

(1978) 09 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 112 of 1973

Balwant Rai Mahajan

APPELLANT

Vs

V.P. Khosla and Others

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (1978) 7 ILR HP 581

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : Kedar Ishwar and K.D. Sood, for the Appellant; B. Sita Ram, for the Respondent

Judgement

C.R. Thakur, J.—The Petitioner has challenged by this writ petition, the order of termination of his services, as contained in Annexures P. 46 and P. 48, and has further prayed that he be held entitled to all the consequential benefits accruing by the quashing of the orders of termination.

2. The Petitioner herein was appointed as a Compositor in the Government of India Press, "Simla, on 2-5-1953. He was declared quasi permanent in 1956 and continued to work in that capacity till 3-12-1971, when the order of removal from service was passed by the Respondent No. 1, who was the Manager of the Press at the relevant time.

3. According to the pleas taken up by the Petitioner, he had been an active member of the Trade Union and because of his participation in the activities of the trade union, the Manager i.e. the Respondent No. 1 got offended with the Petitioner, and when his wife and his son fell ill he applied for the reimbursement of a sum of Rs. 49.41 P. incurred by him on their treatment, Shri P.N. Saxena rejected the said claim. The Petitioner served a notice u/s 80, Code of Civil Procedure. On receiving that notice, he was threatened with dire consequences including the termination of his services. However, the Petitioner filed a suit for

recovery of the aforesaid amount on 25-12-1964, which was ultimately decreed. It is further averred that in order to take vengeance, several baseless allegations were levelled against him and he was charge sheeted and after conducting an eye wash enquiry he was dismissed and removed from service on 20-4-1966 . He challenged the order of dismissal, by a civil writ petition No. 49 of 1967 in the Delhi High Court (Himachal Bench J, Simla, on the grounds of mala fides attributed to Respondents Nos. 2 and 3. That petition was allowed by order, dated 12-1-1968, and the order of dismissal was quashed, vide Annexure P. 1 to the petition.

4. After the order of dismissal was quashed, Shri V.P. Khosla, who had filed a return in that writ petition, further got annoyed and wrongly fixed his seniority as a Compositor Grade-II, against which the Petitioner made representations, which were not decided, and he was informed that the matter was under active consideration of the Head Office, as would be clear from Annexures P. 3 and P. 4.

5. That the Petitioner remained on leave from 20-6-1966 to 21-6-1966 and on 4-7-1968, which was treated as half-pay leave by the Respondent No. 1. That the Petitioner was entitled, to commuted leave for the same, but when the same was not done by Respondent No. 1 the Petitioner had to represent to the Headquarters" office. The representation was allowed and his leave was ultimately commuted.

6. The Petitioner again remained on leave on medical grounds from 15-12-1968 to 19-12-1968 and from 23-12-1968 to 28-12-1968 which too he was entitled to as commuted leave. But Respondent No. 1 again treated it as half pay leave and partly as earned leave. The Petitioner represented to the Manager (Respondent No. 1), who turned down the representation and his salary for the month of December, 1968, was also not paid. Ultimately this leave was also commuted by the higher authorities at the Headquarters.

7. Though the Petitioner had been in service from 2-5-1953 and was declared quasi-permanent in July, 1956, and had put-in 18 years of service till the date when he filed the petition, yet he was not confirmed. He made several representations to Respondent No. 1, but to no purpose. It is further averred that he was not paid his salary for the month of November 1970 with a view to cause him harassment, and the Petitioner had, therefore, to take the matter to the authorities under the Payment of Wages Act, and when the notice was sent by the said authority to Respondent No. 1, then the Respondent No. 1 at once paid the salary which was earlier withheld illegally.

8. It is further averred that when he was in the night-shift from 1st April, 1969, and was to continue in the said shift for a period of one year in the normal course, but with a view to cause monetary loss to the Petitioner, he was transferred to the day-shift by the Respondent No. 1 letter, dated 30-12-1970. He filed a suit in the Court of the Senior Sub-Judge to obtain stay order against the said order, whereupon Shri V.P. Khosla (Respondent No. 1) cancelled his

previous orders on 2-1-1971, vide Annexure P. 13.

9. It is further averred that on 9th January, 1971, when the Petitioner was on duty, Respondent No. 1 threatened him that he would be no more in service and that he had made up his mind to turn the Petitioner out of the Press and that it would be better if the Petitioner resigned, otherwise he would always be in the Courts. He thereafter received an order that he should be on duty in the day shift from 18-1-1971.

10. On 28th November, 1970, the Petitioner worked for all the duty hours, but he was shown absent in the attendance roll. The Petitioner met the Respondent No. 1, but instead of listening to his grievance he was threatened of the consequences of termination of his services. He was also served a show cause notice to further harass him, but ultimately the Petitioner was shown on duty. He has attached copies of such letters, Annexures P. 14, P. 15 and P. 16.

11. Since the Petitioner was threatened and harassed and was, told time and again that he would be dismissed, therefore he tendered his resignation on 11-1-1971. Annexure P. 17, mentioning therein the harassment meted out to him at the hands of the Respondent No. 1.

12. Thereafter it is stated that the Petitioner received a letter, dated 8-4-1971, from the Respondent No. 1 along with three annexures, whereby the Respondent No. 1 proposed to hold an enquiry against the Petitioner on the charges of unauthorised absence from duty and failure to comply with the directions of the Manager of the Press. That letter is Annexure P. 24. The Petitioner represented to the Chief Controller of Printing and Stationery, vide Annexures P. 25 and P. 26. However, Respondent No. 1, vide his order, dated 30-4-1971, Annexure P. 28, appointed Shri M.B. Lall Srivastava (Respondent No. 3) as the Enquiry Officer and also appointed one Shri Rai Singh as the Presenting Officer, vide Annexure P. 27. The Petitioner further " received a letter on 5-5-1971 from the Respondent No. 1, asking him to submit a clear-cut resignation vide Annexure P. 29, to which he replied vide Annexure P. 30. The Petitioner again made a further representation to the Chief Controller of Printing and Stationery, which was turned down by the Controller of Administration, vide Annexure P. 32. Thereafter the Petitioner received a notice dated 24-5-1971 from the Respondent No. 3 about the date of the proceedings in the enquiry to be held on 31st May, 1971. He informed the enquiry officer that he was not acceptable to him as he was biased against the Petitioner and was subject to influence and pressure of the Manager of the Government of India Press and was personally aware of, the facts which had led to the resignation of the Petitioner. He also made allegations of bias and mala fides against the Respondent No. 3 in para 13 of the petition. It is averred that the Petitioner was sent by the Respondent No. 3 to Chandigarh to fetch the migration certificate of his son and that he had to incur the expenditure for his journey from his pocket and when he demanded the money from the Respondent No. 3, he refused to pay the same. 1 He also addressed a letter, Annexure P. 35, to the Manager that Shri M.B. Lall who had been appointed as

Enquiry Officer by him was not acceptable to him and that the Enquiry Officer must be appointed by the Chief Controller from the Head Office or from any other Ministry so that a thorough enquiry may be held. This request was turned down vide Annexure P. 36 by the Respondent No. 1. Thereafter he wrote a lengthy letter Annexure P. 37 to the Manager," ventilating his grievances against the Manager about the threats and harassment given to him by the Manager.

13. The Petitioner, in response to the notice issued by the Enquiry Officer, gave his reply, and in this reply, Annexure P. 38, he narrated the grievances against Shri V.P. Khosla as also against the Enquiry Officer as contained in paras 5 and 2 respectively of the reply. The Petitioner did not appear before the Enquiry Officer, because of his grievance against him, and the Enquiry Officer therefore proceeded exparte and submitted his report which, according to the Petitioner, is biased and interested. The Petitioner was given a notice by the Respondent No. 1 after he had received the enquiry report, calling upon the Petitioner to show cause why the penalty of removal from service should not be imposed and he was asked to submit the reply within fifteen days from the date of issue of the letter, i.e. 15-10-71, which is Annexure P. 41. The Petitioner filed his representation and also wrote to the Head Office as also to the Secretary, Ministry of Works and Housing, against the biased enquiry and mala fide acts of Respondents Nos. 1 and 3. Thereafter the Petitioner received the impugned order of termination of service, dated 3-12-1971, on 7-12-1971.

14. The Petitioner, feeling aggrieved, filed an appeal Annexure P. 47 to the Chief Controller, Printing and Stationery, on 20-1-1972. The appeal was also dismissed vide order, Annexure P. 48, dated 20th October, 1972. The Petitioner thereafter filed a review petition to the Secretary, Works, Housing and Urban Development, New Delhi, and which was pending at the time when this petition was filed.

15. Vide C.M.P. No, 635 of 1973, dated, 12th September, 1973, filed by Shri K.S. Krishnan, Manager, Government of India Press, Simla, through Shri Bakshi Sita Ram, Advocate-General, Shri K.S. Krishnan submitted that the Respondent No. 1 against whom the allegations of mala fide and bias had been levelled had not been able to file his affidavit as he had retired from service. He was, however, asked to file his affidavit, and it was further submitted that when the same was received it would have to be shown to the Advocate General. In so far as the Respondents Nos. 2 to 5 were concerned, they filed their reply on the affidavit of Shri K.S. Krishnan, Manager, Government of India Press, Simla.

16. It may be stated at the outset that the Respondent No. 1 did not file any reply, nor he appeared to controvert the allegations of mala fides levelled against him. This affidavit in reply had been filed by a man, who was not the Manager of the Press at that time, nor he was aware of the facts.

17. It had been averred that the petition suffers from laches in as much as he was removed from service on 3-12-1971 and his appeal was dismissed on 20-10-1972. This preliminary objection should not detain us for long because it

would be apparent that this writ petition was filed on 3-7-1973, i.e. after about 8 months and 13 days, and this writ petition, therefore, cannot be said to be belated by any stretch of imagination.

18. On merits it was pleaded that he was removed from Government service as a result of disciplinary action taken under the rules. In fact, the petition is mainly based on mala fides and by this return it is sought to deny all the allegations by a person against whom there are no allegations and who was not the Manager at the relevant time. A person against whom the allegations are made has not filed any affidavit. However, Shri M.B. Lall has filed his affidavit denying the allegations as contained in para 13 of the writ petition.

19. The facts as disclosed by the Petitioner show that the mala fides attributed by the Petitioner to Shri V.P. Khosla are writ large and these allegations of mala fides have remained uncontroverted. From Annexure P. 1 which is a copy of the judgment of the Delhi High Court in Civil Writ Petition No. 49 of 1967, decided on 12-1-1968, about which the Petitioner has made a reference in para 3 of his petition, it would be manifest that on the basis of the allegations of mala fides against Shri V.P. Khosla made by the Petitioner in that writ petition, Shri Khosla had passed orders of removal from service of the Petitioner on 24-6-66 and that order was struck down on the ground of mala fides. At page 28 of the File, and page 17 of the judgment, it has been observed:

"The order of removal cannot be justified. The basis of the enquiry was not to genuinely enquire into the truth of any allegations against the misconduct of the Petitioner but to punish him for filing, a suit for recovering the amount which he rightly considered due to him and which had been wrongly disallowed by the Department. It seems that the Petitioner did write a letter to the Manager, on November 7, 1964, alleging that the Assistant Manager had asked him to withdraw his notice and had threatened him with dire consequences if he did not do so. After this letter the Assistant Manager could not have any sympathy for the Petitioner. When the Accountant recorded his note dated October 26, 1964, suggesting disciplinary action, against the Petitioner, the Assistant Manager merely asked for relevant papers to be put up without saying that the Petitioner had brought the papers to him on October 16, 1964, when he had directed him to return the papers to the Time Keeper or the Accounts Branch. If the papers had in fact been brought to the Assistant Manager he would have normally noted that fact while passing his order dated October 28, 1964.

At page 18 of the judgment, which is Annexure P. I, it has been further observed:

"After considering all the facts and circumstances of the case, I am satisfied that the dominant motive in taking action against the Petitioner was not to take disciplinary proceedings against him for what may have been bona fide considered to be acts of misconduct on his part, but to teach him a lesson for instituting a suit for the amount which had been disallowed and for making allegations of harassment against the then Assistant . Manager (Administration)

without trying to ascertain whether there was any substance in these allegations or not. The order of removal has, therefore, to be struck down as mala fide and also because it was passed without giving reasonable opportunity, as required by Article 311 of the Constitution, and in violation of the statutory rules and the principles of natural justice.

Therefore, it is proved that the Respondent No. 1 was nursing grudge against the Petitioner. The Petitioner has repeated instances of mala fide actions taken against him by the Respondent No. 1 in paras 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16. These are glaring instances of mala fides which, as already stated, remain uncontroverted. I have already given a narration of all these allegations, as averred by the Petitioner in the factual part of the judgment and it would not be proper to repeat the same. The Petitioner, it would be clear from these narrations of facts of mala fides, has proved that Shri Khosla was quite spiteful and was always out to look for an opportunity to harass the Petitioner in one way or the other. Whenever the Petitioner wanted to seek relief in the matter of leave, although Shri V.P. Khosla refused to treat his leave as commuted leave, the Petitioner went to the higher authorities and they treated his leave as commuted leave. Again, when his dues were denied to him for the month of November, 1970, with a view to cause him harassment, the Petitioner took the matter to the authorities under the Payment of Wages Act and when a notice was received by Mr. Khosla, he at once paid the salary to the Petitioner. On 28-11-70 although the Petitioner was on duty, yet he was shown as "absent". Thereafter he met Mr. Khosla who said that he would be dismissed. The Petitioner protested, whereafter Shri Khosla had to mark him as present". On 30-12-1970, Shri Khosla shifted him from his night duty to day duty in order to cause him pecuniary loss. The Petitioner challenged this order by a civil suit and obtained a stay order, where after Mr. Khosla cancelled the order. All these facts remain uncontroverted.

20. On 9th of January, 1971, as averred by the Petitioner, Shri Khosla threatened him and asked him either to resign or to spend the time in Courts. And this allegation also remains uncontroverted. The affidavit is filed by Respondent No. 2, who, as already stated, was not there at that time. Hence this uncontroverted averment proves the case of the Petitioner about the behaviour and attitude of Shri Khosla towards the Petitioner. The Petitioner had all along been harassed and had not been confirmed although he had put in 18 years" or more of service as Compositor. It appears that Mr. Khosla had been taking this hostile attitude towards the Petitioner because of the fact that the Petitioner was an active member of the union and he did not yield to the illegal and arbitrary orders of the authorities of the Press. It was because of the hostile and bullying attitude of Mr. Khosla that the Petitioner was compelled to tender his resignation on 11-1-1971, which is Annexure P. 17. Although according to the letter Ex. P. 20 issued by the Respondent No. 1, the resignation had been received on 8th of February, 1971, but he did not make any mention in his letter subsequently addressed to the Petitioner. One of such letters is Ex. P. 19, dated 22nd February,

1971, and instead of acknowledging the resignation letter what the Respondent No. 1 did was to charge sheet him for having absented from duty and appoint Shri M.B Lall, his subordinate, to conduct an enquiry, against whom also the Petitioner had a grouse because according to the averment made by the Petitioner, the Petitioner had been sent by Mr. M.B. Lall to Chandigarh to bring the migration certificate of his son and on that journey he had to incur expenditure from his own pocket, and when he demanded back the money from Mr. Lall, he got offended. Although Mr. M.B. Lall has filed his affidavit to controvert this fact, but in the face of the woeful story of the Petitioner about the ill-treatment and harassment meted out to him at the hands of Shri Khosla, it is quite manifest that the Enquiry Officer who was also his subordinate could not be a free agent to conduct the enquiry and he had to act according to the tune played by Mr. Khosla who was bent upon harming the Petitioner at all times. The Petitioner, therefore, was justified in staying away from the enquiry.

21. Shri Bakshi Sita Ram, learned Counsel for the Respondents other than Shri V.P. Khosla, contends that the Petitioner cannot challenge the enquiry on the ground that it was ex parte, and he has relied on *P. Joseph John Vs. The State of Travancore-Cochin*, *Major U.R. Bhatt Vs. Union of India (UOI)*, and *Ghanshyamdas Srivastava Vs. The State of Madhya Pradesh*, to show that if the delinquent official fails to appear, then the enquiry cannot be said to be vitiated.

22. *P. Joseph John (supra)* does not assist the learned Counsel for the Respondents. What it says is that after the report of the Commissioner was placed before the Public Service Commission and the latter approved of the action proposed to be taken, the Petitioner was given another opportunity to show cause but he did not avail himself of that opportunity or submit any explanation or show any cause on which the Public Service Commission could be consulted, there was in the circumstances no further necessity to consult the Public Service Commission. Here the question is whether for non-participation of the delinquent in view of the fact that he had made certain allegations of mala fide against the Enquiry Officer, the Enquiry Officer could proceed ex parte against him. *Major U.R. Bhatt (supra)* also does not assist him. It only says that an enquiry officer is not bound by the strict rules of the law of evidence and when the public servant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him. This authority is also distinguishable because the Petitioner had written to the authorities that Shri M.B. Lall was not acceptable to him as an enquiry officer who had been appointed as such by Shri Khosla because he was biased against him and he had given it in writing. Therefore, this by itself is sufficient to show that he absented because he did not place any faith or confidence in the enquiry officer who, according to him, was biased and he could not expect any fair deal at his hands. The third authority *Ghanshyamdas Srivastava (supra)* also will not be of any assistance because of its different facts. It only says that in case the Government servant fails to avail himself of the opportunity offered to him, he cannot complain that no opportunity was given to

him. When the Petitioner had been right from the start making a grievance about the appointment of the enquiry officer, it was not fair to turn down his request, nor it was fair on the part of Shri Lall to proceed with the enquiry when he had been told explicitly by the Petitioner that he did not repose any confidence in him because he was biased and his appointment as enquiry officer was not acceptable. Therefore, if he did not participate in the enquiry, he was justified to stay away, and any such enquiry conducted would definitely be vitiated. In this behalf I may also refer with advantage to *Manak Lal Vs. Dr. Prem Chand*, in which it has been held:

"It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

Again, the Allahabad High Court in *Brindaban v. The State of Uttar Pradesh* 1973 (1) S.L.R. 3 has held that in a departmental enquiry if the delinquent officer reasonably apprehended that the enquiry officer was biased against him, the entire enquiry proceedings were vitiated. In *C.S. Sharma Vs. State of Uttar Pradesh and Another*, also, it has been held that the principle that bias in a domestic tribunal is immaterial will not apply in determining whether reasonable opportunity as required by Article 311(2) has been given by the enquiry officer to the charged officer. The officer selected to make an enquiry should be a person with an open mind and not one who is either biased against the, person against whom action is sought to be taken or one who has prejudged the issue. Bias is relevant not only in the punishing authority but also in the enquiring officer even where the enquiring officer is a different person from the punishing authority. It is also not necessary that the bias must be shown in some form during the course of the enquiry against the charged officer. The appointment of an officer who is biased against the charged officer is a clear, denial of reasonable opportunity.

23. Therefore, from the aforesaid authorities it would be quite manifest that the Petitioner had no confidence in Shri M.B. Lall against whom he had a grievance and he had openly told him in writing that he: did not accept him as an enquiry officer because he was prejudiced, and the averments of the facts which led to the bias or prejudice in the mind of the enquiry officer have been narrated in the petition itself. Therefore, on that ground if, after he had made it quite clear to the authorities that Shri M.B. Lall was not acceptable to him because of his bias against him, he did not participate in the enquiry that did not mean that Shri M.B. Lall was to proceed *ex parte*. He himself should have reported the matter to

the authorities that he would not conduct the enquiry as the Petitioner did not repose confidence in him as he made certain allegations of bias against him. The Petitioner did not expect that the enquiry officer would be acting with an open and independent mind, and therefore his non-participation will not validate the enquiry. The enquiry from the very inception is vitiated, and therefore the authorities relied on by the learned Counsel for the Respondents are not applicable.

24. From the aforesaid discussion the only irresistible conclusion that can be drawn is that the enquiry is vitiated as the enquiry officer was biased and the Petitioner had given it in writing that he was not acceptable to him as he had a bias against him because of certain allegations made by him against the enquiry officer who had refused to give him his money which he had spent on his journey to Chandigarh to bring the migration certificate of the son of the enquiry officer. The allegations of mala fides against Shri V.P. Khosla remain uncontroverted in the absence of any counter affidavit. It has been held by their Lordships of the Supreme Court in S. Pratap Singh Vs. The State of Punjab, that in a petition under Article 226 of the Constitution by a Government servant challenging his suspension and departmental enquiry ordered against him and alleging mala fides on the part of the Minister-in-Charge, if there is no counter-affidavit by the Minister concerned but affidavit is filed by the Secretary in the Department having no personal knowledge regarding allegations against the Minister, then mala fides are proved. Here in the instant case, the mala fides are alleged against not only Shri V.P. Khosla who ordered the enquiry against the Petitioner but also against the enquiry officer. The allegations of mala fides against Shri V.P. Khosla remain uncontroverted. The affidavit has been filed by the successor of Shri V.P. Khosla, who has no personal knowledge regarding the allegations against Mr. Khosla. Shri K.S. Krishnan the successor of Shri V.P. Khosla had also taken time vide his application CMP. No. 635/73 to file the affidavit of Shri V.P. Khosla, who had since retired. But the same was not filed, and, therefore, his affidavit is not of any avail to controvert the allegations made against Shri Khosla.

25. Therefore, the order as contained in Annexure P. 24 ordering the initiation of the enquiry as also the enquiry report Annexure P. 42 resulting in the dismissal order Annexure P. 46 are all bad in law and are hereby quashed. The Petitioner, therefore, shall be deemed to have been in service and shall be entitled to all the consequential benefits arising from the quashing of these orders. The Petitioner is also held entitled to his costs assessed at Rs. 200/-.