

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3206 OF 2002

UNION OF INDIA & ORS.

Appellant (s)

VERSUS

S.C.BISWAS @ SUBHAS CHANDRA BISWAS

Respondent(s)

(With office report)

Date: 17/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)

Ms. Sushma Suri, Adv.

For Respondent(s)

Mr.Chanchal Kumar Ganguli, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(Shashi Sareen)

(Vijay Aggarwa

1)

Court Master

Court Master

(Signed reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3206 OF 2005

UNION OF INDIA & ORS.
Appellant(s)

...

Versus

S.C.BISWAS @ SUBHAS CHANDRA BISWAS
Respondent(s)

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Re

J U D G M E N T

ARIJIT PASAYAT, J.

The Union of India and its functionaries have questioned the correctness of decision rendered by a Division Bench of the Calcutta High Court allowing the appeal preferred by the respondent (hereinafter referred to as the 'employee'). It was held, inter alia, in the impugned judgment that there was a necessity for grant of personal hearing when the Disciplinary Authority differed from the findings recorded by the Enquiry Officer.

A brief to the factual aspects would suffice.

Disciplinary proceedings were initiated and three charges were framed against the employee. The Enquiry Officer found that charge Nos. 2 and 3 were established. He, however, recorded a finding that charge No. 1 was not established. When the matter was placed before the

Disciplinary Authority, he took a different view, and held that charge No. 1 was also established. Recording reasons for the same, an order of dismissal was passed. The employee filed a writ petition in the High Court which was dismissed by a learned Single Judge taking the view that the order of dismissal did not warrant any interference. The order of learned Single Judge was assailed before the Division Bench in MAT No. 251/2000. The Division Bench was of the view that since no opportunity of hearing was granted to the employee before the Disciplinary Authority took the final view differing from the one expressed by the Enquiry Authority, same amounted to violation of principles of natural justice. The Division Bench noted that though plea recording absence of hearing was not raised, yet in view of the settled position of law that non grant of such opportunity caused prejudice and was in gross violation of principles of natural justice, relief was available to the employee. It also did not accept the plea of the appellants that when two of the charges were established, the order of dismissal cannot be faulted even if it was to be accepted that there was any lapse in not granting opportunity and it would not make any difference on the final outcome of the proceedings. The High Court held that what would have been the cumulative effect of the findings is a different

matter. It, therefore, remitted the matter to the Disciplinary Authority for

proceeding afresh from the stage after the submission of the report and finding of

the Enquiry Officer. It was left open to the Disciplinary Authority to reconsider

the matter and pass a fresh order. It was held that the employee was entitled to

reinstatement on the post to which he would have been entitled had he not been

dismissed from service.

The High Court relied on certain decisions of this Court to hold that

even in the absence of specific provision for grant of opportunity, the same has to

be read into the rules providing modalities to be adopted. The High Court made

specific reference to Punjab National Bank & Ors. Vs. Kunj Behari Misra, AIR

1998 SC 2713 and Yoginath D.Bagde Vs. State of Maharashtra & Anr., 1999 (7)

SCC 739.

In support of the appeal, Mr. N.N.Goswami, learned Senior Counsel

submitted that the approach of the High Court is clearly erroneous, in as much as

when there was no specific plea raised about any prejudice having been caused

due to non grant of the opportunity, the High Court

should not have entertained the appeal. Reliance was placed by Mr. Goswami on

Rule 36 of the Central

Industrial Security Force Rules, 1969 (in short the 'Rules') which according to

him, requires recording of reasons and not grant of an opportunity of hearing

when Disciplinary Authority differs from the Enquiry Officers' views. Further, the

decisions relied on by the High Court referred to cases of total exoneration and were not of the present nature where two of the three charges have been

established. In any event, according to Mr. Goswami, the High Court could not have directed payment of arrears of salary.

In response, Mr. A.K.Ganguli, learned Senior Counsel submitted that

taking into consideration the chequered career of the litigation, the fact that

Appellate Authority had set aside the order passed in the first instance (not on

technical ground but finding that there was insufficiency of material). The order of

the High Court does not suffer from any deficiency. In that background facts,

when the employee has not been paid anything for nearly two decades, the High Court's order is clearly equitable and calls for no interference.

We shall first deal with the question whether there is need for grant of

opportunity in the absence of specific provision in the rules. An identical issue was

dealt with by a three Judge Bench of this Court in Punjab

National Bank case (supra). There also a similar plea that the rules did not

provide for grant of an opportunity did not find acceptance.

Considering the identical provision governing the case in Punjab

National Bank case (supra) this Court held that the principles of natural justice

have to be read into the provision. As a result thereof, whenever the Disciplinary

Authority disagrees with Enquiry Officer on any article of charge then before it

records its own finding on such charge, it must record its tentative reason for such disagreement and give to the delinquent officer an opportunity to represent before it. Two earlier decisions of this Court in *Bheru Singh s/o Kalyan Singh Vs. State of Rajasthan* 1994 (2) SCC 467 and *State of Rajasthan Vs. M.C. Saxena* AIR 1998 SC 1150 were overruled as not laying down the correct law. The principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. Even if a statute is silent and there are no positive words spelling out the need to hear the party whose rights and interests are likely to be affected the requirement to follow the fair procedure before taking a decision must be read into the statute unless the statute provides otherwise.

Therefore,

the judgment of the High Court to the extent, it held that an opportunity of

hearing was to be granted does not warrant any interference.

But we find substance in the plea of Mr. Goswami about the non

sustainability of the direction for payment of arrears of salary. In *Managing*

Director, ECIL, Hyderabad & Ors. Vs. B.Karunakar & Ors. (1993) 4 SCC 727

this Court held at paragraph 31 as follows:

Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after

hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it

should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled.

The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

High Keeping in view above principles, we set aside that part of the Court's judgment which relates to direction for payment of arrears of salary.

if the As the matter is pending since long, it would be appropriate proceedings pursuant to the High Court's order are completed by the Disciplinary Authority as early as practicable, preferably within four months

from today. The entitlement, if any, of the employee for any salary or other benefits, as was held in Managing Director, ECIL Hyderabad case (supra) would depend upon the final adjudication made by the Disciplinary Authority.

The appeal is allowed to the aforesaid extent. No costs.

.....J.

(ARIJIT PASAYAT)

.....J.

(H.K.SEMA)

New Delhi,

August 17, 2005.

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