondent authorities have not

followed the procedure prescribed by law and have violated the principle of natural justice. That apart, the authorities have misinterpreted and

misread the order of the Tribunal while re-imposing the punishment upon the Petitioner.

10. In view of the above, this Court is of the considered opinion that the impugned order of punishment dated 21.1.1999 and the order in appeal

dated 15.3.2001 affirming the same, deserve to be and are hereby quashed. The petition is accordingly allowed. In the peculiar facts and

circumstances of the case, there shall be no order as to the costs.