IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10229 of 1995

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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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? 1 TO 5 NO

ARJUNSINH JYOTIBHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR VB GHARANIA, AGP for Respondent No. 1, 2, 3, 4, 5

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 30/08/97

ORAL JUDGEMENT

On 25th March, 1986, a clash occurred amongst two groups of residents of village Mandvi within the jurisdiction of Limkheda Police Station, Panchmahals District. Two cases, being Chapter Case Nos. 58/86 and 59/86 were registered in connection with the said incident. The petitioner herein, at the relevant time,

was serving as un-armed Head Constable Grade-I in Limkheda Police Station. It is alleged that in the course of registration of the above Chapter cases and investigation into the said incident, the petitioner demanded an illegal gratification from one of the groups of people headed by Shri Babubhai Shankarbhai Patel. The said Shri Babubhai Patel and others contributed in all Rs.1,200/-and paid to the petitioner by way of gratification on 30th March, 1986. A complaint in this regard was lodged with the Anti Corruption Bureau by said Shri Babubhai Patel and others. Pursuant to the said complaint, disciplinary proceeding was initiated against the petitioner by issuing a chargesheet on 28th October, 1988. The proceeding was conducted by the Inquiry Officer and on completion of the inquiry, he submitted his report. The Inquiry Officer held that the charge of demand and acceptance of illegal gratification made against the petitioner was proved. The disciplinary authority, respondent No.5 herein, under his order dated 13th March 1992 held that the imputation of charge made against the petitioner was not proved beyond doubt . All that was proved was that the petitioner had corrupt motive. He, therefore, imposed a punishment of reduction in rank for a period of two years. Feeling aggrieved, the petitioner preferred an appeal before the Deputy Inspector General of Police, Vadodara Range, he being the appellate authority. The said appellate authority, under his order dated 6th August, 1992, held that the decision taken by the disciplinary authority was not proper and the evidence led in course of disciplinary proceeding was not correctly appreciated. He, therefore, recorded the finding of guilt and took the view that the order of punishment of reduction in rank was not adequate and set aside the same. At the same time, he ordered a notice to be issued to the petitioner calling upon him to show cause why the punishment imposed upon the petitioner should not be enhanced to that of dismissal from service. The petitioner replied to the said show cause notice. After considering the reply given by the petitioner and the records of the disciplinary proceedings, under order dated 28th January, 1993, the Special Inspector General of Police, Vadodara Range, imposed a punishment of dismissal from service. Feeling aggrieved, the petitioner preferred a Revision Application before the respondent No.3 herein. The respondent No.3 under his order dated 25th March, 1994 confirmed the order of punishment imposed by the appellate authority and rejected the application for revision preferred by the petitioner. The petitioner preferred further Revision to the State Government. The State Government, under its communication dated 26th July, 1995 rejected the said

Revision Application. Feeling aggrieved, the petitioner has preferred this petition.

2. Learned advocate Mr. Raval has appeared for the petitioner and has raised the following contentions :

(a) The order of punishment of reduction in rank made by the disciplinary authority was proper and should not have been interfered with by the appellate authority.

(b) The appellate authority cancelled the order of disciplinary authority without affording the petitioner an opportunity of hearing and, thus, the order made by the appellate authority setting aside the order of the disciplinary authority has been made ex-parte.

(c) The petitioner was not furnished a copy of the report of the preliminary inquiry nor was he furnished copies of depositions of witnesses examined in course of the inquiry.

(d) The respondent No.4 had no authority to make order of punishment in suo-motu exercise of revisional power. He has failed to properly appreciate the evidence led in course of the disciplinary proceedings and the power of suo-motu revision has not been exercised within reasonable time.

(e) The power of suo-motu revision could not have been exercised just for the purpose of enhancing the punishment imposed upon the delinquent.

(f) In any view of the matter, the imputation of charge made against the petitioner has not been proved beyond reasonable doubt.

(g) No criminal complaint has been lodged against the petitioner inspite of the allegation of demand and acceptance of illegal gratification.

(h) The additional material produced before the State Government in support of the revision application has not been considered and the order made by the State Government is not a speaking order.

Learned AGP Mr. Gharania has appeared for the respondents and has submitted that the petitioner was afforded all the opportunity to defend himself. He,

however, concedes that he has no answer to the specific contentions raised by Mr. Raval.

3. The disciplinary authority after perusing the records of the disciplinary proceedings, has come to the conclusion that the factum of demand and acceptance of illegal gratification has not been established.However, he has recorded a finding that all that is established is corrupt motive. Ex-facie, the findings recorded by the disciplinary authority are contrary to each other. Having considered that the corrupt motive was established, the petitioner was visited with the punishment of reduction in rank. Feeling aggrieved, the petitioner preferred appeal before the appellate authority. It was specific contention of the petitioner that the findings recorded by the disciplinary authority were contrary to each other and the demand and acceptance of illegal gratification having not been established, the petitioner could not have been visited with any punishment. Having assailed the order of the disciplinary authority, the petitioner can not now be permitted to submit that the order of the disciplinary authority was proper and correct and should not have been interfered with. The appellate authority having considered the findings recorded by the disciplinary authority has set aside the order of punishment made by the disciplinary authority. In my view, while making such an order, the records of the Inquiry Officer and the order of the disciplinary authority were before the appellate authority and the appellate authority was not required to hear the petitioner for setting aside the order of punishment imposed upon the petitioner. The order of appellate authority, therefore, can not be said to be ex-parte nor the petitioner could have claimed right of hearing for setting aside the order of punishment imposed upon him.

4. As far as the petitioner's claim to copy of the report of the preliminary inquiry is concerned, the same is required to be rejected. The preliminary inquiry is nothing but a fact-finding investigation before any action is initiated against a delinquent. Such an investigation is made with a view to satisfying the competent authority regarding prima-facie evidence against a delinquent. A delinquent is, therefore, not entitled to receive a copy of the report of the preliminary inquiry unless such report is made part of the record of the disciplinary authority. In the present case, the appellate authority has categorically held that the preliminary inquiry report was not made part of the

disciplinary proceedings, nor was it relied upon by the Presenting Officer appointed by the respondent authorities. Mr. Raval has not been able to assail the above finding recorded by the appellate authority. In view of the said finding, the petitioner's claim for the report of the preliminary inquiry requires to be rejected. Mr. Raval has not been able to show who were the witnesses whose deposition was not supplied to the petitioner. He, therefore, submitted that some of the statements recorded in course of preliminary inquiry were not furnished to the petitioner. The allegation is vague. Mr. Raval has not been able to point out who were the witnesses whose statements were recorded in course of preliminary inquiry and have notbeen furnished to the petitioner. On perusal of the list of documents annexed to the chargesheet, it appears that two statements , one of Shri Ramjibhai Baria and other of Shri Mavsingbhai Tersingbhai were recorded in course of preliminary inquiry and the statements given by both the aforesaid two persons have been furnished to the petitioner alongwith the chargesheet. The contention raised by Mr. Raval is, therefore, ill-founded and requires to be rejected.

5. Mr. Raval has relied upon section 27A of the Bombay Police Act and has submitted that the respondent No.4 had no power of review. He has submitted that by the time the order made by the disciplinary authority was taken into suo-motu revision, 8 months had passed and the petitioner had thus served almost 1/3rd of the punishment imposed upon him by the disciplinary authority. He has further submitted that the notice of enhancement of punishment was issued by the Deputy Inspector General of Police, Vadodra Range, however the order has been made by the Special Inspector General of Police, Vadodra Range. The impugned order, therefore, requires to be quashed and set aside. He has further submitted that in view of the provisions contained in section 27-A of the Act, the power of suo-motu revision could not have been exercised so long as the appeal preferred by the petitioner was pending before the appellate authority. He has also relied upon some opinion, part of which is recorded in his application for revision made to the State Government. He has submitted that power of suo-motu revision could not have been exercised for enhancement of punishment alone. I do not find any substance in either of these contentions. Section 27A of the Act empowers the State Government or the Inspector General of Police or Deputy Inspector General of Police to call for and examine the record of any inquiry or proceeding of any subordinate police officer. It also empowers such

officer, interalia, to impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by such order. Second proviso to the said sub-section provides three circumstances in which the power of revision can not be exercised viz (1) In a case where an appeal against the decision or order passed in inquiry or proceeding has been filed and is pending; (2) In case where appeal against such decision or order has not been filed, before the expiry of a period provided for filing such appeal; and (3) In any case, after the expiry of the period of three years from the date of the decision or order sought to be revised. The question is whether the appellate authority can be said to have exercised the power of suo-motu revision pending the appeal preferred by the petitioner herein, and whether such power is exercised beyond reasonable time. While considering the appeal preferred by the petitioner, the appellate authority first quashed and set aside the order made by the disciplinary authority and then ordered a notice to be issued to the petitioner to show cause why the petitioner should not be visited with the punishment of dismissal from service. Thus, at the time when the petitioner was issued notice to show cause, the appeal preferred by him was already disposed of by setting aside the order of punishment made by the disciplinary authority. It, therefore, can not be said that at the time when the appellate authority exercised its power of suo-motu revision under section 27A of the Act, the appeal preferred by the petitioner was still pending. The said section 27A of the Act provides for a period of limitation. In the present case, the power of revision has been exercised within the period of limitation. The question whether it can be said to be within reasonable time or not, therefore, does not arise. Even otherwise, the power exercised within 8 months from the date of the order under revision, can not be said to be exercised beyond reasonable time. Mr. Raval has not been able to establish that the respondent No.4 is not empowered to exercise revisional jurisdiction under section 27A of the Act. I am afraid, I can not agree to the contention raised by Mr. Raval that since the notice was ordered to be issued by the Deputy Inspector General of Police, Special Inspector General of Police could not have decided the matter. The Special Inspector General of Police had all the records of the disciplinary authority and the reply submitted by the petitioner before him, I do not see why he could not have exercised revisional power conferred upon him under section 27A of the Act. Clause (b) to section 27A of the Act empowers the competent authority, interalia, to enhance the penalty imposed by the order under revision. There being a

specific provision for enhancement of penalty imposed upon the delinquent, the contention raised by Mr. Raval that the revisional power could not have been exercised merely for enhancement of punishment, requires to be rejected. As far as the opinion referred by Mr. Raval is concerned (page-207), such an opinion is neither binding to the competent authority nor it is binding to this court. Further the said opinion has been given in respect of some Rule 24 (1). It, however, does not disclose which are the Rules referred therein. Obviously, they are not the relevant Rules i.e. The Bombay Police (Punishment & Appeal) Rules. In that view of the matter also, the contention requires to be rejected.

6. Mr. Raval has vehemently argued that the evidence led during the course of the disciplinary proceedings has not been correctly appreciated by the appellate authority. He has also submitted that the imputation of charge made against the petitioner has not been proved beyond reasonable doubt. I am afraid, I can not accept such a contention while exercising power of judicial review under Article 226 of the Constitution of India. Besides, I have carefully perused the order made by the appellate authority. The appellate authority has made thread-bare analysis of the evidence led in course of disciplinary proceedings. Having appreciated the evidence, the appellate authority has recorded a finding that the imputation of charge made against the petitioner was proved. In the domestic inquiry, it is not necessary that the charge must be proved beyond reasonable doubt. Standards of proof required in the domestic inquiry are not as strict as those in the criminal prosecution. Besides, while recording its finding of guilt, the appellate authority has also taken into consideration the contradictions in the depositions given by the witnesses. Even after considering such contradictions, the charge is held to be proved. This court can not sit in appeal over the findings recorded by the appellate authority and record a finding of its own. The contention raised by Mr. Raval, therefore, requires to be rejected.

7. The petitioner can not be said to be innocent merely because no criminal complaint has been lodged against the petitioner in respect of demand and acceptance of the illegal gratification by him. For every offence that may have been committed, a complainant need not lodge a criminal complaint. Mr. Raval has next relied upon the affidavit made by one of the complainants on 14th December, 1994. He has submitted that the group clash occurred on account of political difference between

two groups of villagers and the same was actuated by bias. He has submitted that one of the complainants has made an affidavit on 14th December, 1994 to that effect. A copy of the said affidavit was sent by the petitioner to the State Government, however, the said affidavit has not been considered by the Government while rejecting the petitioner's application for revision. Except bare averment of the petitioner that the petitioner had sent a copy of the said affidavit to the Government, there is no evidence on record whatever to indicate that the copy of the said affidavit had reached the revisional authority. Besides, the veracity of such affidavit is also requires to be tested and further the question if such a material could have have been produced at the revisional stage also requires to be considered. Be that as it may, since there is nothing on the record that the said affidavit had reached the revisional authority, same does not require to be considered at all. Each and every contention raised by the petitioner has been dealt with in great detail. The statements recorded in course of the proceedings and the other evidence has also been considered in great detail. The appellate authority after thoroughly examining the record, has come to the conclusion that the imputation of charge made against the petitioner was established. The petitioner had preferred an application for revision against the said order dated 28th January, 1993 before the respondent No.3. The respondent No.3 also under his order dated 25th March, 1994 dealt with each and every contention raised by the petitioner and also the relevant evidence. A second revision was preferred before the State Government. Apparently, the State Government has accepted the findings recorded by the authorities below and the reasonings given in support of such findings. If the Government were in agreement to the reasonings and the findings recorded by the lower authorities, it was not necessary for the Government to reiterate such reasonings and findings. Further, the petitioner has not raised any new point before the State Government. In my view, the State Government was not required to reiterate the reasonings and the findings recorded by the authorities below when it was in complete agreement with the reasonings and findings recorded by the authorities below. The impugned order made by the State Government on 26th July, 1995, therefore, can not be vitiated on the ground that the same is not a speaking order.

8. Mr. Raval has vehemently contended that both the revisional authorities i.e. neither the respondent No.3 nor the State Government afforded an opportunity of

personal hearing to the petitioner and the impugned orders are, therefore, vitiated for non-observance of principles of natural justice. He has submitted that the petitioner had, in his written submission, categorically demanded a personal audience and both the authorities below were liable to afford a personal audience to the petitioner. In support of his contention, he has relied upon judgment of this court in the matter of HASMUKHBHAI DHANJIBHAI ZAVERI VS R. PARTHASARTHY (12 GLR, 128) He has particularly relied upon paragraph-18 of the judgment. In the case before the court, the court was considering the action of the Municipal Commissioner in cancelling the permission to construct granted earlier. The court held that, " the cancellation of the permission would have serious repercussion on an individual right to property and is bound to affect his interest adversely ". Having held thus, the court held that the prior notice and an opportunity to be heard should be given before a licence can be revoked. In paragraph-18 of the judgment, the court has laid down the principles of natural justice which are required to be observed in such matters. The principles laid down are (i) the particulars of the alleged material misrepresentation or fraudulent statement attributed to the person likely to be affected by the order should be clearly and precisely communicated to him; (ii) the person likely to be affected should be communicated the material on the basis of which the authority proposes to take action; (iii) the person likely to be affected should be given fair and reasonable opportunity to explain his case and to correct or controvert any statement prejudicial to him with a view to absolving himself of the charge levelled against him. He has next relied upon the judgment of the Supreme Court in the matter of GULLAPALLI NAGESWARE RAO & ORS VS ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION & ANR (AIR 1959 SC 308) He has particularly relied upon Head-Note (e). In case before the Supreme Court, the court was considering the validity of an order which the Government was empowered to make after affording an opportunity of personal hearing to the person concerned. In case before the court, the hearing was afforded by the Secretary of the State, while the decision was rendered by the Minister. The court held that, " This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing.....If one person hears and another decides, then personal hearing becomes an empty formality. Therefore the said procedure followed in this case also offends another basic principle of judicial procedure ". In the present case, the question of affording personal audience to the petitioner by an authority other than the one

making the order does not arise. The said judgment, therefore, shall have no applicability to the facts of the present case. He has next relied upon the judgment in the matter of NAGENDRA NATH BORA & ANR VS COMMISSIONER OF HILLS DIVISION & ANR (AIR 1958, SC 398). The court considering the relevant statute and rules framed thereunder held that the appellate authority hearing the appeal under the Excise Act was exercising quasi judicial function. Next Mr. Raval has relied upon the judgment in the matter of THE MANAGING DIRECTOR U.P. WAREHOUSING CORPORATION & ANR VS VIJAY NARAYAN VAJPAYEE (AIR 1980, SC 840) He has particularly relied upon Head-Note (B). The court held that, " the employer could not terminate the service of its employee without due enquiry in accordance with the statutory Regulations and in accordance with the rules of natural justice ". It further held that, "such an inquiry into the conduct of the public employee is of a quasi judicial character. The court would, therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice" . It further held that, " The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment ". Next Mr. Raval relied upon the judgment in the matter of NATIONAL TEXTILE CORPORATION VS SWADESHI COTTON MILLS (AIR 1981, SC 818). In the said judgment, the court was considering taking over of an undertaking without investigation. The court considering section 18-AA of the Act held that the said section did not expressly in unmistakable and unequivocal terms excludes the application of audi alteram partem rule at the pre-decisional stage. The court held that the principle of natural justice, therefore, should be read in the provision. However, in view of the facts of the said case, the impugned action was upheld by the court. In that case before the court, opportunity to defend to the offended party was not at all granted, which is not the case in the present case. In my view, therefore, the said judgment has no applicability to the facts of the present case. He next relied upon the judgment in the matter of FARID AHMED ABDUL SAMAD & ANR VS. THE MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD & ANR (AIR 1976 SC 2095) In that matter before the court, the court was considering the necessity of affording personal hearing under section 5A of the Land Acquisition Act. Section 5-A of the Land Acquisition Act enjoins

upon the competent authority to afford an opportunity of personal hearing. Thus, the person concerned has a statutory right to have a personal hearing . In the present case, Mr. Raval has not been able to establish that the petitioner had a statutory right to personal hearing. Besides, all the authorities have recorded a specific finding that there is no statutory provision which requires the delinquent to be given a personal hearing. In the matter of I.J.RAO COLLECTOR OF CUSTOMS & ANR VS BIBHUTI BHUSHAN BAGH & ANR (AIR 1989, SC 1884), the court held that the Collector had power to extend the time for completion of investigation and then to give post-decisional hearing to the person from whom the goods were seized in order to determine whether the order of extension should be cancelled or not. There is no question of ex-post-facto hearing in the present case and the principle laid down in the above judgment is not attracted on the facts of the present case. Next Mr. Raval has relied upon the judgment in the matter of STATE BANK OF PATIALA & ANR VS K. SHARMA (AIR 1996, SC 1669). In the said matter, the court has summarised the basic principles which are required to be followed in context of the disciplinary inquiry and order of punishment imposed by the employer on the employee. The court has held that distinction should be drawn between 'no opportunity' and 'adequate opportunity'. It held that in case of former, the order passed would undoubtedly be invalid. But in latter case, the effect of violation (of a facet of the rule of audi alteram parterm) has to be examined from the stand-point of prejudice. He has next relied upon the judgment in the matter of HARINAGAR SUGAR MILLS LTD. VS SHYAM SUNDER JHUNJHUNWALA & ORS (AIR 1961, SC 1669) He has particularly relied upon Head-Note (e) on page-1671. In the said paragraph, the court has drawn distinction between 'court' and 'Tribunal' and Administrative Officer' acting judicially.

9. It can not be disputed that while holding a disciplinary inquiry and imposing a punishment upon a delinquent, the disciplinary authority is exercising a quasi-judicial function, and is required to act judicially and free from bias. It can not be disputed that in course of disciplinary proceedings, a delinquent is required to be afforded a fair opportunity to defend himself, that is to say, he should be given a notice to show cause and an opportunity to defend himself by leading evidence and by controverting the evidence led by the disciplinary authority. In the present case, it is not disputed that the petitioner has been given an opportunity to defend himself i.e. he has been given a notice to show cause; he has been given the material

relied upon by the disciplinary authority; he has been permitted to cross-examine the witnesses relied upon by the disciplinary authority and to lead evidence in his defence. The question, however, is whether the petitioner ought to have been given a personal audience before the appellate/revisional authority. None of the above referred judgment lays down a principle that in all cases a delinquent is entitled to an opportunity of personal audience before the appellate/revisional authority. The question is squarely answered by this court in the matter of R.M.BAJPAYEE VS STATE OF GUJARAT & ORS ((1985 (2) GLR 1261) In the said judgment, the court was considering the power of revision of the State Government under section 27-A of the Bombay Police Act. Precisely, the contention raised was that before the revision application was disposed of by the State Government, the petitioner ought to have been given personal hearing. The court considering the provisions contained in section 27-A of the Act and the earlier Supreme Court judgments held that, " A party likely to be affected by a decision is entitled to know the evidence against him and to have an opportunity of making a representation. However, the party can not claim that an order made without affording a personal hearing can not be sustained. It would appear from the aforesaid provisions that even assuming that proviso to section 27A applied, the nature of opportunity of being heard contemplated thereby need not be a personal hearing, any representation received from the delinquent on the basis of which the revisional jurisdiction is exercised, should be suffice." Same is the principle canvassed by the Supreme Court in the matter of CARBORUNDUM UNIVERSAL LTD. VS. THE CENTRAL BOARD OF DIRECT TAXES, NEW DELHI (JT 1989 (4) SC 56) , the court held that, " The legal position is that where a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed particularly when the proceedings are quasi-judicial.....Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof ". In view of the above referred two judgments, the order of punishment imposed upon the petitioner can not be vitiated for want of personal audience before the revisional authorities. It is evident that the petitioner's representation in the form of appeal or application for revision was before the authorities alongwith the records of the inquiry proceedings. Besides, all the contentions raised by the petitioner have been dealt with and answered specifically.

10. No other contention has been pressed before me. In view of the above discussion, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI