Shri Shekhar Ghosh vs Union Of India & Anr on 1 November, 2006

Equivalent citations: 2006 AIR SCW 6271, 2007 (1) SCC 331, (2007) 112 FACLR 661, (2007) 1 LAB LN 577, (2007) 1 SCT 86, (2007) 1 SERVLR 756, (2007) 1 ALLMR 487 (SC), (2007) 1 SUPREME 860, (2006) 11 SCALE 363, (2007) 2 JCR 267 (SC), (2007) 49 ALLINDCAS 987 (SC), (2007) 66 ALL LR 180, 2007 (1) KLT SN 63 (SC)

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 4635 of 2006

PETITIONER:
Shri Shekhar Ghosh

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 01/11/2006

BENCH:
S.B. SINHA & MARKANDEY KATJU

JUDGMENT:

J U D G M E N T (Arising out SLP) No. 1400 of 2006) S.B. Sinha, J.

Leave granted.

Appellant was appointed as Khalasi at Kota Railway Station of Western Railway Administration in the year 1981. On 8th February, 1985, he was promoted as a Junior Clerk. A test was conducted by Chief Works Manager (Wagon Repair Shop) of Western Railway, Kota. He qualified in the same test. The Western Railways Administration started one Railway Electrification Project and he was transferred thereto in September 1985. While working there as a Junior Clerk, he was promoted as a Senior Clerk on 24.4.1987 on an ad hoc basis. On completion of the project, he was repatriated to his original office. Although he was posted in the office of the Kota Railway Station of Western Railway Administration, he was kept in the said workshop. A request for change of his name was agreed to by the competent authority, namely, the second Respondent herein and his request for absorption on the said post was also accepted.

A complaint against him by four employees working in the Divisional Office of Kota was made on 4.5.1994 that he was not entitled thereto alleging that the promotion granted to him was not a regular one. Relying on or on the basis of the said complaint, a show cause notice was issued on 10.4.1995 to him which is in the following terms:-

> ""According to the rule for the change of lien, the application of the employee should have been forwarded from his parental department. But it did not happen so and then the Chief Clerk Sh. Hridesh Bhatnagar, employee in the Establishment Branch in Divisional Office without any enquiry fixed the lien of Sh. Shekhar Ghosh in the W.B.S.M. Group in the Divisional Office and Rs.5000/- as a bribe was taken for this forgery work. Sh. Shekhar Ghosh is employed on today's date as a clerk by way of forgery under Assistant Engineer (Central), Kota. Sh. Shekhar Ghosh has not even passed any departmental examination for becoming clerk; even then he has been posted as clerk in a forged manner. When Shri Shekhar Ghosh had come after having repatriated from R.I. Organisation then he should have been relieved for Goods Compartment Repairing Factory, Kota and whatever his position adjusted there as Khalasi or Fitter, there itself he should have been adjusted. However, it id not happen so. Nothing sort of any correspondence was done with the parental Department of Sh. Shekhar Ghosh.
>
> In a similar situated case, Sh. Pandey was already refused to take from R.I. then how the rule framed separately for Sh. Shekhar Ghosh.
>
> Therefore, it is requested that this forgery case of Sh. Shekhar Ghosh be got enquired into immediately and disciplinary action be initiated against the then Head Clerk who mislead the administration and having taken bribe in a fraudulent manner Sh. Shekhar Ghosh made a clerk from Khalasi."

He filed his reply to the show cause requesting that he should be treated to be a selected Clerk `whose lien has been changed from WRS to Division' so that his legitimate dues are saved.

By an order dated 18.10.1996, he was repatriated to his original place of work i.e. the office of the Chief Manager of Factory, Goods Compartment Repairing Factory, Kota. Yet again, on 22.10.1996, another Office Order was issued.

Appellant filed an Original Application before the Central Administrative Tribunal. The operation of the order was stayed by an interim order dated 1.11.1996. However, by an order dated 17.11.1996, the Administrative Tribunal noticing that his name in the seniority list had been included by way of mistake, it was opined that there was no illegality or infirmity in the action taken in repatriating the appellant.

A Writ Petition filed by Appellant questioning the said order had been dismissed by a Division Bench of the High Court by an order dated 26.10.2004. The High Court arrived at its findings, inter alia, on the premise that a finding of fact had been recorded by the Tribunal that Appellant had been

holding the post of a Clerk on regular basis was accepted under a mistake, holding:-

> "The juniors to the petitioner had rightly made a representation against this untimely service benefits given to the petitioner. It is also not the case where without notice and affording opportunity of hearing to the petitioner the impugned order has been passed by the respondent. On the representation made by the other employees the respondents took all the care and caution, the enquiry had been conducted and only after detection of the mistake and after giving opportunity of hearing to the petitioner he was reverted.
>
> After considering the entire record of the writ petition we are satisfied that the petitioner was rightly repatriated back to the work-shop where he was holding the lien on the post of khalasi (Gr.II)."

The contention of Appellant was that an entry had been made in his service record in regard to regularization of his services but no order was served upon him stating:-

> "That the decision of the respondents is contrary to the record. In the service record of the applicant it has been verified by the competent authority that applicant is holding the post of Junior Clerk in substantive capacity."

In the counter-affidavit filed before the Tribunal, Respondents herein accepted the said contention stating:-

> "5(j). That the contents of para no. 5(j) of the original application are denied. Orders for regularization of the applicant as Clerk were never passed. The alleged entry made in the service record is also wrong and due to the mistake committed on part of the answering respondent."

Appellant had asked for production of his service records which was declined. Respondents, therefore, indisputably proceeded on the basis that a mistake occurred in making an entry in the service book of the appellant. The mistake committed admittedly, thus, was on the part of the respondents.

The mistake was said to have been detected on the basis of the complaint made by four employees. Serious allegations had been made against the appellant therein. If the allegations made therein were correct; then not only the appellant but also other officers of the department, whom he had allegedly paid bribe for forging the documents, were guilty of misconduct.

Appellant had never been supplied with a copy of the said complaint. No disciplinary proceedings were initiated against him. No charge was framed, nor any witness was examined. No Inquiry Officer was appointed to conduct an enquiry into the allegations on the charges of misconduct framed against the appellant in that behalf.

The order dated 21.11.1996 clearly demonstrates that the Senior Divisional Officer, Kota, without holding an enquiry arrived at a finding that his original post was Khalasi in Wagon Repair Shop, Kota and his lien had been cancelled. He was directed to be repatriated. Despite arriving at such a finding, a post-decisional hearing was sought to be afforded to the appellant.

A post decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion.

In K.I. Shephard v. Union of India AIR 1988 SC 686, this Court opined:-

> "...It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

[See also V.C. Banaras Hindu University and Ors. v. Shrikant, 2006 (6) SCALE 66].

We are, however, not oblivious of the fact that there is some shift in the concept of principles of natural justice which has been noticed by this Court in P.D. Agrawal v. State Bank of India & Ors., 2006 (5) SCALE 54 in the following terms:

> " The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula "

It is not denied or disputed that even when a mistake is sought to be rectified, if by reason thereof, an employee has to suffer civil consequences ordinarily the principles of natural justice are required to be complied with. It was so held in Ram Ujarey v. Union of India [(1999) 1 SCC 685] in the following terms:-

> "17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and

> brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him."

Curiously Respondents in their counter-affidavits filed before the Tribunal and the High Court did not raise any plea of rectification of any mistake. It was also not stated in the show cause notice issued to the appellant. Only a plea of mistake was taken for the first time before the Tribunal, but no plea was taken that it was entitled to rectify the same or his order impugned before it was capable of being rectified. Thus, it was not a case where an opportunity of hearing was given to Appellant on the premise that a mistake had been committed by the authorities of the first respondent and the same was required to be rectified.

If a mistake is to be rectified the same should be done as expeditiously as possible. [See Board of Secondary Education, Assam v. Mohd. Sarjumma (2003) 12 SCC 408] We are not oblivious that in Ram Chandra Tripathi v. U.P. Public Services Tribunal IV and Others [(1994) 5 SCC 180], an order passed by way of a mistake was permitted to be corrected as the same was done in violation of the order of injunction. In such a situation only, this Court held that an opportunity of being heard for correcting such mistake would not arise because there would not have been any occasion to take one view or the other in the matter on the basis of representation to be made by the affected employee.

It is also not a case where a mistake was apparent on the face of the records and, thus, compliance of the principles of natural justice would not have made any difference as was in the case of Smt. Ratna Sen nee Roy v. The State of West Bengal & Ors. [1995 (1) Cal. LT 462].

Requirements to comply with the principles of natural justice would, therefore, vary from case to case. If upon giving an opportunity of hearing to an affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with. We may notice that recently in Union of India & Ors. v. Bikash Kuanar [2006 (10) SCALE 86], a Division Bench of this Court opined:-

> " It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the records, a rectification thereof is permissible without giving any hearing to the aggrieved party."

In this case, Respondents accept that Appellant was entitled to a hearing. All the necessary ingredients of principles of natural justice were thus required to be complied with. Appellant as noticed hereinbefore had not been given adequate opportunity of hearing inasmuch as: (i) the hearing was sought to be given was a post-decisional one, which is bad in law; (ii) a copy of the

complaint was not supplied to Appellant at furtherance if not proposed that a mistake was sought to be rectified; (iii) No charges were framed; (iv) no witness was examined; and (v) no Inquiry Officer arrived at any finding that Appellant was guilty of the charges levelled against him.

The Tribunal or the High Court did not consider these aspects of the matter. The impugned judgment, therefore, cannot be sustained.

For the reasons aforementioned, the appeal is allowed. However, in the facts and circumstances of this case, there will be no order as to costs.