

(1998) 7 Supreme Court Cases 97 : 1998 Supreme Court Cases (L&S) 1795

(BEFORE SUJATA V. MANOHAR AND M. SRINIVASAN, JJ.)

DIRECTOR GENERAL, INDIAN COUNCIL OF MEDICAL RESEARCH
AND OTHERS . . Appellants;

Versus

Dr ANIL KUMAR GHOSH AND ANOTHER . . Respondents.

Civil Appeal No. 4073 of 1991⁺, decided on August 6, 1998

A. Service Law — Departmental Enquiry — Appreciation of evidence — Documentary evidence produced during enquiry — Author of a document when not required to be examined as witness — Held on facts, genuineness of



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documents produced during enquiry was not in dispute and therefore their authors need not be examined — Disciplinary enquiry initiated against respondent for wrongly claiming house rent allowance (HRA) — In municipal register, rental value of his house was assessed less than 10% of his salary and therefore he was not entitled to HRA but respondent drawing HRA by producing certificates from Chairman, Vice-Chairman and Secretary of the municipality that rental value was more than 10% — Enquiry Officer not acceding to respondent's request for examining the officers who issued the certificates — Held, the factum of issuance of the certificates was not in dispute and therefore the enquiry officer was right in not summoning the officers — Respondent also doubting authenticity of Internal Audit report prepared by Accounts Officer and therefore requesting for summoning of the Accounts Officer as witness — The Presenting Officer however forgoing to rely upon the Internal Audit Report and therefore held, respondent's request for summoning the Accounts Officer rightly not acceded to by the enquiry officer — Respondent's further objection that certified copy of the Assessment Register could not have been admitted in evidence unless the concerned officials from the municipality were examined, also not sustainable

(Paras 10 and 13)

B. Service Law — Departmental Enquiry — Appreciation of evidence — Documentary evidence — Marking of exhibits — Respondent given opportunity to inspect documents during the course of enquiry but serial numbers given to exhibits by enquiry officer after conclusion of enquiry — Held, omission to mark the exhibits during the course of enquiry did not vitiate the enquiry

(Para 11)

C. Service Law — Misconduct — Wrongful claim of an allowance — Respondent not entitled to house rent allowance (HRA) according to rental value of his house as assessed in municipal register but he drew HRA on the basis of certificates of rental value issued by Chairman, Vice-Chairman and Secretary of the municipality though according to rules, only assessment made in the municipal register could be the basis for determining entitlement to HRA — Respondent, held, guilty of misconduct

(Para 16)

D. Service Law — Departmental Enquiry — Penalty — Proportionality with misconduct — Respondent removed from service and also disqualified for future service in the appellant-Council, on account of wrongful drawl of house rent allowance (HRA) to which he was not entitled — Penalty, held, not excessive — Further held, the fact that the respondent was drawing the allowance for about ten years as allowed by the authorities was not a mitigating factor for reducing the penalty

(Para 17)

Appeal allowed

K-M/ARTZ/20072/CLA

Suggested Case Finder Search Text (*inter alia*):

departmental enquiry

Advocates who appeared in this case:

Raju Ramachandran, Senior Advocate (V.K. Rao, Arun K. Thiruvengadam and Ms Madhu Sikri, Advocates, with him) for the Appellants;

N.B. Shetye, Senior Advocate (D.P. Mukherjee, Sanjay Kr Ghosh and Ms Nandini Mukherjee, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

M. SRINIVASAN, J.— The first respondent who was a senior officer in the Cholera Research Centre (now known as the National Institute of Cholera and Enteric Diseases) had for over a period of ten years wrongly claimed



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house rent allowance to the tune of Rs 16,819.95. Under the relevant rules, an officer or employee residing in his own house could claim house rent allowance only if the annual rental value as assessed for municipal purposes was more than 10% of the salary. The annual rental value of the house occupied by the first respondent which was his own as assessed for tax purposes and entered in the Municipal Registers was much less than 10% of his salary. However, he obtained certificates from the Chairman, Vice-Chairman and Secretary of the Municipality that the rental value of the premises "may be safely committed" at a particular amount per month which was in excess of 10% of his salary. He produced such certificates in support of his statement that the monthly rental value actually assessed for municipal purposes was in excess of 10% of his salary and claimed house rent allowance. Unfortunately for him, the Internal Audit Party found out the game which lead to a departmental enquiry against him. He was found guilty and removed from service with a disqualification from future service under the Council.

2. The first respondent challenged the order in a writ petition before the Calcutta High Court. A learned Single Judge held that the enquiry against him was vitiated by violation of principles of natural justice and quashed the order. On appeal, a Division Bench affirmed that finding. But strangely, the Bench went one step further and held that even if the charges were true, it would only prove that the first respondent was indiscreet and there was no misconduct on his part. It is that judgment which is assailed in this appeal.

3. Even at the outset, we wish to point out that the view expressed by the Division Bench of the High Court that even if the charges were true, there was no misconduct is shocking especially when benefits have been obtained from out of public funds on false certificates. Fortunately, learned counsel for the first respondent appearing before us did not justify that view of the Bench. Hence, it is unnecessary to dwell upon it for long. Suffice it to hold that the view of the Division Bench of the High Court is obviously wrong and it is hereby overruled.

4. Now we shall advert to the question whether the principles of natural justice were violated and the departmental enquiry was vitiated. The memorandum of charges issued to the first respondent set out the following two charges:

"ARTICLE OF CHARGE I

That the said Dr A.K. Ghosh declared in 1964 that the rental value of his own house at 284, Mudially Road, Calcutta-24, was Rs 160 p.m. (or Rs 1920 per annum) as actually assessed for municipal purposes while in actual fact, the annual value of the house as assessed by the Garden Reach Municipality for the house of Dr Ghosh

for the years 1961-62 to 1965-66 was Rs 235, for the years 1966-67 to 1970-71 Rs 260, and for the years 1972-73 to 1976-77 Rs 290 only.



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ARTICLE OF CHARGE II

That Dr Ghosh claimed house rent allowance of Rs 16,819.95 which was not admissible to him for the period from August 1964 to August 1975 by submission of false documents."

5. A statement of imputation was attached to it. A list of documents by which the articles of charges were proposed to be sustained was appended. There was no list of witnesses as the Department did not propose to examine any witness. The enquiry was held in seven sessions commencing from 31-12-1976 and ending with 4-6-1977. The daily proceedings were recorded and shown to the first respondent who signed the same. The first respondent did not submit any list of witnesses. In fact, he stated on more than one occasion that he had no witness to be summoned on his behalf. In the course of the enquiry, he made a request orally for summoning the Administrators and other authorities of the Municipality and the Accounts Officer of the Council to testify the statements made by them. The Enquiry Officer expressed his view that they were not necessary but permitted the first respondent to produce them on his own as his witnesses. The latter did not avail of that opportunity.

6. The copies of the proceedings were handed over to the respondent as and when ready and he himself deposed on all points referred to in the statement of defence. It should be mentioned here that the defence taken by the first respondent in the enquiry was that he claimed HRA on the basis of certificates issued by the municipal authority and the same had been granted. He contended that the assessment of the annual value for municipal purposes was only for the assessment of taxes levied by the Municipality and the assessment of rental value for claiming HRA was entirely different. According to him, the rental value could even be assessed by the Special Land Acquisition Officer, 24 Parganas, Alipore.

7. During the enquiry he had opportunity to peruse every document that was sought to be used in evidence. Apart from the certificates produced by himself for claiming HRA, copies of the Municipal Assessment Register for the relevant period certified to be true copies by the Secretary, Garden Reach Municipality and issued under the seal of the Administrator of the Municipality were marked as exhibits. A perusal of the list of exhibits shows that they consisted only of the official correspondence and the certificates produced by the first respondent and the certified copies issued by the Municipality. At the conclusion of the enquiry, the first respondent made his submission on the basis of the materials on record. The Enquiry Officer after considering the matter in detail gave his findings in his report on 21-7-1977. He held that both charges stood proved.

8. The disciplinary authority accepted the report as he found that the material on record was sufficient to sustain the findings. The main grievance put forward by the first respondent before the High Court in the writ petition with regard to the alleged violation of the principles of natural justice was that the witnesses whom he wanted to be examined by the Enquiry Officer



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were not examined. Secondly, it was alleged that the documents were marked as exhibits only on 21-7-1977 after the conclusion of the enquiry. Thirdly, it was urged that the Enquiry Officer was biased against the first respondent. The fourth objection was that the municipal authorities who had issued certified copies of the Municipal Assessment Register had not been examined and consequently those documents were not admissible in evidence.

9. Unfortunately, the above objections found favour with the Single Judge as well as the Division Bench of the High Court. In our opinion, none of the objections has any substance.

10. The entire record of the enquiry proceedings have been placed before us. We have gone through the same and we find that there is absolutely no justification in the allegation that principles of natural justice have been violated. We have already referred to the fact that the first respondent did not furnish any list of witnesses and only in the course of enquiry, he requested the Enquiry Officer to examine the officials of the Municipality who had issued the certificates produced by him in support of his claim of HRA. It is surprising that the High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been issued by the high officials of the Municipality and unless the factum of such issuance was in dispute, there was no necessity to examine those officials. At another stage, the first respondent challenged the authenticity of the internal audit report and wanted the author thereof to be examined in order to substantiate the same. The Presenting Officer stated that the said report was not necessary for the case and the same was not introduced in evidence. Hence, there was no necessity to examine the Accounts Officer who prepared the internal audit report. If the first respondent wanted to examine any witness on his side, he was given sufficient opportunity to produce witnesses and examine them but he did not do so. The record shows that he was permitted to reopen his defence and present further defence even on 28-3-1977. On that date as well as on 7-5-1977, he had categorically stated that he did not have any witness to be called as defence witness on his behalf.

11. The second objection is equally meaningless. The documents were taken on file during the course of the enquiry and the first respondent perused every one of them before the conclusion of the enquiry. Copies were also furnished to him and as requested by him he was given seven days' time for presenting his defence after the receipt of copies of documents though under the rules, only three days' time was permitted. Instead of giving numbers to the exhibits as and when the documents were taken on file, the Enquiry Officer would appear to have given serial numbers to the exhibits at the conclusion of the enquiry on 21-7-1977. The adoption of such a procedure by the Enquiry Officer was not violative of the principles of natural justice.



12. There is no material on record whatever to support the contention that the Enquiry Officer was biased against the first respondent. The record of proceedings of the enquiry shows that the Enquiry Officer has acted impartially and without any kind of bias whatever.

13. The objection that the certified copies of the Assessment Register should not have been marked without examining the officials concerned of the Municipality is untenable. The genuineness of the documents was never in dispute. In fact, the case

of the first respondent is that the assessment in the Municipal Register was only for the purpose of taxation and it is not relevant for the claim of HRA.

14. We are fully satisfied that there was no violation of any principles of natural justice in the departmental enquiry conducted against the first respondent. A faint attempt was made before us to contend that Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules was violated. The Rule is in the following terms:

"14. (3) Where it is proposed to hold an enquiry against a government servant under this Rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up:

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—
 - (a) a statement of all relevant facts including any admission or confession made by the government servant;
 - (b) A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained."

15. We have already referred to the fact that the memorandum of charges issued to the first respondent contained distinct articles of charges and was accompanied by a statement of imputation and a list of documents. Hence, there is no substance in the above contention.

16. It is sought to be argued that the rental value for the purpose of HRA Rules need not be the same as the annual value as entered in the Municipal Register. There is no merit in this contention. The relevant rule refers to gross rental value of the house as assessed for municipal purposes. An official memorandum dated 26-5-1969 marked as Ex. P-22 in the enquiry has clarified that if a house is situated within a municipality, the grant of HRA should invariably be regulated on the basis of gross rental value as assessed by the authorities of the municipality. Hence, we hold that the claim of HRA by the first respondent on the basis of the certificates obtained from the Chairman, Vice-Chairman and Secretary of the Municipality to the effect that the rental value of the premises may be safely committed at a particular amount when the value entered in the Assessment Register for municipal purposes was different was in violation of the relevant rules. Consequently, the first respondent was guilty of the charges framed against him.



17. The punishment awarded to him is claimed to be disproportionate to the offence committed by him. We do not agree. The fact that the authorities concerned did not detect the falsity of the claim for about ten years and allowed the same does not help the first respondent to contend that the punishment should be reduced.

18. The High Court is clearly in error in interfering with the order of punishment passed against the first respondent by the disciplinary authority. In the result, the appeal is allowed, the judgment and order of the High Court dated 19-2-1991 in appeal from original order, Tender No. 2773 of 1989 and the judgment and order dated 15-9-1989 in Civil Rule No. 212 (W) of 1979 are set aside. The writ petition filed by the first respondent in Civil Rule No. 212 (W) of 1979 on the file of the High Court at Calcutta stands dismissed. There will be no order as to costs.

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† From the Judgment and Order dated 19-2-1991 of the Calcutta High Court in Appeal from Original Order Tender No. 2773 of 1989

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