

Rajasthan High Court

Hari Narain vs Union Of India (Uoi) And Ors. on 9 December, 1980

Equivalent citations: 1980 WLN UC 546

Author: M Jain

Bench: M Jain

JUDGMENT M.C. Jain, J.

1. The petitioner by this writ petition seeks to quash the enquiry proceedings Exhibit 29, Enquiry officer's report Exhibit-28, show cause notice, Exhibit 27, order of removal dated January 9, 1975 (Ex. 31) and the order passed in appeal dated March 19, 1975 (Ex. 33).

2. The brief facts leading to this writ petition may be stated as under: The petitioner was a Khalasi, posted at shop No. 23, A, Northern Railway Workshop, Jodhpur He was served with a memorandum dated January 25, 1974 along with charge-sheet, statement of allegations, list of documents and the list of witnesses. The petitioner filed a reply to the charge-sheet. By the order dated March 9, 1974, Shri R.K. Kapoor, shop Superintendent, Wagon Construction, Northern Railway Workshop, Jodhpur, was appointed as Enquiry Officer. The petitioner objected to the appointment of Shri Kapoor but his objection was turned down both by the Assistant Personnel Officer (W), and thereafter by the Dy. Chief Mechanical Engineer (W), Northern Railway Jodhpur. It appears that the petitioner did not participate in the enquiry and ultimately the enquiry was conducted in his absence. The Enquiry Officer on completion of the enquiry found both the charges proved against the petitioner. It was found by him that on December 21, 1973, the petitioner threatened the official S.R. Samajpati, Senior Chargeman to due consequences when Shri Samajpati refused to mark him present. It was also found proved that on December 22, 1973, the petitioner slapped Shri Samajpati near D.S. Office Jodhpur while he was going to his house for taking lunch.

3. The report of the Enquiry officer dated November 23, 1974 (Exhibit-28) was considered by the Disciplinary Authority. The Disciplinary Authority agreed with the findings of the Enquiry Officer and issued a second show cause notice proposing the penalty of removal from service vide Memorandum (Exhibit-27) dated December 17, 1974. The petitioner submitted his representation. Thereafter the Disciplinary Authority vide order dated January 9, 1975 (Exhibit 1), intimated the penalty of removal from service awarded to the petitioner. The petitioner preferred an appeal to the Dy. Chief Mechanical Engineer (W) Northern Railway, Jodhpur who by his order dated May 9, 1975 (Exhibit 33) rejected the appeal and upheld the penalty imposed by the Disciplinary Authority.

4. The petitioner in the present writ petition has challenged the enquiry proceedings, the report of the Enquiry Officer, the show cause notice and the order of removal and the order of the Appellate Authority on various grounds to which I shall advert while dealing with the contentions of the petitioner.

5. A counter to the writ petition was filed by the Union of India, in which the grounds of challenge of the proceedings have been refuted and the petition was resisted. It was stated that the proceedings taken and the penalty imposed are not in any way vitiated. It was further stated that the petitioner absented himself from the enquiry and did not cooperate with the Enquiry Officer in the conduct of

enquiry and he was afforded ample opportunity by the Enquiry Officer. The petitioner now cannot be heard to complain that there has been any denial of reasonable opportunity of hearing to him. The conduct of enquiry and the order passed by the Disciplinary Authority and the Appellate Authority, were, therefore, justified In the end it was prayed that the writ petition be dismissed.

6. I have heard Mr. M.R. Calla, and Mr. M.R. Singhvi learned Counsel for the petitioner and Mr. A.K. Mathur, learned Counsel for Union of India.

7. Mr. Calla, learned Counsel for the petitioner urged that the conduct of enquiry by Shri M.R. Kapoor was improper and was not an imparital one. The petitioner had objected to the appointment of Shri R.K. Kapoor as the Enquiry Officer vide his letter dated April 4, 1974 (Exhibit 3) addressed to the Assistant Personnel Officer (W) Northern Railway, Jodhpur and to the Dy. Chief Mechanical Engineer (W) Northern Railway, Jodhpur vide letter dated 20/22-4-1974 (Exhibit 6). A further representation in this regard was made by the petitioner on April 28, 1974 (Exhibit 10). The petitioner had alleged that Shri R.K. Kapoor is the immediate officer of the complainant Shri Samajpati as well as the petitioner and in a case of assault of Shri R.K. Kapoor, Shri Samajpati was his witness. That being so i.e. Samajpati being the witness of the Enquiry Officer, should be taken to be inter ested in Samajpati's complaint. These averments made by the petitioner in his writ petition have not been denied in para 10 of the counter to the writ petition.

8. It was stated in para 10 that Shri R.K. Kapoor was not at all interested against the petitioner & the petitioner's apprehension is far fetched and baseless. His insistence for changing the officer was clearly to avoid the enquiry.

9. Shri Calla and Shri Singhvi admitted that Shri Samajpati was witness for Shri Kapoor in the complaint lodged by Shri Kapoor in a case of assault against him. According to Shri Calla, it should therefore, be taken that Shri Kapoor was interested in Samajpati, else Samajpati would not have appeared as a witness to support Shri Kapoor's case. Shri Kapoor's interestedness thus, is evident and so it cannot be said that he could hold an impartial enquiry. I am unable to agree with this contention of the learned Counsel for the petitioner. It is significant to note that the two representations filed by the petitioner in this regard were considered both by the Assistant Personnel Officer Shri A.P. Sharma and the Dy. Chief Mechanical Engineer (W) Northern Railway, Jodhpur who by their communications dated April 12, 1974 and May, 1, 1974 rejected the petitioner's representations stating that there are no reasons for changing the Enquiry Officer. The enquiry has been adjourned from time to time and ample opportunity was afforded to the petitioner. If the Enquiry Officer would have been interested in Samajpati, the Enquiry Officer would not have deferred the enquiry time and again and would not have adjourned the enquiry without any sufficient reason. The conduct of the enquiry proceedings clearly demonstrate that the Enquiry Officer was in no way prejudiced against the petitioner nor in any way interested in the complainant. It may also be stated that it has not been disclosed by the petitioner as to for what purpose Samajpati was cited as a witness by Shri Kapoor. It may be that Samajpati may be a formal witness Merely acting at a witness by Shri Kapoor, in my opinion is insufficient to hold that Shri Kapoor, was in any way biased against the petitioner or interested in the complainant Shri Samajpati. The petitioner ought to have disclosed the nature of evidence of Shri Samajpati and the nature of witness

without which it cannot be found that Shri Kapoor was interested in Samajpati's testimony to support and strengthen his case and for that purpose he could oblige Samajpati, It may be pointed out that there was no question of obliging Shri Samajpati by Shri Kapoor. The complaint of Samajpati was to be substantiated by his own testimony. When the petitioner has not participated in the enquiry, it cannot be said that there was any possibility of taking a favourable view in the appreciation of the statement of the complaint Samajpati.

10. I have already pointed out above, so far as the conduct of the proceedings is concerned, no favour has been shown to the complainant rather favour has only been shown to the petitioner in conducting the enquiry proceedings. Thus, on this ground the enquiry proceedings are not in any way affected.

11. It is next urged by the learned Counsel for the petitioner that the petitioner was not supplied the documents asked for by him, so the enquiry proceedings are vitiated. There is no substance in this contention of the learned Counsel for the petitioner. Under Rule 9, the petitioner is only entitled to inspection of documents, I have not been referred to any material on record on the basis of which it can be said that the petitioner applied for inspection of documents or copies of documents prior to the filing of the written statement in defence. On the contrary the enquiry proceedings show that the petitioner was questioned by the Enquiry Officer and on August 28, 1974, the Enquiry Officer put a question No. 4 "whether you have asked me to show you relevant documents they can be show to you just now or you want the copy of the document?". The petitioner did not request for inspection of the documents for which the enquiry officer was prepared, rather in reply to his question he stated that he wants every document he asked for in his application dated August 28, 1974 in writing. It would appear that on the next date the petitioner did not appear before the Enquiry Officer. It cannot be said that the Enquiry Officer was not prepared to deliver the copies of the documents. As a matter of fact, the petitioner was only entitled to inspection of documents for which preparedness was shown even at the stage of enquiry by the Enquiry Officer. When the petitioner himself absented from the enquiry proceedings and did not request for supply of documents at the stage of enquiry it cannot be said that there has been any denial of opportunity to the petitioner so this ground as well does not stand.

12. It is next urged that the petitioner was not allowed to avail the facility of defence counsel. This contention is absolutely baseless. The petitioner was asked to name his defence counsel with their consent. The petitioner named two defence counsel i.e. Shri B.L. Sharma and Shri Shri Nath Bohra. The petitioner failed to comply with the instructions and the consent was not submitted. Shri Bohra was intimated on August 28, 1974 vide Exhibit-R (i) and he was required to give a certificate that he does not have more than two cases to defend. On August 28, 1974, it was recorded by the Enquiry Officer in enquiry proceedings that the petitioner stated in answer to question No. 3 that so long as his defence counsel Shri B.L. Sharma, Guard, Jodhpur will not come he will not be able to reply his question and his letter dated August 28, 1974, be replied, on which the Enquiry Officer passed an order that in his application dated August 26, 1974, he named two defence counsel Shri B.L. Sharma and Shri Shrinath Bohra. But he did not file their written consent. Nomination of Shri Bohra was accepted and in this connection copy of the letter for sparing Shri S.N. Bohra to defend his case, was given to him and it was further ordered that his written consent to defend his case on August 29,

1974 must be obtained by him and submitted to the Enquiry Officer. Shri Bohra, being in the shop his consent can easily be obtained. However, on August 29, 1974 the petitioner himself absented from the proceedings and his father presented the consent of Shri Bohra. From the proceedings, it would appear that the facility for production of defence counsel was allowed. Thus there is no substance in the plea of the petitioner that he was not allowed to avail the facility of defence counsel.

13. Similarly the plea that the petitioner was not allowed to approach the venue of the enquiry on August 28, 1974 in the afternoon is absolutely baseless. It cannot be conceived that the petitioner would not have been allowed to reach the venue of the enquiry in the second meeting on August 28, 1974, when in the first meeting he could reach even when the pass was bearing the date August 27, 1974 and even the petitioner's father appeared on August 29, 1974. It does not stand to reason that the petitioner would not have been allowed to appear before the Enquiry Officer in the second meeting. When the enquiry was postponed to August 29, 1974, the petitioner could have appeared on August 29, 1974 but it appears that he deliberately chose to remain absent and did not participate in the Enquiry.

14. Another ground which has been taken is that in the list of witnesses given along with the charge sheet, no name of witness was entered and at enquiry, names of new witnesses were introduced although only one witness Shri Kripal Singh was examined by the Enquiry Officer.

15. It is true that the name of Shri Kripal Singh was not mentioned in the list of witnesses supplied to the petitioner. In this connection, it may be pointed out that in the initial list of witnesses the name of Shri Kripal Singh does not appear as he did not witness the main incident of assault by the petitioner of Shri Samajpati. His evidence is of circumstantial nature. He had been cited as a witness at the enquiry, it cannot be said that any prejudice has been caused to the petitioner. If the petitioner would have participated in the enquiry, he would have had an opportunity of cross examining the witnesses. Thus on this ground as well the enquiry proceedings cannot be held vitiated.

16. With regard to the proceedings and enquiry report, no other contention has been advanced before me.

17. It was urged that the show cause notice (Exhibit-27), is bad as it does not record findings of the Disciplinary Authority on each charge and it does not record the reasons of the findings. It simply records that the Disciplinary Authority agreed with findings of the Enquiry Officer and holds that the charges are proved. This is insufficient in the eye of law.

18. As against this, Shri Mathur submitted that the petitioner has been supplied with the report of the enquiry officer which recorded the findings of the charges along with the reasons of the findings and the Disciplinary Authority had agreed with the findings and it was not necessary for the Disciplinary Authority to state its own reasons for agreeing with the findings recorded by the Enquiry Officer. He supported his submission by citation of two authorities of the Supreme Court in the State of Assam and *Anr. v. Bimal Kumar Pandit* (1) and *State of Madras v. A.R. Srinivasan* (2) In *State of Madras v. Srinivasan* (supra), it was observed by their Lordship that having regard to the

material which is thus made available to the Government and which is made available to the delinquent officer also, it is unreasonable to suggest that the State Government must record its reason as to why it accepts the findings of the Tribunal.

19. It was further observed :

It is conceivable that when the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case it is not necessary that the reasons should be detailed or elaborate.

20. In the light of the law laid down by the Supreme Court in the above decisions it was not necessary for the Disciplinary Authority to record the reasons for the findings of both the charges to which an agreement was expressed in the Memorandum Exhibit-27. The petitioner was supplied with the report of the Enquiry Officer and the proceedings of enquiry, so the entire record was made available to the petitioner. It was perfectly legal for the Disciplinary Authority to have agreed with the findings of both the charges and it was not necessary for it to record its own independent reasons for the findings.

21. Thus, I do not find any infirmity or legal flaw in Exhibit-27 notice to show cause given to the petitioner for the proposed punishment.

22. The main attack of the learned Counsel for the petitioner is on the order of the disciplinary Authority, Exhibit-31 and the order of the Appellate Authority, Exhibit-33. It has been vehemently urged on behalf of the petitioner that both these orders are not speaking orders. Order, Exhibit-31 does not disclose whether reply to the show cause notice and the grounds raised therein have at all been considered. Exhibit-31 according to the learned Counsel for the petitioner is simply an order of removal and does not show any application of mind to the reply submitted by the petitioner to the show cause notice and consideration of the points urged by him.

23. Similar is the position of the order passed in appeal. It was also pointed out that the order which has actually been passed by the Disciplinary Authority was not communicated to the petitioner. It simply recited the penalty awarded and the basis of some order passed by the Disciplinary Authority. In the absence of speaking order the petitioner was denied the opportunity to present an effective appeal.

24. In support of this submission reliance has been placed on the decisions of this Court in *Kripal Singh v. The State of Rajasthan* (3) 1979 WLN 715, *Ram Khilari v. Union of India* (4) 1976 RLW 321, *Phool Chand v. The State of Rajasthan and Ors.* (5) 1980 WLN (UC) 311, *Kuldeep Singh v. Union of India* (6) 1974 RLW 171, *The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and Anr.* (7) and an unreported Decision of this court in *S.B. Civil Writ Petition No. 1894 of 1975 Phani Bhushan Thakore v. State of Rajasthan and Public Service Commission Ajmer* decided on April 11, 1980. Reference was also made to a decision of the Supreme Court in *S. L. Kapoor v. Jagmohan and Ors.* (8) .

25. Shri Mathur on the other hand urged that in Exhibit-31, the order communicated, by the Disciplinary Authority to the petitioner, it has been recorded that the penalty has been imposed upon the petitioner for the specified charges which stand substantiated. As the charges have been found to stand substantiated, the Disciplinary Authority awarded the penalty of removal from service. This order merged into the Appellate order and the Appellate Authority in its order has recorded that all reasonable facilities had been given to the petitioner to clear the charge and since charges have been found proved, it sees no reason to reduce or enhance the penalty. The order of the Appellate Authority thus is a speaking order as the Appellate Authority has considered that the petitioner was afforded all reasonable opportunity to clear himself of the charges. Thus, both the orders cannot be considered to be non speaking orders. He particularly emphasised that the ground as contended by the learned Counsel for the petitioner should be viewed in the peculiar situation of this case. He pointed out that the petitioner was afforded full opportunity at the enquiry but he adopted a non Cooperative attitude and did not participate in the enquiry. It would be an empty formality if the orders are quashed on the ground that they are not reasoned one. When this court has considered the contention of the petitioner on merits and if the court finds that the other contentions do not merit acceptance then it would be futile to quash the orders and remit the case at the stage of passing of the final orders on the reply to the show cause notice submitted by the petitioner.

26. Shri Mathur made a reference to a decision of the Supreme Court in Major U. R. Bhatt v. Union of India (9) .

27. I have carefully considered the above submissions of the learned Counsel for the parties. The bare perusal of the orders Exhibit-31 and 33 makes it abundantly clear that both the orders do not assign any reasons whatsoever. Exhibit 31 does not speak as to what ground were urged by the petitioner in his reply to the show cause notice and how these grounds have been dealt with ?

28. Similarly the appellate order also does not disclose how and in what manner the grounds raised in appeal were considered by the Appellate Authority. It is true that whatever contentions were advanced before me have been negatived by him as above. It was the duty of the Disciplinary Authority as well as the Appellate Authority to have considered those grounds and recorded their findings on those grounds and recorded reasoned orders but they have failed to do so. Thus the question which arises for consideration is, that if the merits of the contentions as advanced before me have been negatived, would it be an empty formality if the orders are quashed on this technical ground that they are not speaking orders and would it be proper to invoke the extra ordinary jurisdiction of this Court under Article 226 when there is no substance in the contentions challenging the enquiry proceedings and the report of the Enquiry Officer and the show cause notice.

29. I need not deal with the case law cited by the learned Counsel for the parties. To me the position appears to be well settled that in all quasi judicial orders, the orders should be reasoned one showing the application of mind by the authority passing the order so that effective remedy can be availed by the person against whom the order has been passed. As considered above, both the orders do not satisfy this requirement.

30. Even when the petitioner absented from the proceedings before the Enquiry Officer, still, when he had submitted reply to the show cause notice and submitted memorandum of appeal against the order of removal, it was obligatory for the Disciplinary Authority as well as for the Appellate Authority to have passed reasoned orders. Quashing of the two orders may on the fact appears to be meaningless But in this connection observation made in para 17 in S.L. Kapoor's case (8 (supra) may throw some light. It has been observed in para 17 that where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. The relevant and most important observation, thereafter, proceeds : "But it will be a pernicious principle to apply in other situations where conclusions are controvertial however, slightly and penalties are discretionary.

31. Applying the above principles to the facts of the present case, it cannot be said that under the law only one penalty is permissible. As more than one penalty is permissible and penalties are discretionary it is quite possible that when the orders are quashed a different penalty may be awarded. So it cannot be said that it would be an empty formality in the present case if the two orders, are quashed. The result of quashing of the two orders may be different as the penalty is discretionary with the authority and penalty permissible is law is not one. In this view of the matter although there is only legal technical flaw in the two orders but they are quite apparent and obvious, so they have to be quashed.

32. In the result, this writ petition is portly allowed. The order of the Disciplinary Authority dated January 9, 1975 (Exhibit-31) and the order of the Appellate Authority dated March 19, 1975 (Exhibit 33) ire quashed. It would, however, be open to the Disciplinary Authority to consider the reply to the show cause notice submitted by the petitioner and thereafter, pass a reasoned order.

33. The writ petition in respect of the enquiry proceedings, Enquiry officer's report and show cause notice, shall stand dismissed.

34. In the circumstances of the case, the parties shall bear their own costs of this writ petition.