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SMT. INDRANI BAI

v.

UNION OF INDIA AND ORS.

APRIL 21, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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Service law : Civil Service—Disciplinary Enquiry—Rules of Natural Justice—Where employee doubted impartiality of enquiry and represented at the earliest for change of Enquiry Officer, held, request should have been acceded to—Failure to reopen ex parte proceedings and to allow employee to cross-examine employer's witnesses already examined and to give him an opportunity to adduce evidence in rebuttal—Amount to violation of principles of natural justice and fair play—Constitution of India—Articles 14, 21 and 311 (2)—Administrative Law.

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A disciplinary enquiry was instituted against an employee (since deceased) on a charge of attempt to commit theft. The employee alleged bias against the Enquiry Officer and represented to the higher authorities for a change in the Enquiry Officer. This request was not acceded to, and he was directed to participate in the enquiry. The enquiry was being proceeded with *ex parte*. The employee thereafter appeared before the Enquiry Officer and sought an opportunity to recall the witnesses already examined by the employer for cross-examination, and also to examine himself and his witnesses in rebuttal. However, instead of giving him such an opportunity, the Enquiry Officer directed him to submit a written brief.

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The employee did not do so. Therefore, the order of dismissal from service was passed, which was confirmed in appeal.

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In the meantime, the employee died. The prayer of his widow for pension and appointment on compassionate grounds was turned down by the authorities on the grounds that he had been dismissed from service. She thereafter filed an Application under the Administrative Tribunals Act 1985 before the Central Administrative Tribunal, Jabalpur, which was dismissed on the ground of multiplicity of causes of action. She thereupon appealed to this Court by Special Leaves.

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Allowing the Appeal, this Court

HELD : 1. When the employee, who had entertained a doubt about the impartiality of the enquiry officer made a representation at the earliest to change the Enquiry Officer, the authorities should have acceded to the request and appointed another Enquiry Officer, other than the one whose objectivity was doubted. Unfortunately this was not done. [611-E-F]

2. Despite the directions issued by the higher authorities the Enquiry Officer directed the delinquent to submit written brief. In other words he proceeded from the stage where he last closed the proceedings. That was not the spirit of the order of the Director General. Thus it is a clear case of violation of principles of natural justice. The Enquiry Officer was obviously expected to recall the *ex parte* order and to give the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the Enquiry Officer did not adopt the said procedure which would have been just, fair and reasonable. The delinquent had not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principle of natural justice and fair play offending Articles 14, 21 and 31(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed. [611-D-H, 612-A]

3. The Respondents are directed to pay the appellant pension according to the Rules and to pay to the appellant the full salary payable to the deceased from the date of his suspension till the date of his superannuation or the date preceding his death, whichever is earlier with all consequential benefits, after deducting subsistence allowance already paid. [612-B-C]

4. The Respondents are directed to consider the case of the appellant for suitable appointment to any post for which she may be eligible, for rehabilitation on compassionate grounds. [612-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3962 of 1994.

From the Judgment and Order dated 26.4.90 of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in O.A. No. 85 of 1990.

Sanjay Kunur and R.N. Keshwani for the Appellant.

Kailash Vasdev and Ms. A. Subhashini for the Respondents.

A The following Order of the Court was delivered :

Leave granted.

B The appellant is the widow of one Narayan Naidu, a turner in gun carriage factory at Jabal Pur. On April 15, 1980, it was alleged, that he attempted to commit theft of 50 mm grill. On April 17, 1980, a charge memo was given. On June 26, 1980, the General Manager appointed the enquiry officer to conduct an enquiry against him. The delinquent made a representation to higher authorities that the enquiry officer was biased against him and requested to appoint any other impartial person to conduct
C enquiry against him. Instead of acceding to the request, the higher authorities had directed the delinquent on October 23, 1980 to participate in the enquiry. On November 20, 24 and 30, 1980, witnesses were examined *ex parte*. But, unfortunately, on December 14, 1980, the delinquent was set *ex-parte* as he did not appear before the enquiry officer. On March 5, 1981,
D he made another representation to recall the witnesses already examined for cross-examination and to give him a further opportunity to examine himself and his witnesses in rebuttal. The authorities directed the delinquent, by their order dated September 26, 1981, to attend the enquiry when fixed and cooperate with the enquiry officer. Pursuant to this direction, as found from the record, that the enquiry officer, instead of reopening the
E matter and giving him an opportunity to cross-examine the witnesses already examined or to examine himself as a witness or his witnesses, by a letter dated November 26, 1991 has stated thus :

F "Your were advised to submit a written brief vide letter No. MWP/ENO/14318/81, dated 27.8.81, by 10.9.81. No reply was received from your end. However, the Presenting Officer has presented his written brief, a copy of which is enclosed.

G You are hereby given another opportunity to submit your written brief before 15.12.1981 failing which, it will be presumed that you have no written brief to be submitted. The proceedings of the Court of Enquiry held, have already been sent to you vide letter No. MP1/ENO/149318/80, dt. 18.1.81."

H Therefore, the delinquent did not submit his written brief and an order of dismissal from service was passed and on appeal, it was confirmed.

In the meanwhile, the delinquent died on March 1, 1985. His widow made a representation for payment of gratuity, pension and other retrial benefits and also sought alternative employment for her subsistence. As regards payment of gratuity, it has been paid though belatedly, but the pension was not paid on the ground that the delinquent was dismissed from service. It is said that the delinquent had since been dismissed from service, she is not eligible for any compassionate appointment. Her O.A. No. 85/1990 was dismissed by C.A.T., Jabal Pur on April 26, 1990 on the ground of multiplicity of causes of action. Thus, this appeal by special leave. A B

While issuing notice to the respondents, we had directed the respondents to place before us the entire record. A counter affidavit has been filed and record also has been placed before us. In fairness, Shri Kailash Vasdev, learned counsel for the U.O.I., having gone through the entire record, has placed necessary material before us. As seen from the narration of the facts, that after the direction was issued by the Director General in his letter dated September 26, 1981, the enquiry officer had not recalled the *ex parte* order dated December 14, 1980 nor did he recall the witnesses already examined on September 20, 24 and 30, 1981 for cross-examination nor given him an opportunity to adduce his evidence in rebuttal. On the other hand, it is clear from the letter extracted hereinbefore that despite the direction issued by the higher authorities, the enquiry officer directed the delinquent to submit written brief, in other words, he proceeded from the stage where he last closed the proceedings. That was not the spirit of the order of the Director General. Thus, it is a clear case of the violation of principles of natural justice. It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of the enquiry to be conducted by the enquiry officer, when he made a representation at the earliest, requesting to change the enquiry officer, the authorities should have acceded to the request and appointed another enquiry officer, other than the one whose objectivity doubted. Unfortunately, that was not done. Even after the Director General had given an opportunity to the delinquent to participate in the enquiry, the enquiry officer obviously was expected to recall the *ex parte* order and given the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable. C D E F G

Under these circumstances, it is a clear case that the delinquent had H

- A not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principles of natural justice and fair play offending Arts. 14, 21 and 311(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed. The respondents are directed to grant to the appellant the pensionary benefits according to rules and also to consider her case for suitable appointment on any post to which she may be eligible for rehabilitation, on compassionate ground. The respondents are further directed to pay the full salary payable to the deceased delinquent to the appellant from the date on which he was kept under suspension till date on which he would have attained superannuation or February 28, 1985, the preceding date of his death whichever is earlier, with all consequential benefits after deducting the subsistence allowance already paid, right from the date of the suspension order till date of dismissal. The exercise should be done within three months from the date of the receipt of the order.
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The appeal is accordingly allowed. No costs as it is a legal aid case.

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- R.R. Appeal allowed.