
(2000) 09 OHC CK 0003
In the Orissa High Court
Case No : O. J. C. No. 6641 of 1998

Bhubaneswar Chhatra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Citation : (2000) 2 OLR 564

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Ashok Ku. Mishra-3, G.B. Mohapatra and P.K. Jena, for the Appellant; S.K. Das, A.S.C. (Central), for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has challenged the order of removal from service pursuant to a disciplinary proceeding and the order passed by the appellate authority rejecting the appeal.

2. The petitioner while working as Constable, C.I.S.F. at Paradip Port was served with a memorandum of charges dated 29.5.1996. The charges are as follows :

"No. 852280197 Const. B. Chhatra of CISF Unit PPT Paradip is charged for gross misconduct in that the said No. 852280197 Const. B. Chhatra was detailed for "A" shift duty at Gate No. 3 from 0500 hrs. to 1300 hrs. on 16.5.1996. The said No. 852280197 Const. B. Chhatra while on duty collected money illegally from 3 truck drivers at the rate of Rs. 5/- per truck loaded with coal and care food as disclosed by the truck drivers at Atharbanki gate in front of Inspector R.P.Gangopadhyay, ASI/Ex-K.R.K. Dora. ASI/F.A. Rama Rao and Ct. N.Samal. The above act on the part of No. 852280197 Const. B. Chhatra amounts to gross misconduct.

Sd/- COMMANDANT CISF, UNIT PPT, PARADIP No. 852280197 Const. B. Chhatra was detailed for "A" shift duty at Gate No. 3 from 0500 hours to 1300 hrs. on 16.5.1996. While he was on duty at the aforesaid place 3 trucks bearing

No. OR-04-8346, OR-05B-4755 and OR-15A-7611 loaded with coal and care food went out through Gate No. 3. The truck drivers were detained at Atharbanki gate by ASI/Ex-K.R.K. Dora and on enquiry they stated that they have paid Rs. 5/- for each truck at Gate No. 3. On getting information Sri. D.S.Yadab, Asst. Comdt./ Fire reached the spot and picked up No. 852280197 Constable B. Chhatria from gate No. 3 to Atharabanki gate where the truck drivers/identified No. 852280197 Constable B. Chhatria as the person to whom they have paid Rs. 5/- for each truck in presence of Insp. R.P. Gangopadhyay ASI/Ex-K.R.K. Dora, ASI/ F.A. Rama Rao and Ct. N. Samal. The above act on the part of No. 852280197 Ct. B. Chhatria amounts to gross misconduct towards duty.

Sd/- COMMANDANT CISF UNIT PPT, PARADIP 3. In reply to the aforesaid charges the petitioner submitted that the charges have been framed on the basis of the statement of some persons who were not made available for cross-examination at the time the statements were recorded. He denied the charges in his reply and further stated that the charges have been framed only to humiliate and harass him. Not being satisfied with the reply given by the petitioner the authority decided to hold an enquiry and Inspector B.K. Nayak of CISF Unit, Paradip Port Trust was appointed as the Enquiring Officer. In course of enquiry some constables and officers were examined and on the basis of the statements a report was submitted where the petitioner was found guilty of the charges. The petitioner thereafter submitted representation challenging the findings of the Enquiring Officer, but the same was not accepted and the disciplinary authority passed an order of removal from service. The appeal of the petitioner was also rejected by the Deputy Inspector General, CISF, East Zone, Patna. Challenging the order passed by the disciplinary authority as well as the appellate authority, the petitioner has approached this Court.

4. Learned counsel for the petitioner submits that accepting the entire evidence on record no case is made out in support of the charges and it is a clear case of no evidence. He further submitted that the persons on whose complaint the preliminary enquiry was held were not examined and therefore there was no scope for the petitioner to meet charges levelled against him. Learned Additional Standing Counsel (Central) Sri S.K. Das submitted that principles of natural justice have been followed in the disciplinary proceeding and that materials available on record clearly prove the charges and therefore this Court should not interfere with the finding of the Enquiring Officer.

5. I have gone through the statements of witnesses examined in course of enquiry which have been annexed to the writ application. Inspector R.P. Gangopadhyaya who was examined as P.W. 1 stated in his evidence that he enquired the matter from the drivers of trucks bearing registration No. OR-04-8346, OR-05B-4755 and OR-15A-7641 namely Balaram Singh, M.M. Mallick and C. Banerjee who said that they had paid Rs. 5/- to CISF Jawan of short size detailed at Gate No. 3. He further stated in his evidence that after arrival of Asst. Commandant D.S. Yadav and on being questioned the drivers and helpers

identified the petitioner to have taken Rs. 5/- from each vehicle. In cross-examination, said witness admitted that no money was found from the person of the petitioner. A.S.I. K.R.K. Dora was examined as P.W.2 who only stated that all the helpers of the trucks in presence of the Asst. Commandant pointed out towards the petitioner and said that they have paid money to the petitioner. However, in cross-examination he admitted that all the drivers and helpers did, not complain against the petitioner. He further admitted that as per the order of the Assistant Commandant D.S. Yadav, he asked all the helpers of the truck in presence of Sri N. Samal and all of them said that they have paid money at Gate No. 3. On being questioned by the Enquiring Officer this witness said that in his opinion the petitioner had not taken money from the truck drivers or from helpers. Constable N.Samal who was examined as P.W.4 states that drivers and helpers in presence of the Asst. Commandant, D.S.Yadav, identified the petitioner to have taken money from them. A.S.I., A.Rama Rao also made statement to that effect and further stated that the Asst. Commandant recorded the statements of those helpers. The Asst. Commandant D.S.Yadav was also examined and he stated that no money was found from the petitioner, but Rs. 20.50p. was recovered from Constable B. Behera who had also been detailed along with the petitioner at Gate No. 3. He also stated that in presence of all drivers and helpers the petitioner was identified to have taken Rs. 5/- per truck at Gate No. 3. In cross-examination he has admitted that nothing was found from the pocket of the petitioner and that the Gate in-charge had not informed him that the petitioner has taken money at Gate No. 3. The Enquiring Officer found that the petitioner was identified by drivers and helpers of the truck in question in presence of the Asst. Commandant and that Rs. 20.50p. was found from the pocket of constable B. Behera which must be the amount collected from truck drivers and ultimately held that the circumstantial evidence available on record points that money in question must have been collected by the petitioner while on duty at Gate No. 3. Finding of the Enquiring Officer is quoted below :

"The point of consideration is whether CISF No. 852280197 Constable B. Chhatra of CISF Unit PPT, Paradip while detailed for A-shift duty at Gate No. 3 from 0500 hrs to 1300 hrs had collected money illegally from 3 truck drivers and helpers @ Rs. 5/- per truck loaded with coal and. care food as disclosed by the truck drivers at Atharbanki gate in front of Inspector R.P. Gangopadhyaya, ASI/ K.R.K.Dora, ASI/F.A.Rama Rao and Constable N.Samal.

The statement of P.W.I. P.W.II, P.W.III, P.W.IV and P.W.V and the charged official Constable B. Chhatra corroborate with the fact that No. 852280197 Constable B. Chhatra was detailed at Gate No. 3 in "A" shift duty from 0500 hrs. to 1300 hrs on 16.5.1996 had collected Rs. 5/- each from the helpers of the three trucks bearing No. OR-04-8346, OR-05B-4755 and OR-15-A-7671 load with coal and care food. The matter was disclosed when the charged official was brought to the AB Gate by P.W.V where the driver Balram Singh and helper Manoj Patra of truck No. OR-04-8346, Dvr. M.M. Mallick, helper B.K. Mallick of trucks No. OR-05B-4755 and Dvr. B. Banchur, helper N. Deep of truck No. OR-15-A-7671

identified No. 852280197 Constable B. Chhatra in presence of all P.Ws. to whom they had paid Rs. 5/- per truck at Gate No. 3. P.W.V already searched the pocket of the charged official but he did not recover any amount from him. The P.W.V had also searched Constable B. Behera (who was detailed at gate No. 3 with the charged official) and found Rs. 20.50 in his possession. Hence circumstantial evidence points that the money in question must be collected by the on duty personnel at Gate No. 3.

After carefully going through the prosecution case and documentary evidence alongwith the fact and circumstances noticed above, I came to the conclusion that the article of charge framed against No. 852280197 Constable B. Chhatra of CISF Unit PPT Paradip Vide Memorandum No. V-I5014(1)/Naj/17/96/Adv./2646 dt. 29.5.1996 is "PROVED" beyond reasonable doubt.

Sd/- 12.12.1996 (B.K.Nayak) Inspector/Ex-Enquiring Officer" 6. After receipt of copy of memorandum dated 19.12.1996 the petitioner submitted his reply stating that the truck drivers and helpers were pressurised by the Asst. Commandant to identify the petitioner failing which they would be blacklisted and accordingly out of fear the said truck drivers identified the petitioner to have taken Rs. 5/- from each of the truck drivers. However, the disciplinary authority did not accept the plea of the petitioner and agreeing with the findings of the Enquiring Officer passed order of removal from service. The appellate authority also held that although money was not recovered from the petitioner's pocket, in such type of cases it is difficult to recover amount taken and the fact that the truck drivers have identified the petitioner is a strong evidence to prove the allegation.

From the evidence stated above, it can only be said that the drivers and helpers of the aforesaid three trucks in presence of the Asst. Commandant and other CISF Officials on being questioned, identified the petitioner to have taken money from them. Evidence of A.S.I. Rama Rao shows that the statement of the drivers and helpers were recorded, but neither the drivers nor the helpers who are said to have complained, were examined nor the recorded statements were produced before the Enquiring Officer. Under what circumstances the drivers and helpers identified the petitioner could have been proved had they have been examined in the proceeding. Since on the basis of the complaint lodged by those drivers and helpers charges were framed and proceeding was initiated it was the duty of the authority to examine those drivers and helpers in the proceeding. Accepting the evidence that the petitioner was identified by the drivers and helpers of the truck in question to have taken Rs. 5/-from each of three trucks, same cannot be accepted as proof of the charges in absence of any material to show that the petitioner in fact collected money from them. On the contrary, no money was found from the pocket of the petitioner Rs. 20.50 paise recovered from the pocket of the constable B. Behera cannot be linked with the allegation that the petitioner collected money. Though proof of charges beyond reasonable doubt as done in criminal cases is not necessary in disciplinary proceeding, but in absence

of acceptable materials also the delinquent officer cannot be found guilty.

7. In a decision reported in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, the apex Court held that in a petition under Art. 226 the High Court does not function as a Court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, the High Court can always interfere with the same. Here is a case, where the Enquiring Officer in the report has stated that the recovery of Rs. 20.50p. from Constable B. Behera is a strong piece of evidence coupled with identification of the petitioner by the truck drivers and helpers to prove charges. There is no quarrel over the fact that the petitioner was identified by truck drivers and helpers on being questioned by the Asst. Commandant at the time when the alleged occurrence took place, where the petitioner had no occasion to cross-examine the said truck drivers and helpers or raise any objection in presence of senior officers. It was the duty of the authority to get those drivers and helpers examined in the proceeding. Having not done so much reliance could not have been placed on the evidence of official witnesses in absence of any other material to prove that the petitioner had in fact collected Rs. 5/- from each of the trucks. The fact that no money was found from the pocket of the petitioner is a circumstance against the charges and therefore finding of the Enquiring Officer that Rs. 20.50 recovered from the pocket of constable B. Behera, is the amount collected by the petitioner is definitely perverse and cannot be accepted..

The apex Court in another decision reported in (2000) 1 ATT (SC) 7 (*Hardwari Lai v. State of U.P. and Ors.*) held that non-examination of complainant whose evidence could have revealed truth or otherwise of the charges is also a material factor to be taken into consideration. Had the truck drivers and helpers been examined in the proceeding, they could have said as to whether the petitioner in fact collected Rs. 5/- from each of the truck or not. The appellate authority also observed that mere identification is strong evidence to prove the allegations and the petitioner should have produced evidence to disprove the statements of truck drivers. When the truck drivers were not examined, there was no occasion for the petitioner to cross-examine them and disprove the allegations made by them and therefore observation of the appellate authority is a result of non-application of mind.

8. After going through the evidence on record, I am of the view that the findings of the Enquiring Officer are based on no evidence and are not supported by principles of law. I, therefore, set aside the order of removal from services under Annexure-8, as well as the order passed by the appellate authority under Annexure-10. The writ application is allowed and the opposite parties are directed to reinstate the petitioner in service with all service benefits.