Union Of India & Ors vs E. Bashyan on 11 March, 1988

Equivalent citations: 1988 AIR 1000, 1988 SCR (3) 209, AIR 1988 SUPREME COURT 1000, 1988 (2) SCC 196, 1988 LAB IC 1702, (1988) 1 JT 627 (SC), (1988) 2 SCJ 219, (1988) 1 CIVLJ 684, (1988) 7 ATC 285, (1988) 1 CURLR 483, 1988 UJ(SC) 1 621, (1988) 56 FACLR 701, 1988 BLJR 477, (1989) 1 LAB LN 201, 1988 (1) JT 627, (1988) 2 LABLJ 249, 1988 SCC (L&S) 531

Author: M.P. Thakkar

Bench: M.P. Thakkar, N.D. Ojha

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
E. BASHYAN.

DATE OF JUDGMENT11/03/1988

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
OJHA, N.D. (J)

CITATION:
1988 AIR 1000 1988 SCR (3) 209
1988 SCC (2) 196 JT 1988 (1) 627
1988 SCALE (1)578

ACT:
Constitution of India: Article 311(2) Disciplinary Authority-Failure to supply copy of report of Enquiry officer to delinquent before recording finding about guilt-Whether violative of principles of natural justice-Matter referred to a larger Bench.
Administrative Law: Natural Justice Enquiry officer's report-Supply of to delinquent by Disciplinary Authority before final order-Necessity for-Matter referred to a larger Bench.

HEADNOTE:
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The enquiry officer's report was not made available to the respondent before the disciplinary authority passed the final order recording the finding of guilt against him. The Central Administrative Tribunal held in favour of the respondent.

In the special leave petition it was contended for the Union of India that the only authority which really and actually holds the delinquent guilty need not afford any opportunity to him before finding of guilt is recorded and the material on which the authority acts.

Referring the matter to a larger Bench the Court observed:

In the event of failure to furnish the report of the Enquiry officer the delinquent is deprived of crucial and critical material which is taken into account by the real authority who holds him guilty namely. the Disciplinary Authority. He is the real authority because the Enquiry officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt to assist the Disciplinary Authority who alone records the effective finding in the sense that the findings recorded by the Enquiry officer standing by themselves are lacking in force and effectiveness. Non-supply of the report would therefore constitute violation of principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 333 (2) of the Constitution. [214B-C]

There can be glaring errors and omissions in the report. Or it may
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have been based on no evidence or rendered in disregard of or by overlooking evidence. if the report is not made available to the delinquent. this crucial material which enters into the consideration of the Disciplinary Authority never comes to be known to the delinquent and he gets no opportunity to point out such errors and omissions and disabuse the mind of the Disciplinary Authority before he is held guilty or condemned. Serving a copy of enquiry report on the delinquent to enable him to point out anomalies, if any, before finding about guilt is recorded by the Disciplinary Authority is altogether a different matter from serving a second show cause notice to enable the delinquent in the context of the measure of the penalty to be imposed, which has been dispensed with by virtue of the amendment to Art. 311(2) by 42nd Amendment of the Constitution. [211E-H]

Since the question whether it is the right of the delinquent to pursuade the Authority which makes up its mind as regards the guilt of the delinquent that such a finding is not warranted in the light of the Keport of the Enquiry officer was not directly in issue and has neither been presented nor discussed in all its ramifications in C.A. No. 537 of 1988 (Union of India & Ors. v. M. Sivagnam) decided on February 8, 1988 by a Bench comprising of three Judges?

and the Secretary. Central Board of Excise & Customs & Ors. v. K.S. Mahalingam, (1986 (1) SCALE 1308) decided by a Bench of two Judges, relied on by the petitioners to contend that the point is directly or at any rate by necessary implication covered in their favour, the matter is referred to a larger bench on considerations of propriety. [214D-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition From the Judgment and order dated 12.11.1987 of the Central Administrative Tribunal. New Bombay in Tr. Appln.

G. Rama Swamy, Additional Solicitor General, A. Subba Rao and P. Parmeshwaran for the Petitioners.

Urmila Sirur for the Respondent.

The following order of the Court was delivered by THAKKAK, J: This matter raises a question of mega- importance viz. whether failure to supply a copy of the Report of the Enquiry officer to the delinquent before the Disciplinary Authority makes up his mind and records the finding of guilt as against him would constitute violation of Article 311(2) of the Constitution of India and violation of principles of natural justice. This question appears to be resintegra so far as this Court is concerned notwithstanding the contention of the learned counsel for the petitioner to the contrary. Counsel contends that the point is directly or at any rate by necessary implication covered in the petitioners' favour. Reliance in this connection is placed on an order passed by a Bench comprising of three Hon'ble Judges of this Court in C.A. No. 537 of 1988 and on an order passed by a Bench comprising of two Hon'ble Judges of this Court in the Secretary, Central Board of Excise and Customs & Ors v. K.S. Mahalingam 1986 (1) Scale 1308. The facts of both these matters reveal that the Enquiry officer's report was not made available to the delinquent before the Disciplinary Authority passed the final order recording the finding of guilt against him. But in the aforesaid two judgments to which our attention has been called, the sole issue in focus was regarding the necessity for serving a second show cause notice as regards the measure of penalty before the imposition of the penalty in the context of the argument that such a notice is no more essential in view of the 42nd Amendment of the Constitution.

Now an Enquiry officer merely makes his recommendations, by his report in the light of the evidence recorded by him and the submissions urged before him. The tentative view expressed by the Enquiry Officer may or may not be accepted by the Disciplinary Authority. It is the Disciplinary Authority who makes up his mind on the basis of the report and reaches the conclusion whether or not the delinquent is guilty. He may or may not accept the recommendations and may or may not accept the report. The disciplinary Authority builds his final conclusion on the basis of his own assessment of evidence taking into account the reasoning articulated in the Enquiry officer's Report and the recommendations made therein. If the report is not made available to the delinquent, this crucial material which enters into the consideration of the Disciplinary Authority never comes to be

known to the delinquent and he gets no opportunity whatsoever to have a say in regard to this critical material at any point of time till the Disciplinary Authority holds him guilty or condemns him. Such would be the consequence even if the Enquiry officer has found him to be blameless and recommended his exoneration in case the Disciplinary Authority has disagreed with the Enquiry Report. There can be glaring errors and omissions in the report. Or it may have been based on no evidence or rendered in disregard of or by overlooking evidence. Even so, the delinquent will have no opportunity to point out to the Disciplinary Authority about such errors and omissions and disabuse the mind of the Disciplinary Authority before the axe falls on him and he is punished. It appears to us to be a startling proposition to advance that the only authority which really and actually holds him guilty need not afford any opportunity to the person against whom such finding of guilt is recorded and the material on which he acts.

It needs to be highlighted that serving a copy of the enquiry report on the delinquent to enable him to point out anomalies, if any, therein before the axe falls and before finding about guilt is recorded by the Disciplinary Authority is altogether a different matter from serving a second show cause notice to enable the delinquent in the context of the measure of the penalty to be imposed.

It appears to us that the Report of an Enquiry officer is akin to a Report submitted by the Commissioner for taking accounts in a partnership suit to the Court wherein he summarises the evidence and expresses his opinion and records his tentative findings for the benefit of the Court. The Report of the Commissioner is no doubt taken into account by the Court but then the Court builds its conclusion only after making available the Report to the parties and after hearing the parties on the Commissioner's Report. It would be a startling proposition to propound that the Court can accept or reject the Report of the Commissioner with or without modification, without even showing the same to the parties or without hearing the parties in the context of the report.

The true legal position in regard to the findings recorded by an Enquiry officer and the legal effect of his report as spelled-out by us hereinabove is buttressed by a decision rendered by a Constitution Bench of this Court in Union of India v. H. C. Goel, [1964] 4 SCR 718 a quarter century ago wherein the following proposition have been enunciated:

> (1) the Enquiry officer holds the enquiry against the delinquent as a delegate of the Government;
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> (2) the object of the enquiry by an Enquiry officer is to enable the Government to hold an investigation into
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> 1. In a case like the present one where the power to dismiss or remove vests unto the Disciplinary Authority and the Enquiry Report is required to be submitted to the Disciplinary Authority (and not to the Government) the propositions will be applicable to the Disciplinary Authority.

the charges framed against a delinquent, so that the Government can, in due course consider the evidence adduced and decide whether the said charges are proved or not; (3) "the findings on the

merits" recorded by the Enquiry officer are intended merely to supply appropriate material for the consideration of the Government. Neither the findings nor the recommendations are binding on the Government as held in A.N. D'silva Union of India, [1962] (Suppl) (1) SCR 968.

(4) The enquiry report along with the evidence recorded by the Enquiry officer constitute the material on which the Government has ultimately to act. That is the only purpose of the enquiry and the report which the Enquiry Officer makes as a result thereof. It is thus evident that the findings recorded by the Enquiry officer become infused with life only when the Disciplinary Authority applies his mind to the material which inter alia consists of the report of the Enquiry officer along with the evidence and the record etc. If therefore the basic material comprising of the report of the Enquiry officer which has been taken into consideration by the Disciplinary Authority for holding that the delinquent is guilty as per the view expressed by his delegate namely, Enquiry Officer, is not made available to the delinquent till the axe falls on him, can it be said that the principles of Natural Justice have been complied with? Can it be said that the delinquent had an opportunity to address the mind of the Disciplinary Authority who alone in reality found him guilty? Since it cannot be so asservated it will be difficult to resist the conclusion that principles of natural justice have been violated and the delinquent has been denied reasonable opportunity.

It is no doubt true that when the Constitution Bench rendered the aforesaid decision in H.C. Goel's case Article 311(2) had not yet been amended. However, that makes little difference. By virtue of the amendment what has been dispensed with is merely the notice in the context of the measure of penalty proposed to be imposed. 1 he opportunity required to be given to a delinquent which must be reasonable opportunity compatible with principles of Natural Justice has not been dispensed with by virtue of the said amendment. Therefore the view taken in the context of the contention that the Discipli-

nary Authority need not afford an opportunity to the delinquent in regard to the measure of the punishment will not hold good in the context of the present argument in the background of the non-supply of the report of the Enquiry officer. In the event of the failure to furnish the report of the Enquiry officer the delinquent is deprived of crucial and critical material which is taken into account by the real authority who holds him guilty namely, the Disciplinary Authority. He is the real authority because the Enquiry officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt to assist the Disciplinary Authority who alone records the effective finding in the sense that the findings recorded by the Enquiry officer standing by themselves are lacking in force and effectiveness. Non-supply of the report would therefore constitute violation of principles of Natural Justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 311(2) of the Constitution.

The question arising in this matter is not with regard to the giving of notice limited to the question of what penalty should be imposed. The question is whether it is the right of the delinquent to persuade the Authority which makes up its mind as regards the guilt of the delinquent that such a finding is not warranted in the light of the Report of the Enquiry officer. The decision on this point will affect millions of employees in service today as also those who may enter Government service hereafter for times to come. The matter thus needs careful consideration in depth, and if necessary

at length. As this Bench is comprised of two Judges, we do not consider it proper on our part to pass any order in regard to the present petition though prima facie we are not inclined to grant leave in view of the two recent decisions cited before us. In any view of the matter we do not think that it is proper on our part to pass any order notwithstanding the fact that it appears to us that this question was not directly in issue and has neither been presented nor discussed in all its ramifications in the aforesaid two matter.

In fact this proposition has not been discussed at all in these judgments. It is therefore futile on the part of the petitioners to contend that the point is covered and concluded in their favour. Even so we prefer to be guided by considerations of propriety and refer the matter to a larger bench. We also wish to place on record that merely granting leave in a matter like this will serve no better purpose than prolonging the misery of all concerned. It may be that after ten years the appeal is dismissed. It may happen that the employee may die meanwhile. It may also happen that the order of reinstatement may be confirmed after ten years. In that event the public exchequer will have spent lakhs of rupees without taking any work from the employee. With the pendency of an appeal on this point hundreds of allied matters may have to be admitted and tagged on to the present matter. The point therefore deserves to be settled at this stage itself by a larger Bench.

Learned Counsel for the respondents-caveator prays that if the Court is inclined to consider this question after granting special leave, the petitioner should be directed to pay the past arrears and continue to pay the salary to the respondent who has succeeded before the Central Administrative Tribunal. This question also, in our opinion, should better be dealt with by the larger Bench before which this matter is placed as per the directions of the Hon'ble Chief Justice. We accordingly refer this matter to a larger Bench. The office shall seek directions of the Hon'ble the Chief Justice in this behalf P.S.S.