CASE NO.:
Appeal (civil) 7312-7313 of 2002

PETITIONER:
Div. Mangr. Plantn. Div. Andaman&Nicobar IS.

RESPONDENT:
Munnu Barrick & Ors.

DATE OF JUDGMENT: 17/12/2004

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Management of Andaman Nicobar Islands Forest and Plantation Development Corporation situate in the Union Territory of Andaman and Nicobar Islands is in appeal before us from a judgment and order dated 4.7.2001 passed by a Division Bench of the Calcutta High Court in CAN No. 28 of 2001 (M.A.T. No. 12 of 2001) whereby and whereunder an application for condonation of 103 days' delay in filing an appeal under Clause 15 of the Letters Patent of the Calcutta High Court was not condoned as also an order dated 10.10.2001 passed by another Bench of the said High Court refusing to review the said order.

Respondent No. 1 to 8 herein (Respondent Workmen) were workmen working with the Appellant in their establishment. On an allegation of commission of mis-conduct of giving less outturn and instigating other workmen to slow down work and give less daily outturn, they were placed under suspension by orders dated 10.10.1994 and 24.10.1994. Charge Sheets containing the articles of misbehaviour and in support thereof list of documents as well as the list of witnesses which were to be brought on records for sustaining the same were supplied to the workmen. It appears that the conditions of services of the workmen are governed by the Rules framed by the Appellant known as IES Rules.

The workmen despite notice did not participate in the domestic enquiry whereupon an ex-parte enquiry was conducted by the Inquiry Officer. He upon completion of the enquiry sent his report to the disciplinary authority. The disciplinary authority by an order dated 12.6.1995 directed removal of the workmen from services. Along with the orders of removal, a copy of the enquiry report was also enclosed.

An industrial dispute was raised by the workmen culminating in a reference made by the Administrator, Andaman and Nicobar Islands to the Labour Court, Andaman and Nicobar Islands by a notification dated 13.3.1997.

Before the Labour Court, both the parties filed their respective pleadings and adduced evidences. By reason of an award dated 10.11.1998, the learned Presiding Officer, Labour Court, Andaman and Nicobar Islands in I.D. Case No. 1 of 1994 arrived at a finding that the said orders of removal passed against the workmen were bad in law as a copy of the enquiry report was not served upon the workmen with a second show-cause notice and consequently directed reinstatement of workmen in service with all back wages and service benefits attached thereto.

The learned Presiding Officer in his award dated 10.11.1998 held:

"Here in this case apart from change over of the position in I.D. Act by introduction of Section 11-A, there is glaring violation of natural justice as pointed out earlier, that is to say non compliance with the mandate of Article 311 (2) of the Constitution, to be specific, no second show cause notice was served upon any of the eight workmen as named before, giving each of them opportunity to present their defence, if any, before imposition of punishment or penalty. The principle of natural justice, Audi Alterm Partem was clearly violated and contravened. The rudimentary and fundamental principles have been clearly infringed. It is also a clear case of discrimination. The delinquent workmen were denied of their right to receive the copy of inquiry report as well as the right of hearing before final order imposing major penalty."

The said order came to be questioned by the Appellant herein in a writ petition filed before the Calcutta High Court. Before a learned Single Judge of the said court a contention was raised by the Appellant herein that the it should be permitted to proceed with the disciplinary proceeding against the Respondent Workmen from the stage of service of the report of the Inquiry Officer on them. The said contention was rejected by the learned Single Judge by an order dated 20.12.2000 on the premise that the Appellant had not filed any application for adduction of additional evidence before the Labour Court. It was opined:

"Accordingly, I am not in a position to sustain the contention of the petitioner authority that except for the service of notice of the enquiry report upon the respondent \026 workmen all the charges framed against the respondent-workmen were proved beyond doubts. I, therefore, do not incline to interfere with the impugned award passed by the Tribunal. I, accordingly, dismiss this writ petition."

A Letters Patent Appeal thereagainst was preferred before the Division Bench which was barred by limitation, as a delay of 103 days occurred in filing the same. As indicated hereinbefore, the delay in filing the said appeal was not condoned. Consequently, the appeal was dismissed; whereafter a review application was filed before the said court and the same also came to be dismissed.

Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the Appellant would submit that the Division Bench of the High Court in the peculiar facts and circumstances of the case and particularly having regard to the question of law involved therein should have disposed of the appeal on merit upon condoning the delay in filing the same.

The learned counsel would urge that the Presiding Officer, Labour Court and consequently the learned Single Judge of the High Court clearly erred in invoking the principles governing conditions of services of the employees of the Union of India in the instant case as Article 311 of the Constitution of India is clearly inapplicable. In any event, the learned counsel would contend that non-supply of the enquiry report to the delinquent workmen in order to enable them to raise contentions as regard the quantum of punishment would not vitiate the entire enquiry proceedings inasmuch as the Disciplinary Authority could have considered the matter afresh on the question of punishment upon service of a copy of the said enquiry report.

Mr. Gupta would submit that even in Managing Director, ECIL, Hyderabad, etc. etc. Vs. B. Karunakar, etc. etc. [AIR 1994 SC 1074] the Court has laid stress on the 'prejudice doctrine', in terms whereof it was obligatory on the part of the workmen to show that they had been prejudiced by reason of non-supply of the enquiry report. Reliance in this connection has also been placed on Canara Bank and Others Vs. Debasis Das and Others [(2003) 4 SCC 557].

Nobody has appeared for the Respondents despite service of notice.

Domestic enquiry in an industrial establishment is governed by the Standing Orders applicable thereto. The employer, if it is a government company, or a society registered under the Societies Registration Act can also frame its rules and regulations governing the conditions of service of its employees. A domestic enquiry is required to be conducted in terms of such rules and regulations.

From a perusal of the award passed by the Presiding Officer, Labour Court, it does not appear that the workmen had raised any contention as regards violation of any mandatory provision of such rules laying down the procedure for conducing departmental proceedings. Indisputably, however, the principles of natural justice in such a proceeding are required to be complied with.

In law, the concerned workmen do not enjoy any status as they are not the employees of Union of India and furthermore, their conditions of service, were not governed by any rule made under Article 309 of the Constitution. Services of the workmen were also not protected under Article 311 thereof. It has been contended before us that in terms of the extant rules governing the conditions of service of the workmen, a departmental appeal was maintainable against an order of the Disciplinary Authority. Presumably, such a remedy was provided with a view to enable the workmen to prefer an effective departmental appeal and only in that view of the matter, a copy of the enquiry report was supplied by the Appellant along with the order of the dismissal.

The workmen evidently did not avail the benefit of filing any departmental appeal. In such an appeal they could have shown as to how and in what manner and to what extent they were prejudiced by non-supply of a copy of the enquiry report. Had the workmen filed such an appeal, they could have furthermore demonstrated before the Appellate Authority that in terms of the rules and regulations governing their conditions of service, they were, as a matter of right, entitled to a copy of the enquiry report before an order of punishment is imposed upon them.

The principles of natural justice cannot be put in a strait-jacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regard compliance of the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. [See Bar Council of India Vs. High Court of Kerala, (2004) 6 SCC 311]

The Presiding Officer, Labour Court, as noticed hereinbefore, committed a manifest error in invoking Article 311 of the Constitution of India in the instant case.

In Karunakar (supra), this Court has clearly held that the employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report.

This Court in Canara Bank (supra) while following Karunakar (supra) held:

"19. Concept of natural justice has undergone a great deal of change in recent years. Rules of

natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

Referring to a large number of decisions, it was observed that a court will refrain from interfering with an order, having regard to 'useless formality theory', in a given case. It was opined:

"27. It is to be noted that at no stage the employee pleaded prejudice. Both learned Single Judge and the Division Bench proceeded on the basis that there was no compliance of the requirement of Regulation 6(18) and, therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(18) has not been correctly interpreted, the conclusions regarding prejudice are indefensible."

The learned Single Judge of the High Court, therefore, in our opinion, seriously erred in not considering the matter from the aforementioned angle. Furthermore, in view of the submissions made on behalf of the Appellant herein, the court should have given an opportunity to complete the disciplinary proceeding from the stage of supplying a copy of the enquiry report to the workmen so as to enable them to raise a contention as regard correctness of the findings of the Inquiry Officer contained in the report as also on the quantum of punishment proposed to be imposed by the Appellant while issuing a second show cause notice.

In a case of this nature where serious questions of law were raised by the Appellant, in our opinion, the Division Bench of the High Court should have taken a liberal view on the application for condonation of delay filed by the Appellant wherefor the Respondents workmen could have been adequately compensated on monetary terms.

Ordinarily, we have remitted the matter back to the Division Bench for consideration of the matter on merit but as we are satisfied that the learned Single Judge of the High Court as well as the Presiding Officer, Labour Court have seriously erred in passing the impugned award and judgments, with a view to do complete justice to the parties we are of the view that all the impugned judgments and orders should be set aside and the matter remitted to the Presiding Officer, Labour Court for consideration of the matter afresh. However, as the matter is pending for a long time, we direct the Appellant to pay a sum of Rs. 10,000/- to the workmen by way of costs. Such costs should be deposited before the Labour Court within six weeks from date.

The impugned order dated 4.7.2001 passed by the Division Bench of the High Court, dated 20.12.2000 passed by the Single Judge of the High

Court as also the award dated 10.11.1998 passed by the Presiding Officer, Labour Court, Andaman and Nicobar Islands are accordingly set aside.

This Appeal is allowed and the matter is remitted to the Court of the Presiding Officer, Labour Court, Andaman and Nicobar Islands with the aforementioned directions. As the Respondents have not appeared, there shall be no order as to costs.