

Supreme Court of India

Indrani Bai vs Union Of India on 21 April, 1994

Equivalent citations: 1994 SCC, Supl. (2) 256 JT 1994 (3) 580

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

INDRANI BAI

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 21/04/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 SCC Supl. (2) 256 JT 1994 (3) 580

1994 SCALE (2) 777

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. Leave granted.

2. The appellant is the widow of one Narayan Naidu, a turner in gun carriage factory at Jabalpur. On 15-4-1980, it was alleged, that he attempted to commit theft of 50 mm grill. On 17-4-1980, a charge memo was given. On 26-6-1980, the General Manager appointed the enquiry officer to conduct an enquiry against him. The delinquent made a representation to higher authorities that the enquiry officer was biased against him and requested to appoint any other impartial person to conduct enquiry against him. Instead of acceding to the request, the higher authorities had directed the delinquent on 23-10-1980 to participate in the enquiry. On 20-11-1980, 24-11-1980 and 30-11-1980, witnesses were examined ex parte. But, unfortunately, on 14-12-1980, the delinquent was set ex parte as he did not appear before the enquiry officer. On 5-3-1981, he made another representation

to recall the witnesses already examined for cross-examination and to give him a further opportunity to examine himself and his witnesses in rebuttal. The authorities directed the delinquent, by their order dated 26-9-1981, to attend the enquiry when fixed and cooperate with the enquiry officer. Pursuant to this direction, as found from the record, that the enquiry officer, instead of reopening the matter and giving him an opportunity to cross-examine the witnesses already examined or to examine himself as a witness or his witnesses, by a letter dated 26-11-1991 has stated thus:

"You were advised to submit a written brief vide letter No. MWP/ENO/14318/81, dated 27-8-1981, by 10-9-1981. No reply was received from your end. However, the Presenting Officer has presented his written brief, a copy of which is enclosed.

You are hereby given another opportunity to submit your written brief before 15-12-1981 failing which, it will be presumed that you have no written brief to be submitted. The proceedings of the Court of Enquiry held, have already been sent to you vide letter No. MPI/ENO/149318/80, dated 18-1-1981."

3. Therefore, the delinquent did not submit his written brief and an order of dismissal from service was passed and on appeal, it was confirmed.

4. In the meanwhile, the delinquent died on 1-3-1985. His widow made a representation for payment of gratuity, pension and other retirement benefits and also sought alternative employment for her subsistence. As regards payment of gratuity, it has been paid though belatedly, but the pension was not paid on the ground that the delinquent was dismissed from service. It is said that the delinquent had since been dismissed from service, she is not eligible for any compassionate appointment. Her OA No. 85 of 1990 was dismissed by Central Administrative Tribunal, Jabalpur on 26-4-1990 on the ground of multiplicity of causes of action. Thus, this appeal by special leave.

5. While issuing notice to the respondents, we had directed the respondents to place before us the entire record. A counter-affidavit has been filed and record also has been placed before us. In fairness, Shri Kailash Yasdev, learned counsel for the Union of India, having gone through the entire record, has placed necessary material before us. As seen from the narration of the facts, that after the direction was issued by the Director General in his letter dated 26-9-1981, the enquiry officer had not recalled the ex parte order dated 14-12-1980 nor did he recall the witnesses already examined on 20-9-1981, 24-9-1981 and 30-9-1981 for cross-examination nor had given him an opportunity to adduce his evidence in rebuttal. On the other hand, it is clear from the letter extracted hereinbefore that despite the direction issued by the higher authorities, the enquiry officer directed the delinquent to submit written brief, in other words, he proceeded from the stage where he last closed the proceedings. That was not the spirit of the order of the Director General. Thus, it is a clear case of the violation of principles of natural justice. It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of the enquiry to be conducted by the enquiry officer. When he made a representation at the earliest, requesting to change the enquiry officer, the authorities should have acceded to the request and appointed another enquiry officer, other than the one whose objectivity was doubted. Unfortunately, that was not done. Even after the

Director General had given an opportunity to the delinquent to participate in the enquiry, the enquiry officer obviously was expected to recall the ex parte order and give the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable.

6. Under these circumstances, it is a clear case that the delinquent had not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principles of natural justice and fair play offending Articles 41, 21 and 311(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed. The respondents are directed to grant to the appellant the pensionary benefits according to rules and also to consider her case for suitable appointment on any post to which she may be eligible for rehabilitation, on compassionate ground. The respondents are further directed to pay the full salary payable to the deceased delinquent to the appellant from the date on which he was kept under suspension till date on which he would have attained superannuation or 28-2-1985, the preceding date of his death whichever is earlier, with all consequential benefits after deducting the subsistence allowance already paid, right from the date of the suspension order till date of dismissal. The exercise should be done within three months from the date of the receipt of the order.

7. The appeal is accordingly allowed No. costs as it is a legal aid case