

A

STATE OF GUJARAT

v.

R. G. TEREDESAI & ANR.

April 10, 1969

B

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Constitution of India Art. 311(2)—Failure to provide recommendations of the Enquiring Officers as to punishment—If vitiates enquiry—Natural Justice, Principles—Civil Services (Classification, Control and Appeal) Rules, r. 55.

C

As there was omission to supply to the first respondent a copy of the recommendations of the Enquiry officer in the matter of punishment (although a copy of his report containing his findings on various charges was supplied) the first respondent filed a writ petition in the High Court challenging the order of the State Government removing him from its service. The first respondent contended that the omission amounted to failure to provide reasonable opportunity of making representation against the penalty proposed within the meaning of Art. 311(2) of the Constitution. The High Court held that proceedings were vitiated from the stage of the show cause notice relating to punishment, and set aside the order of removal, but liberty was given to the State Government to issue fresh show cause notice regarding the proposed punishment. Dismissing the State's appeal, this Court;

D

HELD :—The requirement of a reasonable opportunity could not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment were disclosed to the delinquent servant. [254 E]

E

The Enquiry Officer is under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the delinquent servant. But if the Enquiry Officer has, also made recommendations in the matter of punishment that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed on such officer, it must be disclosed to the delinquent officer. Since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. [253 H—254 D]

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G

Union of India v. H. C. Goel, [1964] 4 S.C.R. 718, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 961 of 1966.

H

Appeal by special leave from the judgment and order dated March 18, 1965 of the Gujarat High Court in Special Civil Application No. 580 of 1961.

R. H. Dhebar, S. K. Dholakia and S. P. Nayar, for the appellant. A

G. L. Sanghi and A. G. Ratnaparkhi, for respondent No. 1.

M. S. K. Sastri, R. H. Dhebar and R. N. Sachthey, for respondent No. 2.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave against a judgment of the Gujarat High Court. The sole point for determination is whether omission to supply to the first respondent a copy of the recommendations of the Enquiry Officer in the matter of punishment, although a copy of his report containing his findings on the various charges was supplied, amounted to a failure to provide reasonable opportunity of making a representation against the penalty proposed within the meaning of Art. 311(2) of the Constitution. C

The first respondent joined the Baroda State Service in 1937. He was absorbed as a Sales Tax Officer, Class III in the former State of Bombay after merger. In December 1962 he was served with a charge-sheet containing allegations of attempt to obtain illegal gratification from certain cloth dealers. A departmental enquiry was held and on March 15, 1964 he was dismissed from service. He challenged the order of dismissal by means of a civil suit. In May 1958 the City Civil Court decreed the suit holding that the order of dismissal was illegal. He was reinstated with effect from October 10, 1958. He was, however, suspended with immediate effect as a fresh enquiry was proposed to be held against him under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. A fresh charge-sheet was served on him containing the same allegations as on the previous occasion. In December 1959 a notice was served on him by the Government calling upon him to show cause why punishment of removal should not be imposed on him. Along with the show cause notice the report of the Enquiry Officer containing his findings was sent to him. The Enquiry Officer had also made certain recommendations regarding the punishment which in his opinion should be inflicted on the first respondent. No copy of these recommendations, however, was furnished to him. In March 1960 it was proposed that the first respondent be allocated to the State of Gujarat in view of the bifurcation of the erstwhile State of Bombay. In September 1960 he was removed from service by an order passed by the State Government. The first respondent then filed a petition under Art. 226 of the Constitution challenging the order of removal. D E F G H

One of the points which was raised before the High Court was that the failure to send a copy of the report of the Enquiry

- A Officer containing his recommendations in the matter of punishment vitiated the proceedings. The High Court expressed the view that since the recommendations were a part of the appropriate material for the consideration of the Government in the matter of imposition of punishment on the first respondent, he was entitled to a copy of those recommendations at the time when
- B he was called upon to show cause. It was consequently held that the proceedings were vitiated from the stage of the show cause notice relating to punishment. The order of removal was set aside but it was made clear that the Government would be at liberty to issue a fresh show cause notice regarding the proposed punishment and to take appropriate proceedings from that stage onwards, if it chose to do so. The State has filed the present
- C appeal.

- Learned counsel for the State urged that the Enquiry Officer was not required to make any recommendation about the punishment which was to be imposed on the first respondent on the charges against him which had been found to have been proved.
- D It was pointed out that the sole duty of the Enquiry Officer was to give his conclusions or findings on the charges which he was called upon to enquire into and the recommendations which he made in the matter of punishment were wholly redundant and irrelevant. For that reason it was not at all necessary that the first respondent should have been supplied a copy of the recommendations relating to punishment. In this connection reference
- E has been made to the Bombay Civil Services Conduct, Discipline and Appeal Rules wherein the procedure has been laid down when an order of dismissal, removal or reduction in rank has to be passed on a member of the service. According to the Rule the proceedings shall contain sufficient record of the evidence and a statement of the findings and the grounds thereof. There are
- F similar provisions in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

- In *Union of India v. H. C. Goel*⁽¹⁾. It has been observed that unless the statutory rules or the specific order under which an officer is appointed to hold an inquiry so requires the Enquiry
- G Officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if however, the Enquiry Officer makes any recommendations the said recommendations, like his findings on the merits, are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, nor the recommendations
- H are binding on the Government. Now although it is correct that the Enquiry Officer is under no obligation or duty to make any

(1) [1964] 4 S.C.R. 718.

recommendations in the matter of punishment to be imposed on the servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the various charges which have been preferred against the delinquent servant. But if the Enquiry Officer proceeds to recommend that a particular penalty or punishment should be imposed in the light of his findings or conclusions the question is whether the officer concerned should be informed about his recommendations. In other words since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the Enquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. If the Enquiry Officer has also made recommendations in the matter of punishment that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. The requirement of a reasonable opportunity, therefore, would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant.

We have no manner of doubt that the decision of the High Court must be upheld in the above view of the matter. The appeal fails and it is dismissed with costs.

Y.P.

Appeal dismissed.