

PETITIONER:
SAWAI SINGH

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT 02/05/1986

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1986 AIR 995 1986 SCR (2) 957
1986 SCC (3) 454 1986 SCALE (1)1282

ACT:

1. Termination of services - Nature of charge vague and difficult for any accused to meet the charge and also unsupported by evidence, absence of opportunity for cross-examination non-examination of handwriting expert etc. - Order of termination of service is bad in law. C

2. Burden of proof a serious offence - Evidence of handwriting expert necessary but dead - The prosecution should call another handwriting expert to corroborate the charge Penal Code S.463 read with Section 45 Evidence Act.

3. Natural justice principle of - Applicability to Service cases, explained.

HEADNOTE:

The appellant who was working as Superintendent, Sheep and Wool, Nagaur was appointed as a Returning Officer to conduct Panchayat elections at Sardi in Panchayat Samiti Ladnun held in the month of December, 1960. On the 2nd of July 1965, the Government of Rajasthan informed the appellant that an inquiry was proposed to be held against him for showing undue favour to one of the contesting candidate's by wrongly rejecting another candidate's nomination paper after committing forgery by effecting erasion of the the word "Panch" on the nomination paper. The Additional Commissioner for departmental inquiry held the enquiry and on the basis of his report dated 27th March, 1967, the Government issued a show cause notice on 3rd October 1968 and after receipt of the reply cancelled it and issued a fresh show cause notice to which the appellant again gave an elaborate reply. However by an order dated 5.4.1971 the Government directed the removal of the appellant from service. The Writ Petition filed by the appellant challenging the orders of termination was dismissed summarily. The writ appeal also met the same fate. Hence the appeal by special leave.

Allowing the appeal, the Court,

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HELD: 1.1. If the charges are vague and it is very difficult for any accused to meet the charges fairly and the evidence adduced perfunctory and did not at all bring home the guilt of the accused is entitled to be exonerated of the

offence charged with. Non-allegation by the delinquent either before the enquiry officer or before the High Court that the charges were vague does not by itself exonerate the department to bring home the charges. Though a departmental enquiry is not like a criminal trial, the charges involving consequences of termination of service must be specific. [965 C-F]

Suresh Chandra Chakrabarty v. State of West Bengal, [1971] 3 S.C.R. 1; and State of Andhra Pradesh v. S. Sree Rasma Rao, [1964] 3 S.C.R. 25 referred to.

1.2 Having regard to the consequences of the offences with which the delinquent officer was charged and having regard to the nature of charge and the evidence of handwriting expert and the absence of opportunity for cross-examination and the conflicting nature of evidence of Chaturbhuj and nature of evidence given by Jiwan Dass, in the instant case, the report of the Inquiry Officer and the consequent termination order passed by the Government cannot be sustained. [966 D-E]

2. In a case where an offence under section 463 Indian Penal Code is involved and the allegation is sought to be proved by the evidence of handwriting expert and the handwriting expert was not available for cross-examination on the ground that at that time he was dead, then it was necessary on the part of the department to adduce evidence to call another handwriting expert to corroborate their charge. In the absence of such discharge of the burden of proof, the Court may draw an adverse inference supported by other evidence against the prosecution. [964 B-C]

3.1 There is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee and there must be investigations to the charges consistent with the requirement

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Of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation. [965 F-G]

3.2 The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry the rules under which the Tribunal is acting, the subject matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non. [965 H; 966 A-D]

K.L. Tripathi v. State Bank of India & Ors., [1984] 1 S.C.C. 43 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2179

(N) of 1972.

From the Judgment and Order 7.4.1972 of the Rajasthan High Court in Special Appeal No. 74 of 1972.

Tapas Roy, S.K. Jain for the Appellant. F

Badri Das Sharma, Surya Kant Sharma and Miss Maya Rao for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal by special leave granted by this court against the order dated 7th April, 1972 of the High Court of Judicature for Rajasthan, at Jodhpur, in Special Appeal No. 74 of 1972. The High Court of Rajasthan Jodhpur in the said appeal refused to interfere with the order of the learned single Judge of that High Court. The H

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learned single judge had dismissed the writ petition of the appellant challenging the order of termination of his services.

The appellant was an employee of the Rajasthan Government and was appointed as returning officer to conduct Panchayat elections at Sardi in Panchayat Samiti Ladnun in the district of Nagpur held in the month of December, 1960. At that time, the appellant was working as Superintendent, Sheep & Wool, Nagpur. The election was to take place on 26th December, 1960 and the date for submission of nomination forms was 25th December, 1960. Four persons, namely, Shri Chaturbhuj, Shri Purna Ram, Shri Jiwan Ram and Shri Jiwan Dass filed their nomination forms. The nomination paper filed by Shri Chaturbhuj was alleged to have been found incomplete and it was, therefore, rejected. The nomination paper was said to be defective for the following reasons -

(i) In the opening line the Ward Number was not filled in and the space provided therefore was left blank ;

(ii) In the second line out of the words Panch Sarpanch one of the two was not struck out; so that there was no indication whether the nomination was for the office of Panch or that of Sarpanch.

(iii) In the third line of the blank space again intended to specify the office, the said Chaturbhuj had filled in his own name thus instead of stating that he was proposing himself as candidate for the office of Panch or Sarpanch, it was found that he was proposing himself as Chaturbhuj.

(iv) At the end of sub-paragraph (1) containing a declaration by the candidate as to his qualifications the said Chaturbhuj did not strike off one of the two words Panch/Sarpanch.

In view of the above, the nomination paper was rejected. Shri Jiwan Dass and Shri Jiwan Ram withdrew their candidature and Shri Purna Ram was left alone in the field and was, therefore, elected to the office of Sarpanch.

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On the 2nd July, 1965, the government of Rajasthan informed the appellant that an enquiry was proposed to be held against him on charge which was as follows :

"That the said Shri Sawai Singh, while functioning as District Sheep & Wool Officer, Nagaur, during the year 1960 was appointed as Returning Officer to conduct Panchayat Election at Sardi in Panchayat Samiti Ladnun in the month of December, 1960. That the said Shri Sawai Singh showed undue

favour to one of the contesting candidates Shri Purna Ram. He manipulated the withdrawal of Shri Jeewan Dass a dummy candidate of Shri Chaturbhuj who was contesting candidate against Shri Purna Ram. The said Shri Sawai Singh committed forgery by effecting erasion in the word "panch" on the nomination paper of Shri Chaturbhuj and malafidely and improperly rejected his nomination form."

The statement of allegations was also sent alongwith the forwarding letter and it was mentioned in the said statement as follows :

"4. Shri Sawai Singh manipulated the withdrawal of Shri Jeevan Dass a dummy candidate of Chaturbhuj by cheating.

5. He further committed forgery by effecting erasion in the word 'panch' on the nomination paper of Shri Chatur Bhuj and malafidely and improperly rejected the nomination form of Chaturbhuj and thereby acted in furtherance of the prospects of the election of Shri Purna Ram as Sarpanch Sardi."

A reply to the said charge-sheet was submitted by the appellant. He denied the charge levelled against him. By an order dated 4th November, 1965, the Government appointed the Additional Commissioner for departmental enquiry, Rajasthan, Jaipur as an Enquiry Officer to hold the enquiry against the appellant. The enquiry Officer submitted his report on 27th March, 1967. Perusal of the enquiry report makes perfunctory reading - comparing the evidence of Chaturbhuj and the appellant it is difficult to accept on what basis the enquiry H

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Officer accepted the Chaturbhuj's version. The Enquiry Officer did not discuss the inherent improbabilities of the statements of Chaturbhuj which will be noted later.

On 3rd October, 1968, the government issued a show-cause notice to the appellant which was as follows :

"According to the report of the Enquiry Officer the charge has been proved to this extent that Shri Sawai Singh with dishonest intention to declare candidate Poornaram uncontested successful Sarpanch made changes in the nomination form of Shri Chaturbhuj which was complete at the time when was presented and thus made it incomplete and thereafter illegally rejected it. The State Government has provisionally accepted the decision. The State Government has provisionally taken further decision that Shri Sawai Singh be removed from State Service for the said mistake. Hence Shri Sawai Singh is hereby given an opportunity that if he wants to file a representation against the provisional decision he may present it within 15 days From the date OF receipt of this letter to the undersigned."

It may be mentioned that what was the dishonest motive except the inference from the rejection of the nomination paper on alleged improper grounds nothing was indicated in the report of the Enquiry Officer.

This notice, however, was later on cancelled and a fresh show-cause notice was issued. The appellant gave an elaborate reply to the said notice. To complete the narration of events, the government by an order dated 5th April, 1971 accepted the findings of the Enquiry Officer and directed his removal from service. The appellant filed a writ petition before the High Court. The writ petition was

heard by P.N. Signal, J. as the learned judge then was of the High Court and he by his order dated 31st August, 1971 dismissed the same summarily.

The appellant filed a special Appeal before the Division Bench. The said appeal was also summarily dismissed on 7th April, 1972. Thereafter on refusal of the High Court to grant

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a certificate, by special leave, this appeal has come up A before us nearly 15 years after the termination of employment.

Shri Tapash Chandra Roy, learned advocate for the appellant, urged before us three main submissions, namely, (i) the charges were not clear ; (ii) there was no evidence to support the charges and on the contrary (iii) the evidence on record was contrary to the charges made. The charges framed have been noted namely, (i) the appellant showed undue favour to one of the candidates Shri Purna Ram. (ii) He manipulated the withdrawal of Jiwan Dass, the dummy candidate of Shri Chaturbhuj who was the contesting candidate against Shri Purna Ram and (iii) Shri Sawai Singh committed forgery by effecting erasion of the word 'panch' on the nomination paper of Shri Chaturbhuj and malafidely rejected his nomination paper. The second charge i.e. the withdrawal of Jiwan Dass can only be understood in the light of the statement of Shri Jiwan Dass. Shri Jiwan Dass stated thus in his evidence which was on the record of the enquiry :

"I withdrew my nomination paper at 3 P.M. I only heard in the evening that the nomination paper of Chaturbhuj had been rejected. I do not know whether symbol was issued to Chaturbhuj or not. My statement was recorded by Collector Ex. P.11 and also by C.I. which is Ex. P.12. I had withdrawn my nomination paper voluntarily. No one told me that nomination paper of Chaturbhuj had been accepted, and on that basis, I should withdraw I had stated in portion A to of the statement marked Ex. P.12 that I was told regarding the acceptance of the nomination form of Chaturbhuj. For that reason I had withdrawn my nomination form. I was not present when Chaturbhuj had asked the reason for rejection of his nomination paper. I do not remember whether I had given the statement marked to in Ex. P.12 P.A. to (sic). The statement of Ex. P.11 was taken by the steno of the Collector in the absence of Collector. The steno was drunk at that time. I cannot say what he recorded in my statement. I had not stated as marked A to and to in Ex. P.11. On cross-examination the Departmental Officer stated that my nomination form was filled by Sohan Singh. I was not dummy candidate."

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A fair reading of the said statement would give a complete lie to the charge that the appellant manipulated the withdrawal of Jiwan Dass. It is clear that the first charge was not clear, in the sense, how the appellant had alleged to have manipulated the withdrawal of Jiwan Dass. It is difficult for any officer to meet a charge of this nature. The second charge was about committing forgery effecting erasion of the word 'panch' on the nomination paper of Shri Chaturbhuj. This allegation was sought to be proved by the evidence of hand-writing expert. The hand-writing expert was not available for cross-examination on the ground that at that time he was dead. But if evidence of

hand-writing expert was necessary to prove the guilt of the appellant then it was necessary on the part of the department to adduce evidence to call another hand-writing expert to corroborate their charge.

In order to prove the charge against him it was necessary to establish that Shri Chaturbhuj had filed nomination being Ex. P.13, complete in all respects. Shri Chaturbhuj is the complainant and his evidence on filing of the nomination paper is not only contradictory but also leads one to believe that he had filed an incomplete nomination form. Shri Chatur Bhuj in Ex. E.H. Pl (D.E.) stated that his nomination paper was duly filled in by him. This was taken by the Enquiry Officer to mean that the nomination paper was complete in all respects and wrongly rejected. Shri Chaturbhuj on 8th July, 1966 was shown the nomination from Ex. P.13 and he admitted that Ex. P13 bears his signatures and that he had submitted it for Sarpanch but he did not say that whether he had struck off the word 'panch' in the nomination paper so as to convey his proposal for Sarpanch. He also could not say on seeing the nomination paper that the word 'Panch' in the nomination paper marked A & by the Additional Commissioner Departmental Enquiry had been struck off or not. He could not say whether any rubbing or erasion of the word 'Panch' had taken place or not. Shri Chaturbhuj had stated that he did not remember who had written his nomination paper. There were two persons present at that time. One was his brother Shri Dhar who was not produced in the Departmental Enquiry and the other was Puran Chand Sharma of Ladnun. This was an ambiguous and misleading statement. On the other hand, in the evidence of Shri Puran Chand, he said that he had filled up one form for 965

Shri Chaturbhuj for Sarpanchship and identified the same to be Ex.13. He stated after a look at Ex. P.13 that the form was filled up by him in his own hand except the signatures which were done by Shri Chaturbhuj himself in his presence. When the form was shown to him, he stated in his examination-in-chief that the name of Shri Chaturbhuj in Ex. P.13 marked to and I to J was in the hand-writing of Shri Chaturbhuj himself and also the signatures K to L were in the handwriting of Shri Chatur Bhuj. There were several other contradictions in the said statement of Puran Chand which were mentioned in paragraphs 11 to 13 of the writ petition before the High Court. These were not considered by the High Court.

Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

Shri B.D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges.

It has been observed by this Court in Suresh Chandra Chakrabarty v. State of West Bengal [1971] 3 S.C.R. 1 that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of State of Andhra Pradesh v. S. Sree Rama Rao [1964] 3 S.C.R. 25 and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be

fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation.

The application of those principles of natural justice
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must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See K.L. Tripathi v. State Bank of India & Ors., [1984] 1 S.C.C. 43) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non.

Having regard to the consequences of the offences with which the delinquent officer was charged and having regard to the nature of charge and the evidence of hand-writing expert and the absence of opportunity for cross-examination and the conflicting nature of evidence of Chaturbhuji and nature of evidence given by Jiwan Dass, we are of the opinion that the report of the enquiry officer finding the appellant guilty should not have been sustained and the government should not have acted upon it. The High Court in our opinion, with great respect, was in error in not bearing in mind these aspects which have been indicated hereinbefore.

In that view of the matter, the order of the High Court cannot be sustained. In the premises, the order and judgment of the High Court are set aside. The appeal is allowed. The appellant is entitled to the costs of this appeal. The appellant would also be entitled to his remuneration and salary for all this period. We do not know if during the pendency of this appeal the appellant has superannuated and retired. If that is so, he should be in service upto the date of superannuation with the entitlement of pensionary relief. If not, he should be re-instated.

S.R.

Appeal allowed

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