

(2001) 11 JH CK 0015
In the Jharkhand High Court
Case No : CWJC No. 4044 of 2000

Arun Kumar Prasad

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 11 JH CK 0015

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the issuance of charge-sheet dated 4.5.1999 and the order dated 29.10.1999, whereby and whereunder the departmental proceeding against the petitioner, which was earlier closed, has been reopened and the enquiry officer has been appointed to enquire into the charges levelled against the petitioner in respect of furnishing false information regarding his caste at the time of initial appointment.

2. The petitioner was initially appointed in 1973 as held worker under" the respondents-authorities and was posted at Public Health Department. In 1978 he was selected for appointment as Van! Porter. Traffic Department of SAIL. Bokaro Steel Plant. Bokaro Steel City and in 1976 he was promoted on the post of operator/Shunting Zamadar. In 1992 the petitioner was served with a charge-sheet with an allegation of giving false information regarding his caste for the purpose of getting employment in the respondent-BSL. It appears that an enquiry committee was constituted to enquire into the charges of misconduct levelled against the petitioner and the enquiry committee finally submitted its report on 22.3.1993. The Disciplinary Authority, however, found the report inconclusive and ordered for fresh enquiry, vide letter dated 5.4.1995. A fresh enquiry was accordingly conducted and a report was submitted by the enquiry officer which was found to be conclusive and the proceeding was closed by the

Disciplinary Authority, vide letter dated 25.3.1996. The petitioner's case is that again in the year 1999 for the identical charges another charge-sheet was served on the petitioner on 4.5.1999 and vide letter dated 29.10.1999 the respondents appointed an enquiry committee for making a fresh enquiry in respect of the charges.

3. In the counter affidavit filed by the respondents the initiation of departmental enquiry in 1992 and 1995 and the closure of the proceeding in 1996 has not been denied by them. However, it is stated that the Vigilance Department of the respondents registered a complaint against the three employees, namely. Sri A.K. Prasad (Petitioner), Sri K. Prasad and Sri B.B. Ram towards genuineness of their declaration as belonging to schedule caste community for securing employment against the Schedule Caste quota. After making due enquiry when it was found that there is enough substance in the allegation, separate domestic enquiries were conducted by the respondent-Company. During the enquiry it was found that the petitioner belongs to Tanti/Tantwa community and as per the Gazette Notification under Serial No. 27 the said caste has been shown as backward community. Thus the declaration given by the petitioner and other two persons belonging to schedule caste community was false and. therefore, they were found guilty of submission of wrong declaration. Accordingly two of the above named employees excluding the petitioner were dismissed from services. However, on the basis of the enquiry report submitted against the petitioner the Disciplinary Authority took a lenient view to close the proceeding but at the same time also ordered that the petitioner would, in future, be debarred from any benefit available exclusively to Schedule Caste cadre of employees. It is stated that the respondent-Company finding its position very delicate, decided to get the whole matter reviewed by the higher authority and constituted a fresh enquiry committee to enquire the said charges against the petitioner afresh.

4. In the background of the case of the respective parties, the only question that falls for consideration is whether the action of the respondents to reopen and initiate a fresh departmental enquiry in respect of the same charges is justified.

5. Mr. P.P.N. Roy, learned counsel appearing for the petitioner, challenged the impugned decision of the respondents as being illegal and wholly without jurisdiction. Learned counsel submitted that admittedly the petitioner belongs to Tanti/Tantwa caste, which is a scheduled caste community so declared by the Government, vide letter dated 31.1.1992. The petitioner was granted a caste certificate by the competent authority as a member of scheduled caste and, therefore, it cannot be held that the petitioner secured employment by furnishing false certificate. Learned counsel then submitted that in any view of the matter once the departmental proceeding against the petitioner was closed by taking a lenient view, it cannot be reopened and a fresh enquiry in respect of the same charges cannot proceed. Learned counsel relied upon a decision of the Supreme Court in the case of Harbhajan Singh Vs. Karam Singh and Others, and various other decision of different High Courts (1969 (3) SLR 362; 1970 (4) SLR 739:

1979 (2) SLR 370).

6. On the other hand, Mr. R.S. Mazum-dar, learned counsel appearing for the respondent-Company, submitted that the Government letter dated 31.1.1992 declaring Tanti as a member of scheduled caste was subsequently withdrawn by the Government for the reason that Tanti is not a member of scheduled caste. Learned counsel submitted that the action of the respondent-company in initiating a fresh enquiry against the petitioner is justified for the reason that for the same charges two other employees have been dismissed from service.

7. Before appreciating the rival contentions of the parties. I would first like to refer some of the decisions relied upon by the petitioner.

8. In Harbhajan Singh's case (supra) the Supreme Court was considering the power of review of the State Government under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. 1948. It was held that when there was no provision in the Act granting express power of review to the State Government with regard to the order made u/s 42 of the said Act then exercising power of review and passing order is ultra vires and without jurisdiction. Their Lordships observed :--

"6. There is no provision in the Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings can not review his previous order of 3rd April. 1958 dismissing the application of Harbhajan Singh u/s 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution."

9. In the case of C.D. Prabhu v. Deputy Commissioner. South Kanara, (Mysore) 1969 (3) SLR 362, the Mysore High Court was considering a similar question regarding initiation of second enquiry under Mysore Civil Services Classification and Control Rules. Their Lordships observed :--

"4. If it could be said that the second disciplinary proceeding also pertains to the charges which formed the subject matter of the first disciplinary proceeding, it is obvious that the commencement of the second disciplinary proceeding was plainly impermissible. If a disciplinary proceeding is commenced with respect to an accusation and that disciplinary proceeding has reached the stage when an enquiry has been completed that disciplinary proceeding must be continued and must end either in the imposition of a punishment or in exoneration. If that disciplinary proceeding has not been terminated in that way. the commencement of another disciplinary proceedings with respect to "those charges is plainly incompetent"

10. In the case of State of Haryana and Ors. v. Roshan Lal Sharma (1970) 4 SLR. 739, a similar question fell for consideration before the Punjab & Haryana High

Court and it was held that dropping of charges and closure of departmental enquiry is quasi judicial order and it cannot be reviewed unless the Statute grants express power of review. It was held :

"18. Mr. Bhagirath Dass as a last resort argued on the basis of observations made in paragraph 11 in Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, . that the exercise of the power to appoint or dismiss an officer is that exercise not of judicial power but of an administrative power and so the impugned order of Mr. Grewal reviewing certain charges against the respondent was not open to question by the Court. The distinction made by Mr. Bhagirath Dass is unreal. It has been held in Bachhittar Singh Vs. The State of Punjab, , that proceedings in a departmental enquiry held against a Government servant cannot be divided into (a) the enquiry and (b) taking action against him and after so dividing the first point cannot be treated as involving a decision on the evidence and described as judicial while the latter as purely an administrative decision liable to be changed by the state. Both the stages are equally judicial and the second stage of the proceeding is no less judicial than the earlier one. If as held by the Supreme Court in this case, any action taken in a departmental enquiry against an officer is to be a judicial order not liable to be varied at the will of the authority which is empowered to impose a punishment, equally the dropping of certain charges against the public servant meaning the exoneration therefrom is a quasi judicial order and not liable to be varied at the will before the authority unless the relevant Statute or the rules give the authority the power to review. Not only the Full Bench of this Court in Deep Chand v. Additional Director Consolidation of Holdings. Punjab, Jullundur 1964 PLR 318, but also the Supreme Court in Harbhajan Singh Vs. Karam Singh and Others, , has held that in the case of a quasijudicial order unless the statute grants express power of review, that order cannot be recalled or reviewed by the authority which made it however erroneous or unjust it may eventually be discovered to have been."

11. Following the aforesaid decision the Punjab and Haryana High Court in another decision (1972) 7 SLR 601. held that once a proceeding is dropped in respect of certain charges against an employee, it will amount to exoneration from such charges and such decision, which is quasijudicial in nature, cannot be varied by the authority exercising power of review unless the relevant statute or rules give the authority the power of review.

12. In the case of A. Gopala Rao v. Post Master General, Andhra Circle, Hyderabad. (1979) 2 SLR 370. a Bench of Andhra Pradesh High Court, in similar circumstances has held that once an enquiry was conducted in accordance with the rules and ended in favour of the employee and charges were dropped, a further enquiry cannot be conducted.

13. Now I shall discuss some of the relevant and important facts of the instant case. Admittedly, the petitioner was appointed in 1973. In 1992 i.e. after 20 years, on the basis of some complaint, a charge-sheet was served on the

petitioner alleging that he secured employment by giving false information regarding his caste. It was alleged that the petitioner secured employment in B.S.L. as scheduled caste candidate whereas he does not belong to scheduled caste community rather belong to backward class community. The enquiry committee so constituted submitted its report dated 22.3.1993 and the same having been found by the disciplinary authority as inconclusive and not conducted properly, a fresh enquiry was ordered by the Disciplinary Authority in 1995. A copy of a fresh enquiry has been annexed as Annexure 3 to the writ application. The enquiry committee so constituted by the aforesaid order, submitted its report on 7.8.1995. A copy of the said report has been produced before this Court by the learned counsel appearing for the petitioner, the enquiry committee took notice of the letter dated 31.1.1992 issued by the Welfare Department, Government of Bihar to all the Collectors informing that persons of "Pan" and "Swati" caste are called "Tanti" also and they are included in the scheduled caste list. The enquiry committee also took notice of the fact that the aforesaid letter was subsequently withdrawn by the Bihar Government. The conclusion and the finding arrived at by the committee in the enquiry report is reproduced hereinbelow :--

"Conclusion of the Committee.--(i) The committee noted that the basis of the charge levelled against Sri A.K. Prasad is the so called "Fake Caste Certificate" as mentioned in the statement of allegation enclosed with the charge-sheet. However, the Presenting Officer could not produce the said certificate and he further confirmed that no certificate was sent for verification hence there is no basis for the charge that the charge-sheeted employee intentionally "mentioned" fake caste certificate for securing employment in BSL.

(ii) Earlier there was some confusion regarding the status of Tanti/Tantwa Caste whether it belongs to Scheduled Caste or not as is evident from the contradictory letters of Bihar Government.

Findings of the Committee.--Considering all the statements and documents produced at the proceedings, the committee concludes that the charge levelled against Sri A.K. Prasad Shunting Jamadar St. No. 303967 of Traffic Deptt. vide charge-sheet No. PERS(P)/TERM/ CWD/092/92-0643 dated 12.2.1992 is not proved beyond reasonable doubt hence considers Sri. A.K. Prasad "Not Guilty" of the charge levelled against him in the said charge-sheet."

14. On the basis of the said report, the Disciplinary Authority passed the following speaking order closing the disciplinary case against the petitioner :

"I have gone through the report of the Enquiry Committee constituted vide office order No. PERS(P)/48/T&RM/95-309 dated 5/8.4.1995. In view of the findings of the Enquiry committee, the disciplinary case against Shri A.K. Prasad, staff No. 303967. Traffic Department, is hereby closed. However, in pursuance of letter No. 11/M1-3/92-K-2635 dated 4.5.1992 of Welfare Deptt. Govt. of Bihar. Shri A.K. Prasad would in future be debarred from any benefit available exclusively to

Scheduled Caste category of employees."

15. The respondents in para 8 of the counter affidavit have admitted that on the basis of the report submitted by the enquiry committee the Disciplinary Authority taking a lenient view have decided to close the proceeding but at the same time also ordered that the petitioner would, in future, be debarred from any benefit available exclusively to Scheduled Caste category of employees.

16. It is, therefore, clear that on the basis of conclusive finding recorded by the enquiry committee the disciplinary case against the petitioner was closed presumably on full exoneration. However, the petitioner was debarred from getting any further benefit as available to a member of scheduled caste community. In such circumstances, in my opinion, the respondent-company cannot re-start the enquiry afresh in the absence of any specific power to review or to revise, vested by rules in some authority. No statutory provision or rules" or standing orders have been brought to my notice by the counsel for the respondents, which gives the higher authority of the company the power to review his quasi judicial order passed on 8.2.1996 by which the Disciplinary case was closed and the petitioner was presumably exonerated from the charges.

17. It is well settled that where the first enquiry was vitiated owing to a technical defect, a second enquiry on the same old charge could be held on merits. The reinstatement order, which followed only of the reversion order based on the first enquiry, would not invalidate the second enquiry. But once a disciplinary case has been closed, presumably on full exoneration on the basis of conclusive finding recorded by the enquiry committee, the employer cannot re-start the enquiry in the absence of any specific power to review or to revise vested by rules in some authority.

18. In the case of State of Assam and Another Vs. J.N. Roy Biswas, , the Supreme Court while considering a similar question, held as under :--

"4. We may however make it clear that no government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot restart the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basis of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the record."

19. Considering the entire facts and circumstances of the case and the law discussed hereinabove. I am of the opinion that issuance of the impugned charge-sheet and reopening or restarting of an enquiry against the petitioner in respect of the same charge is illegal and wholly without jurisdiction. The action of the respondents is, therefore, not justified.

20. This writ application is, therefore, allowed and the impugned order issuing charge-sheet against the petitioner and appointing an enquiry committee as contained in Annexures 5 and 6 to the writ application are quashed. However, there shall be no order as to costs.

21. Writ allowed.