Major U.R. Bhatt vs Union Of India on 6 May, 1960

Equivalent citations: AIR 1962 SUPREME COURT 1344, 1962 (1) LABLJ 656 1961-62 21 FJR 478, 1961-62 21 FJR 478

Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, K.C. Das Gupta

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           CASE NO.:
Appeal (civil)  311 of 1958

PETITIONER:
MAJOR U.R. BHATT

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 06/05/1960

BENCH:
P.B. GAJENDRAGADKAR & K.N. WANCHOO & M. HIDAYATULLAH & K.C. DAS GUPTA &
J.C. SHAH

JUDGMENT:
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JUDGMENT AIR 1962 SC 1344 The Judgment was delivered by SHAH, J Per Shah, J Major U. R. Bhatt, who will hereinafter be referred to as the appellant was appointed Senior Inspector (Fruit Products) in the Central Agricultural Marketing Department of the Government of India on 9 April 1946. The appellant was initially employed on probation for six months and his appointment was liable to be terminated without notice during probation and thereafter, by notice of there months' duration on either side. The appellant continued to work as senior inspector till 17 March 1947. He was then served with a charge-sheet and called upon to show cause why he should not be dismissed or remove from service or otherwise punished. The appellant submitted his written statement on 22 March 1947. On 25 March 1947, he appeared before the Joint Secretary of the Agricultural Department and he was heard in persons. The Joint Secretary made a report recommending that the appellant's employment be terminated according to the terms of the contract by giving him notice. The Minister in charge of the portfolio concerned, however, directed an enquiry after framing fresh charges against the appellant and that in the meanwhile, he be suspended. On 7 May 1947, another chargesheet was served upon the appellant. By that charge-sheet, he was charged with irresponsibility and insubordination and accordingly unfit to hold the post of senior inspector. The appellant submitted a reply to the charges. The case was then posted for hearing on 9 June 1947 before the Joint Secretary, Ministry of Agriculture, who was appointed the enquiry officer. On that day, Sardar Bahadur Lal Singh, the Fruit Development Adviser, was present at the hearing and was examined. The appellant objected to the procedure adopted by the enquiry officer in using marginal notes made by Sardar Bahadur Lal Singh on the representation made by the appellant. The case then stood adjourned to 10 June 1947. On that day, the appellant met the enquiry officer and intimated that he (the appellant) would not take further part in the proceeding, and promised the

enquiry officer to send a letter explaining his reasons for withdrawing from the proceeding. The proceeding was then adjourned till 13 June. The promised letter of the appellant was received on 11 June. The enquiry officer then submitted his report holding that the charges incorporated in the charge- sheet were submitted his report holding that the charges incorporated in the charge-sheet were substantially proved by the evidence on the record. Holding that the appellant was "irresponsible, insubordinate and unreliable, and as such unfit to be kept in the post of the senior inspector,"

> the enquiry officer recommended that he be dismissed from service from to the date on which he was placed under suspension. The Governor-General of India accepted the report and issued a notice to the appellant requiring him to show cause why he should not be dismissed from service. The appellant made his representation on 10 November 1947. The December 1947, discharged the appellant from service with effect from the date of suspension. The appellant then served the statutory notice of suit upon the Government of India and filed suit No. 442 of 1948 in the Court for a decree for a declaration that the order of discharge, dated 3 December 1947, purporting to terminate the employment of the appellant was void and inoperative and that the appellant continued to remain in service. The appellant by his plaint challenged the validity of the order of discharge on the ground that enquiry on fresh charged against him will illegal, that he was not given adequate opportunity to show cause or to put in his defend at the enquiry, that his suspension was illegal, that the procedure prescribed by law not followed and that the order of discharge was male fide and, therefore void. At the hearing of the suit, the appellant also contended that the Public Service Commission not having been consulted as enjoined by S.266 of the Government of India Act, 1935, the order terminating his employment was invalid. The learned Subordinate Judge held that the appellant was not justified in refusing to take part in the enquiry before the enquiry officer and that even though he had not been afforded adequate opportunity of defending himself as require by rule 55 of the Civil Services (Classification, Control and Appeal) Rules, non- compliance with the rules did not conferred right upon the appellant to claim that his discharge from service was void and inoperative because the provisions of S. 240, Cl. (3) of the Government of India Act, 1935, had been substantially complied with. In the view of the substantially complied with. In the view of the Subordinate Judge, however, the order discharging the appellant from service was void, because the Public Service Commission was not consulted before an order imposing punishment by way of discharge from service was passed against the appellant.Against the order passed by the Subordinate Judge, an appeal was preferred to the District Court at Delhi. In appeal, the District Judge held that the provisions of S.266 of the Government of India Act, 1935, was only directory and not mandatory and failure to consult the Public Service Commission did not render the order passed by the Governor-General illegal. In second appeal, the High Court of East Punjab confirmed the decree passed by the District Judge. The High Court held that failure to follow the procedure prescribed by rule 55 of the Civil Services (Classification, Control and Appeal) Rules was directly attributable to the appellant's conduct and that it did not invalidate the

order. The High Court also held that failure to consult the Public Service Commission did not invalidate the order, because only directory and the only statutory protection afforded to a Government of India Act was only directory and the only statutory protection afforded to a Government servant was that under S.240 of the Government of India Act, he had to be given a reasonable opportunity to show cause against the proposed punishment and the appellant was afforded that protection. The appellant has appealed to this Court with special leave granted under Art. 136 of the Constitution.

The question whether the order, dated 3 December 1947, discharging the appellant from service was void because of failure to consult the Public Service Commission is not now open to be canvassed in view of the decision of this Court, an has, therefore, rightly not been raised by the counsel for the appellant. In State of Uttar Pradesh v. Manbodhan Lal Srivastava 1958 (2) LLJ 273], this Court held that Art. 320(3)(c) of the Constitution of India (which is substantially the same as S.266 of the Government of India Act) is not mandatory and that it does not confer any rights on the public servant, and the absence of consultation or any irregularity in consultation does not afford him a cause of action in a Court of law. It was also held that Art. 311 of the Constitution is to controlled by Art.

320. The content of the protection afforded to civil servants under S. 240, Cl. (3) of the Government of India Act was the same as afforded by Art. 311 of the Constitution, to civil servants.Counsel for the appellant submitted that serious irregularities had occurred in the procedure followed by the enquiry officer, that the enquiry officer had acted on materials which were not made available to the appellant and accordingly the appellant was deprived of a reasonable opportunity of making his defence. He also contended that the Governor-General ought, before passing an order of discharge, to have held a fresh enquiry at which the witnesses for the state and for the appellant were examined, and after holding such an enquiry, an order discharging the appellant from service could be passed. In our view, there is no substance in this contention of the appellant. The appellant declined to take part in the proceedings before the enquiry officer after 9 June 1947. It is true that on the representation made by the appellant, the Fruit Development Adviser had made certain remarks and the appellant felt aggrieved because his representation was down to the Fruit Development Adviser. But that did not justify the appellant in refusing to participate in the enquiry. The submission of the appellant in refusing to participate in the enquiry. The submission of the appellant that the Fruit Development Adviser was not examined on 9 June 1947, has no substance. It is clear from the order recorded on 10 June 1947, that the Fruit Development Adviser had been examined and cross-examined on 9 June 1947, and the enquiry was thereafter adjourned till the next day. There is contemporaneous record made by the enquiry officer to support that view. Even in the petition submitted by the appellant to the Governor-General in reply to the notice, dated 31 October 1947, in Para. 2(h), the appellant stated that he had appeared before the enquiry officer on 9 June 1947, and the enquiry officer had

on that day recorded the statement of the Fruit Development Adviser. It is true that the appellant in his examination before the trial Court asserted that the Fruit Development Adviser had not been examine don 9 June 1947, and Sardar Bahadur Lal Singh, the Fruit Development Adviser, in his evidence stated that he did not remember whether he had been examine don that day. The enquiry officer could not be examined at the trial because, as we are informed at the Bar, he had died before the suit was tried. The record maintained by the enquiry officer is, however, before the Court. In his order, dated 10 June 1947, and his report submitted to the Minister concerned on 11 June 1947, in which he had categorically stated that the Fruit Development Adviser was examined on 9 June 1947, and it was thereafter that the appellant declined to take part in the proceedings. On 10 June 1947, two witnesses were Specially kept present. As the appellant did not take part in the proceeding, the statements previously made by these witnesses were taken into consideration by the enquiry officer in making his report. The enquiry officer is not bound by the strict rules of the law of evidence and when the appellant declined to take part in the proceedings an failed to remain present, it was open to the enquiry officer to proceed on the materials which were placed before him. We are prepared to assume that the appellant had seen the statements made by these witnesses, which were tendered, but if the appellant's ignorance of their statements is the direct result of his own non-co-operation with the proceeding before the enquiry officer, we are unable to hold that the enquiry officer can be said to have proceeded an materials to which the appellant could not have access or that the enquiry officer did not give to the appellant a reasonable opportunity to show cause to establish that the charges against him were unfounded. Nor is there any substance in the contention of the appellant that the Governor- General before passing the impugned order ought to have directed that witnesses be examined again in the presence of the appellant and that the appellant be afforded another opportunity to lead evidence.As pointed out by this Court in Khem Chand v. Union of India and others 1959 (1) LLJ 167], in dealing with what is contemplated by reasonable opportunity to show cause in Art. 311(2) of the Constitution "the reasonable opportunity envisaged by the provision under consideration includes :

(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of

the three punishments and communicates the same to the Government servant."

The content of the reasonable opportunity under Art. 311 of the Constitution is the same as in S.240(3) of the Government of India Act.

Counsel for the appellant contends that the observations made by Das, C.J., indicate that at both the stages, namely, first before the enquiry officer and secondly, before the authority competent to impose punishment, the public servant concerned should be afforded the three opportunities set out in the judgment in Khem Chand case 1959 (1) LLJ 167] (supra). But this contention is, in our judgment, devoid of force. On p. 176, the learned Chief Justice observed, approving the view of the Privy Council in High Commissioner for India v. I. M. Lall [L.R. 75 I.A. 225], that if the public servant has been through the enquiry under rule 55, it would not be reasonable that he should ask for a repetition at that if no enquiry has been held under rule 55 or any analogous rule applicable, then it will be quite reasonable for him to ask for an enquiry. It is evident that an opportunity to who cause is reasonable even if it does not contemplate a further opportunity to examine witnesses provided there has been a fair and full enquiry at an earlier stage before the enquiry officer. In the present case, there was an inquiry held before the enquiry officer. The enquiry officer had afforded to the appellant an opportunity to remain present and to make his defence. It is true that all the witnesses of the State who could have been examined in support of their case were not examined viva voce, but that was because of the conduct of the appellant who declined to participate in the enquiry. He declined to take part in the proceeding and the enquiry officer was, in our view, justified in proceeding to act upon the materials placed before him. Once the appellant expressed a desire not to take further part in the proceeding of the enquiry officer, that officer was entitled to proceed ex parte and to act upon the materials placed before him. The enquiry made by the enquiry officer cannot therefore, be challenged either on the ground of unfairness or incompleteness, the appellant having been afforded the protection of the Constitution guaranteed under S. 240, Cl. (3) of the Government of India Act. The order of discharge from service passed against him by order of the Governor- General is not liable to be questioned on the ground that the materials may not have justified the passing of that order. It is not within the competence of the civil Court to sit in judgment over the decision of the authority who is competent by law to dismiss a public servant provided he has been afforded an opportunity to defend himself consistently with the substance of the constitutional guarantee.On that view, this appeal must fail and is dismissed. There will be no order as to costs.