
(2015) 03 MP CK 0109
In the Madhya Pradesh High Court
Case No : Writ Petition No. 124 of 2015

Chhitaria Sipoy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 03 MP CK 0109

Hon'ble Judges : B.D. Rathi, J.;Sheel Nagu, J.

Bench : Division Bench

Advocate : S.C. Sharma, for the Appellant; Vivek Khedkar, Assistant Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—This petition under Article 227 of the Constitution of India challenges the order of the Central Administrative Tribunal, Jabalpur Bench (Circuit Sitting, Gwalior) passed on 18.12.2013 in O.A. No. 593/2012, whereby the original application in question assailing the punishment of stoppage of 5 annual increments cumulatively was dismissed.

2. Learned counsel for rival parties are heard on the question of admission.

3. The factual matrix giving rise to the instant piece of litigation are that a chargesheet dated 17/18.07.2007 was issued against the petitioner alleging submissions of 45 medical claims; out of which 43 were found to be fake and forged for the period from 15.01.2002 to 20.06.2006. The enquiry proceedings were commenced and were adjourned at the instance of the delinquent employee/petitioner on 22.01.2007 and 24.01.2007 to afford the delinquent employee/ petitioner to engage a defence assistant. On the third day of hearing, i.e., 31.01.2007, the delinquent employee/petitioner expressing his inability to engage defence assistant chose to conduct his defence himself. During collection of evidence in the enquiry, the statement of Dr. Shrivastava, whose signatures

were found on the medical claim bills, was recorded. Dr. Shrivastava as witness clearly stated that his signatures appended on 43 out of 45 medical claim bills raised by delinquent employee/petitioner were forged. Thereafter, the enquiry officer found the charges to be proved.

4. Inculpatory enquiry report was forwarded to the disciplinary authority, i.e., the Deputy Commissioner, Office of the Chief Controller, Government Opium and Alkaloid Factory, New Delhi. The disciplinary authority, in turn, by memo dated 18.07.2007 forwarded the inculpatory findings to the petitioner. In response, the petitioner submitted his representation, which on being considered, lead to passing of the penalty order of reducing the pay of the petitioner by 5 stages for period of two years with cumulative effect by the order dated 30th. June, 2011. The remedy of appeal was unsuccessfully availed by the petitioner in view of the appellate order dated 02.05.2012 affirming the penalty.

5. On putting the penalty and appellate order to test before the Tribunal, it was found that the principles of natural justice were complied with while conducting the disciplinary proceedings. It was further found that the inculpatory findings of the enquiry officer were not perverse, since cogent evidence in shape of statement of the doctor was found by the Tribunal to be sufficient to bring home the charges. The element of quantum of penalty was also gone into by the Tribunal, which found that the same is not excessive looking to the gravity of misconduct.

6. Learned counsel for petitioner places reliance on the decision of the Apex Court in the case of Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, to contend that a question of law can always be raised at any stage before any higher forum despite not having raised in the forum of first instance. Further, reliance is placed on another decision of the Apex Court in the case of J and K Housing Board and Another Vs. Kunwar Sanjay Krishan Kaul and Others, to contend that if the statute prescribes a particular act to be done in a particular mode, then the said act must be done in that manner/mode, thereby excluding all the other unprescribed modes. Lastly, two decisions of the Apex Court in the cases of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, and Surya Dev Rai Vs. Ram Chander Rai and Others, are pressed into service to emphasis the scope of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

7. Learned counsel for petitioner, while assailing the order of the Tribunal and the penalty as well as the appellate order, primarily contends that no opportunity whatsoever was afforded to the petitioner to engage a defence assistant. It is further contended that Dr. Shrivastava, who was the prime witness, was, in fact, produced and examined as a defence witness instead of the prosecution witness. To bolster this submission, the attention of this Court is invited to the statement of Dr. R.C. Shrivastava recorded on 14.03.2007 before the enquiry officer.

8. A bare perusal of the statement of witness Dr. R.C. Shrivastava, which is

brought on record alongwith IA No. 744/2014, does not reflect as to whether the said witness was produced as a defence witness or a prosecution witness. The statement of Dr. R.C. Shrivastava is not in question answer form. However, the said statement clearly indicates that said Dr. R.C. Shrivastava was produced as a prosecution witness since the first paragraph of his statement supports the story of the prosecution, whereafter the petitioner denied asking any question to the said witness in response to the opportunity for cross-examination given by the enquiry officer. The statement is appended with the endorsement at the bottom that the same was recorded in presence of the petitioner. This endorsement is signed by the petitioner on the very same day.

9. There is nothing on record to indicate that any protest, oral or in writing was made by the petitioner in regard to the manner of examination of said witness Dr. R.C. Shrivastava. On making a special query from the counsel for petitioner that whether any objection in express term was made by the petitioner in regard to the manner of subjecting the said witness to examination and cross-examination, the answer is in the negative.

10. In view of the above, it is evident that the petitioner was not prejudiced by the manner of examination/ cross-examination of Dr. R.C. Shrivastava.

11. It is trite principle of Service Jurisprudence that unless prejudice to the delinquent employee is proved in regard to the manner/procedure in conduction of disciplinary proceedings, the order of penalty cannot stand vitiated. It has also been held time and again that the enquiry proceedings conducted in violation of any statutory rule cannot lead to vitiation of the penalty order unless the delinquent employee establishes the breach of any procedural statutory provision of mandatory nature. A few earlier decisions in the cases of *Russell v. Duke of Norfolk* : (1949) 1 All ER 109; *K.L. Tripathi Vs. State Bank of India and Others*, ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, ; *P.D. Agrawal Vs. State Bank of India and Others*, ; and *Kunwar Dilip Singh Vs. State of M.P. and Others*, can be profitably referred to, especially para 33 of the judgment in the case of *State Bank of Patiala and Others v. S.K. Sharma (Supra)* is reproduced below for elaboration :-

"33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him,

then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

12. The aforesaid legal position still continues to hold the field in view of the recent decision of the Apex Court in the case of A.S. Motors Pvt. Ltd. Vs. Union of India (UOI) and Others, .

13. In view of the above discussion, it is evident that the Tribunal has not exceeded its jurisdiction or has not failed to exercise its jurisdiction while upholding the impugned order of penalty. The fact remains that the petitioner could not establish that the penalty order was vitiated due to breach of any mandatory statutory provision or for violation of any of the principles of natural justice to the extent of causing prejudice to the petitioner.

14. The decisions of the Apex Court referred to by the petitioner (Supra) are of no application as is evident from the above discussion.

15. In view of above, no case for interference in the matter is made out. Accordingly, this petition deserves to be and is hereby dismissed sans cost.