Supreme Court of India
Union Of India vs T. R. Varma on 18 September, 1957
Equivalent citations: 1957 AIR 882, 1958 SCR 499
Author: T V Aiyyar
Bench: Das, Sudhi Ranjan (Cj), Aiyyar, T.L. Venkatarama, Sinha, Bhuvneshwar P., Kapur, J.L., Sarkar, A.K.

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
T. R. VARMA.

DATE OF JUDGMENT:
18/09/1957

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
DAS, SUDHI RANJAN (CJ)
SINHA, BHUVNESHWAR P.
KAPUR, J.L.
SARKAR, A.K.

CITATION:
1957 AIR 882 1958 SCR 499

ACT:
Government Servant-Dismissal-Enquiry-Procedure for taking evidence-Applicability of the Indian Evidence Act-Rules of natural justice-Reasonable opportunity--Constitution of India, Art. 311 (2).
Writ-Special jurisdiction of High Court-Alternative remedy -Disputed questions involving taking of evidence-Practice of the High Court-Constitution of India, Art. 226.

HEADNOTE:
The respondent was dismissed from service under the Government of India in pursuance of an enquiry held under Art. 311 of the Constitution of India. He filed an application in the High Court under Art. 226 to quash the order of dismissal on the grounds inter alia that in the enquiry the evidence of the respondent and his witnesses was not taken in the mode prescribed by the Indian Evidence Act and that as a result. he was not given a reasonable opportunity as required under Art. 311(2). It was found that though the procedure laid down in that Act was not strictly followed

the respondent was given a full opportunity of placing his evidence before the Enquiring Officer.
Held : (1) Petitions under Art. 226 of the Constitution should not generally be entertained by the High Courts where an alternative and equally efficacious remedy is available. It is not the practice of Courts to decide in a writ petition disputed questions which cannot be satisfactorily decided without taking evidence.
Rashid Ahmed v. Munsicipal Board, Kairana, (1950) S.C.R. 566 and K. S. Rashid and Son v. The Income-tax Investigation Commission (1954) S.C.R. 738, relied on.
(2) Tile Indian Evidence Act has no application to enquiries conducted by tribunals. The law only requires that tribunals should observe rules of natural justice such as that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied then the enquiry is not open to attack on the ground that the procedure laid down in the Indian Evidence Act for taking evidence was not strictly followed.
New Prakash Transport Co. v. New Suwarna Transport Co,, (1957) S.C.R. 98, followed,
64
500

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 118 of 1957. Appeal by special leave from the judgment and order dated January 31, 1956, of the Circuit Bench of the Punjab High Court at Delhi in Civil Writ No. 243-D of 1954. C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and R. H. Dhebar, for the appellant.

Purshottam Tricumdas, T. S. Venkataraman and K. R. Chaud- hury, for the respondent.

1957. September 18.

The following Judgment of the Court was delivered by VENKATARAMA AIYAR,J:-This is an appeal by special leave against the judgment and order of the High Court of Punjab in an application under Art. 226 of the Constitution setting aside an order dated September 16, 1954, dismissing the respondent herein, from Government service on the ground that it was in contravention of Art. 311 (2) of the Consti- tution.

The respondent was, at the material dates, an Assistant Controller in the Commerce Department of the Union Govern- ment. Sometime in the middle of March, 1953, one Shri Bhan, a representative of

a Calcutta firm styled Messrs. Gattulal Chhaganlal Joshi, came to Delhi with a view to get the name of the firm removed from black list in which it had been placed, and for that purpose, he was contacting the officers in the Department. Information was given to Sri Tawakley an assistant in the Ministry of Commerce and Industry (Com- plaints Branch), that Sri Bhan was offering to give bribe for getting an order in his favour. He immediately reported the matter to the Special Police Establishment, and they decided to lay a trap for him. Sri Bhan, however, was willing to pay the bribe only after an order in his favour had been made and communicated, but he offered that he would get the respondent to stand as surety for payment by him. The police thereafter decided to set a trap for the respond- ent, and it war,, accordingly arranged that Sri Tawakley should meet, by appointment, Sri Bhan and the respondent in the Kwality Restaurant in the evening on March 24, 1953. The meeting took place as arranged, and three members of the Special Police Establishment were present there incognito. Then, there was a talk between Sri Tawak- ley, Sri Bhan and the respondent, and it is the case of the appellant that during that talk, an assurance was given by the respondent to Sri Tawakley that the amount would be paid by Sri Bhan. After the conversation was over, when the respondent was about to depart, one of the officers, the Superintendent of Police, disclosed his identity, got from the respondent his identity card and initialled it, and Sri Bhan also initialled it.

On March 28, 1953, the respondent received a notice from the Secretary to the Ministry of Commerce and Industry charging him with aiding and abetting Sri Bhan in offering illegal gratification to Sri Tawakley and attempting to induce Sri Tawakley to accept the gratification offered by Sri Bhan, and in support of the charges, there were detailed. allega- tions relating to meetings between the respondent and Sri Tawakley on March 17, 1953, on March 21, 1953, a telephonic conversation with reference to the same matter later on that day, and the meeting in the Kwality Restaurant already mentioned. The respondent was called upon to give his explanation to the charges, and he was directed to state whether he wished to lead oral or documentary evidence in defence. The enquiry was delegated to Mt. J. Byrne, Joint Chief Controller of Imports and Exports. On April 10, 1953, the respondent submitted a detailed explanation denying that he met Sri Tawakley either on the 17th or on the 21st March, or that there was any telephonic conversation that day with him, and stating that the conversation which he had in the Kwality Restaurant on the 24th related to an insurance policy of his, and had nothing to do with any bribe proposed to be offered by Sri Bhan. The respondent also asked for an oral enquiry and desired to examine Sri Bhan, Sri Fateh Singh and Sri Jai Narayan in support of his version. On April 17, 1953 Mc. Byrne gave notice to the respondent that there would be an oral enquiry, and pursuant thereto, witnesses were examined on April 20, 1953, and the following days, and the hearing was concluded on April 27, 1953.

On July 28,1953, Mr. Byrne submitted his report, and there- in, he found that the charges against the respondent had been clearly established. On this, a communication was issued to the respondent on August 29, 1953, wherein he was informed that it was provisionally decided that he should be dismissed, and asked to show cause against the proposed action. Along with the notice, the whole of the report of Mr. Byrne, omitting his recommendations, was sent. Oil September 11, 1953, the respondent sent his explanation. Therein, he again discussed at great length the evidence that had been adduced, and submitted that the finding of guilt was not proper, and that no action should be taken against him. He also complained in this explanation that the enquiry was vitiated by the fact

that he had not been permitted to cross-examine. the witnesses, who gave evidence against him. The papers were then submitted to the Union Public Service Commission in accordance with Art. 320, and it sent its report on September 6, 1954, that the charges were made out, that there was no substance in the complaint of the respondent that he was not allowed to cross-examine the witnesses, and that he should be dismissed. The Presi- dent. accepting the finding of the Enquiring Officer and the recommendation of the Union Public Service Commission, made an order on September 16, 1954, that. the respondent should be dismissed from Government service.

The respondent then filed the application out of which the present appeal arises, in the High Court of Punjab for an appropriate writ to quash the order of dismissal dated September 16, 1954, for the reason that there was no proper enquiry. As many as seven grounds were set forth in support of the Petition, and of these, the learned Judges held that three had been established. They held that the respondent had been denied an opportunity to cross-examine witnesses, who gave evidence in support of the charge, that further, he was not allowed to make his own statement, but wag merely cross-examined by the Enquiring Officer, and that likewise, his witnesses were merely cross-examined by the Officer without the respondent himself being allowed to examine them. These defects, they observed, amounted to a denial of reasonable opportunity to the respondent to show cause against his dismissal, and that the order dated September 16, 1954, which followed on such enquiry, was bad as being in contravention of Art. 311(2). In the result, they set aside the order, and directed him to be reinstated. The correctness of this order is challenged by the Solicitor-General on two grounds : (1) that the finding that the respondent had no reasonable opportunity afforded to him at the enquiry is not supported by the evidence; and (2) that even if there was a defect in the enquiry, that was a matter that could be set right in the stage following the show-cause-notice, and as the respondent did not ask for an opportunity to cross-examine the witnesses, he could not be heard to urge that the order dated September 16, 1954, was bad as contravening Art. 311(2).

At the very outset, we have to observe that a writ petition under Art. 226 is not the appropriate proceeding for adjudi- cation of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the relief's to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally effica- cious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Raghid Ahmed v. Municipal Board, Kairana (1), " the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs ". Vide also K. S. Rashid and

(i) [1950] S.C.R. 560.

Son v. The Income-tax Investigation Commission And where such remedy exists, it will be a sound exercise of discre- tion to refuse to interfere in a petition under Art. 226, unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for

determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross- examining the witnesses, who gave evidence in support of the charge. That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on September 16, 1954, an action to set it aside would now be timebarred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits.

The main ground on which the respondent attacked the order dated September 16, 1954, was that at the enquiry held by Mr. Byrne, he was not given an opportunity to cross-examine the witnesses, who deposed against him, and that the find- ings reached at such enquiry could not be accepted. But the question is ,whether that allegation has been made out. In para. 7 of his petition, the respondent stated : " Despite repeated verbal requests of the petitioner, the inquiry Officer did not permit him to crossexamine any wit- ness, who deposed against him."

But this was contradicted by Mr. Byrne, who filed a counter- affidavit, in which he stated:

" (4) That it is incorrect that no opportunity was given to the petitioner at the time of the oral enquiry (1) [1954] S.C.R. 738, 747.

to cross-examine the witnesses who had deposed against the petitioner.

(5) That all witnesses were examined in petitioner's presence and he was asked by me at the end of each examina- tion whether he had any questions to put.

(6) That the petitioner only put questions to one witness Shri P. Govindan Nair, and to others he did not." On this affidavit, Mr. Byrne was examined in Court, and he repeated these allegations and added:

" I have distinct recollection that I asked Shri T. R. Varma to put questions in cross-examination to witnesses." It was elicited in the course of his further examination that he did not make any note that he asked Shri T. R. Varma to put questions in cross-examination to witnesses, and that that might have been due to a slip on his part. We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradic- tion of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true. He was admittedly an officer hold- ing a high position, and it is not suggested that there was any motive for him to give false evidence. There are more- over, features in the record, which clearly show that the statement of Mr. Byrne must be correct. The examination of witnesses began on April 20,1953, and

four witnesses were examined on that date, among them being Sri C. B. Tawakley. If, as stated by the respondent, he asked for permission to crossexamine witnesses, and that was refused, it is surprising that he should not have put the complaint in writing on the subsequent dates on which the enquiry was continued. To one of the witnesses, Sri. P. Govindan Nair, he did actual- ly put a question in cross-examination, and it is difficult to reconcile this with his statement that permission had been refused to cross-examine the previous witnesses. A reading of the deposition of the witnesses shows that the Enquiring Officer himself had put searching questions, and elicited all relevant facts. It is not suggested that there was any specific matter in respect of which cross-examination could have been but was not directed. We think it likely that the respond- ent did not cross-examine the witnesses because there was nothing left for him to cross-examine. The learned Judges gave two reasons for accepting -the statement of the re- spondent in preference to that of Mr. Byrne. One is that there was no record made in the depositions of the witnesses that there was no cross-examination. But what follows from this? That, in fact, there was no cross-examination, which is a fact; not that the request of the respondent to cross- examine was disallowed. Then again, the learned Judges say that the respondent was present at the hearing of the writ petition before them, that they put questions to him, and formed the opinion that he was sufficiently intelligent, and that it was difficult to believe that he would not have cross-examined the witnesses. We are of opinion that this was a consideration which ought not to have been taken into account in a judicial determination of the question, and that it should have been wholly excluded. On a considera- tion of the record and of the probabilities, we accept the statement of Mr. Byrne as true, and hold that the respondent was not refused permission to cross-examine the witnesses, and that the charge that the enquiry was defective for this reason cannot be sustained.

The respondent attacked the enquiry on two other grounds, which were stated by him in his petition in the following terms:

"(C) That the petitioner was cross-examined and was not enabled to make an' oral statement on his own behalf. (D) That the defence witnesses were not given an opportuni- ty to tell their own version or to be examined by the peti- tioner as their depositions were confined to answers in reply to questions put by the Inquiry Officer."

In substance, the charge is that the respondent and his witnesses should have been allowed to give their evidence by way of examination-in-chief, and that only thereafter the officer should have cross-examined them, but that he took upon himself to cross-examine them from the very start and had thereby violated well-recognised rules of procedure. There is also a complaint that the respondent was not al- lowed to put questions to them.

Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to en- quiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of

adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satis- fied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent deci- sion of this Court in New Prakash Transport Co. v. New Suwarna Transport Co. (1), where this question is discussed. We have examined the record in the light of the above prin- ciples, and find that there has been no violation of the principles of natural justice. The (1) [1957] S.C.R. 98.

witnesses have been,examined at great length, and have spoken to all relevant facts bearing on the question, and it is not suggested that there is any other matter, on which they could have spoken. We do not accept the version of the respondent that he was not allowed to put any questions to the witnesses. 'Indeed, the evidence of Sri Jai Narayan at p. 188 of the Paper Book shows that the only question on which the respondent wished this witness to testify was put to him by Mr. Byrne. The evidence of Sri Bhan and Sri Fateh Singh was, it should be noted, wholly in support of the respondent. The findings of Mr. Byrne are based entirely on an appreciation of the oral evidence taken in the presence of the respondent. It should also be mentioned that the respondent did not put forward these grounds of complaint in his explanation dated September 11, 1953, and we are satis- fied that they are wholly without substance, and are an afterthought. We accordingly hold, differing from the learned Judges of the Court below, that the enquiry before Mr. Byrne was not defective, that the respondent had full opportunity of placing his evidence before him, -and that he did avail himself of the same., In this view, it becomes unnecessary to express any opinion on the second question, which was raised by the learned Solicitor-General. In the result, we allow the appeal, set aside the order of the Court below, and dismiss the writ application. There will be no order as to costs.

Appeal allowed.