SUNIL KUMAR BANERJEE A

v.

STATE OF WEST BENGAL AND ORS.

March 26, 1980

[V. R. KRISHNA IYER, R. S. PATHAK AND O. CHINNAPPA REDDY, JJ.] B

Service matter—All India Services Discipline and Appeal Rules 1969—*Consultation with Vigilance Commissioner, if vitiates the order—Enquiry Officer if combined the roles of prosecutor and judge—Reasonable opportunity, if denied.*

The appellant was a member of the Indian Administrative Service. In an C enquiry under rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 against him the Commissioner for Departmental Enquiries, Vigilance Commission, West Bengal was appointed as the Enquiry Officer. He held that certain charges framed against the appellant were proved, certain others were partly proved and one was considered to be a technical omission rather than a serious lapse. The State Vigilance Commission expressed its view on the Enquiry Officer's Report. Thereafter, after consulting the Union Public Ser- D vice Commission, the State Government, which was the Disciplinary Authority, imposed on the appellant the punishment of reduction in rank from the stage of Rs. 2,750 p.m. to the stage of Rs. 2,500 p.m. with certain other consequences.

The appellant's writ petition was dismissed by a single Judge of the High Court and his appeal to the Division Bench was also dismissed.

In appeal to this Court it was contended by the appellant that instead of E holding the enquiry under the All India Services Disciplinary Rules, 1969 it was held under the All India Services (Discipline and Appeal) Rules, 1955 which were repealed and that this caused prejudice to him; as required by rule 8 (19) of the 1969 rules he was not questioned with reference to the circumstances appearing against him which denied him that opportunity of explaining the circumstances which weighed in the mind of the Enquiry F Officer; the Government should not have consulted the Vigilance Commissioner who had no statutory status; though the ultimate finding was based on the report of the Vigilance Commission his report was not supplied to him; the Enquiry Officer combined in himself the role of prosecutor and judge and he was denied a reasonable opportunity of defending himself as important witnesses were not called to enable him to cross-examine them.

Dismissing the appeal, G

HELD : 1. There is no substance in the contention that the 1955 rules and not 1969 rules were followed. The charges framed against the appellant as well as in the first show-cause notice, the reference was clearly to the 1969 rules. The appellant himself mentioned in one of his letters that the charges had been framed under 1969 rules. The enquiry report mentioned that the Enquiry Officer was appointed under the 1969 rules. [183 B-C] H

2. The appellant was not questioned by the Enquiry Officer under rule 8(19) of the 1969 rules. The failure to comply with this requirement did

A not vitiate the enquiry unless the delinquent officer was able to establish prejudice. [183 C-D]

In the instant case the single judge as well as the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of rule 8(19). [183 G]

B 3. The provision incorporated in rule 8(19) is akin to section 342 of the Criminal Procedure Code of 1898 and section 313 of the Criminal Procedure Code of 1974. It is now well-established that mere non-examination or defective examination under section 342 of the 1898 Code is not a ground for interference unless prejudice is established. [183 E-F]

K. C. Mathew v. *The State of Travancore-Cochin,* [1955] 2 S.C.R. 1057; *Bibhuti Bhusan Das Gupta and Anr.* v. *State of West Bengal,* [1969] 2 S.C.R. C 104; referred to.

4. The appellant was not in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with rule 8(19). He cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegations in his written defence. [183 G-H, 184 A]

D

5. If the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commission and obtained its views on the very same material. [184 D-E]

6. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary E authority to furnish the appellant the copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the vigilance commission. [184 F-G]

7. From the circumstances that the Enquiry Officer considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot possibly be said that when he F was later appointed he constituted himself both as prosecutor and judge. There is nothing strange in the same Magistrate who finds *prima-facie* case at an earlier stage trying the case, after framing charges. There is therefore no basis for the contention that the Enquiry Officer was prejudiced against the appellant and combined in himself the role of the prosecutor and judge. [185 A, C-E]

8. The appellant cross-examined the prosecution witnesses and also examin- G ed defence witnesses. Therafter when the matter was posted for argument and was adjourned at least once at the instance of the appellant, the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry Officer rejected the application noticing that it was made at a very late stage. The rules give a discretion to the Enquiry Officer to permit or not to permit a delinquent officer to be represented by a lawyer. No prejudice has resulted by the denial of a lawyer. [185 E-G]

H

9. All the necessary documents were called and there is nothing in the record to suggest that the appellant wanted any particular witness to be called and the request was turned down. The grievance of the appellant that if the

officers who made the notings on the file in connection with some of the charges had been called, he would have been in a position to cross-examine them and elicit statements to substantiate his defence, has neither reasonable basis nor force. [186 B-C] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1277/1975.

Appeal by Special Leave from the Judgment and Order dated 19-9-1975 of the Calcutta High Court in Appeal No. 299/73. B

S. N. Chaudhary for the Appellant.

Gobinda Mukhoty and *G. S. Chatterjee* for the Respondents.

The Judgment of the Court was delivered by. C

CHINNAPPA REDDY, J.—The appellant, a member of the Indian Administrative Service, while working as Divisional Commissioner, North Bengal, was served on May 2, 1970, with a memorandum of charges and was informed by another memorandum to which a list of documents and witnesses was attached, that it was proposed to hold an enquiry against him under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, and that, if he so desired, the appellant could inspect the documents mentioned in the enclosed list. He was further informed that he should submit a written statement of defence within fourteen days from the date of completion of inspection. The appellant submitted his written statement of defence on June 9, 1970. On August 12, 1970 Shri A. N. Mukherjee, Commissioner for Department Enquiries, Vigilance Commission, West Bengal, was appointed as Enquiry Officer to enquire into the charges against the appellant. After completing the enquiry, the Enquiry Officer submitted a report giving his findings on the various charges. Charge Nos. 2 and 5 were held to be proved, charge Nos. 3 and 4 partly proved and charge No. 1 also proved but considered to be a technical omission rather than serious lapse. The Vigilance Commission which considered the Enquiry Officer's report, found that charge Nos. 1, 2, 3 and 5 were fully proved and charge No. 4 partly proved. On April 6, 1971, the disciplinary authority namely the Government of West Bengal issued a notice to the appellant informing him that, on a consideration of the report of the Enquiry Officer they had come to the conclusion that charges Nos. 1, 2, 3 and 5 were fully proved and that charge No. 4 was partly proved and calling upon the appellant to show cause why he should not be reduced in rank. The Union Public Service Commission was then consulted and their advice obtained. According to the Union Public Service Commission charge No. 3 had not been proved while charge No. 1 was proved but was con- D E F G H

A sidered to be a technical irregularity and charge Nos. 2, 4 and 5 were partly proved. Thereafter the Government of West Bengal came to the final conclusion that charge No. 3 had not been proved, charge No. 1 had been proved but was only a technical irregularity and charge Nos. 2, 4 and 5 were partly proved. On those findings the punishment which was imposed on the appellant was reduction B 'from the stage of Rs. 2750/- per month to the stage of Rs. 2500/- per month in the scale of Rs. 2500/- 125/- 2750/- with effect from the date of issue of the order'. This was, however, not to be a bar to his earning increments from the stage of Rs. 2500/- from the date of reduction to the lower stage. Aggrieved by the order of the C Government the appellant filed a Writ Petition in the High Court of Calcutta. A learned Single Judge of the High Court went into the matter in great detail, almost as if he was hearing a regular appeal, perhaps because one of the arguments urged before him was that there was no evidence to sustain any of the charges. The learned Single Judge found that charge Nos. 2, 3 and 5 were not D proved, charge No. 4 was partly proved, charge No. 1 was proved but was only a technical irregularity. He was, however, of the view that the punishment which was actually imposed on the appellant could be imposed in respect of charge No. 4 to the extent to which it was proved. He, therefore, dismissed the Writ Petition. On appeal under the Letters Patent a Division Bench of the Calcutta E High Court came to the conclusion that charge No. 5 was proved, charge No. 1 was proved but was a technical irregularity and charge No. 2 was partly proved. There was a difference of opinion on the question whether charge No. 4 was proved. Both the learned Judges agreed in dismissing the appeal.

F The appellant who argued the appeal in person raised several contentions. He contended that though the enquiry was to have been held under All India Services Disciplinary Rules 1969, it was in fact held under the All India Services (Discipline & Appeal) Rules, 1955, which had been repealed. He was thereby prejudiced and in particular he pointed out that he was not questioned with reference G to the circumstances appearing against him as provided by sub rule 19 of rule 8 of the 1969 rules. He was thus denied an opportunity of explaining the circumstances which weighed in the mind of the Enquiry Officer. The appellant also contended that the Vigilance Commissioner had no statutory status and he should not have been consulted by the Government. He made a grievance of the circumsH tance that the report of the Vigilance Commissioner was not furnished to him though the ultimate findings of the Government were based on the report of the Vigilance Commissioner. He further

submitted that the Enquiry Officer was prejudiced against him and that he combined in himself the role of both prosecutor and judge. He further submitted that he was denied a reasonable opportunity of defending himself as important witnesses were not called so as to enable him to cross examine them though the notings made by them in the files were relied upon against him. Some of the additional documents sought by him were not also made available. He was also not permitted to engage a lawyer.

There is no substance in the contention of the appellant that the 1955 rules and not the 1969 rules were followed. As pointed out by the High Court, in the charges framed against the appellant and in the first show cause notice the reference was clearly to the 1969 rules. The appellant himself mentioned in one of his letters that the charges have been framed under the 1969 rules. The enquiry report mentions that Shri Mukherji was appointed as an Enquiry Officer under the 1969 rules. It is, however, true that the appellant was not questioned by the Enquiry Officer under rule 8 (19) which provided as follows:

> "The enquirying authority may, after the member of the services closes his case and shall if the member of the service has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him".

It may be noticed straightaway that this provision is akin to section 342 of the Criminal Procedure Code of 1898 and section 313 of the Criminal Procedure Code of 1974. It is now well established that mere non examination or defective examination under section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, *K. C. Mathew* v. *State of Travancore-Cochin* (1), *Bibhuti Bhusan Das Gupta & Anr.* v. *State of West Bengal* (2). We are similarly of the view that failure to comply with the requirements of rule 8 (19) of the 1969 rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned single Judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in the way prejudiced by the failure to observe the requirement of rule 8 (19). The appellant cross-examined the witnesses himself, submitted his defence in writing

(1) [1955] 2 S.C.R. 1057.
(2) [1969] 2 S.C.R. 104

A in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with rule 8 (19).

B We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed C before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusion of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance D Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the vary same material. One of the submissions of the appellant was that a copy of the report E of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistant request made by the appellant to the disciplinary authority that the report of the Vigi- F lance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the views of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish G the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commission. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

H We find no basis for the contention of the appellant that there was a reasonable apprehension in his mind that the Enquiry Officer

was prejudiced against him. Nor do we agree with the statement that the Enquiry Officer combined in himself the role of the prosecutor and the judge. It appears that when the preliminary report of investigation was considered by the Vigilance Commissioner with a view to recommend to the disciplinary authority whether a disciplinary proceeding should be instituted or not, the report of investigation was referred by the Vigilance Commissioner to Shri A.N. Mukherji for his views and for the preparation of draft charges if institution of disciplinary proceedings was to be recommended. Shri Mukherji expressed his opinion that there was material for framing five charges and he also prepared five draft charges and forwarded them to the Vigilance Commissioner. The Vigilance Commissioner in turn forwarded the papers to the Government who finally decided to institute a disciplinary proceeding against the appellant. Thereafter Shri A. N. Mukherji was appointed as Enquiry Officer. From the circumstance that Shri Mukherji considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot possibly be said that Shri A. N. Mukherji, when he was later appointed as Enquiry Officer constituted himself both as prosecutor and judge. Anybody who is familiar with the working of criminal courts will atonce realise that there is nothing strange in the same Magistrate who finds a *prima facie* case and frames the charges, trying the case also. It cannot for a moment be argued that the Magistrate having found a *prima facie* case at an earlier stage and framed charges is incompetent to try the case, after framing charges. This was one of the circumstances on which the appellant relied to substantiate his allegation of apprehension of bias. The other circumstances were that he did not permit the appellant to engage a lawyer and that he allowed the Presenting Officer to introduce extraneous matters. The rules give a discretion to the Enquiry Officer to permit or not to permit a delinquent Officer to be represented by a lawyer. In the present case the appellant cross-examined the prosecution witnesses and also examined defence witnesses. Thereafter when the matter was posted for arguments and was adjourned atleast once at the instance of the appellant, the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry Officer rejected the application noticing that it was made at a very belated stage. We think he was right in doing so. Nor is it possible for us to infer bias from the circumstance that the Enquiry Officer did not allow the appellant to engage a lawyer. We may mention that the appellant who himself presented his case before us argued admirably and with such clarity

A and precision as would have done credit to the best of advocates. We cannot conceive of any prejudice resulting to him by the denial of a lawyer. The other circumstance regarding extraneous matters being allowed to be brought in is also equally weightless and we need say nothing more about it.

B There is also no substance in complaint of the appellant that necessary documents and witnesses were not called. All necessary documents were called and there is nothing in the record to suggest that the appellant wanted any particular witness to be called and the request was turned down. The grievance of the appellant is that if the Officers who made the notings on the file in connection C with some of the charges had been called, he would have been in a position to cross examine them and elicit statements to substantiate his defence. We do not think that there is any reasonable basis in the record for such a submission. We find no force in any of the contentions raised by the appellant and having given our earnest consideration to all the contentions raised by him we dismiss D the appeal. but, in the circumstances of the case, without costs. The appellant made a complaint before us that his pension and other retirement benefits have not yet been finalised though it is quite a considerable time since he voluntarily retired from service. Shri Mukhoti learned counsel for the State of West Bengal stated at the Bar that all steps would now be taken to finalise the matter. E We hope the Government will take immediate steps to redress forthwith this grievance of the appellant.

N.K.A. *Appeal dismissed.*