
(1998) 10 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1560 of 1998

Balram Varma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1999) 1 JLJ 209 : (1999) 2 LLJ 324

Hon'ble Judges : Shacheendra Dwivedi, J;S.P. Srivastava, J

Bench : Division Bench

Advocate : P.N. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Srivastava, J.—Feeling aggrieved by the order dated July 31, 1998, passed by the Central Administrative Tribunal, Jabalpur, dismissing his application challenging the order imposing upon him the punishment of compulsory retirement in the proceedings under the Central CCS (CCA) Rules, the petitioner has now approached this Court seeking redress praying for the quashing of the impugned orders and his reinstatement in service with retrospective effect with all the monetary and consequential benefits.

2. We have heard the learned counsel for the petitioner and have perused the record.

3. The facts in brief shorn of details and necessary for the disposal of this writ petition lie in a narrow compass. At the relevant time, the petitioner was holding the post of Senior Accountant in the establishment of the Accountant General, Madhya Pradesh. The officer next above the petitioner was the Section officer-in-charge of the section where the applicant/petitioner worked and the officer next above him was the Senior Accounts Officer/Branch Officer.

4. A charge-sheet was served on the petitioner levelling five charges of misconduct against him. The charges No. 1 to 4 related to the misconduct of the

petitioner in the chamber of the Senior Accounts Officer/Branch Officer, picking up a quarrel with him and about his having manhandled the Senior Accounts Officer/Branch Officer inflicting injuries on his person and hurling upon him abuses of a most derogatory character. The charges also related to his misbehaviour before the Deputy Accountant General (Funds).

5. The fifth charge which was levelled against the petitioner was that on May 19, 1994 after having manhandled the Senior Accounts Officer and inflicting injuries on his person, the petitioner who apprehended the disciplinary action, instigated and succeeded in collecting a huge crowd which committed the acts of rowdyism raising of slogans and tried to break open the chamber of the Accountant General and caused hindrance in discharge of the Official duties. This crowd, it was alleged not only consisted of the employees of the office of the Accountant General but even outsiders also. This rowdyism continued from 10.15 A.M., to 1.30 P.M., and the Senior Officers had been kept as hostages during the aforesaid period.

6. The petitioner denied the charges levelled against him.

7. The disciplinary proceedings against the petitioner initiated with the service of the charge-sheet upon him continued during the period September 23, 1994 to May 29, 1995.

8. The enquiry officer submitted his report dated November 16, 1995 whereunder he found that the charges levelled against the petitioner were duly established excepting the participation of the outsiders so far as the charge No. 5 was concerned.

9. The department had placed reliance in support of the charges on the attendance register, the report of Shri. A.R. Shakyawar, Deputy Accountant General, the report of the incident by Shri. A.K. Khullar, Senior Accounts Officer/Branch Officer, the report of the care-taker, the statement of V.D. Verma and Ramamurthy, Accounts clerks and the report of the Personal Secretary to the Accountant General and the medical report of the Medical Officer, Government Dispensary functioning in the office of the Accountant General showing that the Branch Officer had suffered injuries on his person.

10. The petitioner who had been duly supplied with the copies of the documentary evidence sought to be relied upon in support of the charges led documentary as well as the oral evidence which consisted of the oral depositions of Shri Sunil Kumar Vajpayee and Bagwandas Verma.

11. It may be noticed that efforts had been made to get the petitioner medically examined in the aforesaid dispensary but he was not found within the premises of the office as he had left the office premises after 2 p.m., on April 19, 1994, the date of the incident. The Branch Officer had, however, been examined by the Medical Officer pursuant to the memo issued by the competent authority and it was found that he had suffered injuries.

12. The disciplinary authority vide order dated June 17, 1996, accepted the findings returned by the enquiry officer on the first four charges and imposed a punishment of compulsory retirement on the petitioner providing that he may be entitled to the compensation pension and retirement gratuity. So far as the fifth charge was concerned, it was accepted in part excluding the allegations against the participation of outsiders in the rowdyism.

13. The petitioner thereafter filed an appeal.

14. The appellate authority taking into account the documentary evidence relied upon by the disciplinary authority, i.e., Attendance Register of Fund-54, the report given by the Senior Accounts Officer/Branch Officer dated May 17, 1995, the report given by the Dy. Account General, Shri A.R. Shakyawar, as well as the caretaker's report and the report of the Secretary to the Accountant General, endorsed the findings of the disciplinary authority indicating that the events of misconduct attributed to the petitioner had happened in the office hours, arising out of the official business within the office-campus. It was also found that having manhandled his Branch Officer and having known that action had been initiated against him on the complaint of the Senior Accounts Officer/Branch Officer the petitioner made a retaliatory complaint apart from indulging into more indiscipline. When he was referred to the Medical Officer of the Government Dispensary functioning in the office of the Accountant General for the alleged injuries suffered by him at the hand of the Branch Officer, he chose not to collect this memo, therefore, his complaint was considered to be filed. Internal enquiry showed that the complaint was false.

15. Feeling aggrieved by the order passed by appellate authority, the petitioner filed an application before the Central Administrative Tribunal, Jabalpur.

16. The Tribunal under the impugned order came to the conclusion that since the persons who had made the statements contained in the reports had not been permitted to be cross-examined by the charged official during the enquiry, the aforesaid documents could not be relied upon. It was observed that even the Branch Officer who had made the complaint regarding the applicant's manhandling, misbehaviour and hurling of abuses had not been examined or allowed to be cross-examined.

17. In the aforesaid view of the matter, the Tribunal came to the conclusion that the first four charges could not be considered to have been legally proved on the basis of the documents relied upon by the department.

18. In support of the aforesaid view, the Tribunal appears to have drawn support from a decision of the Apex Court in the case of S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others, decided on December 18, 1994.

19. So far as the fifth charge was concerned, the Tribunal came to the conclusion that there was no justification for any interference in the finding returned against the petitioner on the aforesaid charge.

20. In the aforesaid connection, it was observed that the petitioner himself had stated that the demonstration was a "spot reaction of the employees who were aware of the truthfulness of the events." It was also noticed that the petitioner himself had participated in the demonstration and it had in fact taken place and the demonstrators were the persons of the Civil Accounts Association, Gwalior and were led by the office bearers. It was noticed that the charge was regarding the petitioner's participation in the demonstration. It was held that it was totally unreasonable to believe that unless the petitioner had not instigated, the demonstration could have taken place. It was found unreasonable to believe that it was "spot reaction" of the employees as contended by the applicant/petitioner. The appellate authority it was noticed, had observed that such a demonstration during office hours from 10.15 a.m. to 1.30 p.m, amounted to taking hostage the entire administration in order to have the matter of the disciplinary action against the petitioner dropped then and there. The Tribunal found that this act amounted to a grave misconduct.

21. It was further observed that the fifth charge had to be held as proved at least to the extent of "abetment" or instigation of the demonstration even if the actual participation of the petitioner in the demonstration could not be held to be legally proved. The application of the petitioner was accordingly dismissed.

22. The learned counsel for the petitioner has strenuously urged that the present one was a case which had to be treated as a case of no evidence in support of the charges levelled against the petitioner. The contention is that the documentary evidence which was sought to be relied upon ought to have been proved by leading the oral evidence by the competent person who could prove them. In the absence of any such evidence in regard to the authenticity of the documents as well as the contents of the reports, such evidence could not be utilised or relied upon against the petitioner.

23. The learned counsel for the petitioner has tried to draw support from the findings of the Tribunal in respect of the first four charges and has urged that since the first four charges had not been proved and the evidence sought to be relied upon in support thereof had been ignored, the proving of the fifth charge did not arise as the documentary evidence sought to be relied upon in support of the fifth charge was also that evidence which was relied upon in support of the first four charges.

24. We have considered the above submission.

25. In the present case what we find is that the documentary evidence which was sought to be relied upon in support of the charges consisted of attendance register and the official correspondence in the matter relating to the incident which had taken place not only in the chamber of the Senior Accounts Officer/Branch Officer but also outside the chamber of the Accountant General. The reports relied upon had been submitted by the Senior Officials like the Senior Accounts Officer/Branch Officer and the Deputy Accountant General.

26. The attendance register had been maintained in the regular course of official business. The medical report submitted by the Medical Officers of the Government Dispensary functioning within the Accountant General's office submitted on the basis of the memo issued by a competent high ranking official of the establishment of the Accountant General and by a Government Doctor holding the Government post had also been submitted in the regular course of official business. The disciplinary authorities had taken into account the fact that inspite of best efforts on their part the petitioner had avoided his examination by the Medical Officer of the Government Dispensary functioning within the premises of the Accountant General's Office.

27. The most significant thing which is to be noticed is that while the petitioner had denied the factum of incident claimed to have taken place in the Chamber of the Senior Accounts Officer/Branch Officer, he had not denied the genuineness of either the attendance register or the medical report or the fact that the documents sought to be relied upon had in fact been written by the concerned officials.

28. In the aforesaid circumstances, we are of the considered opinion that the initial onus of proof which rested on the department stood discharged and had shifted on to the petitioner to establish that the incident which had taken place as detailed in the report of the Senior Accounts Officer/Branch Officer and the other officials was in the manner as claimed by him. It was in this view of the matter, that the petitioner himself tried to lead not only documentary evidence but also the oral evidence. Even the oral evidence led by the petitioner clearly indicated that the incident had in fact happened in the chamber of Senior Accounts Officer/Branch Officer who was found screaming. The fact that a demonstration had been made was also not denied.

29. The enquiry officer had given cogent reasons for disbelieving the oral and documentary evidence led by the petitioner. The disciplinary authority as well as the appellate authority had agreed with the findings of the enquiry officer.

30. In the aforesaid circumstances, it could not be said that the presumption about the truthfulness of the contents of the reports and the official correspondence and the attendance register had been rebutted effectively.

31. It may be noticed that it is permissible for the disciplinary authority to infer one fact from the existence of another proved or admitted fact having regard to the common course of natural events or human conduct. It is true that a presumption is not in itself evidence but only makes a prima facie case for a party in whose favour it exists. Further, it should not be lost sight of that a presumption is also available that the official acts are properly performed, but before such a presumption can arise, it must be established that the official act was done. The ordinary presumption is that the acts done by a public officer in his public capacity is rightly done and the person urging to the contrary has to prove the allegation.

32. It is by now well established that strict laws of evidence are not applicable to the departmental proceedings and the insistence on the observance of the rules of evidence by the disciplinary authorities, would rob the administrative law of its utility and the needed flexibility as it hinders or hampers them unduly in their task of weighing evidence and deciding on facts, besides resulting in the exclusion of much of the evidence of probative value. It may, however, be emphasised that the decision of the disciplinary authority must be based on material of some probative value which tends to logically show the existence of facts relevant to the issue to be determined. If the material relied upon by the disciplinary authority is capable of having a probative value, the weight to be attached to it is a matter for the said authority entrusted with the responsibility of deciding the issue.

33. In the present case, what we find is that the petitioner had himself failed to establish his case and rebut the initial presumption available in support of the charges levelled against him.

34. The learned counsel for the petitioner has strenuously urged that the officials had not been examined in support of the reports. As has already been noticed hereinabove, considering the circumstances the initial onus of proof had to be treated as having been discharged and shifted on to the petitioner to prove his case but he miserably failed to do so.

35. We are of the considered opinion that when a report has been made by the high official and the cross-examination of such an official is insisted upon, it will be difficult to maintain discipline.

36. The learned counsel for the petitioner has heavily relied upon a decision of the Apex Court in the case of Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, as well as in the case of S. C. Girotra (supra).

37. Trying to draw support from the decision of the Apex Court in the case of Ahmedabad Municipal Corporation (supra), it was urged that the present case had to be treated as a case where the finding returned by the respondent-authorities against the petitioner was in fact based on no evidence. This contention in our opinion is clearly without any merit. As has already been noticed hereinabove, the documentary evidence referred to in the impugned order sought to be relied upon by the department coupled with the admissions of the petitioner himself as well as that of his witnesses produced in the case constituted material of some probative value which tended to show the existence of facts relevant to the issue to be determined.

38. We are of the clear opinion that if the material relied upon is capable of having any probative value, the weight to be attached to it is a matter for the disciplinary authority entrusted with the responsibility of deciding the issue. It is the preponderance of probability that matters. In the matters regarding departmental proceedings, the expression "sufficient evidence" to prove a charge has to be taken as distinguishable from the evidence which merely raises a

suspicion. The proof has to be capable of scrutiny and should stand the test of reasonableness consistent with the normal conduct and probability. The rule followed in criminal trial that an offence is not established unless proved by evidence beyond reasonable doubt is not applicable to the departmental proceedings.

39. So far as the decision in the case of S. C. Girotra (supra) is concerned we are clearly of the view that it has to be read and understood in the context and the factual situation involved in the case and further in the light of the decision of the Constitution Bench of the Apex Court in the case of Union of India (UOI) Vs. T.R. Varma, especially in view of what had been indicated by the Apex Court itself in its decision in the case of N. Meera Rani Vs. Government of Tamil Nadu and Another, , where it was pointed out that a subsequent decision of the Apex Court by Benches comprised of lesser number of judges have to be so read.

40. In the case of Union of India v. T.R. Varma (supra) it had been pointed out that "stating in broadly" and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

41. A perusal of the decision in the case of S. C. Girotra (supra), indicates that the report sought to be relied upon against the delinquent official was based on certain inferences drawn from the materials which constituted the basis of the charge. The delinquent official was not provided with an opportunity to meet the aforesaid evidence and rebut the same. If opportunity had been provided he could establish and demonstrate that the inferences drawn against him were not possible or did not in fact flow from the evidence having any probative value on which they were based. Such material could not be utilised or relied upon against the delinquent official.

42. It may be noticed at this stage that the Apex Court itself in its decision in the case of The State of Orissa Vs. Sudhansu Sekhar Misra and Others, , has clarified that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observations found therein nor what, , logically follows from the various observations made in it. It was emphasised that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

43. In the present case, as has already been noticed hereinabove, the petitioner had been given full opportunity to rebut the evidence sought to be utilised and relied upon against him. He had in fact led evidence in rebuttal. It was, however,

found to be unreliable and his version of the incident in question was held to be not acceptable. The ratio of the aforesaid decision, therefore, could not come to the rescue of the petitioner.

44. Considering the totality of the circumstances, we are of the view that no justifiable ground has been made out for any interference by this Court in the ultimate decision of the Tribunal in the present proceedings exercising the extraordinary jurisdiction envisaged under Article 227 of the Constitution of India.

45. Moreover, we find the present one to be a case which is not at all fit for the intervention of the equity.

46. The writ petition is accordingly dismissed in limine.