

CASE NO.:
Appeal (civil) 1829 of 2002

PETITIONER:
STATE OF U.P. AND OTHERS

Vs.

RESPONDENT:
RAMESH CHANDRA MANGALIK

DATE OF JUDGMENT: 04/03/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

Brijesh Kumar, J.

Leave granted. Heard learned counsel for the parties.

After holding disciplinary proceedings against the respondent Ramesh Chandra Mangalik, an order of punishment was passed withholding his four increments of salary permanently and for recovery of a sum of Rs.24,822/-. The said order was challenged by the respondent in a writ petition filed at the Lucknow Bench of the Allahabad High Court. The writ petition was allowed by order dated 15.12.1999 setting aside the order of punishment and directing that the respondent would be considered for promotion with effect from the date his juniors were promoted. All consequential benefits were also allowed. The High Court came to the conclusion that the order of punishment was bad in law since principles of natural justice have been violated in holding inquiry due to non supply of copies of all the necessary and relevant documents and for not affording a proper opportunity of hearing to the delinquent. It was also held that no basis for arriving at the figure of the amount sought to be recovered was given. The State Government felt aggrieved by the above order passed by the High Court in the writ petition. Hence, this appeal by Special Leave.

The respondent was appointed as an Assistant Engineer on 19.2.1963, in the Irrigation Department of the State of U.P. He was later on posted as Assistant Engineer In-charge on 8.5.1979 against the vacant post of Executive Engineer in the Irrigation Construction Division, Matatila. It has been pointed out that as a consequence of some orders passed in the litigation pending in this Court, relating to promotions to the post of Executive Engineer, the Assistant Engineers were not being promoted as Executive Engineers but were posted as Assistant Engineers In-charge.. The Junior Engineers and the Assistant Engineers working in any project had been working under the overall supervision of the Assistant Engineer In-charge. During the period 16.5.1979 to 29.3.1981, the respondent had been looking after the execution

of the work of the construction of Upper Rajghat Canal, Matalila and in that connection it was found that there was substantial difference in construction of ground levels and there was change in approved L-Section also. According to the Department changes of the alignments of L-Section were made without the approval of the Chief Engineer. As a result of unauthorized changes, the length of canal was increased by 63 metres. Apart from the above, other irregularities were also noticed. It appears that a preliminary inquiry was made and thereafter a charge-sheet was served upon the respondent on 6.4.1984 for regular departmental proceedings.

The respondent sought time for filing the explanation to the charge-sheet and demanded copies of certain documents. Since all the documents as required by the respondent are said to have not been made available to him, he had to file a reply ultimately on 8.4.1987 under protest. A personal hearing was also asked for. The Inquiry Officer submitted his report on 28.7.1993 on consideration whereof and after going through the other formalities, order of punishment was passed on 21.4.1995 as indicated earlier.

According to the respondent, he had himself detected the changes and other irregularities in the work relating to construction of Upper Rajghat Canal but he got the whole thing corrected without allowing any loss to occur to the Government. It has also been his case that the inquiry proceedings initiated against him are mala fide and at the instance of one Shri Ahuja, the Superintending Engineer. It has also been indicated that he was prosecuted in a criminal case of a trap laid against him but he was acquitted of the charges. We may however clarify here that the charges in the criminal case have no connection or bearing so far the departmental proceedings in question are concerned. The main grievance of the respondent, as indicated earlier, has been that principles of natural justice have been violated in holding the departmental inquiry against him in as much as all the relevant documents have not been supplied to him nor adequate opportunity of hearing was given. He was also not allowed to cross-examine a witness namely Shri M.C. Jain. It is indicated that the respondent was asked by the Inquiry Officer to appear for personal hearing on 8.6.1987 but the Inquiry Officer thereafter collected evidence and obtained letters dated 16.11.1987 and 28.7.1988. But no opportunity was given to him to meet such evidence.

As noted earlier the charges leveled against the respondent have been found to be proved in the departmental proceedings. It also appears that a Technical Committee was constituted to submit its expert report on the charges. The High Court after referring to number of paragraphs of the writ petition and facts narrated therein observed: "We cannot ordinarily go into finding of the fact in the departmental proceeding but in this case we find that the rules of natural justice have been violated". A reference has been made to a decision of this Court reported in 1998 (6) S.C.C. 651 State of U.P. versus Shatrughan Lal wherein it has been held that non supply of copies of relevant documents, relied on in support of the charges, vitiates the inquiry. There cannot be any dispute in so far the above proposition of law is concerned. The High Court has rightly observed that the factual aspect pertaining to the charges and the findings recorded by the Inquiry Officer thereon would of course not be subject-matter of scrutiny in writ proceedings under Article 226 of the Constitution. The High Court, however, has found that copies

of relevant documents were not supplied to the respondent e.g. such "documents as indicated in Paragraphs 4 and 5 of Annexure 26A to the writ petition". It is also observed that out of 22 documents mentioned in the charge-sheet only 17 were supplied. The High Court has particularly made a mention about the letters dated 16.11.1997 and 28.7.1988 (as mentioned in Annexure 26-A of Writ Petition) which are said to have been obtained after 8.6.1997, the date on which the Inquiry Officer had asked the respondent to appear before him. According to the High Court these two letters constitute material which was obtained behind the back of the delinquent. Therefore, it was found that principles of natural justice were violated. The learned Bench of the High Court has also observed that it was unable to see any basis for calculating the amount of loss as Rs.82,740/-. Then an observation, in regard to the acquittal of the respondent in the criminal case has been made, as follows:

"It is true that judgment of the criminal case is not binding on the disciplinary proceedings but it is certainly a piece of evidence which should have been taken into account and should have also been considered"

Coming to the last point first, namely, the acquittal of the respondent in the criminal case, suffice it to say that the criminal proceedings related to a trap case and not at all in relation to the charges in the departmental proceedings. There was thus no occasion to make the above observation for taking into account the judgment of acquittal. It is no doubt non-application of mind to the facts of the case.

In so far the other observation is concerned that the Court was unable to see any basis for the Inquiry Officer to arrive at the figure of Rs.82,740/- as amount of loss, it may be observed that calculations are very clearly recorded in the report of the Inquiry Officer and in that connection our attention has been drawn to Pages 212 to 214 of the S.L.P. Paper Book. The basis of amount of loss is very much indicated in the report of the Inquiry Officer. Therefore, in this respect too, observation of the High Court is not correct.

We may now come to the main question as to whether copies of the relevant documents were supplied to the delinquent and he was afforded opportunity of hearing or not.

Learned counsel for the appellant has drawn our attention to the inquiry report. It indicates that the respondent received the charge-sheet as well as the relevant material in support thereof but the respondent had not been submitting the reply to the charge-sheet on the pretext of non-supply of copies of certain records which were also made available and were inspected by him on 18.12.1984. He was informed by the Inquiry Officer that all the record is available which could be seen and inspected by him. In this connection there seems to be some correspondence going on between the respondent and the authorities who have been furnishing the information and supplying the copies of the documents and have been permitting inspection of documents to the respondent with a request to submit a reply to the charge-sheet. In regard to the request of the respondent for cross-examination of Shri M.K. Jain, Executive Engineer, it was informed to him that since Shri Jain had expired, question of his cross-examination did not arise. The respondent was also provided personal hearing on 8.6.1987. It has been submitted on behalf of the appellant that

all the relevant record as desired by the respondent was made available to him for inspection as well as the copies of the documents except the two documents which were not available on the record of the case. In this connection our attention has been drawn to a letter dated May 6, 1985 written by the Inquiry Officer to the respondent, copy of which has been filed as Annexure R-3, indicating that documents related to the personal file of other officers and those documents were not in the file when received by the Inquiry Officer. It is further submitted on behalf of the appellant that those documents relating to the personal file of other officers have not at all been relied upon by the Inquiry Officer in support of any charge. There was no occasion to furnish copies of these documents by Enquiry Officer as they were not on the record too. It is further submitted that the reply of the Inquiry Officer seems to have satisfied the respondent as thereafter he did not write back any more in that connection. As far the other two letters are concerned which are said to have been obtained by the Inquiry Officer after the date of hearing, it is submitted that no such evidence was obtained by the Inquiry Officer after the date of hearing as alleged. Letter dated 16.11.1987 is in respect of the comments which were asked for from Shri Ranvir Ahuja on certain matters and allegations of mala fides made against him. So far the other letter dated July 28, 1988 is concerned, it is a reply of Executive Engineer to the Chief Engineer indicating that certain records were transferred to the Irrigation Construction Division third, Lalitpur and two documents were being sent along with the letter namely, Log Book 7386 and Charge Memo of Shri Jhoti Bandhan Singh Yadav. It is submitted that no such letter or material has been used against the respondent in proof of the charges leveled against him. It is further submitted that the report of the Inquiry Officer is on record of this case, and the respondent could indicate any such material, if at all, taken into consideration by the Enquiry Officer.

Learned counsel for the appellant has further submitted that particular documents copies of which are said to have not been supplied are not indicated by the respondent much less in the order of the High Court nor their relevance has been pointed out. The submission is that the delinquent will also have to show as to in what manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non furnishing of a copy of the document. In support of this contention, reliance has been placed upon a case reported in 1987 (Supp.) S.C.C. 518 Chandrama Tewari versus Union of India. It has been observed in this case that the obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in support of the charges. It is further observed that if a document even though mentioned in the memo of charges, has no bearing on the charges or if it is not relied upon or it may not be necessary for cross-examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent. The inquiry would not be vitiated in such circumstances. In State of Tamil Nadu versus Thiru K.V. Perumal and others (1996) 5 S.C.C.474 relied upon by the appellant, it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen. In yet another case relied upon by the learned counsel for the appellant, reported in (2001) 6 S.C.C. State of U.P. versus Harendra Arora and another, it has been held that a delinquent must show the prejudice caused to him by non-supply of copy of

document where order of punishment is challenged on that ground.

Learned counsel for the appellant submitted that no material or document has been relied upon by the Inquiry Officer, copy of which or inspection thereof may not have been allowed to the respondent. No material has been obtained after the date of hearing nor any such material has been made use of by the Inquiry Officer. It is further submitted that in the judgment of the High Court it has nowhere been indicated that any material or document, copy of which has not been supplied to the respondent, was used much less any prejudice, if caused to the respondent. Learned counsel for the respondent could not pinpoint any particular document which may have been made use of by the Inquiry Officer for establishing the charges leveled against the respondent, copies of which or inspection thereof may not have been allowed to the delinquent by the Department. No submission has been advanced on behalf of the respondent on the point of prejudice which may have been caused to the respondent by non-supply of document, if any. The High Court has also not gone into the question of the relevance of the documents copies of which are said to have not been supplied to the respondent and consequent prejudice, if caused. We therefore find that the finding of the High Court that principles of natural justice have been violated for non supply of documents to the respondent is not sustainable. The cross-examination of a witness which was sought for, had unfortunately died which fact was also brought to the notice of the respondent.

Learned counsel for the respondent has submitted that even if the charges as levelled against the respondent are taken to be proved, yet no case of misconduct would be made out, so as to make respondent liable for any punishment. In this connection he has referred to a decision of this Court reported in AIR 1979 S.C. 1022 - Union of India and others versus J. Ahmed where the Court was considering the provisions of All India Services (Death-Cum-Retirement Benefits) Rules (1958). The case related to the disciplinary proceedings against an officer who was likely to retire and was to be retained during pendency of the disciplinary proceedings, under suspension. In that connection while considering the question as to what amounts to misconduct it was observed that an act or omission or lack of efficiency or failure to attain highest standard of administrative ability may not by itself amount to or constitute misconduct. Error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct. There was an outbreak of disturbances in the District of Nowgong, Assam where the officer was holding the post of Deputy Commissioner. The charge in that case seemed to have been that the officer showed complete lack of leadership while disturbances broke out and disclosed complete inaptitude or lack of foresight and lack of firmness to take quick and firm decision. We feel that it will be difficult to draw any analogy from the facts of the case relied upon by the learned counsel for the respondent. It also has however been observed that negligence in duty may amount to misconduct in certain cases where consequences be may directly attributed to the negligence of the delinquent resulting in heavy losses.

In connection with the arguments advanced, as indicated in the preceding paragraph, it may be observed that no such ground was taken by the respondent in the High Court. In any case we find that nature of charges in the present case is different which cannot be said to be mere omission on

his part or it may be attributed to lack of competence or inaptitude etc. Apart from other charges it was directly attributed to the respondent that he had made changes in the alignment of long section approved by the Chief Engineer without sanction from the competent authority as a result of which the length of canal itself was much increased involving heavy expenditure. Relevant provisions of the Manual have been quoted in the charges to indicate that the respondent was not authorized to make changes. The approved alignment was rendered infructuous. It all relates to the factual aspect of the matter. Apparently it is not open to the respondent to raise these pleas now at this stage.

In view of the discussion held above, we find that the judgment and order passed by the High Court is not sustainable.

The appeal is therefore, allowed and the order and judgment of the High Court impugned in this appeal is set aside. There would however be no order as to costs.

-----J.
(D.P. Mohapatra)

-----J
(Brijesh Kumar)

March 04, 2002