

Special Civil Application No 11578 of 94

Date of decision: 22/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MB MAKWANA vs STATE OF GUJARAT

Appearance:

-----

MR PB MAJMUDAR for Petitioner

Mr.D.A.Bambhania for the respondents

-----

Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT:

The petitioner who is holding the post of Sales-tax Officer (III) Unit-IV files this petition before this court challenging the order Annexure-F dated 17.8.1994 under which the disciplinary authority inflicted the penalty of stoppage of two increments with future effect. Brief facts leading to the present petition are as under:

2. The petitioner was served with a memo dated 10.7.91 for the misconduct alleged therein. The departmental inquiry was conducted by the inquiry officer but the alleged misconduct was not found proved by the Inquiry Officer. The disciplinary

authority did not agree with the finding recorded by the Inquiry Officer and a show cause notice was given to the petitioner in the matter by the said authority. The petitioner gave a detailed reply to the show cause notice and he prayed for personal hearing. Though without giving any personal hearing to the petitioner, vide order dated 17.8.94 the authority inflicted the aforesaid penalty of stoppage of 2 increments with future effect. Hence this petition.

3. Reply affidavit was filed by the respondents and it is not in dispute that personal hearing demanded by the petitioner in reply to the show cause notice was not given to him.

4. In para 6 of the reply the respondents have justified their action of not giving personal hearing to the petitioner in the matter as the disciplinary authority has taken into consideration all the aspects before passing the order dated 17.8.94. It has further been stated that during the inquiry, the petitioner was given ample opportunity of hearing and therefore, there was no necessity to give any personal hearing to the petitioner. Same thing has been repeated in para 10 of the reply. Reference to para 9 of the reply is necessary to be made. The respondents have stated in para 9 that after taking into consideration the report of the preliminary Inquiry Officer, the competent authority had submitted a report to the Government and on the basis of the said report the Government has taken action against the petitioner. Though the Rules viz. the Gujarat Civil Services (Discipline and Appeal) Rules 1971 may not provide for such an opportunity of hearing to be afforded to the petitioner nevertheless at the same time there is no provision in the Rules aforesaid which bars such an opportunity to be given. I find no substance in the submission of Shri Bambhania that as in the inquiry the petitioner was given full opportunity of hearing no further opportunity to be given to the petitioner. The inquiry report, as stated earlier is in favour of the petitioner and the disciplinary has not agreed to that report. In such circumstances, where the disciplinary authority has disagreed with the report of the inquiry officer, an opportunity of hearing should have been given to the petitioner when he prayed for the same. Mr. Bambhania has not very seriously opposed this aspect.

5. In the result, this petition is partly allowed. The order dated 17.8.94 at Annexure-F is set aside. The matter is sent back to the respondent no.1 with a direction to afford an opportunity of hearing to the petitioner and after hearing the petitioner to pass appropriate orders in accordance with law.

Rule is made absolute in the aforesaid terms. No order as to costs.

cgg

for correction pl.see original