R.C.Sharma vs Union Of India & Ors on 6 May, 1976

Equivalent citations: 1976 AIR 2037, 1976 SCR 580, AIR 1976 SUPREME COURT 2037, 1976 LAB. I. C. 1333, 1976 2 SCWR 66, 1976 3 SCC 574, 1976 SERVLJ 516, 1976 2 SERVLR 265, 1976 UJ (SC) 576

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
R.C.SHARMA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT06/05/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1976 AIR 2037 1976 SCR 580
1976 SCC (3) 574

ACT:
Service matter-Departmental proceedings-When could be declared null and void.
Procedure-Time limit in delivering judgment after hearing arguments-If prescribed by C.P.C.

HEADNOTE:
After holding a departmental enquiry on certain charges of contravention of Government Servants' Conduct Rules, the appellant was reduced in rank. His suit for a declaration that the impugned action was void and inoperative was dismissed. The High Court dismissed his appeal.
On appeal, it was contended that the departmental enquiry was vitiated on account of material irregularities, and that, as a result of excessive delay, between the date of hearing and delivery of judgment by the High Court, it

did not deal with a number of submissions made by him and thereby caused prejudice.

Dismissing the appeal to this Court,

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HELD: (1)(a) The question whether the appellant was given a reasonable opportunity to lead evidence and was sufficiently heard or hot is largely a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the Government servant from an alleged violation of a rule must be proved.[583C]

(b) The plea that the appellant had been subjected to trial on allegations which had been the subject-matter of previous enquiries overlooks that no charge was framed as a result of any previous enquiry. If an enquiry was held at a particular stage, possibly to determine whether regular proceedings should be drawn up or started, it did not debar a departmental trial. [583D]

State of Assam & Anr. v. J. N. Roy Biswas AIR 1975 SC 2277 and R. T. Rangachari v. Secretary of State, AIR 1937 PC 27, held inapplicable.

(c) It was not shown whether any evidence which the appellant tried to produce was really wrongly excluded and at what stage and for what reasons. All these are questions of fact which should be raised in the departmental trial. After that if there was any patent error a writ petition lay. [584A]

(d) A suit challenging a departmental proceeding cannot be treated as an appeal from the findings in those proceedings or against a punishment inflicted upon the Government servant even if these were erroneous. A question which could affect the result in a civil suit has to be of such a nature that it goes to the root of the jurisdiction that the conduct of the departmental trial illegally and vitiates the result. It is only if the departmental proceeding is null and void that a plaintiff could obtain the reliefs he had asked for. [584E-F]

Smt. Ujjam Bai v. State of U.P. & Anr. [1963] 1 S.C.R. 778 @ 835, 836, referred to.

(e) Unless a point could be raised on behalf of an appellant which is capable of vitiating the departmental proceedings there could be no declaration that the departmental proceedings were null and void. [585H]

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(2) The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, an unreasonable delay between the hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments were submitted. It is not unlikely that some points which the litigant considered important might have

escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there excessive delay between hearing of arguments and delivery of judgments.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1155 of 1971.

(Appeal by Special Leave from the Judgment and Order dated 17-11-1969 of the Allahabad High Court in First Appeal No. 178/61).

S. C. Manchanda, Sadhu Singh, R. N. Kapoor, Mrs. Nirmala Gupta, Uzzal Singh and J. M. Khanna for the appellant.

Gobind Das, P. P. Rao, Girish Chandra and S. P. Nayar for the respondents.

The Judgment of the Court was delivered by BEG, J. This is an appeal by special leave against the judgment and order of a Division Bench of the Allahabad High Court given by it on 17th November, 1969, dismissing a plaintiff's first appeal arising out of an original suit for a declaration that the order passed by the Commissioner of Income-tax, Lucknow, on 2nd April, 1956, reducing the appellant in rank from the post of an Income-tax Officer to that of an Income-tax Inspector, was void and inoperative. It appears that the appellant was in service upto 30th April 1958, when he was prematurely retired. The appellant also claimed Rs. 20,904/-as arrears of salary, but he reduced this claim to Rs. 16,561.29.

The appellant was originally appointed on 22nd November 1922, as Lower Division Clerk, and, thereafter, promoted as Income-tax Inspector in 1942. He was promoted to the post of Income-tax Officer in 1945. His case was that he had worked to the entire satisfaction of his immediate superior officers and higher authorities and had earned a number of certificates highly appreciative of his work. He was confirmed early in 1952 as an Income-tax Officer. He was, however, placed under suspension on 30th September, 1953, by the Commissioner of Income-Tax, U.P., Lucknow, on the basis of a preliminary enquiry on allegations involving corruption and violation of service rules.

Charges were framed on 30th December, 1953, by Shri A. K. Bose, Deputy Director of Investigations, who was appointed by the Commissioner of Income-tax as the Inquiring Officer. The preliminary enquiry had been conducted by Shri G. S. Srivastava, Inspecting Assistant Commissioner of Income-tax, Meerut.

That first charge was that the appellant had entered into partnership with others, under the name of Gautam Cycle Mart, Meerut, in 1939, in contravention of the Government Servants' Conduct Rules. The second charge was that he had made various investments in the name of various members of his family far in excess of and disproportionate to the known sources of his income. His high standard

of living and expenditure were also mentioned there. The third and the last charge gave particulars of thirteen assessment cases in which the appellant was alleged to be either "grossly negligent, careless, inefficient, and/or corrupt in the performance of his duties as Income-tax Officer".

The appellant's defences included alleged confused nature of charges characterized by him as "vague, over- lapping, intermingled" and wrongly joined together. He also pleaded that there had been an enquiry in 1949, by Shri A. R. Sachdeva, Asstt. Inspecting Commissioner, into some of the matters mentioned in the charges, and about others in 1952 by Shri R. N. Srivastava, another Inspecting Commissioner, and that the appellant had been exonerated of the allegations and imputations made against him on each occasion. One of his defences was that a fresh enquiry into the same charges was not permissible under the Departmental rules and was also barred by rules of natural justice. He also complained of failure to give him opportunity to produce nine witnesses in his defence with some documents.

It is evident that the questions raised by the appellant depended on findings of fact. All relevant facts had been examined by the officer who held the enquiry and by the punishing authority. No malafides against either the Inquiring Officer, Shri A. K. Bose, Deputy Director Investigation, or against the punishing authority was alleged. There are, however, suggestions that Shri G. S. Srivastava and Shri R. N. Srivastava, Inspecting Assistant Commissioners, were pursuing the appellant for some unknown reason which we do not find stated anywhere. We fail to see how these two officers, who neither conducted the actual departmental trial nor could have any influence over the punishing authority, could cause any miscarriage of justice or do anything to vitiate the departmental trial merely because they held preliminary inquiries before framing charges. The defence of the appellant seemed something similar to the much too common a defence of the accused in criminal trials attributing all their misfortunes to the hostility of the police.

The question whether the appellant was given a reasonable opportunity to lead evidence and to be heard or not is largely a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the government servant resulting from an alleged violation of a rule must be proved.

The plea that the appellant has been subjected to trial on allegations which had been the subject matter of previous enquiries overlooks that no charge was framed as a result of any previous enquiry. Therefore, the two authorities cited:

> The State of Assam & Anr. v. J. N. Roy Biswas, and R. T. Rangachari v. Secretary of State, do not help the appellant. If an inquiry is held, at a particular stage, possibly to determine whether regular proceedings should be drawn up or started, it does not debar a departmental trial. That was the nature of the previous enquiries. It appears that it is only after the appellant's activities had become more notorious that further enquiry was undertaken and regular charges framed. It is possible that the appellant may have been emboldened by the failure of officers to report earlier that charges should be framed and tried. In any case, this could not stand in the way of the first

regular enquiry in the course of which charges were actually framed and fully enquired into by Officers whose integrity and sense of justice is not challenged.

As for the denial of the opportunity to produce nine witnesses in defence, all that is suggested is that these witnesses could only state what opinions they had formed about the work, efficiency, and integrity of the appellant. They could not say anything about the particular instances which formed the subject matter of the charges against the appellant. It is not uncommon for astute Govt. servants, facing such enquiries, to give long lists of witnesses and documents so as to either prolong an enquiry or to prepare grounds for future litigation. Unless the exclusion of evidence is of a kind which amounts to a denial of natural justice or would have affected the final decision it could not be material. In the case before us, it has not even been shown how the witnesses whose production was said to have been disallowed could help the appellant's case on specific charges. Indeed, we do not know whether any evidence which the appellant tried to produce was really wrongly excluded and at what stage and for what reasons. All these are questions of fact which should be, initially, raised in the departmental trial. After that, if there was any patent error a writ petition lay. Finally, the trial Court and the High Court had considered at some length all relevant questions raised.

Learned Counsel for the appellant has handed over a very carefully and laboriously prepared statement of facts of the case to show us that the evidence did not support the charges levelled against the appellant. It was also submitted that, apart from the charges relating to partnership in the Gautam Cycle Mart, no other charge was found substantiated. Furthermore, it was submitted that, after the inquiring officer had found that the Gautam Cycle Mart was started in 1942 and not in 1939, the appellant should have been given a further opportunity to meet a new case. No rule was cited in support of such a technical objection to the nature of the charge which would cover the starting of the Gautam Cycle Mart at any time subsequent to 1939 also. In any case, it was for the appellant to satisfy the Departmental authorities, which had looked into the case upto its final stages, that he had suffered some injustice which to be set right. He had been given a second opportunity by the punishing authority before it inflicted the punishment of demotion. Nothing further was required by law. And, it was probably because the appellant was absolved of charges involving corruption in the discharge of his duties that he was given the lesser punishment of demotion and neither dismissed nor removed from service.

A suit challenging the validity of departmental proceedings cannot be treated as an appeal from the findings in the departmental proceedings or the punishment inflicted upon the Govt. servant even if these are erroneous. A question which could effect the result in a civil suit has to be of such nature that it goes to the root of the jurisdiction and the conduct of the department trial and vitiates the result. It is only if the departmental proceeding in null and void that a plaintiff in such a suit could obtain the relief he had asked. We are unable to see what point had been raised by the

appellant which could have had that effect upon the departmental proceedings.

In Smt. Ujjam Bai vs. State of & Anr., this Court said (at P. 835):

"A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required (i.e.) has jurisdiction to determine".

After citing a passage from Halsbury's Laws of England, 3rd Edn. Vol. 11, page 59, this Court held (at p. 836):

The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a mauer on which the jurisdiction of that body depends. These princi ples govern not onnly the findings of inferior courts stricto strictio also the findings of administrative bodies which are deemed be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal".

Learned Counsel for the appellant said all that could possibly be said on behalf of his client. He pointed out that the High Court had given its judgment eight months after it had heerad argumenst. He urged that the result was that the High Court did not deal with a number of submissions made because they had, apparently, been forgotten. The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers importan may have escaped notice. But, what is more important is the litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done.

On 4th March, 1971, however, the High Court refusing the certificate of fitness of the case for appeal to this Court observed that questions had been attempted to be raised before it in asking for certification which had not been argued at the time when the first appeal was heard by the High Court. We find that one of the learned Judges who dismissed the application for a certificate of fitness of the case had also heard the arguments in the first appeal. There is no affidavit before us that any particular points argued before the Division Bench had not been referred to or dealt with by the

Bench. Moreover, the Division Bench had probably not dealt with all arguments on questions of fact because it did not consider it necessary to do so. After all, it was not hearing an appeal against the findings of the departmental authorities. It pointed this out. Furthermore, after hearing the arguments of the learned Counsel for the appellant, we are ourselves unable to see any point which could be raised on behalf of the appellant capable of vitiating the departmental proceedings. Unless such a point could be raised, there could be no declaration that the departmental proceedings were null and void.

There is also an application before us for revocation of grant of special leave to appeal by this Court on the ground that some material facts were suppressed or misrepresented for the purpose of obtaining special leave. Although the special leave petition does not state that all the points sought to be raised by it were not argued before the Division Bench, this is not enough to merit cancellation of the special leave to appeal which was granted by this Court. At the time of grant of special leave, the order refusing grant of certificate of fitness of the case for appeal to this Court must have been before this Court. We are unable now to see the point on which special leave was granted. But, that too would not, by itself, merit a revocation of special leave at this stage after hearing arguments.

We, therefore, dismiss both the appeal and the application for revocation of special leave. Parties will bear their own costs.

P.B.R. Appeal dismissed.