Supreme Court of India
Jagdish Prasad Saxena vs State Of Madhya Bharat on 28 October, 1960
Bench: P.B. Gajendragadkar, A.K. Sarkar, K. Subbarao, K.N. Wanchoo, J.R.

CASE NO.:
Appeal (civil) 348 of 1958

PETITIONER:
JAGDISH PRASAD SAXENA

RESPONDENT:
STATE OF MADHYA BHARAT

DATE OF JUDGMENT: 28/10/1960

BENCH:
P.B. GAJENDRAGADKAR & A.K. SARKAR & K. SUBBARAO & K.N. WANCHOO & J.R. MUDHOLKAR

JUDGMENT:

JUDGMENT AIR 1961 SC 1070 The Order of the Court is as follows This appeal by special leave arises out of a petition filed by the appellant Jagdish Prasad Saxena against the respondent, the State of Madhya Pradesh, in the High Court of Madhya Bharat, in which he prayed that a writ of certiorari or mandamus or any other appropriate writ or direction should be issued against the respondent quashing the order passed by it on 3 December, 1953, terminating the services of the appellant as from 2 October, 1951 when he had been suspended. A chargesheet in regard to the proceedings taken against in regard to the appellant was furnished to him on 17 October, 1951; but it is common ground that no fresh enquiry had been subsequently held before the impugned order was passed against him. The High Court has, however, held that in the enquiry which had been held before the appellant was furnished with the chargesheet he had substantially admitted the material facts on which the chargesheet was framed, and so, failure to hold a formal enquiry after giving him the chargesheet had not caused any prejudice to him; that is why the High Court refused to issue a writ claimed by the appellant and dismissed his petition. In his present appeal by special leave the appellant challenges the correctness and propriety of the said decision. The appellant was permanently employed in the department of Customs and Excise by the respondent as a distillery inspector, and at the material time he was posted at Barwaha in the district of Khargone. It is admitted that he was governed by the rules and regulations of the State Civil Service. At Barwaha there is a distillery as well as a warehouse in a separate building within the same premises. Kethulekar was a warehouse clerk in charge of the warehouse and Narona was the distiller. On 12 July, 1951, at about 5 p.m., when the appellant was about to leave the distillery Narona asked for the key of the receiver for taking flow reading, and the appellant gave the key with instructions to Kethulekar to supervise the distillation. It appears that Kethulekar, who was then on duty, issued liquor to Nathu, contractor of Piplia, to whom a permit had been issued in respect of 1 gallon of Narangi (of strength 25 U.P.), 20 gallons of Rasi (of strength 60 U.P.) and 2 gallons of Dubara (of strength 25 U.P.), for which the contractor had deposited in the treasury Rs. 180-6-0. At the time of the said issue of liquor, however, the contractor was given 1 gallon of Narangi and 32 gallons of Dubara, that is to say, an excess quantity of 30 gallons of Dubara was illegally given to him thereby

causing a loss of Rs. 305-10-0 to the Government. According to the appellant, Kethulekar acting in concert with Narona transferred some liquor from the receiver to the warehouse vat in order to make up the deficiency consequent upon the illegal issue of liquor to the contractor. Some informer reported this matter to the Superintendent of Customs and Excise who immediately rushed to the place and seized the entire stock of liquor from Nathu, contractor.On 13 July 1951, the Superintendent along with the appellant held a preliminary enquiry in the case; at this enquiry all the three persons admitted their guilt, and the Superintendent eventually recovered Rs. 305-6-0 from Kethulekar to compensate the department for the loss caused by the illegal delivery of 30 gallons of Dubara, and he was suspended from 17 July 1951.

As directed by the superintendent the appellant submitted his detailed report about this incident. Five days thereafter the Deputy Commission of Customs and Excise held a second enquiry along with the Superintendent. At this enquiry Kethulekar and Narona implicated the appellant for complicity in the illegal transaction. The appellant also made a statement in this enquiry though no chargesheet had been given to him. As a result of this enquiry the Superintendent submitted his report on the same day, that is to say, 21 July, 1951. On the same day the Deputy Commissioner also made his report, and by his finding he absolved the appellant from the charge that he had any complicity in the offence. He, however, held that the appellant was guilty of slackness of supervision and control and recommended his transfer to some other place and the withholding of his grade increment for six months; accordingly the appellant was transferred to Indore on 6 September 1951.

On 1 October 1951, the Deputy Commissioner suspended the appellant with effect from 2 October, 1951, under instructions from the Secretary, Finance, Department of Excise and Customs; and he was also required to be present at Barwaha on 8 October 1951.

On 8/9 October 1951, the Deputy Commissioner reopened the enquiry against the appellant because three complaints had been made against him by Kethulekar. In this enquiry the appellant filed his written statement on 16 October, 1951, though he had not been furnished copies of the reports made under the previous two enquiries. On 17 October, 1951, the Deputy Commissioner gave the appellant the chargesheet in regard to his alleged complicity in the illegal issue of liquor. On 21 October, 1951, the Deputy Commissioner submitted his report and again absolved the appellant from having had any hand in the commission of the offence.After more than a year had elapsed the appellant received, on 25 November 1952, a notice calling upon his to show cause within fifteen days as to why he should not be removed from service as penalty for the offence committed by him in allowing the transfer of illegal to the contractor in his presence. On 8 December, 1952, the appellant requested that he should be allowed an inspection of the record to enable him to make a proper and adequate reply to the notice, but his application was ignored. On 11 December 1952, the appellant gave a reply to the show-cause notice and asked for a personal hearing. This request was rejected, and on 3 December, 1953, an order was passed terminating his services as from 2 October, 1951 when he had been suspended. It is on these facts that the appellant challenged the validity of the impugned order of dismissal, and contended that since no enquiry was held against him he has not had a reasonable opportunity to meet the charge in question. As we have already indicate, the High Court has rejected this argument, and so the short question which arises for decision is : Was the High Court right in holding that in substance the appellant has had a reasonable opportunity to meet the charge levelled

against him under Art. 311(2) of the Constitution ?

In order to decide the merits of this controversy it is necessary to refer to some more material facts. The chargesheet supplied to the appellant on 17 October, 1951, sets out elaborately several facts against him. It is specifically averred in the chargesheet that the appellant was present at the time when liquor was illegally given to the contractor, and that there was in fact a conspiracy between the appellant and Kethulekar. Thus his presence at the time when the offence was committed and his conspiracy with Kethulekar constitute the first charge against him. It is also alleged that subsequent to the commission of the offence the appellant fraudulently made interpolations in the relevant note-books which were required to be kept by him in the discharge of his official duties. The details of these interpolations have been set forth in the chargesheet. The third allegation against the appellant is that after liquor had been seized from the contractor his co-conspirators went to see the appellant at 7 a.m. on 13 July, 1951, for seeking advice from him. There are some other details also set forth in the chargesheet but it is unnecessary to refer to them. After this chargesheet was served on the appellant he was required to submit his explanation that very day.On 25 November 1952, the Under Secretary to the respondent issued a notice against the appellant calling upon him to show cause why he should not be removed from service as penalty for the offence which he had committed. This notice recited that "the issuing of liquor against the entries in the pass to the contractor Nathu and the making up of stock by transferring liquor illegally from the distillery had been fully established."

Since the appellant was in charge of the distillery, and the transfer of distillery liquor had taken place in his presence he was guilty of a serious offence. It would thus be seen that the only charge on which this notice was issued was that the appellant was present at the time when the illegal transfer of liquor took place. This notice called upon the appellant to furnish his reply within fifteen days.

On 8 December 1952, the appellant wrote to the Under Secretary that since the case had become more than a year old it was difficult for him to file a reply unless he was allowed to inspect the file containing the papers of all the relevant enquiries held in that matter; but apparently no action was taken on this request, and so the appellant trusted his memory and proceeded to file an elaborate reply on 11 December, 1952. For nearly a year thereafter nothing seems to have happened in this matter. On 25 November, 1953, however, the finance Minister to whom the papers had presumably been submitted for orders held that the appellant had a hand in the commission of the offence and that as a punishment for the same he should be removed from service from the date of his suspension. The order passed by the Minister shows that he relied on three facts against the appellant :

(1) that he had given the key of the distillery to the distiller, Narona,(2) that after the seizure of the liquor from the contractor Kethulekar and the contractor had gone to see the appellant next morning for taking advice, and (3) that the entries in the relevant books had been tampered with.

The Minister thought that the explanation offered by the appellant in his written statement on all these matters was not satisfactory. Pursuant to this order the Under Secretary communicated to the appellant on 3 December, 1953, the decision of the respondent to remove the appellant from service

as from the date of his suspension. The appellant then moved the respondent for a review of the said order but on 1 December, 1954, his application for review was dismissed on the ground that the respondent saw no reason to revise, modify or amend its decision of 25 November 1953; that is how the impugned order came to be passed.

It is true that the appellant specifically admitted during the course of the previous enquiry that illegal liquor had been delivered to the contractor, and that he had given the key of the receiver to Narona. It is the strength of those admissions that the High Court took the view that the appellant had substantially admitted his guilt and so there was really no need for holding a formal enquiry against him after the chargesheet was supplied to him. In this connexion it is necessary to remember that the previous enquiry was not directed against the appellant as such, and he was certainly not in the position of an accused in the said enquiry. In fact, as we have already indicated, the result of the said enquiry was that the appellant was absolved from any complicity in the commission of the offence, and the only criticism made against him was that he was slack in his supervision, that is why he was transferred. In such a case, even if the appellant had made some statements which amounted to admission it is open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. But apart from this consideration, if the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Under Art. 311(2) he was entitled to have a reasonable opportunity of meeting the charge framed against him, and in the present case, before the show-cause notice was served on him he has had no opportunity at all to meet the charge. After the chargesheet was supplied to him he did not get an opportunity to cross-examine Kethulekar and others. He was not given a copy of the report made by the enquiry officers in the said enquiries. He could not officer his explanation as to any of the points made against him; and it appears that from the evidence recorded in the previous enquiries as a result of which Kethulekar was suspended an inference was drawn against the appellant and show-cause notice was served on him. In our opinion, the appellant is justified in contending that in the circumstance of this case he has had no opportunity of showing cause at all, and so the requirement of Art. 311 (2) is not satisfied.The two facts admitted by the appellant do not necessarily or inevitably lead to the conclusion that he was guilty of the offence with which he was charged; besides, if his statements are used against him all statements must be considered as whole and, thus considered, there is no admission of guilt at all. The essential part of the finding against him is that he was present at the time when liquor was transferred to the contractor; and his presence cannot be reasonably inferred from the facts admitted by him. Even as to the delivery of the key to Narona no rules has been produced in this case which positively prohibited the delivery of such a key even in an emergency. Indeed the report made by the Superintendent on 13 July, 1951, shows that as a prudent man the appellant should not have given the key to Narona. The appellant was told that in future "the key should be given only to reliable persons in case of need." This admonition would show that in case of need it was open to the appellant to give the key to a reliable person, and that must necessarily mean that there was no rule which absolutely prohibited the delivery of the key any person even in case of need. Therefore, the admission made by the appellant that he gave the key to Narona cannot necessarily lead to the conclusion that he was in league with Narona or Kethulekar.

The order passed by the Minister shows that he took into account the alleged interpolations in the books kept by the appellant as well as the facts that Kethulekar and the contractor saw the appellant the next morning. Now it is clear that so far as these two facts are concerned the appellant was given no opportunity to cross-examine Kethulekar and the contractor and to show that their story was untrue; nor was he given an opportunity to substantiate his explanation about the alleged interpolations in the books. The Minister may have thought that the facts to which his attention was invited indicated that the appellant must have been present at the warehouse when the offence took place; but it is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a chargesheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the chargesheet. In the present case preliminary enquiries of a general type were held and they ended in a findings Kethulekar. The reports did not show that the appellant was guilty of the offence for which he was ultimately dismissed from service. The delay made in giving the appellant the chargesheet as well as in communicating to him the final order of dismissal shows that the authorities did not think that time was the essence of the matter, and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a chargesheet on 17 October, 1951. In our opinion; therefore, the High Court was in error in coming to the conclusion that no prejudice had been caused to the appellant as a result of the respondent's failure to hold an enquiry against him after supplying him with a chargesheet. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by his the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.The result is the appeal is allowed, the decision of the High Court is set aside and the order of dismissal passed against the appellant is quashed. The appellant will be entitled to his costs in this Court.