
82 CWN 539 : (1978) 2 LLJ 337

Calcutta High Court

Case No: None

A.K. Dutta

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Jan. 16, 1978

Acts Referred:

Constitution of India, 1950 – Article 309

Citation: 82 CWN 539 : (1978) 2 LLJ 337

Hon'ble Judges: G.N. Roy, J

Bench: Single Bench

Judgement

G.N. Roy, J.

This Rule is directed against a departmental inquiry being conducted against the petitioner in terms of Memo No.

88/CVC/71-CDE (D), dated 6th of July, 1973 issued by Shri D.N. Pande, the Commissioner for departmental inquiries being Annexure "N" to

the writ petition. The petitioner in the instant Rule is a Zoologist serving Zoological Survey of India. The said officer was charge-sheeted by Shri

S.P. Joshi, Deputy Secretary, Government of India, Ministry of Education, by his Memo dated 12th of March, 1969 being Annexure "C" to the

writ petition. It will appear from the statement of article of charges framed against the petitioner that four charges were framed against the petitioner

for various lapses alleged in the said statement of articles of charges. Along with the said charge-sheet a statement of imputation of misconduct or

misbehavior in respect of the articles of charges made against the petitioner was also forwarded to the petitioner and a list of documents by which

the articles of charges framed against the petitioner were proposed to be sustained was also enclosed with the charge-sheet. Along with the

charge-sheet a list of witnesses by whom the articles of charges framed against the petitioner were proposed to be sustained was also forwarded

to the petitioner. It appears that out of ten documents referred to in Annexure 3 to the charge-sheet a letter of Station Master, Nadbai, was also

one of the documents proposed to be relied upon by the department. The Station Master, Nadbai, also appears to be one of the witnesses by

whom the articles of charges were proposed to be proved,

2. It appears that the petitioner asked for inspection of the documents referred to in the said Annexure 3 including the letter of the Station Master,

Nadbai, but the department could not give inspection to the said letter of the Station Master, Nadbai, in view of the fact that the said letter was

misplaced and could not be found out. It also appears that despite the petitioner's repeated requests for supply of the copies of the statement of

the witnesses referred to in Annexure 4 to the charge-sheet, statements of three witnesses had not been supplied to the petitioner. The petitioner

also wanted to rely on a number of documents which were in the custody of the Government for the purpose of his defence against the proposed

departmental inquiry. But it appears that only one document bearing serial No. 2 had been inspected by the petitioner and the document bearing

serial No. 1 could not be inspected by the petitioner and the said document is reported to be missing and efforts were being made to trace the

original. So far as the other documents bearing serial Nos. 3 to 8 and 10 to 19 are concerned, the aforesaid documents had been lying in the

Record Room of the Old Court Building of the Sub-Judge, Jaipur and due to some misconception, the petitioner could not get any inspection of

the said documents but from the affidavit-in-opposition, it appears that such documents may be available for inspection by requisitioning the said

documents from the Court of the Sub-Judge, Jaipur. It further appears that although the statements of three witnesses relied on by the prosecution

for drawing the charge-sheet against the petitioner had not been supplied to the petitioner despite demands made, therefore, and although one of

the documents relied on by the prosecution in drawing the charge-sheet against the petitioner could not be made available for inspection of the

petitioner because of the misplacement of the said document as referred to hereinbefore, by the impugned memo it was directed that the oral

inquiry would be held on 6th to 10th of August, 1973 and witnesses would be examined on the said dates and if the inquiry would not be

concluded within the aforesaid dates the inquiry would continue from day to day until the same was concluded.

3. Mr. Gupta the learned Counsel appearing for the petitioner submits that under the Central Civil Services (Classification, Control and Appeal)

Rules it is incumbent for the inquiring officer and/or the Government to supply the copies of the statements of witnesses and the documents on the

basis of which the charge-sheet had been framed by the Government against the petitioner. Mr. Gupta further submits that the inquiring authority

and/or the department was bound to supply such statement of witnesses and/or to give inspection of such documents so as to enable the petitioner

to prepare his defence in the said inquiry proceeding and to effectively cross-examine the witnesses proposed to be examined by the prosecution

and to lead evidences on his behalf. Mr, Gupta contended that in the instant case it is quite clear and evident that the statement of three witnesses

proposed to be examined by the prosecution against the petitioner in the departmental inquiry have not been supplied to the petitioner. Further, a

document referred to in Annexure 3 to the charge-sheet being a letter of the Station Master, Nadbai, was not made available to the petitioner for

inspection on the ground that the said document was misplaced. Mr. Gupta also points out that large number of documents called for by the

petitioner from the custody of the Government for the purpose of his defence were also not yet made available to the petitioner for inspection but in

spite of such facts, the inquiring officer was proceeding to continue the departmental inquiry proceeding and start examination of witnesses to

serious loss and prejudice of the petitioner, Mr. Gupta submitted that the statement of the witnesses and the document referred to in Annexures 3

and 4 to the charge-sheet from the basis on which the charge-sheet was drawn against the petitioner and until and unless inspection of the

documents referred to in the said annexures are given to the petitioner and the copies of the statement of all the witnesses referred to in the said

Annexure 4 are supplied to the petitioner, the departmental proceeding cannot continue and any attempt to continue the departmental proceeding

without furnishing such statements of the witnesses and without giving inspection of the documents referred to Annexure 3 will amount to violation

of the statutory Rules framed for such departmental inquiry under Article 309 of the Constitution of India and also violation of the principles of

natural justice. In support of his contention Mr. Gupta relied on a decision of this Court made in the case of Collector of Customs v. Biswanath

Mukherjee, reported in (1974) C.L.J. 251. In the said decision a large number of decisions of this Court and other courts, including Supreme

Court of India, were considered and it was held that violation of Rule 14 Sub-rule (8) of the said Central Civil Services (Classification, Control and

Appeal) Rules amounted to denial of reasonable opportunity to defend the delinquent officer and as such, such violation vitiated the departmental

inquiry proceeding.

4. Mr. Roy Choudhury the learned advocate appearing for the respondent, however, contends that out of ten documents referred to in Annexure 3

only one document was not made available to the petitioner for inspection because the said document was misplaced. Mr. Roy Chowdhury further

stated that although inspection of a large number of documents called for by the petitioner could not be made available because of non-availability

of the records at the time of issuing the Rule it has now been found out and it will appear from the statement made in the affidavit-in-opposition that

a number of documents lying the Court of the learned Sub-Judge of Jaipur will be made available to the petitioner for inspection. Mr. Roy

Choudhury submits that although the petitioner did not get inspection of one of the documents relied on by the prosecution and the petitioner was

also not supplied with the statement of three witnesses relied on by the prosecution for framing the charges and although some of the documents

called for by the petitioner were also not made available to the petitioner for inspection, the departmental proceeding itself is not vitiated and the

petitioner is bound to appear in the said departmental proceeding and to file his written defence(Mr Roy Choudhury submits that if there is no

inherent lack of jurisdiction in issuing a charge-sheet and/or initiating a departmental proceeding then the said departmental proceeding must

continue and the petitioner may make submissions about the prejudice suffered by him for non-supply of certain documents and/or for not giving

inspection of certain documents and it is for the Inquiring Officer to adjudicate in the facts and circumstances of the case. Mr Roy Choudhury

submitted that the instant Rule must fail because the petitioner is not entitled to challenge the departmental inquiry proceeding at this stage. Mr. Roy

Choudhury contends that the Inquiring Officer on noting the submissions made by the petitioner may adjudicate in favour of the petitioner and in

that event there may not be any occasion for the petitioner to move this Court in its Constitutional writ jurisdiction but if, on the other hand, the

adjudication is made by the officer concerned against the petitioner he may move this Court and ventilate his grievances by pointing out the

irregularities committed in the departmental proceeding and it is only at that stage this Court will interfere in its Constitutional writ jurisdiction.

5. I am unable to accept this contention of Mr. Roy Choudhury. If for violation of statutory rules and/or principles of natural justice, a departmental

proceeding is liable to be quashed by this Court there is no sense in asking the petitioner to suffer the agony of the departmental proceeding and

then come to this Court for ventilating his grievance on the irregularities which obviously vitiate the proceeding. It may be noted in this connection

that the petitioner has not taken part in the inquiry proceeding by examining and/or cross-examining the witnesses. Hence there is no question of

acquiescence. For breach of statutory rules and violation of principles of natural justice, the petitioner has moved this Court at the earliest

opportunity and before further continuance of the inquiry proceeding and in my view the petitioner has moved this Court at the proper stage. It is

quite clear and evident in the facts and circumstances of the case that statement of three witnesses relied on by the prosecution for the purpose of

framing the charge-sheet has not been supplied to the petitioner. It is also quite clear that the letter of the Station Master, Nadbai, on the basis of

which one of the charges were framed against the petitioner was not made available to the petitioner for inspection because of the alleged

misplacement of the said document. There is no doubt that the petitioner is seriously prejudiced for non-supply of the aforesaid statement of the

witnesses and for failure to give inspection of the documents in question. The petitioner is also seriously handicapped in submitting his defence in

the said departmental inquiry and/or effectively cross-examining the witnesses proposed to be examined by the department in the departmental

proceeding and/or in leading his evidences in the proceeding. Accordingly in my view, the departmental proceeding cannot continue without supply

of the statement of witnesses and/or of the giving inspection of the aforesaid documents to the petitioner.

6. The Rule is, therefore, made absolute but in the facts and circumstances of the case I make no order as to costs.