State Of U.P vs Shatrughan Lal & Anr on 30 July, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3038, 1998 AIR SCW 2897, 1998 LAB. I. C. 3489, 1998 ALL. L. J. 2159, (1999) 1 SERVLJ 213, (1998) 3 SCR 939 (SC), 1998 (3) SCR 939, (1998) 6 JT 55 (SC), 1998 (6) SCC 651, 1998 (6) JT 55, 1999 (1) SRJ 97, 1998 (6) ADSC 527, (1998) 3 UPLBEC 2019, (1998) 80 FACLR 389, (1998) 5 SERVLR 43, (1998) 4 SCT 162, (1999) 94 FJR 36, (1999) 1 RAJ LW 92, (1998) 2 CURLR 857, (1998) 3 ALL WC 2373, (1998) 2 LABLJ 799, (1998) 4 LAB LN 639, (1998) 6 SUPREME 587, (1998) 5 SCALE 1

Author: S. Saghir Ahmad

Bench: S. Saghir Ahmad

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
SHATRUGHAN LAL & ANR.

DATE OF JUDGMENT: 30/07/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S. 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.

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 department 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.

These findings are assailed before us by the counsel for the State of U.P. 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 hearting. 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 vs. Union of India 1987 (Supp.) SCC 518 = AIR 1988 Sc 177; Kashinath Dikshita vs. Union of India & Ors. 1986 (3) SCC 229 = AIR 1986 SC 2118; State of Uttar Pradesh vs. Mohd. Sharif (1982) 2 SCC 376 = AIR 1982 SC 937).

In High Court of Punjab & Haryana vs. Amrik Singh 1995 (Supp.) 1 SCC 321, it was indicated that the delinquent officer must be supplied copies 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.

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 vs. 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 document in his defence.

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.

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:

> "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 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 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.

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 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.

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