(22) For the reasons recorded above, the present revision petition fails and the same is dismissed. No costs.

S.C.K.

Before R.S. Mongia & K.C. Gupta, JJ

P.N. VERMA,—*Petitioner*

versus

THE CHAIRMAN, FCI AND OTHERS,—*Respondents*

C.W.P. No. 14309 of 1998

10th July, 2000

Constitution of India, 1950—Art. 226—Food Corporation of India (Staff) Regulations, 1971—Regs. 58 & 59—Enquiry Officer exonerating the petitioner from all charges in the regular departmental enquiry—Disciplinary authority disagreeing with the findings of the Enquiry Officer and imposing penalty of reduction in rank after considering comments of the petitioner on the report—Reasons for disagreement not conveyed to the petitioner—Appellate authority rejecting appeal of the petitioner—Whether non-supply of the reasons for disagreement prejudiced the petitioner—Held, yes—It amounts to complete denial of reasonable opportunity and violates principles of natural justice—Impugned orders quashed with liberty to the Corporation to proceed against the petitioner under law.

Held, that if the Enquiry Officer is not himself the Disciplinary authority, the principles of natural justice require that enquiry report must be supplied to the delinquent official to show to the Disciplinary authority that he should not agree with the Enquiry Officer. Conversely also, if the Disciplinary authority is in disagreement with the report of the Enquiry Officer, the rules of natural justice would require that the delinquent official must know as to why Disciplinary Authority is not agreeing with the findings recorded by the Enquiry Officer and should be given a chance to persuade the Disciplinary Authority not to do so. This is the minimum requirement of the rules of natural justice.

(Para 7)

Further held, that the non-supply of the reasons for disagreement with the enquiry report has clearly prejudiced the petitioner inasmuch as before the award of punishment, he never knew as to what has weighed with the Disciplinary Authority to disagree with the Enquiry Officer's report.

(Para 7)

Ajay Sharda, Advocate, *for the petitioner.*

Hemant Gupta, Advocate, *for the respondent.*

JUDGMENT

R.S. Mongia, J

(1) The petitioner, who was working as a Deputy Manager (Quality Control) with the Food Corporation of India (hereinafter referred to as 'the Corporation') at Sangrur was served with a charge-sheet by the Corporation,—*vide* letter dated 29th July, 1995, under Regulation 58 of the Food Corporation of India (Staff) Regulations, 1971 (hereinafter referred to as 'the Regulations'). He filed a reply to the charge-sheet. However, the reply having not been found satisfactory, a regular departmental enquiry was ordered and one Shri K. N. Srivastava, Joint Secretary (retired) was appointed as an Inquiry Officer, who submitted his report dated 29th February, 1996, exonerating the petitioner from all the charges levelled against him as, according to the Inquiry Officer, none of the charges was proved. Though the petitioner had been exonerated from all the charges by the Inquiry Officer, yet the inquiry report was supplied to the petitioner and he was directed to send his comments on the same. It is not understood that if the petitioner was exonerated by the Inquiry Officer, what comments he was supposed to offer on the same. However, he submitted his comments that he stood exonerated by the Inquiry Officer and no further action was called for against him. However, the disciplinary authority served an order dated 21st March, 1996 on him whereby the penalty of reduction in rank from the post of Deputy Manager, Quality Control, to the post of Assistant Manager with immediate effect was imposed upon him and his basic pay was fixed at the maximum of the pay scale of the Assistant Manager, i.e., Rs. 3500 per mensem. It was further ordered that the suspension period of the petitioner would be treated as not spent on duty. The copy of the order has been appended as Annexure P-1. The petitioner filed a statutory appeal against the order of punishment (Annexure P-1) within the statutory period but,—*vide* order dated 5th May, 1998, copy Annexure P-3, the appeal was rejected. Hence the present writ petition.

(2) It may be observed here that the petitioner stood retired from service on 31st March, 1996, on attaining the age of superannuation. It is argued by the learned counsel for the petitioner that the disciplinary authority was not itself the inquiring authority. If the disciplinary authority had disagreed with the findings of the Inquiry Officer, the reasons for disagreement with the same should have been furnished to

the petitioner in order to enable him to convince and persuade the disciplinary authority that the findings of the Inquiry Officer are well based and there are no legal and valid grounds or basis to disagree with the findings of the Inquiry Officer. This, according to the petitioner, amounts to complete denial of reasonable opportunity and principles of natural justice and the impugned orders are vitiated on this ground alone. Admittedly, in the present case, the disciplinary authority had disagreed with the findings of the Inquiry Officer but reasons for disagreement were never conveyed or furnished to the petitioner. It may be observed here that the reasons which were recorded by the disciplinary authority for disagreeing with the findings of the Inquiry Officer are only contained in the impugned order of punishment dated 21st March, 1996, copy annexure P-1. The reasons given are as under :—

"AND WHEREAS Shri K.N. Srivastava, retired Joint Secretary, stationed at New Delhi was appointed as Inquiring Authority to enquire into the charges framed against the said Shri P.N. Verma,—*vide* order of even No. dated 19th September, 1995 according to the findings of the enquiry report, submitted on 29th February, 1996 the prosecution has not been able to substantiate the charges and accordingly, the charges are not proved.

AND WHEREAS as per the existing instructions, a copy of the enquiry report of the Inquiring Authority was made available to the said Shri P.N. Verma,—*vide* letter of even No. dated 4th March, 1996 for representation, if any, within 7 days from the date of receipt of the report, i.e. latest by 13th March, 1996. In his representation dated 10th March, 1996, Shri P.N. Verma has contended that he had carried out the mandatory supervisory checks and, therefore, he cannot be held responsible. His other ground is that he had asked for the transfer of the people and his request to this effect was not acceded to.

AND WHEREAS having gone through all the relevant records of the case, annexed with the enquiry proceedings and attenuating circumstances of the case and gravity of the charges against the said Shri P.N. Verma, the undersigned does not agree with the findings of the Inquiry Officer because in any system of sample checking, if it is properly done, the existence of BRL rice could not have gone undetected. The fact that Inquiry Officer believed a document filed, by the CO routinely, without going into the facts that BRL rice was

physically there, his findings are erroneous and based on wrong facts."

(3) According to the learned counsel for the petitioner, the reasons aforesaid for disagreeing can hardly be said to be any reason and in fact the order is non-speaking one. Learned counsel for the petitioner drew our attention to Regulation 59 of the Regulations, to which reference will be made hereinafter.

(4) In appeal, petitioner had specifically raised the point that along with the report, the reasons for disagreement by the disciplinary authority with the findings of the Inquiry Officer had never been supplied to him. The appellate authority in its order only holds that on charge No. 3, there was some supervisory lapse. On first and second charge, the appellate authority observed as under :—

"The records indicate that the first issue about the connivance with the lower staff is not proved, as was concluded by the Inquiring Officer. In fact, C.O., had sent a report against the subordinate staff to the Regional Office and the question of connivance did not arise.

Regarding second aspect, as submitted by the charged officer and indicated by records, he did not carry out any inspection at Malerkotla and Sangrur after December, 1994. Therefore, the question of identifying the negligence subordinate and reporting on their connivance, did not arise. As such, I hold that this allegation is not proved."

(5) On charge No. 3 it was observed "It is, therefore, clear that the charge of supervisory lapse is established against the C.O. beyond any doubt.

(6) Learned counsel for the respondents argued that firstly as per Regulations, it is not necessary to supply copy of the enquiry report along with the reasons, if any, recorded by the disciplinary authority for disagreeing with the findings of the Inquiry Officer and secondly, prejudice should be shown to have been caused to the petitioner with the non-supply of the reasons for differing with the findings of the Inquiry Officer and since no prejudice had been shown, the impugned orders Annexures P-1 and P-3 are perfectly legal. It was further submitted that in the facts and circumstances of the case that when the petitioner was retiring on 31st March, 1996, there was hardly any time left with the respondent-Corporation to issue the petitioner a show cause notice along with the enquiry report and the reasons recorded

by the disciplinary authority for disagreeing with the findings of the Inquiry Officer.

(7) After hearing learned counsel for the parties, we are of the view that this petition is liable to succeed. So far as the question that the Regulations do not provide for supply of the enquiry report or the reasons recorded by the disciplinary authority for differing with the findings recorded by the Inquiry Officer, suffice it to say that the apex Court in *Union of India and others* v. *Mohd. Ramzan Khan* (1) and *Ram Kishan* v. *U.O.I. and others* (2), held that it is the requirement of the rules of natural justice that where the disciplinary authority is itself not the inquiring authority, the report of the Inquiry Officer along with the reasons by the disciplinary authority for disagreeing with the findings of the Inquiry Officer must be supplied to the delinquent officer to give him an opportunity to challenge the report and/or the reasons recorded by the disciplinary authority for disagreeing with the Inquiry Officer. In Division Bench judgment of this Court in *Devinder Singh Grover* v. *The Food Corporation of India and another* (3) (the judgment was written by one of us (R.S. Mongia, J.) Shri Hemant Gupta, who is counsel for the Corporation in this case, was also the counsel for the Corporation in that case and had raised similar arguments as raised in the present writ petition. It will be opposite to reproduce paras 3 to 6 of that judgment:—

> "3. It is not disputed on the part of the respondents that reasons for disagreement by the Disciplinary Authority were not supplied to the petitioners before passing the orders of dismissal. Reference at this stage may be made to Regulation 59 of the Food Corporation of India (Staff) Regulations, 1971, which deals with the action on the enquiry report and it reads :
>
> "59. Action on the inquiry report :
>
> (1) The disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 58 as far as may be.
>
> (2) The disciplinary authority, shall, if it disagrees with the findings of the inquiring authority on any article of charge

(1) 1991 (1) SLR 159
(2) Judgments Today 1995(7) SC 43
(3) 1997(2) Recent Services Judgments 689

record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clause (i) to (iv) of Regulation 54 should be imposed on the employee, it shall, notwithstanding anything contained in Regulation 58, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Regulation 54 should be imposed on the Corporation employee, it shall make an order imposing such penalty and it shall not be necessary to give the Corporation employee any opportunity of making representation on the penalty proposed to be imposed.

(5) xx xx xx xx xx"

4. Learned counsel for the petitioners argued that non-supply of the reasons for disagreement by the Disciplinary Authority with the findings of the Enquiry Officer has prejudicially affected them as the impugned orders of dismissal are in violation of the principles of natural justice. Learned counsel for the petitioners have cited a judgment of Andhra Pradesh High Court by Mr. Justice K. Ramaswamy (now Judge of Supreme Court) reported as 1989 (7) SLR 688 where the aforesaid regulation came up for consideration and it was held that in Regulation 59 (2) principles of natural justice would be read and it would be incumbent on the Disciplinary Authority to supply reasons for disagreement to the delinquent official. This judgment of Andhra Pradesh High Court was relied upon by a learned Single Judge of this Court in 1995 (5) S.L.R. 11 where same regulation came up for consideration. The letters patent appeal against the aforesaid judgment also stands dismissed. Further reliance has been placed on the judgment of Hon'ble the Apex Court in *Ram Kishan* v. *U.O.I. and others* JT 1995 (7) S.C. 43, wherein a show cause notice issued to the delinquent official as to why particular punishment be not imposed, the Disciplinary Authority had

not mentioned the reasons for disagreement with the enquiry report. In these circumstances it was held that the show-cause notice was not proper as it was violating the right of the delinquent official to show to the Disciplinary Authority that the reasons for disagreement were not well based. According to the Apex Court this violated the principles of natural justice.

5. On the other hand learned counsel for the respondents argued that if the Disciplinary Authority is itself inquiring authority, the report need not be given to the delinquent official and on the basis of the enquiry report, the disciplinary authority itself can award punishment and if the disciplinary authority disagrees with the report of the Inquiry Officer and given its own findings it is as good as holding of enquiry by the disciplinary authority itself and, therefore, the reasons for disagreement are not required to be given to the delinquent official. Moreover, learned counsel for the petitioners have not shown any prejudice that may have been caused to the petitioners by non-supply of the reasons for disagreement. Further, the reasons for disagreements is not 'material' which is to be supplied to the delinquent official. In support of his contention, learned counsel for the respondent cited a judgment of the apex Court in *Managing Director, ECIL, Hyderabad* v. *B. Karunakar,* 1993 (5) SLR 532. In that case, the apex Court observed that the supply of copy of enquiry report is not a mere ritual and it must be shown that prejudice has been caused by the non-supply thereof.

6. After hearing learned counsel for the parties, we are of the opinion that there is sufficient force in the argument of learned counsel for the petitioners. The whole idea of the rules of natural justice is that the delinquent official should know what is against him so that he can meet the same before the disciplinary authority acts on the same. In *Union of India* v. *Mohd. Ramzan,* 1991 (1) S.L.R. 159, Hon'ble the apex Court observed that if the Enquiry Officer is not himself the Disciplinary Authority the principles of natural justice require that enquiry report must be supplied to the delinquent official to show to the Disciplinary Authority that he should not agree with the Enquiry Officer. Conversely also, if the Disciplinary Authority is in disagreement with the report of the Enquiry Officer, the rules of natural justice would require that the delinquent official must know as to why Disciplinary Authority is not agreeing with the findings recorded by the Enquiry

Officer and should be given a chance to perusade the Disciplinary Authority not to do so. This is the minimum requirement of the rules of natural justice. We are in respectful agreement with the view expressed by Andhra Pradesh High Court as noticed above, followed by a learned Single Judge of this Court, L.P.A. against which also stands dismissed. "The non-supply of the reasons for disagreement with the enquiry report has clearly prejudiced the petitioners inasmuch as before the award of punishment, they never know as to what has weighed with the Disciplinary Authority to disagree with the Enquiry Officer's report." The report of the enquiry along with the reasons for disagreement with the enquiry would in the circumstances be the real enquiry report which, even according to the judgment cited by the learned counsel for the respondent, has to be supplied to the delinquent official."

(8) From the reading of the observations made above, it will be evident that all the arguments raised by the learned counsel for the respondents were repelled. We are told that the Corporation never filed any further appeal against that judgment and the same has become final. We find no distinctive features in this case.

(9) It may further be added here that the apex Court in *State of Maharashtra* v. *Bhaishankar Avalram Joshi and another* (4), observed that failure to supply the enquiry report amounts to denial of reasonable opportunity. Though that case was under Article 311 (2) of the Constitution of India, yet the same principles have been reiterated in *Mohd. Ramzan's case* (*supra*) as it amounts to denial of principles of natural justice. The Supreme Court in *Bhaishankar Avalram Joshi's case* (*supra*) observed as under :—

"It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant must depend on the facts of each case, but it would be in very rare cases indeed in which it could be said that the Government servant is not prejudiced by the non-supply of the report of the Enquiry Officer."

(10) For the foregoing reasons, we allow this writ petition and quash orders dated 21st March, 1996, copy annexure P-1, and 5th May, 1998, copy annexure P-3.

(11) As a matter of abundant caution we may observe here that this will not debar the Corporation to proceed against the petitioner, if

(4) AIR 1969 SC 1302

under law, proceedings can continue against a retired person for imposing any punishment on him.

S.C.K.

Before Jawahar Lal Gupta & Mehtab S. Gill, JJ

THE STATE OF HARYANA,—*Prosecutor*

versus

RAJU @ RAJU CHAUHAN,—*Accused/Respondent.*

M.R. No. 3 of 1999 &
CRL. APPEAL No. 463-DB of 1999

26th April, 2000

Indian Penal Code, 1860—Ss. 302, 363 & 376—Rape and murder of a minor girl after kidnapping—Sessions Judge awarding sentence of death—No delay in recording the FIR—Accused's guilt proved beyond doubt—His conduct not humane—Death sentence confirmed—Appeal dismissed.

Held that the FIR was recorded without any delay. The oral evidence proves the story given at the outset. The medical evidence and the Laboratory report fully corroborate the oral testimony. Cumulatively, there is no doubt regarding the appellant's guilt. Thus, we hold that the charge is proved beyond doubt.

(Para 23)

Further held that the accused is a youngman. But his conduct was not humane. He kidnapped a young child. Committed rape. And then, he killed her brutally. Smashed the child's skull and face with a brick. All indicative of an insensitive and sick mind.

(Para 24)

Further held, that it is true that the extreme penalty has to be awarded in the rarest of rare cases. But, we cannot allow every sick man to evade the rope and make the society suffer. Society needs to be saved from the sick men like Raju. They must be eliminated. So that others may live. Helpless children like Rinku need to be given a sense of security and protected from such persons. We find no mitigating circumstance which may warrant anything less than the extreme penalty.

(Para 25)