

STATE OF U.P.
v.
SHATRUGHAN LAL AND ANR.

JULY 30, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK JJ.]

Service Law :

Departmental Enquiry—Supply of documents—Relied on—In Charge-sheet—Copies of—Not supplied to delinquent employee—Effect of—Held Delinquent employee must be informed in writing that he has the right to inspect the documents—Lapse in this regard would vitiate the enquiry.

Departmental Enquiry—Supply of documents—Statements of witnesses during preliminary enquiry—Copies of—Not supplied to delinquent employee—Effect of—Held : Non-supply of copies of statements deprives the delinquent employee of an effective opportunity of hearing—Further, copies of statements must be supplied where witnesses are proposed to be examined at the enquiry.

Departmental Enquiry—Hearing—Irregularities in—Prejudice to delinquent employee in defending himself—Copies of statements of the witnesses recorded during preliminary enquiry not supplied to delinquent employee — Effect of—Held : Employer failed to establish that non-supply of the said copies of statements did not cause any prejudice to the delinquent employee—Hence, effective opportunity of hearing not given to him—Therefore, enquiry vitiated.

The respondent was dismissed from Government service after a regular departmental enquiry. The respondent filed a petition before the State Public Services Tribunal challenging the order of his dismissal. The Tribunal allowed the petition on the grounds that the copies of documents relied on in the charge sheet and the statements of witnesses recorded in the preliminary enquiry were not supplied to the respondent. The High Court summarily dismissed the writ petition filed by the appellant-State. Hence this appeal.

On behalf of the appellant it was contended that copies of the documents were not supplied to the respondent as the respondent had every right to inspect the same at any time.

A Dismissing the appeal, this Court

HELD: 1. If the appellant did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which the copies were asked for by him may be inspected. The access to record must be assured to him. [943-B]

2. One of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. Copies of the statements of witnesses recorded during the preliminary enquiry must be supplied to the delinquent employee particularly if those witnesses are proposed to be examined at the departmental trial. [941-F-G; 942-C]

Chandram Tewari v. Union of India, [1987] Supp. SCC 518; *Kashinath Dikshita v. Union of India*, [1986] 3 SCC 229; *State of U.P. v. Mohd. Sharif*, [1982] 2 SCC 376 and *High Court of Punjab & Haryana v. Amrik Singh*, [1995] Supp. 1 SCC 321, relied on.

3. The Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself. [943-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2469 of 1982.

From the Judgment and Order dated 4.2.82 of the Allahabad High Court in W.P. No. 5062 of 1981.

T. N. Singh and R. B. Misra for the Appellant.

Dharam Bir Vohra for the Respondents.

The Judgment of the Court was delivered by

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SAGHIR AHMAD, J. The respondent who was a Lekhpal in the service of the State Government, was dismissed from service after a regular departmental inquiry. The order of dismissal was challenged before the U.P. Public Services Tribunal which, by its judgment dated 13.3.81, allowed the claim petition with the findings that the departmental proceedings conducted against the respondent as also the Order dated 28.2.77 by which he was removed from service were illegal and void. The State of U.P. then filed a writ petition in the High Court which was dismissed summarily on 4.2.82.

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We have heard learned counsel for the parties. The Tribunal has found as a fact that copies of the documents which were proposed in the charge-sheet to be produced in the departmental proceedings as proof in support of articles of charges were not supplied to the respondent. This finding was based on the own admission of the appellant in the written statement that the copies of the documents mentioned in the charge-sheet were not supplied to the respondent which could be inspected by him at any time. The Tribunal further found that the copies of the statement recorded during the preliminary inquiry on the basis of which the charges were subsequently framed against the respondent were also not supplied to him. It was, on these two grounds that it was held by the Tribunal that the inquiry proceedings were bad in law.

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These findings are assailed before us by the counsel for the State of U.P.

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Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. see: *Chandrama Tewari v. Union of India*, [1987] Supp. SCC 518 = AIR (1988) SC 117; *Kashinath Dikshita v. Union of India & Ors.*, [1986] 3 SCC 229 = AIR (1986) SC 2118 and *State of Uttar Pradesh v. Mohd. Sharif*, [1982] 2 SCC 376 = AIR (1982) SC 937.

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In *High Court of Punjab & Haryana v. Amrik Singh*, [1995] Supp. 1 SCC 321, it was indicated that the delinquent officer must be supplied copies

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A of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principles of natural justice would be violated.

B Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India & Ors.*, [1986] 3 SCC 229 (supra), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

D Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the charge sheet to be relied upon as proof in support of articles of charges were not supplied to the respondent nor was any offer made to him to inspect those documents.

E Learned counsel appearing for the appellant has contended that the opportunity to inspect the documents was, as a matter of fact, provided to him as set out in Paragraph 10 of the written statement filed before the Tribunal, in which, it was, *inter alia*, indicated as under:

F “The petitioner was required to reply to the charge within a period of 15 days from the date of receipt of charge sheet and not from the date of order as alleged in the petition. It is no doubt correct that the copies of the documents mentioned in the charge sheet purporting to substantiate a particular charge, were not supplied to the petitioner because it was not necessary and the petitioner had every right to inspect them at any time. It is, therefore, wrong to say that the
G petitioner was greatly handicapped for want of the copies of the documents mentioned above.”

This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge sheet were not supplied to the respondent as the respondent had every right to inspect them
H at any time. This assertion clearly indicates that although it is admitted that

the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him nor were the records made available to him for inspection. If the appellant did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which the copies were asked for by him may be inspected. The access to record must be assured to him. A B

It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself. C D

For the reasons stated above, the appeal has no merits and is, therefore, dismissed, but without any order as to costs.

V.S.S.

Appeal dismissed.