
(2018) 05 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7766 Of 2017

Anand Kumar Bardhan

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 290, 291

Immoral Trafficking (Prevention) Act, 1956 — Section 3, 4, 5, 6

Citation : (2018) 3 PLJR 329

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Y.V.Giri, Ashish Giri, Sumit Kumar Jha, Subhash Prasad Singh

Final Decision : Allowed

Judgement

1. The petitioner by way of the present writ petition has prayed for quashing the order dated 06.09.2016 issued by the Principal / Deputy Secretary,

Industrial Department, Government of Bihar, Patna by which the petitioner has been inflicted the punishment of dismissal from service.

2. The brief facts of the case are that the petitioner was discharging his duty as Deputy Director (Technical) Technical Development Directorate

Industry Department, Bihar, Patna when he was informed about initiation of the departmental proceeding by a Resolution dated 16.12.2014, on the

ground of being found in a nude condition alongwith a lady in a beauty parlour whereupon the police had arrested the petitioner and S.K. Puri P.S.

Case No. 306 of 2014 was lodged against the petitioner under Sections 290, 291/34 of the Indian Penal Code and Sections 3, 4, 5, 6 of the Immoral

Trafficking (Prevention) Act, 1956.

3. The Inquiry Officer submitted his inquiry report dated 15.04.2015, wherein

the Inquiry Officer has recorded that despite several letters sent to the witnesses i.e. the Senior Superintendent of Police, Patna, Officer Incharge of the concerned police station and others, none of the witnesses turned up during the course of the departmental inquiry. It has further been recorded by the Inquiry Officer that on account of non appearance of the police officials for producing evidence, it cannot be ascertained as to whether the petitioner is involved in the present case or not, hence, the Inquiry Officer held that the charges levelled against the petitioner, cannot be said to have been fully / completely proved. It has further been recorded by the Inquiry Officer in the conclusion portion of the said inquiry report that since the matter is going on in the Court, the decision of the Court shall be followed.

The Disciplinary Authority had then issued a second show cause notice dated 12.06.2015, annexing the aforesaid inquiry report and calling upon the petitioner to submit his reply within 15 days. Thereafter, the Disciplinary Authority by an order dated 06.09.2016 has passed the order of punishment dated 06.09.2016 whereby and whereunder the petitioner has been dismissed from service.

4. The learned Senior Counsel for the petitioner has argued that the present case is a case of no evidence, which has been truly acknowledged by the inquiry officer in his inquiry report. In this regard, the learned Senior Counsel has relied upon a judgment rendered by the Honâ??ble Apex Court, reported in (2009) 2 SCC 570 (Roop Singh Negi Vs. Punjab National Bank).

5. Per contra, the learned counsel for the respondents has supported the order of punishment dated 06.09.2016 and has submitted that such type of immoral act committed by the petitioner is disgraceful and such type of person is not fit to be retained in Government service.

6. I have heard the learned counsel for the parties as also perused the materials on record.

7. At the outset, it must be stated that one has to go by the procedure required to be followed in the departmental proceeding and the evidence adduced during the course thereof and has not to be swayed away by emotions and nature of allegations. In the present case, admittedly, none of the witnesses came forward to depose during the course of the departmental proceeding despite them being requested by the Inquiry Officer repeatedly.

In fact, the Inquiry Officer himself has admitted in his inquiry report that since

no evidence has come forward, there is no clarity as to whether the allegations levelled against the petitioner are correct or not and the same can only be established after conclusion of the proceedings pending before the Court.

8. Thus, admittedly, the present case is a case of no evidence and in such cases, the law laid down by the Apex Court in the case of Roop Singh Negi

(supra) is required to be followed. It would be relevant to reproduce paragraph nos. 14 to 23 of the said judgment rendered in the case of Roop Singh

Negi (Supra) hereinbelow:-

14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges

levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into

consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against

all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The

management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer

on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported

confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the

police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on

record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence.

The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on

the basis that the offence was committed in such a manner that no evidence was left.

16. In Union of India vs. H.C. Goel, it was held: (AIR pp. 369-70, paras 22-23)

22. The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence

even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge 3 is proved against him is based on no evidence.

17. In *Moni Shankar v. Union of India* this Court held: (SCC p. 492, para 17)

17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding,

principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether

while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and

irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The

Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face

value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the

doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of

unreasonableness is giving way to the doctrine of proportionality.

18. In *Narinder Mohan Arya vs. United India Insurance Co. Ltd.* whereupon both the learned counsel relied upon, this Court held: (SCC p. 724, para

26)

26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question.

The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the

Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at

in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any

material from outside sources during the conduct of the enquiry. (See *State of Assam v. Mahendra Kumar Das.*) (2) In a domestic enquiry fairness in

the procedure is a part of the principles of natural justice. (See *Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.*) (3) Exercise

of discretionary power involves two elements (i) Objective, and (ii) subjective and existence of the exercise of an objective element is a condition

precedent for exercise of the subjective element. (See *K.L. Tripathi v. SBI.*) (4) It is not possible to lay down any rigid rules of the principles of

natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh v. State*

of Rajasthan.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was

not the subject-matter of the charges is wholly illegal. (See *Export Inspection Council of India v. Kalyan Kumar Mitra.*) (6) Suspicion or presumption

cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority

in certain circumstances. (See *Central Bank of India Ltd. v. Prakash Chand Jain and Kuldeep Singh v. Commr. of Police.*)

19. The judgment and decree passed against the respondent in *Narinder Mohan Arya* case had attained finality. In the said suit, the enquiry report in

the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned

situation filed a Writ Petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial

finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the

matter. This Court emphasized that a finding can be arrived at by the Enquiry Officer if there is some evidence on record. It was furthermore found

that the order of the appellate authority suffered from non-application of mind.

20. This Court referred to its earlier decision in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* to opine: (*Narinder Mohan Arya* case, SCC p. 729, paras 41-42)

41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be

binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well.

See e.g. *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and RBI v. S. Mani*. Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be

lawful to do so. In *RBI* this Court observed: (SCC p. 116, para 39)

â??39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly

perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.â??

In that case also, the learned single judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arya case, SCC p. 730, paras 44-45)

44. No such finding has been arrived at even in the disciplinary proceedings nor any charge was made out as against the appellant in that behalf. He

had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the

question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as

regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry

Officer cannot base his findings on mere hypothesis. Mere ipso dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an

Enquiry Officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply

its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to

play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials

available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same

error.

21. Yet again in M.V. Bijlani vs. Union of India this Court held: (SCC p. 95. para 25)

25.Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubts, we

cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial

function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant facts. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

22. Yet again in *Jasbir Singh vs. Punjab & Sind Bank* this court followed *Narinder Mohan Arya vs. United India Insurance Co. Ltd.*, stating: (*Jasbir Singh case*, SCC p. 570 para 12)

12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proofâ??.

9. From a bare perusal of the inquiry report dated 15.04.2015, it is apparent that the entire findings of the Inquiry Officer is based on no evidence. In

fact, no witnesses had appeared to prove the allegations levelled by the prosecution and in fact, the Inquiry Officer himself has opined in his inquiry report that in absence of appearance of the witnesses as also in absence of any

evidence being led by the prosecution, it is difficult to come to a conclusion that the charges have been completely proved as against the petitioner herein. The Inquiry Officer has further remarked that since the police officials did not appear for adducing evidence and a case, at their behest, is going on in the Court, the final decision of the Court would be binding.

10. In such view of the matter, the present case is a case of no evidence, hence, the department has utterly failed to prove the charges, as against the petitioner herein.

11. Now coming to the order of the disciplinary authority dated 06.09.2016 by which the punishment of dismissal has been inflicted upon the petitioner

herein, it must be stated that the same is merely a narration of the events which have taken place in the present case, right from the filing of the

F.I.R., initiation of the departmental proceeding, leading to the filing of the inquiry report and issuance of the second show cause notice. In fact, the

order of punishment dated 06.09.2016 is not based on any evidence muchless the same discusses any material found against the petitioner herein

during the course of the departmental inquiry, hence, the same is fit to be set aside being not supported by any reason or evidence for punishing the petitioner.

12. It is a trite law that the order passed by the disciplinary authority has severe civil consequences, hence, appropriate reasons are required to be

assigned. Moreover, a decision must be arrived at on the basis of some evidences, which is legally admissible.

13. In such view of the matter, the order of punishment dated 06.09.2016 is unsustainable in the eyes of law and is, therefore, set aside and quashed.

14. The writ petition is allowed, however, without any order as to cost.