
(2002) 06 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 13477 (W) of 2001

Bhagawan Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2002) 3 CALLT 1

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Ashok De, K.B.S. Mahapatra and H.S. Chakraborty, for the Appellant; Mrinal Kanti Lodh and M.K. Kundu, for the Respondent

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The petitioner was a constable in the Central Industrial Security Force (for short CISF). Petitioner has questioned the order of dismissal dated August 10, 2000 by the disciplinary authority being annexure P-24. It was also confirmed by the Appellate Authority by its order dated August 7, 2001 being annexure P-26. As many as five charges were framed against the petitioner under Rule 34 of the CISF Rules, 1969. In substance and effect, the imputation in the charges framed against the petitioner is to the effect that the delinquent (petitioner) devised, designed and executed financial irregularity amounting to Rs. 70,871/- by which the charged officer deceived his superior officer thereby failing to maintain absolute integrity and devotion to duty. Along with the articles of charge, list of documents by which the said charges was proposed to be sustained was furnished to the petitioner along with a list of witnesses by whom said charges were proposed to be established.

2. One of the grievances of the petitioner was that he prayed for furnishing of the preliminary enquiry report along with the statement recorded during the preliminary enquiry, which was denied to him. It is, however, not disputed that the other documents prayed for by the petitioner as per his letter annexure "B"

at page 31 dated December 20, 1999 were furnished to him by the respondent authority through the covering letter annexure P-3. The reasons for non-supply of the preliminary enquiry report is stated in annexure P-5 being the letter dated February 12, 2000 on the ground that it is an inter office correspondence and since not considered, relevant for preparation of the defence, the same was not supplied. Petitioner was also informed through the same letter that the relevant documents as listed in annexure III to the charge sheet had already been supplied and that if the petitioner wishes to inspect the same documents, he may report to the office on any working day and can as well take extracts thereof.

3. A prayer was also made by the petitioner for change of the enquiry officer on the ground that some of the witnesses on behalf of the department are senior in rank to the enquiry officer. The said plea was rejected by the disciplinary authority on the ground that there is no rule to debar an Inspector to conduct the enquiry when PWs are senior to him in rank.

4. Another grievance of the petitioner was that the enquiry officer erroneously rejected the prayer of the petitioner to summon the Assistant Director (Accounts), New Delhi and Audit Team (MHA) as defence witnesses on the ground that consent letter of those officers had not been placed before the enquiry officer. According to the petitioner, there is no rule that the charged official is required to submit consent letter from the defence witnesses. Whereas, according to the enquiry officer, the responsibilities and duties of Drawing and Disbursing Officer (DDO) are enumerated in the rules and are not the matter under investigation in the case and, therefore, unless consent letter of the officers which the petitioner wanted to examine as his witness was placed, he could not call the said officers as defence witnesses.

5. The enquiry officer found the petitioner guilty of all the five charges framed against him. A copy of the said report was furnished by the disciplinary authority to the petitioner by his letter annexure P-22 at page 58 and the petitioner was afforded an opportunity to make any representation or submission in relation thereto within the time framed thereof. The petitioner asked for and was granted further time to submit his representation. The disciplinary authority considered the submissions made by the petitioner and was of the view that there has been no violation of principles of natural justice in the conducting of the enquiry and that the same has been conducted as per the prescribed procedure. The disciplinary authority considered the findings of the enquiry officer as also the evidence in support thereof and held the charges proved except with regard to charge No. 3. which was held "not proved" by the disciplinary authority.

6. The aforesaid charge No. 3, which was held not proved was in respect of deliberate tearing off one page each of the two bills dated March 31, 1999 and January 30, 1999 with an intention to tamper with the details pertaining to the bills.

7. Being aggrieved by the orders passed by the disciplinary authority imposing

the punishment of dismissal from service, petitioner preferred an appeal which was considered on its merits by the Appellate Authority and in the elaborate order passed by the disciplinary authority, the appeal of the petitioner was rejected and the order passed by the disciplinary authority with the penalty so awarded was upheld.

8. A supplementary affidavit affirmed on January 9, 2002 was filed by the petitioner to which affidavit-in-opposition has also been filed.

9. In the said supplementary affidavit, petitioner has filed certain documents being annexure P-27 which is a xerox copy of acquaintance roll. It is sought to be established therefrom that when petitioner noticed over billing against sweeper K.C. Patra, petitioner wrote against the said name as "not to be paid". The respondents while supplying the copy of the said document, xeroxed copy was made in such a way that the relevant portion remains out of image. Letter being annexure P-28 is relied upon by the petitioner for the purpose of showing that the respondents made the said payment to sweeper K.C. Patra with malafide intention. Annexure P-29 to the said supplementary affidavit is the authentication made by the concerned prosecution witnesses with respect to the payment made in respect of constable R.N. Das and constable (GD) O.D. Sharma. The petitioner received the amount on that account as according to the petitioner, the said constables R.N. Das and O.D. Sharma had received loan from certain P. W.s. Annexures P-30 and P-31 to the said supplementary affidavit are the actions taken by the respondent authorities for recovery of the monies from the persons who had so received such payments under unauthorized claims. It was, therefore, contended that all the monies under the alleged bills, which were subject matter of the charges, has been recovered and, therefore, the said charges do not survive.

10. Affidavit-in-opposition has been filed on behalf of the respondents and the various allegations have been traversed. The impugned orders are sought to be sustained for the reasons contained therein.

11. Learned counsel for the petitioner Mr. Ashok De reiterated the aforesaid grievances of the petitioner and contended that the enquiry is vitiated on the grounds of violations of principles of natural justice.

12. The above contentions are countered by the learned counsel for the respondent by submitting that there is no rule which bars appointment of an enquiry officer inferior in rank to the disciplinary authority or the prosecution witnesses. There has been no denial of principles of natural justice. The petitioner was not entitled as of right to be furnished the preliminary enquiry report. Further, if the petitioner wanted to examine any defence witnesses, it was for him to have produced them before the enquiry officer or at least to have submitted their consent letters to enable the enquiry officer to call them as defence witnesses.

13. I am inclined to accept the submission of Mr. Mrinal Kanti Lodh, learned

advocate for the respondent that there is no bar for appointment of an enquiry officer inferior in rank either to the disciplinary authority or the departmental witnesses. No such rule nor any authority has been placed by the learned advocate for the petitioner to substantiate his contention to the contra.

14. In so far as non-furnishing of preliminary enquiry report is concerned, it is held in Krishna Chandra Tandon Vs. The Union of India (UOI), that it is necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding an disciplinary enquiry and, therefore, before he makes up his mind he may either himself investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore the preliminary enquiry report and the documents connected therewith are, it was held, in the nature inter-departmental communications between officers preliminary to the holding of enquiry and have no importance unless the enquiry officer has relied upon them for his conclusions. Therefore, so long as the preliminary enquiry report is not sought to be relied upon by the disciplinary authority to establish the charges framed against the delinquent official, Petitioner before that stage would have no right to ask for a copy of the preliminary enquiry report, as he did in the instant case. The contention of the petitioner is accordingly rejected.

15. The right of a charged officer to produce witnesses and the duties of the enquiry officer in that behalf was considered in Tata Oil Mills Co. Ltd. Vs. Its Workmen, . The Supreme Court observed that in a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness and that just as the management produced its witnesses the charged employee should have taken steps to produce his witnesses.

16. The contentions of the petitioner as aforesaid are, therefore, liable to be and are hereby rejected.

17. Next, it is contended by Mr. Dey that the report of the enquiry officer and the conclusions based thereupon are perverse. The charges do not constitute misconduct. If at all, it is a bonafide mistake in the preparation of the bills and error of judgment which cannot be regarded as misconduct. It was further contended by Mr. Dey that the enquiry officer as also the disciplinary authority did not consider the defence statement. The enquiry officer as also the disciplinary authority made out a case of cheating and misappropriation which is not even the charge framed against the petitioner and, therefore, the impugned proceedings are vitiated on the ground of taking irrelevant matters into consideration. It was also contended by Mr. Dey that the charge No. 4 cannot be said to be established. The two constables in question R.N. Das and constable (GD) O.D Sharma were not examined to prove the said charge and on the contrary, annexures to the supplementary affidavit at page 7, the letter of authority has been authenticated under the signature of the Commandant.

18. Mr. Dey relied upon the judgments of the Supreme Court reported at Glaxo

Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , Kuldeep Singh Vs. The Commissioner of Police and Others, .

19. In Kuldeep Singh's case, cited supra, the parameters of judicial review have been defined as also the scope of interference by the High Court with orders passed by the disciplinary authority. In that case, reference was made to the judgment of the Supreme Court in Nand Kishore Prasad Vs. State of Bihar and Others, wherein, it was held that the disciplinary proceedings before domestic Tribunal are of a quasi judicial character and it is, therefore, necessary that the authority should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with same degree definiteness, points to the guilt of the delinquent and does not rest the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event the findings recorded by the enquiry officer would be perverse.

20. The findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on evidence adduced by the parties or no reasonable person would have come to those findings on the basis of that evidence.

21. In that case, the Court also considered the meaning of hearing in accordance with the principles of natural justice. It was observed that one of the basic requirements is that all the witnesses in the department enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, a copy of that statement should be first supplied to delinquent who should thereafter be given an opportunity to cross-examine that witness.

22. It is equally well settled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that an individual receives fair treatment and not to ensure that the conclusions which the authority reaches is necessarily correct in the eye of the Court. The Court is concerned to determine whether the enquiry was held by a competent officer or whether the rules of natural justice are complied with. The technical rules of Evidence Act nor proof of fact or evidence as defined therein, apply to the disciplinary proceedings. When the authority accepts that the evidence and conclusions receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court in exercise of its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own finding depending on the evidence. A writ Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the

rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or whether the conclusions or findings reached by the disciplinary authority is based on no evidence.

23. The contentions as to the validity of the findings arrived at by the enquiry officer/disciplinary authority are accordingly to be judged in the light of the above principles.

24. The enquiry officer as also the disciplinary authority in the case on hand held that the bills in question were prepared by the delinquent while working in the account section. It was further held that none of the said bills except bill No. 245 dated May 31, 1999 was put up to the In-Charge bill section or Inspector. Accounts for checking/scrutiny purpose. As a result, several irregularities have been found based whereupon the charges had been framed. The disciplinary authority also considered the defence set up by the delinquent viz., that the bills were prepared at the instance of the superior officers. The said plea was negatived for want of evidence on behalf of the charged officer. There is no evidence placed before this Court also to sustain the said plea. It was also pleaded by the charged officer that earlier also recoveries were affected in case of over payment but the erring staff were not charge sheeted. His plea before the disciplinary authority, therefore, was that he has been made the scape goat in order to save the superior officer. The said plea was rejected inter alia, on the ground that the earlier recoveries in other cases will have no relevancy with the case on hand.

25. The disciplinary authority found the following irregularities :

"a) Bills were prepared without supporting valid authority like Pay Drawn Statement or Service Order.

b) Acquaintance Rolls were prepared in respect of those persons whose names did not figure in the relevant bills. Thus, unauthorized personnel were paid the amount.

c) Amounts claimed in the bills and reflected in the Acquaintance Rolls varied. Even corresponding entry was also not made in the Pay Bill Register.

d) In case of arrear bills, whole amount has been claimed instead of the balance amount due.

e) Double claims have also been made in some cases and

f) Calculation in some of the bills has been inflated."

26. The aforesaid findings find support from the material on record and it is based thereon that the conclusion is arrived at by the disciplinary authority as regards the guilt of the petitioner with respect to charges 1 & 2.

27. As already noticed supra, the disciplinary authority differed with the view of the enquiry officer and held that the charge No. 3 stands "not proved".

28. With regard to charge No. 4, the disciplinary authority on the basis of the statement of P.W.'s 2, 3 and 5 and Exhibits 1 and 2 observed that it was clear that the charged official prepared the pay authorities in his own favour. It was also held that the charged official himself prepared the bills and drew the amount on pay authority. It was also held that in respect of the said two constables R.N. Das and constable (GD) O.D. Sharma, there was no question of reclaiming the amount in the unit and, therefore, the claim was unauthorized. The contention of Mr. Dey, however, is that the amount was received by the charged officer as the said two constables had received loans from certain P.W.s. Though annexure P-29 is relied upon by Mr. Dey, it may establish the authorization given by the said two constables enabling the petitioner to receive payments on their behalf, it may even establish that there was no forgery but the same will not disprove the charge that payments had been received on account of the said two constables by the petitioner on the basis of the bills prepared by the charged officer when such entitlement was non-existent and claim was unauthorized.

29. The charge No. 5 was in respect of dereliction of duty. The disciplinary authority found that except in one case all the bills in question were prepared by the charged officer were not put up either to the In-charge (Bill section) or Inspector (Accounts).

30. It cannot, therefore, be said that the findings arrived at by the disciplinary authority are perverse or based on no evidence. The submission of Mr. Dey that the disciplinary authority has while dealing with the charges and evidence on record used the word at one place "cheating", the enquiry officer has also used the expression misappropriation when the same do not constitute the subject matter of the charge but in my view, the mere use of those expressions would not vitiate the findings arrived at by the enquiry officer or the disciplinary authority.

31. As already noticed supra, the conclusions arrived at by the enquiry officer and the disciplinary authority to the extent that the charges were held proved finds support from the evidence on record. There is, therefore, no warrant to interfere with the said findings.

32. As regards the contention of the petitioner that the amounts covered by the bills, which were subject matter of the charges having been recovered in full, the charges do not survive, suffice it to state that such contention is misconceived. The enquiry is with respect to the misconduct and that has been established. Even though no actual loss was found proved the disciplinary action against the delinquent was justified. It is not necessary that there should be actual loss as even likelihood of loss was enough to hold the employee guilty. The finding as to actual loss would be relevant where orders for recovery of the loss is passed. Such is not the case on hand.

33. Lastly, it was contended that the punishment inflicted upon the petitioner is harsh and shockingly disproportionate. Mr. Dey submitted that the petitioner is a

general duty constable and was having unblemished record of service and the charges as framed can perhaps be regarded as an error of judgment or unintentional mistake in the preparation of bills with which the petitioner is not well conversant and for such bonafide mistake specially keeping in view that the petitioner has not made any gain for himself and also keeping in view that the entire sum which was the subject matter of the charges has been recovered to the Government, the penalty of dismissal from service warrants interference by this Court.

34. As regards the power of writ Court to interfere with the punishment inflicted by the disciplinary authority, interference is permissible only when the punishment is shockingly disproportionate or the same is contrary to the statutory provisions or in excess of the power conferred upon the disciplinary authority. In the case on hand, the procedure for imposing major penalties as in Rule 34 CISF Rules was followed. The enquiry officer conducted the proceedings in accordance with the prescribed procedure and the petitioner has been afforded every opportunity of a fair hearing in the matter. The findings of the enquiry officer have been furnished to the petitioner before the disciplinary authority passed the impugned order of dismissal from service. Dismissal from service is one of the major penalties, which can be imposed upon the petitioner as enumerated in Rule 31. The charges pertain to financial irregularity and in my view, therefore, on the establishment of the said charges, the punishment inflicted cannot be said to be either ultra vires the powers vested in the disciplinary authority or not warranted by the extent Rules.

35. Mr. Dey, however, submitted that the gravity of the offence in matters of financial irregularity should be keeping in view that the petitioner is a general duty constable who had been asked to perform the duties of Accounts Clerk. The petitioner should not be judged in the manner as an employee of a bank with respect to financial irregularities. The parameters for consideration as also the nature of service is entirely different. Mr. Dey may be justified in the distinction drawn between the employees of a bank and those in the employment not connected with the bank. In banking business, it has been emphasized that absolute devotion, integrity and honesty needs to be preserved by every bank employee. If this is not observed, the confidence of the public/depositors would be impaired.

36. I cannot accede to the submission of Mr. Dey that is merely a case of negligence and no deliberate misconduct was committed by the petitioner. I am not in agreement with the said submission. No doubt had it been merely a case of negligence, petitioner would certainly be entitled to a reduced punishment on the authority of the judgment of the Supreme Court in State Bank of India and others Vs. T.J. Paul, . The nature of charge framed and the conclusions arrived at by the disciplinary authority would show that the bills had been prepared and neither initial of In-charge (Bill section) nor In-charge (Account section) were obtained. The preparation of the bills was a deliberate act of claiming moneys on

unauthorized account and thereby the charged official had committed financial irregularity by deliberately preparing/claiming moneys on account of ECL in respect of unauthorized persons who were not entitled for payment of ECL amounting to grave misconduct and dereliction to duty.

37. In T.J. Pauks case, cited supra, the Supreme Court held that even though no actual loss was proved the disciplinary action against the employee was justified and the dismissal order was valid. The Supreme Court held that even though there may not be actual loss, even likelihood of loss was enough to hold the employee guilty.

38. In Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, , the Supreme Court held that in case of financial irregularity showing of sympathy is uncalled for.

39. It should be borne in mind that the jurisdiction of a writ Court to interfere with the quantum of punishment is limited. In Union of India v. G. Ganayntham AIR 1997 SC 4630 : 1997 Lab IC 3341, the Supreme Court held that the doctrine of proportionality is to be tested on principles akin to doctrine of Wednesbury's unreasonableness. Unless it is held that the punishment imposed upon the delinquent officer is so irrational as to shock one's conscience and that no reasonable man while exercising his power would impose the same, the High Court cannot interfere therewith.

40. It is only in very rare cases as pointed out in B.C. Chaturvedi Vs. Union of India and others, that the Court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of punishment awarded by the competent authority. Judged in the light of the same it cannot be said that the punishment imposed on the petitioner is shockingly disproportionate to the gravity of the misconduct proved.

For the reasons aforesaid, the writ application is liable to be and is accordingly dismissed, however, without any order as to costs.

Let urgent xerox certified copy of this judgment and order be furnished to the appearing parties, if applied for, on priority basis.