Anant Sadashiv Chandwandkar Vs District Judge and Disciplinary Authority, District Court, Thane and Others

Court: Bombay High Court

Date of Decision: March 20, 1997

Acts Referred: Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 â€" Rule 20(2), 23

Citation: (1997) 3 ALLMR 340 : (1997) 3 BomCR 171 : (1997) 3 BOMLR 545 : (1997) 3 MhLj 302

Hon'ble Judges: Ashok Agarwal, J; A.Y. Sakhare, J

Bench: Division Bench

Advocate: R.J. Kochar, for the Appellant; R.D. Rane and Govt. Pleader, for the Respondent

Judgement

A.C. Agarwal, J.
By the present petition, Petitioner seeks to impugn an order of dismissal passed by the District Judge, Thane on 7th

April, 1993. The said order is affirmed by the High Court in an Administrative Appeal on 28th March, 1994. Short facts leading to the filing of the

petition are as under :

2. Petitioner joined service in the Judicial Department at Thane as a peon. The order of appointment is dated 31st October, 1990. The same is

annexed at Exh. "A" to the petition. The order shows that his appointment was made purely on temporary basis and his services are made liable to

be terminated at any time without notice or without assigning any reason therefore .

3. During the period 2nd November, 1990 to 3rd June, 1991 the Petitioner worked as a peon in the Court of VIIIth Joint Civil Judge, Junior

Division and Judicial Magistrate, First Class, Thane. On 3rd June, 1991 he was transferred to the Court of Civil Judge, Palghar. While serving at

Palghar, Petitioner started absenting himself from duty on several occasions. Despite warning, he continued absenting himself from duty. Hence on

4th February, 1992 a Show Cause Notice was issued by the District Judge, Thane pointing out that the Petitioner had remained absent on various

date mentioned in the notice. Petitioner was asked to show cause why his services should not be terminated. Petitioner vide his reply dated 13th

February, 1992 showed cause. On 18th August, 1992 a charge sheet was served upon the Petitioner and disciplinary proceedings were initiated

against him. On 2nd October, 1992 an additional charge sheet dated 30th September, 1992 was served upon the Petitioner in respect of

additional absence of the Petitioner from duty. On 14th October, 1992, Petitioner showed cause against the additional charge sheet. The Chief

Judicial Magistrate, Thane was appointed as Enquiry Officer. During the enquiry, Petitioner admitted the charge contained in the charge sheet and

hence no evidence was required to be led in the enquiry. On 2nd March, 1993, the Enquiry Officer submitted his report to the District Judge

holding the Petitioner guilty of the charges levelled against him. On 15th March, 1993 the District Judge being the Disciplinary Authority issued a

Show cause Notice to the Petitioner to show cause why major penalty of dismissal from service should not be imposed upon him. On 29th March,

1993, Petitioner submitted his reply and prayed that the proposed punishment should not be imposed upon him. By the impugned order passed by

the District Judge on 7th April, 1993, Petitioner has been dismissed from service. Being aggrieved by the said order, the Petitioner on 13th July,

1993 preferred an Administrative Appeal to the High Court. By an order passed on 28th April, 1994, the said appeal is dismissed. The aforesaid

orders are impugned in the present petition.

4. Mr. Kochar, learned Counsel appearing in support of the petition has vehemently contended that the Petitioner has been persuaded by the

Enquiry Officer to admit his guilt by extending an inducement that in case he does so he will be let off lightly. According to him no reliance ought to

have been placed on the aforesaid admission. Hence, the finding of guilt recorded by the Enquiry Officer deserves to be quashed.

5. In the instant case, the Enquiry Officer who was at the relevant time Chief Judicial Magistrate and is now Civil Judge, Senior Division has put in

an Affidavit in Reply. In the affidavit he has specifically denied that during the course of enquiry, the Petitioner was impressed upon by him that if

the Petitioner admits the guilt, only minor penalty would be imposed upon him and that the Petitioner was induced and/or forced by him to admit

the guilt and was compelled to give his statement on 15th February, 1993 before him. In our judgment, the contention made on behalf of the

Petitioner deserves to be rejected. The Enquiry Officer is a responsible Judicial Officer, he has no axe to grind, he has no interest in extracting a

false admission from the Petitioner. There was no reason for him to extract a false confession from the Petitioner. In the circumstances, we have no

hesitation in rejecting the first contention advanced by Mr. Kochar.

6. Mr. Kochar next contended that the order passed by the High Court in an Administrative Appeal filed by the Petitioner is not a speaking order.

All that is communicated to the Petitioner by the High Court is that ""Their Lordships have dismissed the appeal being meritless"". The aforesaid

order is not a speaking order. The same does not show true and proper application of mind. The order which is not supported by reason is liable

to be quashed.

7. In the case of Ram Chander v. Union of India, 1986 2 CLR 10., the Apex Court has observed as under :

6. It was not the requirement of Article 311(2) of the Constitution prior to the Constitution (Forty-Second Amendment) Act, 1976 or of the rules

of natural justice, that in every case the appellate authority should in its order state its reasons except where the appellate authority disagreed with

the findings of the disciplinary authority. In State of Madras Vs. A.R. Srinivasan, , a Constitution Bench of this Court while repelling the contention

that the impugned order by the State Government accepting the findings being in the nature of quasi-judicial proceedings was bad as it did not give

reasons for accepting the findings of the Tribunal, observed as follows :

In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order, imposing a penalty on

the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer being with an enquiry

conducted by an officer appointed in that behalf. That enquiry is followed by report and the Public Service Commission is consulted where

necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent

officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the

Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer

and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusion of the Tribunal, though even in

such a case, it is not necessary that the reasons would be detailed or elaborated. But where the State Government agrees with the findings of the

Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the

penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reason to show why the said findings were

accepted by it. The proceedings are, no doubt, quasi judicial; but having regard to the manner in which these enquiries are conducted, we do not

think an obligation can be imposed on the State Government to record reasons in every case"".

7. Again in Som Datt Datta Vs. Union of India (UOI) and Others, , a Constitution Bench of this Court rejected the contention that the order of the

Chief of the Army Staff confirming the proceedings of the General Court Martial u/s 164 of the Army Act, 1950 and the order of the Central

Government dismissing the appeal of the delinquent officer u/s 165 of the Act were illegal and ultra vires as they did not give reasons in support of

the orders, and summed up the legal position in these words :

Apart from any requirement imposed by the statute or statutory rules either expressly or by necessary implication, there is no legal obligation that

the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal

should always and in every case give reasons in support of its decision"".

8. So also in Tara Chand Khatri v. 6 Municipal Corporation of Delhi,, (1977) 1 LLJ 331 SC , this Court observe that there was a vital difference

between an order of reversal by the appellate authority and an order of affirmance and the omission to give reasons for the decision may not by

itself be a sufficient ground for passing such order, relying on the test laid down by Subba Rao, J. in Madhya Pradesh Industries Ltd. Vs. Union of

India and Others (UOI), :

Ordinarily, the appellate or revisional authority shall give its own reasons succinctly; but in case of affirmance where the original Tribunal gives

adequate reasons, the Appellate Tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons"".

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate

authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the

Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties

specified in Rule 6 or enhancing any penalty imposed under the said Rule, the appellate authority shall ''consider'' as to the matters indicated

therein. The word ''consider'' has different shades of meaning and must in Rule 22(2) in the context in which it appears mean an objective

consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

10. After the amendment of Clause (2) of Article 311 of the Constitution by the Constitution (Forty Second Amendment) Act, 1976 and the

consequential change brought about in Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968, substituted by the Railway

Servants (Discipline and Appeal) (Third Amendment) Rules, 1978 it is no longer necessary to afford a second opportunity to the delinquent

servant to show cause against the punishment. The Forty-Second Amendment has deleted from clause (2) of Article 311 the requirement of a

reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso

to clause (2) that :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the

evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty

proposed"".

11. After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed

of the charges against him and given a reasonable opportunity of being heard. But the essential safeguard of showing his innocence at the second

stage i.e., after the disciplinary authority has come to a tentative conclusion of guilt upon a perusal of findings reached by the Inquiry Officer on the

basis of the evidence adduced, as also against the proposed punishment, has been removed to the detriment of the delinquent officer. In view of

the said amendment of Article 311(2) of the Constitution, Rule 10(5) of the Railway Servants Rules has been substituted to bring it in conformity

with Clause (2) of Article 311, as amended Rule 10(5) as substituted provides as follows :

10(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced

during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the railway servant, it

shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the

penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary

authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on

the railway servant"".

12. We may here mention that a corresponding change in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has been

brought by substituting Rule 15(4) taking away the procedural safeguard of making a representation at the second stage i.e., before imposing

punishment on the basis of the evidence at the inquiry.

13. In Union of India and Another Vs. Tulsiram Patel and Others, a five Judge Bench by a majority of 4 : 1 held that where a department inquiry

was wholly dispensed within the three situations under the second proviso to Article 311(2), the only right to make a representation on the

proposed penalty which was to be found in clause (2) of Article 311 of the Constitution prior to its amendment having been taken away by the

Constitution (Forty Second Amendment) Act, 1976 there is no provision of law under which a Government servant can claim this right. This Court

fast week in the Secretary, Central Board of Excise and Customs v. K. S. Mahalingam, C.A. No. 1279 of 1986, decided on April 24, 1986 after

referring to the constitutional changes brought about observed :

After the amendment, the requirement of Clause (2) will be satisfied by holing an inquiry in which the Government servant has been informed of

the charges against him and given a reasonable opportunity of being heard"".

13-A. After the majority decision in Tulsiram Patel"s case it can no longer be disputed that the right to make a representation on the proposed

penalty which was to be found in clause (2) of Article 311 of the Constitution having been taken away by the Forty-Second Amendment, there is

no provision of law under which a Government servant can claim this right"".

In this context it is pertinent to note that the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 no where provides for a hearing to be

given in an appeal and does not provide for points to be considered in an appeal against decision in domestic enquiries. Rules 20 to 23 of the

aforesaid Rules, more particularly Rules 20(2) and 23 which deal with appeals in findings against domestic enquiry does not contemplate giving of

a personal hearing and does not contemplate the consideration of points in an appeal. Hence in the absence of Rules in that behalf, it is not

necessary to give a hearing and to pass a reasoned order in a domestic enquiry.

8. The aforesaid observations make it clear that in the absence of Rules it is not always obligatory on the part of Appellate Authority to afford a

hearing and to pass a reasoned order. In the instant case we have perused the record in respect of the appeal filed by the Petitioner. The Enquiry

Officer has recorded the statement of the Petitioner in question and answer form and the Petitioner in clear term has admitted his guilt. The

Petitioner has not disputed his absence on the various dates indicated in the charge-sheet. He has merely tried to give reasons which compelled him

to remain absent. We find that a detailed submission has been made by the Additional Registrar (Legal). This submission gives the details in respect

of the charges contained in the charge sheet, the appointment of an Enquiry Officer, admission of guilt by the Petitioner, issuance of further charge

sheet by the Disciplinary Authority and the imposition of penalty of dismissal from service. The aforesaid submission is considered by the

Administrative Judge of the High Court and the finding of guilt as also the quantum of punishment has been approved and the appeal is dismissed.

Having regard to the aforesaid position as also the observations to be found in the aforesaid decision of the Apex Court, the second contention

raised by Mr. Kochar is rejected.

9. Mr. Kochar, lastly and vehemently contended that the extreme penalty of dismissal from service is shockingly disproportionate to the charges

held proved against the Petitioner.

10. The Petitioner it cannot be forgotten had been appointed on 2nd November, 1990. His appointment was purely temporary and was liable to

be terminated without notice. While on temporary employment, the Petitioner is seen to have started absenting himself. Though warned, he

repeated his absence. It is further found that the Petitioner had behaved in arrogant manner with the staff working there. When the Civil Judge with

whom he was working issued notice to the Petitioner the later used rough language in reply given to the Civil Judge. It is further found that due to

the persistence absence of the Petitioner from duty the administration of the Court has seriously suffered. When once the Petitioner was given the

duty to serve a tapal, he did not report back for two days when it was possible for him to report back on the very same day. Having regard to the

aforesaid charges which find a place in, the charge sheet and which have been held proved against the Petitioner in our view it is not possible to

accept the contention of Mr. Kochar that the punishment of dismissal from service is shockingly disproportionate to the charges held proved and

hence requires interference in writ jurisdiction. The last contention raised by Mr. Kochar is also rejected.

11. In the result we find that the present petition is devoid of merit and the same deserves to be dismissed. Rule is discharged. There will be

however in the facts and circumstances of the case, no order as to costs.

12. Petition dismissed.