BRIJ NANDAN KANSAL

v.

STATE OF U.P. & ANR.

FEBRUARY 26, 1988

[E.S. VENKATARAMIAH AND K.N. SINGH, JJ.]

Service matter—Challenging order of dismissal—Denial of reasonable opportunity of defence contemplated by Article 311(2) before its amendment—Whether Administrative Tribunal has power to re-appraise evidence and record subsequent findings to hold that evidence is not sufficient to sustain charges against government servant involved.

The appellant was in Government service. On a number of charges framed against him, the State government referred his case to the Administrative Tribunal for enquiry. In respect of the six charges against the appellant, the Tribunal recorded findings that the first charge was not proved but it recorded findings against the appellant in respect of the remaining charges. The Governor issued notice with a copy of the findings of the Tribunal to the appellant to show cause why he should not be dismissed. The appellant submitted reply to the show-cause notice, which was referred to the Tribunal for its consideration. The Tribunal submitted a report dated July 7, 1971, recording the finding that there was no convincing evidence to uphold the charges framed against the appellant. The State Government referred the matter to the Legal Remembrancer for opinion. The Legal Remembrancer opined that there was sufficient evidence on record to uphold charges 2 to 5 against the appellant, which were of common pattern to the effect that the appellant had claimed travelling allowance at the rate of first class railway fare without having actually travelled in that class on four different occasions. The Governor thereupon disregarding the findings of the Tribunal issued order dismissing the appellant. The appellant challenged the order of dismissal by a writ petition in the High Court. The High Court (Single Judge) allowed the writ petition and quashed the order of dismissal. The respondent—State preferred a Letters Patent appeal. The Division Bench of the High Court allowed the appeal and set aside the order of the Single Judge of the High Court. The appellant then moved this Court for relief by this appeal.

Allowing the appeal, the Court,

A HELD: After scrutiny of the two reports of the Administrative Tribunal and the note of the Legal Remembrancer, the Court found that the view taken by the Tribunal in its subsequent report dated July 7, 1971, was positive in nature that there was no convincing evidence to sustain the charges 2 to 5 against the appellant. [84B]

B There was no justification for the view taken by the High Court. The Tribunal was the inquiring authority. In its initial report dated May 7, 1970, it had recorded findings against the appellant, but when the Governor referred the appellant's reply to the show-cause notice to the Tribunal for reconsideration of the matter, it recorded a positive finding that there was no convincing evidence to support its earlier findings. The Tribunal had acted within its jurisdiction in reappraising C the evidence in the light of the appellant. The State Government issued the impugned order of dismissal on the basis of the opinion of the Legal Remembrancer without recording any reasons for disregarding the findings of the Tribunal. If the State Government chose to pass the order of dismissal, in all fairness, it should have recorded reasons for D the same, and in order to afford a reasonable opportunity to the appellant, it was necessary for the Government to communicate to him the reasons for disagreement with the Tribunal's report. The report of the legal Remembrancer on the basis of which the Government has passed the impugned order, had never been communicated to the appellant and he was denied opportunity to meet the same. Article 311(2) before E its amendment by the Constitution (forty-second Amendment) Act, 1975, contemplated reasonable opportunity of defence even at the stage of show-cause notice. The appellant had been denied opportunity of being heard at the stage of show-cause notice. [84E-H; 85A-B; F]

F The Tribunal in its report dated July 7, 1971 had categorically recorded the finding that there was no evidence on record to prove the charge that the appellant had not purchased 1st class tickets in advance relating to the journeys in question. The Tribunal had observed that the evidence raised suspicion against the appellant but mere suspicion was not sufficient to hold that the charges stood proved. The Legal Remembrancer, ignoring the findings of the Tribunal, concluded that G the evidence on record had proved charges 2 to 5. The entire approach of the Legal Remembrancer in considering the Tribunal's findings suffered from errors of law. He was of the opinion that the Tribunal had no authority to reappraise the evidence or enter into the sufficiency or adequacy of the evidence. The principles applicable to judicial review of administrative actions or findings recorded in departmental disci- H plinary proceedings do not apply to a Tribunal which is like an

inquiring authority while assessing the evidence on charges against a delinquent officer. The Tribunal could enter into adequacy, insufficiency or credibility of evidence on record. The Tribunal was not discharging the functions of a court but was acting as an enquiring authority therefore it had full powers to appraise the evidence and record its findings. The approach of the Legal Remembrancer was misconceived as a result whereof he had opined that the findings of the Tribunal in appellant's favour be ignored. The State Government committed a serious error of law in ignoring the findings of the Tribunal applying the principles of judicial review of administrative actions by a court of law, without giving the appellant an opportunity to show cause against the proposed view of the Government, and in passing the impugned order on the basis of the report of the Legal Remembrancer. In view of the findings of the Tribunal dated July 7, 1971 aforementioned, the impugned order of dismissal could not legally be sustained against the appellant. [85F-G; 86C-H; 87A]

There was no evidence on record to sustain the findings of charges 2 to 5 against the appellant, and further, the appellant was denied a reasonable opportunity of defence contemplated by Article 311(2) as it then existed. The State Government's order dismissing the appellant from service was illegal and unconstitutional. The order of the Division Bench of the High Court was set aside, the appellant's petition was allowed and the order of dismissal was quashed. The appellant was directed to be treated in service without a break with all the consequential benefits. [87B-C]

State of Andhra Pradesh **v.** *S.N. Nizamuddin Ali Khan,* **[1977] 1 S.C.R. 128, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1068 of 1976

From the Judgment and Order dated 7.8.1974 of the Allahabad High Court in Special Appeal No. 102 of 1974.

R.K. Garg, V.J. Francis and N.M. Popli for the Appellant.

Anil Dev Singh and Mrs. S. Dixit for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. This appeal is directed against the judgment of a

A Division Bench of the High Court of Allahabad dated August 7, 1974 allowing the respondent's Letters Patent appeal and setting aside the order of the learned Single Judge and dismissing the appellant's writ petition made under Article 226 of the Constitution challenging the order of the State Government dated April 24, 1972 dismissing the appellant from the U.P. Civil Service (Executive Branch).

B

The appellant was in the service of the State of Uttar Pradesh as a member of the U.P. Civil Service (Executive Branch). He was posted as Regional Transport Magistrate at Bareilly between June, 1962 to October, 1964. A number of charges were framed against the appellant and the State Government referred the matter to the U.P. Administrative Tribunal constituted under the U.P. Disciplinary Pro-
C ceedings (Administrative Tribunal) Rules 1947 (hereinafter referred to as the Rules) for enquiry into those charges. The Tribunal after recording evidence of the parties submitted its findings to the State Government on 27th May, 1970. Out of six charges framed against the appellant the Tribunal recorded the finding that the first charge was
D not proved but it recorded findings against the appellant in respect of the remaining five charges. The Governor issued show cause notice to the appellant on July 29, 1970 calling upon him to show-cause as to why he should not be dismissed from service. The notice was accompanied with a copy of the findings of the Tribunal. The appellant submitted a detailed reply making comments on the findings recorded
E by the Tribunal on each of the charges. The appellant submitted that there was no evidence to support the charges and the findings recorded by the Tribunal were not sustainable. On receipt of the appellant's reply to the show-cause notice the Governor referred the same to the Tribunal in accordance with Rule 10(2) of the Rules. The Tribunal considered the appellant's reply to the show-cause notice and his com-
F ments on the findings recorded by it earlier on the charges and thereupon it submitted a detailed findings to the Governor on 7.7.1971. In that report the Tribunal on a detailed analysis of the evidence recorded the finding that there was no convincing evidence to uphold the charges framed against the appellant. On receipt of the report of the Tribunal the State Government appears to have referred the matter to
G the Legal Remembrancer for his opinion. The Legal Remembrancer disagreed with the findings recorded by the Tribunal by his report dated July 7, 1971 and he opined that there was sufficient evidence on record to uphold the charges 2 to 5 against the appellant. In view of the opinion submitted by the Legal Remembrancer the Governor disregarded the findings recorded by the Tribunal and issued the impugned
H order dated April 24, 1972 dismissing the appellant from service.

The appellant preferred a writ petition under Article 226 of the Constitution before the High Court at Allahabad challenging the order of dismissal on a number of grounds. C.S.P. Singh, J. allowed the writ petition by his order dated January 10, 1974 and quashed the order of dismissal. The Respondent–State of Uttar Pradesh preferred letters patent appeal before the Division Bench against the judgment of the learned Single Judge. The Division Bench by its order dated August 7, 1984 allowed the appeal, set aside the order of the learned Single Judge holding that the appellant had been given reasonable opportunity of defence and there was ample evidence to sustain the charges and the order of dismissal did not suffer from any constitutional infirmity. Hence this appeal.

The State Government had framed six charges against the appellant, and referred the same to the Administrative Tribunal for enquiry. The Tribunal recorded findings that charge No. 1 was not proved, while remaining charges two to six stood proved against the appellant. The State Government accepted the Tribunal's findings on charges Nos. 2 to 5 but it disagreed with the Tribunal's findings on charge No. 6 as it was of the opinion that the said charge was not made out. The State Government issued notice to the appellant to show cause against the proposed punishment of dismissal from service. The appellant submitted a detailed reply to the show cause notice assailing the findings of the Tribunal, on the ground that there was no evidence on record to sustain the findings of the Tribunal on charges Nos. 2 to 5. On receipt of the appellant's explanation, the State Government referred the matter to the Tribunal again and thereupon the Tribunal considered the matter and by its report on 7th July, 1971 it recorded findings that there was no convincing evidence to support the charges and sustain its findings recorded earlier on charges 2 to 5 against the appellant. Charges 2 to 5 were of common pattern to the effect that the appellant had while posted as the Regional Transport Magistrate at Bareilly claimed travelling allowance at the rate of first class railway fare without having actually travelled in that class on four different occasions. Three out of four journeys were alleged to have been made on 14th April, 1963, 26th May, 1963 and 11th September, 1963 from Bareilly to Nijibabad and the fourth journey was made on 30th April, 1963 from Nijibabad to Bareilly. The appellant denied the charges and asserted that he had performed the aforesaid journeys in the first class and had paid fare for that class. In its initial report dated 7th May, 1970 the Tribunal had recorded findings that there was evidence on record to sustain the charges but in its subsequent report dated July 7, 1971 the Tribunal after considering the appellant's reply to the show

A casue notice and after reappraising the evidence held that there was no convincing evidence to sustain its earlier findings on charges 2 to 5 in the light of the submissions made by the appellant in reply to the show cause notice. We have carefully scrutinised the two reports of the Tribunal as well as the note of the Legal Remembrancer. We are of opinion that the view taken by the Tribunal in its report dated July 7, B 1971 was positive in nature that there was no convincing evidence to sustain the charges 2 to 5 against the appellant. The Legal Remembrancer disagreed with the findings recorded by the Tribunal. The Governor acted on the report of the Legal Remembrancer without recording any reasons for disagreeing with the findingss of the Tribunal dated July 7, 1971 and passed the impugned order dated C 24.4.1972 dismissing the appellant from service.

The High Court has held that the findings of the Tribunal dated May 7, 1970 and further the report of the Legal Remembrancer indicated that there was evidence on record to support the charges against the appellant therefore the Government was justified in passing the D impugned order of dismissal. The High Court further held that since there was some evidence on record which the Government found sufficient to sustain the charges, the Court had no jurisdiction to interfere with the order on the ground of inadequacy of the evidence. The High Court held that the Governor was justified in accepting the opinion of the Legal Remembrancer and it was not necessary for him to record E any reasons in disagreeing with the findings of the Tribunal dated July 7, 1971. We do not find any justification for the view taken by the High Court. The Tribunal was the inquiring authority. It was entrusted with the duty of holding inquiry and submitting its findings to the Government. In its initial report dated May 7, 1970 it recorded findings against the appellant but when the Governor referred the appellan's F reply to the show cause notice to the Tribunal, it reconsidered the matter in the light of the analysis of the evidence submitted by the appellant and thereupon it recorded a positive finding, that there was no convincing evidence to support its earlier findings on the charges. The Tribunal acted within its jurisdiction in reappraising the evidence as the Governor had referred the matter to it under Rule 10(2) of the G Rules. The State Government without recording any reasons for not accepting those findings issued the impugned order of dismissal presumably on the basis of the opinion of the Legal Remembrancer. The State Government did not record any reason as to why it ignore the findings recorded by the Tribunal. If the State Government chose to pass the impugned order of dismissal, in all fairness it should have H recorded reasons for the same and in order to afford reasonable

opportunity to the appellant it was necessary for the State Government to communicate the reasons for disagreement with the Tribunal's report to the appellant. The report submitted by the Legal Remembrancer to the Government on the basis of which the impugned order was passed had never been disclosed or communicated to the appellant and he was denied opportunity to meet the same. Article 311(2) before its amendment by the Constitution (Forty-second Amendment) Act, 1976 contemplated reasonable opportunity of defence even at the stage of show cause notice. In *State of Andhra Pradesh* v. *S.N. Nizamuddin Ali Khan*, [1977] 1 S.C.R. 128 an enquiry into certain charges was held by a High Court Judge against a Munsif Magistrate. The Enquiry Officer submitted its findings and recommended compulsory retirement. The Chief Justice of the High Court also examined the evidence on his own and confirmed the findings of the Enquiry Officer and made recommendation of compulsory retirement. Both reports were sent to the Government and a show-cause notice with the Enquiry Officer's report was issued to the respondent. The Government issued orders retiring the Munsif compulsorily. This Court held that since the supplementary report submitted by the Chief Justice to the Government was not given to the officer he had no reasonable opportunity of making his representation against the report of the Chief Justice and therefore, the order of compulsory retirement was vitiated. The Court emphasised that the officer was denied the opportunity of being heard at the second stage of enquiry. Indisputably, in the instant case the Governor acted on the report of the Legal Remembrancer which contained findings against the appellant but the copy of the same was not given to him. Hence the appellant could get no opportunity of meeting the same. The appellant was therefore denied opportunity of being heard at the stage of show cause notice.

We have carefully gone through the Tribunal's report dated July 7, 1970. We find that the Tribunal has categorically recorded a finding that there was no evidence on record to prove that the appellant did not purchase Ist calss tickets in advance relating to the journeys in question. The Tribunal observed that the evidence on record raised suspicion against the appellant but it observed that mere suspicion was not sufficient to hold that the charges had been proved against the appellant. The Legal Remembrancer ignored the findings recorded by the Tribunal and concluded that the evidence on record duly proved charges 2 to 5 against the appellant. On a perusal of the Legal Remembrancer's note which is on record, we find that the entire approach of the Legal Remembrancer in considering the Tribunal's findings suffered from errors of law. While holding that the Tribunal

had committed error in holding that there was no evidence to prove charges against the appellant, he observed:

> "Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the court to review the evidence and to arrive at an independent finding on the evidence."

The above observations of the Legal Remembrancer clearly indicate that he was of the opinion that the Tribunal had limited jurisdiction in reconsidering the findings recorded by it earlier against the appellant. He proceeded on the assumption that the Tribunal had no authority to reappraise the evidence or to enter into sufficiency or adequacy of evidence while considering the question whether charges stood proved against the appellant on the evidence on record. The principles applicable to judicial review of administrative actions or findings recorded in departmental disciplinary proceedings do not apply to a Tribunal which is like an inquiring authority while assessing the evidence on the charges framed against a delinquent officer. The Tribunal was entrusted with the primary duty of making inquiry and record its findings on the charges. In that process it could enter into adequacy, insufficiency or credibility of evidence on record. The Legal Remembrancer was of the opinion that the Tribunal could not enter into the realm of adequacy or sufficiency of evidence and for that purpose he relied upon the well-established principles of judicial review of administrative actions. The Tribunal was not discharging the functions of a court but on the other hand it was acting as the inquiring authority and it had full power to reappraise the evidence and record its findings and in that process it was open to it to hold that the evidence on record was not sufficient to sustain the charges against the appellant. The whole approach of the Legal Remembrancer was misconceived as a result of which he opined that the findings recorded by the Tribunal in appellant's favour could be ignored. We are of opinion that the State Government could not ignore the findings of the Tribunal applying the principles of judicial review of administrative actions by a court of law. The State Government committed serious error of law in ignoring the findings of the Tribunal without giving an opportunity to the appellant to show-cause against the proposed view of the Government and passing the impugned order on the basis of the report of the Legal Remembrancer. The Tribunal's findings dated July 7, 1970 clearly indicated that there was no evidence to sustain the

charges against the appellant and in that view the impugned order of dismissal could not legally be passed against the appellant. A

In view of our discussion, we are of opinion that there was no evidence on record to sustain the findings on charges 2 to 5 against the appellant and further the appellant was denied reasonable opportunity of defence as contemplated by Article 311(2) as it then existed. We B further hold that the State Government's order dismissing the appellant from service was illegal and unconstitutional. We, therefore, set aside the order of the Division Bench of the High cosurt and allow the appellant's petition and quash the order of dismissal dated April 24, 1972 and direct that the appellant shall be treated to be in service without break with all consequential benefits. The appellant is entitled C to his costs.

S.L. Appeal allowed.