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Calcutta High Court

Case No: Civil Order No. 4478 (W) of 1988

A.K. Saxena — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision: Dec. 8, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21

Citation: (1997) 1 ILR (Cal) 265

Hon'ble Judges: Bhagabati Prasad Banerjee, J

Bench: Single Bench

Advocate: Sahid Ali Khan, for the Appellant;

Judgement

Bhagabati Prosad Banerjee, J.
In this writ application, the Petitioner had, inter alia, challenged the order passed by H. Pandey, Deputy General Manager (P & A), Engineering Projects (India) Limited, a Government of India Undertaking. By the" said order, the Petitioner"s representation, October 24, 1986, regarding adverse remarks made against him in the Annual Appraisal for the year ending December 31, 1985.

2. The facts of this case is that the Petitioner joined the service on December 1, 1978, as Stores-in-Charge and was posted at New Delhi and thereafter transferred to Assam in connection with the Project of Engineering Projects (India)" Limited at Bongaigaon Thermal Power Project and remained posted there for about 41/2 years. Thereafter, in 1983, he was transferred to Dehradun in connection with the Calcium Carbide Project of the said Company and he remained there for about three years. Thereafter, he was transferred to the" Coal Handling Project at Kolaghat Thermal Power Project Stage-ll in the District of Midnapore, West Bengal.

3. According to the Petitioner, from the very inception of the joining duties till the date of the filing writ application, he had rendered dedicated and efficient service to the said

concern. It is stated that one of the officials of the Engineering Project (India) Ltd., namely Mr. J. Mohanty, Respondent No. 4, had built up unreasonably a personal enmity with the Petitioner and out of mala fide acts and malice on the part of the said Mr. Mohanty, as the Petitioner was an active member of the Trade Union and thereafter by a Memo, dated January 16, 1986, the said Shri Mohanty informed Sri N.K. Dutta, General Manager, Calcutta, under the subject of insubordination on the part of Sri Saxena, Store Keeper, Grade-I, at the Dehradun site and in the said Memo, it was inter alia stated as follows:

...in order to maintain discipline at site, exemplary action may be taken against Shri Saxena. Further it is suggested that a transfer from the site to a foreign assignment will not serve as any punishment, as such the proposed foreign assignment may be got cancelled, in view of his insubordination and doubtful integrity (there is a pending case against him for loss of valuable store items).

4. It is not necessary to go into the facts and circumstances of this case in details. In view of the fact that ultimately the said Sri J.N. Mohanty recorded adverse remarks into the Annual Performance Appraisal of the Petitioner which was communicated to the Petitioner by Sri H. Pandey, Manager (P & A), New Delhi, for the purpose of giving the Petitioner an opportunity to improve upon the area of deficiency pointed out in those remarks. The said remarks were as follows:

The following remarks appear in your Annual Performance Appraisal for the year ending December 31, 1985:

1. Functional ability to cope with the responsibilities to higher position effectively.

-- Unsatisfactory

2. Mental ability to cope with the responsibilities of higher position effectively.

-- Unsatisfactory

3. Willingness to assume and discharge responsibility, vigour in originating action and drive in carrying through to completion.

-- Unsatisfactory

Overall appraisal of potential

--Unsatisfactory

Promotability''

-- Unsatisfactory

5. Overall performance of Sri A.K. Saxena'' had not been satisfactory, for-

(a) Small items entrusted to him were found missing at the time of. requirement, resulting in delay in the commissioning of the equipment and additional cost to the project. These small items could have been kept in the Steel Almirah under lock and key.

(b) His sense of responsibility could be well judged from the fact that, he was deputed to Bombay on. 7 days'' sanctioned tour and he reported to HQ. after 14 days without caring for sending any communication from Bombay even after expiry of.7 days. These remarks are being communicated to you with a view to give an opportunity to improve upon area of deficiency pointed out in these remarks.

6. Immediately, on receipt of the said communication, the Petitioner made a detailed and long representation with the purpose of showing that the said adverse remarks had no actual and/or factual basis and the same was as a result of mala fide acts on the part of Mr. Mohanty. The Petitioner disclosed the facts in details in order to establish that the said remarks had no actual and/or factual basis. The said representation of the Petitioner was stated to have been considered by Sri H. Pandey and disposed of by the following order:

This has reference to your representation dated 24.10.1986 regarding remarks appeared in your Annual Appraisal for the year ending 31.12.1985. The matter has been reviewed in detail by the management and we find no reason for expunging the remarks from the above ACR.

As such the remarks appeared in your above referred ACR stand.

7. In this petition, Mr. Sahid AM Khan, learned Counsel appearing on behalf of the Petitioner, submitted that because of non-consideration and/or non-application of mind, the said adverse remarks had not been expunged and the said adverse remarks were standing in the way of getting promotion to higher posts and if the said adverse remarks are allowed to remain in the service, in that event, the Petitioner''s career would be completely destroyed.

8. It was submitted by Mr. Sahid Ali Khan that it was incumbent on the part of the authority concerned before whom such representation was made, to consider the representation and should have given reasons for such consideration.

9. The Supreme Court, in the case of Gurdial Singh Fijji v. State of Punjab, had held that:

The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or

another, not arising out of any fault on the part of the Appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified.

10. In Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, it was observed -

that in recent times, the judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. The State activity too is becoming fast pervasive. As the State has descended into commercial filed and joint public sector undertakings have grown up, the stake of public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze ; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes an 1 availability of reasons for action on the record assures credibility to the action, disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by administrative superior and by judicial process.

11. In S.N. Mukherjee Vs. Union of India, the Supreme Court held that the recording of articles by an administrative authority service a solitary purpose. Namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The said purpose would apply equally. It is, however, not required that the reason should be as elaborate as in the decision of the Court of law. The extent and nature of the reasons would depend on particular facts and circumstances of the case. What is necessary is that the reasons are clear and explicit so as to implicate that the authority had given due consideration to the point in controversy.

12. In Krishna Swami Vs. Union of India and another, the Supreme Court had held that non-recording of reasons by statutory/public authority/functionary would render the decision arbitrary, unfair and unjust, violating the Articles 14 and 16 of the Constitution of India.

13. Failure to give adequate reasons may amount to error of law so as to justify the quashing of the decision

14. In Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others, Mukherjee, J., observed that people at large have a right to know in order to be able to take part in the participatory development of the industrial life and democracy. Right to know is a basic right which citizens of the free India aspire. In this age, in our land, under Article 21 of our Constitution, that right has reached a new dimension and urgency. That right puts better responsibility upon those who take upon themselves the responsibility to inform.

15. The Supreme Court, in the case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, held that the Supreme Court, while considering the effect upon the rights of an aggrieved person who is entitled to protection under Arts.14 and 16 of the Constitution of India, suppressed the need to record reason and particularly this is the only remaining visible safeguard against possible injustice and arbitrariness in making selections. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision, whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusion reached. Only in this way can opinions or decisions recorded, be shown to be manifestly just and reasonable.

16. I am of the view that when an adverse remark is made and communicated to the affected person and the person who is aggrieved by such recording of adverse remark, makes a representation for the purpose of expunging, the said adverse reports, principles of fairness require that the authorities concerned should consider the same and dispose of such representation by giving reasons and not dispose of mechanically merely by saying that representation has been considered and rejected. Obligation to furnish reasons is imperative in such matters. The opportunity to make representation would become a mere idle formality if obligations to furnish reasons are not there. Giving of reasons has now become a part of the principles of natural justice. Similarly, duty to act fairly has also become a part of the principles of natural justice. In the instant case, the Respondents have chosen not to file any affidavit. Accordingly, the allegation made by the Petitioner in the writ application stands uncontroverted and it is well-settled principle that when a prima facie case of misuse of power has been made out it is open to a Court to draw the inference that unlawful purposes have been pursued if the competent authority fails to adduce any grounds supporting the validity of its conduct. Specific allegations had been made against the Respondent No. 4, but the same remain uncontroverted. The obligation to furnish reasons helps the parties to the proceedings and the Courts to see what matters had been taken into consideration and what view has been taken on the point of fact.

17. The Supreme Court in the case of U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., observed that in situations where even though a person has no unfor-cible right yet he is affected or likely to be affected by the order passed by a public authority, the principles of legitimate expectation were evolved. Fair and just treatment is the core of our jurisprudence. No one should suffer for omission in law or technicalities in rules. Therefore, when the law permits the Local Body then it is implicit in it that the local authority can legitimately expect to be informed or intimated of the proceedings. It would be in consonance with the principles of fairness, otherwise the right shall hand off of the chance, of the authority having come to know of the proceedings. It is an assurance in law of intimation, about pendency of the proceedings ; without intimation one cannot exercise the right of assisting any determination of compensation.

18. In Attorney-General of Hong Kong v. N.G. Yuan Shin (1983) 2 All E.R. 346, it was held that where expectations were based upon some statement or undertaking on behalf of the Public Authority, the principles of legitimate expectation in this context are capable of including the expectations which go beyond legal rights, provided they have some reasonable basis. A person may have a legitimate expectation of being treated in a certain way by an administrative authority, even though he has no legal rigth in private law to receive such treatment.

19. Accordingly, it must be held that when an adverse report is communicated for the purpose of making representation and when such representation is made, in that event, the maker of such representation has a legitimate expectation that the representation should be considered by giving reasons. Giving of reasons communicates application of mind and application of the principles of fairness in administrative action. Unless reasons are required to be given, in that event, the right to make representation would become a mere formality. Right to make representation includes the right to know the reasons.

20. In the instant case, the disposal of the representation by non-speaking, the Respondents concerned are under duty and/or obligation to dispose of such representation by giving a speaking order which will ensure that the authorities had applied their minds and had acted bona fide without any prejudice and/or free from bias. It is not merely of some importante, but of fundamental importance that justice should both be done and manifestly seen to be done. Nothing is to be done which creates any suspicion that there has been improper interference in the cause of justice.

21. Accordingly, the order is set aside and the Respondents are directed to dispose of the Petitioner''s representation afresh in the light of the observation made above and by giving reasons in the manner indicated above in this order, within a period of one month from the date of the communication of the order. It is made clear that the Court had no occasion to enter into the merits of the case and/or the legality and/or the validity and/or the correctness of the adverse report is concerned. It would be open to the authorities concerned to take any view of the matter, but the authorities concerned can only do only after giving proper application of mind and by giving good and sufficient reasons therefor. It is also made clear that if it is ultimately found by the authorities concerned that the adverse remarks were unjustified, in that event, any loss caused to the Petitioner, his service because of ''such adverse remarks, should be restored.