
(2010) 03 SHI CK 0111
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 695 of 2010

Dharam Swaroop

APPELLANT

Vs

Hon"ble High Court of H.P. and Another

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 226

Citation : (2010) 2 ShimLC 130

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. Mohan Singh Jain, learned Counsel for the present petitioner.

The petitioner has prayed to set aside the impugned order dated 6.8.2003 (Annexure P-6) [passed by Hon"ble Chief Justice of High Court as an Appellate Authority, dismissing the appeal], as well as order dated 1.4.2002 (Annexure P-5) passed by learned District and Sessions Judge, Solan, District Solan, thereby removing the petitioner from service. The petitioner has further prayed for reinstating him to the post of Naib Nazir with the consequential benefits by giving him benefit of doubt and substituting the penalty of removal from service with lesser penalty treating the same as disproportionate penalty.

2. In order to adjudicate the present writ petition, it is necessary to give the factual background of the case. It appears that petitioner Shri Dharam Swarup Sharma, was initially appointed as Peon on 1.1.1989 and promoted as Process Server in February, 1995, subsequently as Naib Nazir in August, 1995, while posted as such in the office of Sub-Judge-cum-Judicial Magistrate, 1st Class, Solan during 21.8.1995 to 16.9.1998, he was involved in the embezzlement, misappropriation and fraud, for which he was served with a charge-sheet dated 18.1.1999 comprising of mainly two charges as follows:

(i) Shri Dharam Swaroop Sharma while functioning as Naib Nazir in the office of Sub-Judge 1st Class, Solan w.e.f. 21.8.1995 to 16.9.1998 withdrew payment vide bill No. 23 dated 25.4.1997 on 5.5.1997 for making payment to Kanchan and Manoj enterprises, Shimla but in cash book showed making of payment to the supplier of charcoal, whereas, kept the amount with himself and used the same dishonestly for himself. The amount was embezzled since 5.5.1997 to 14.8.1998 and subsequently made payment on 14.8.1998 when the payee/supplier of charcoal served legal notice. Thus, said Dharam Swaroop Sharma temporarily embezzled, unlawfully retained and misappropriated the Govt. money that is Rs. 6474/- and with a view to conceal such temporary embezzlement, unlawful retention and misappropriation of the said amount forged entry.

(ii) In order to hide, suppress embezzlement intentionally, forged entry in cash-book and therefore actually made payment after receipt of demand notice on 14.8.1998. Made erasen qua entry in receipt No. 258 and alterations showing payment on 5.5.1999, whereas, actual payment was made on 14.8.1998. Likewise forged entries by way of erasen and over writing in letter, dated 19.8.1998 and receipt No. 258. Thus by misrepresentation of facts/fraud and grave misconduct. The said Shri Dharam Swaroop Sharma failed to maintain absolute integrity and devotion to duty and has acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

3. The said charges pertained to the period when petitioner was posted in the Court of Sub-Judge Solan, as such, the petitioner was called upon to submit reply to the said memo. In response the petitioner has denied the charges. It was decided to hold department inquiry into the matter. Shri Ram Swaroop Sharma, Superintendent-Grade-II of the office of Additional District and Sessions Judge, Solan was assigned as Presenting Officer to present the case/on behalf of the department. The writ petitioner had opted to defend his case through his defence assistant, Shri K.D. Sharma (Retd. Naib Tehsildar).

4. Shri K.S. Chandel, the then Sub-Judge-cum-Chief Judicial Magistrate appointed as an inquiry officer on 22.2.1999, has made an inquiry and has submitted the inquiry report with findings that the charges against the petitioner are proved as the petitioner while working as Naib Nazir in the office of Sub-Judge-cum-Judicial Magistrate, 1st Class, Solan on 5.5.1997 withdrew vide bill No. 23 dated 25.4.1997 amounting to Rs. 6474 towards the payment of charcoal supply showing the said money to have been disbursed in cash book, whereas, the delinquent official kept the above money for his own use and had made the payment of such money to the supplier on 14.8.1998, thereby, committed temporary embezzlement during the said period and in that respect the petitioner erased the date of payment on the receipt as 5.5.1997 instead of 14.8.1998, thereby, the writ petitioner made temporary embezzlement and has committed grave misconduct. According to the inquiry officer even in reference

to his assertion that the petitioner has made payment of said amount to the supplier, the petitioner, could not be exonerated of the misdeed as the petitioner has been found guilty of two charges. The District and Sessions Judge, Solan, in the capacity of disciplinary authority has considered the inquiry report and after careful consideration has affirmed the conclusion arrived by the inquiry officer holding the petitioner guilty of the above two charges, proposed to impose major penalty of removal of the petitioner from service and accordingly he removed him from service forthwith vide an order dated 1.4.2002 (Annexure P-5).

5. Being aggrieved the petitioner preferred a statutory appeal before Hon"ble the Chief Justice of Himachal Pradesh, who has also considered the entire record of the inquiry and has made reappraisal of the evidences recorded during the course of inquiry as well as the material/record of disciplinary authority. Consequent upon the direction dated 10.7.2003 issued by Hon"ble the Chief Justice for further inquiry into the matter regarding the defence plea that the money was remitted to the party concerned through money order, and the finding of the disciplinary authority that such defence was an afterthought and unfounded, such finding too was considered by Hon"ble the Chief Justice and after careful consideration following observations have been recorded:

I find absolutely no scope for interfering with the finding that the money, in question, had been misappropriated by the delinquent official and that his plea of having remitted the money to the supplier of the coal is an afterthought. I ordered further inquiry in the matter by the Disciplinary Authority with this feeling that the delinquent official, being a low paid servant might have not been able to put forward his defence properly. The evidence collected by the Disciplinary Authority in the course of further inquiry fully justifies the report of the Disciplinary Authority submitted in the form of communication dated 28th/30th July, 2003 that the plea of the delinquent official regarding remission of money through money order, is unfounded.

I have also given due consideration to the mercy plea of the delinquent official. Looking to the gravity of the act of misconduct, that is misappropriation of Government money, there does not appear to be any justification for interfering even with the quantum of the penalty imposed by the Disciplinary Authority.

For the foregoing reasons, the appeal is dismissed. The appellant be informed accordingly.

6. During the course of hearing learned Counsel for the petitioner has submitted that removal of the petitioner from service is illegal and the order of removal is disproportionate to the gravity of charges proved against the petitioner.

7. In order to analyze the gravity of the submissions made on behalf of the petitioner, it is necessary to go through the decisions of Hon"ble Supreme Court as below:

(i) Hon"ble Supreme Court in Secretary to Government, Home Deptt. and Others

Vs. Srivaikundathan, has observed that the quantum of punishment imposed is matter to be considered by the disciplinary authority and the scope of judicial review regarding reducing of quantum of punishment was held impermissible.

(ii) Hon"ble Supreme Court in Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, has held that the Court's interference with the punishment is called for only when it is so disproportionate as to shock the judicial conscience.

(iii) In V. Ramana Vs. A.P.S.R.T.C. and Others, relying on earlier decisions in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223 : (1947) 2 All ER 680 ; Council of Civil Service Unions v. Minister for Civil Service 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL); Om Kumar v. Union of India (2001) 2 SCC 386 ; B.C. Chaturvedi Vs. Union of India and others, ; Union of India and another Vs. G. Ganayutham (Dead) by LRs., : and referring earlier decisions in Attorney General v. Guardian Newspapers Ltd. (No. 2) 1 AC 109 : (1988) 3 All ER 545; Debyshire County Council v. Times Newspapers Ltd. 1993 AC 534 : (1993) 1 All ER 1011 : (1993) 2 WLR 449 (HL); R. v. Secretation of State for Home Deptt., ex p simms (1999) 3 ALL ER 400 : (2000) AC 115 ; R. v. Lord Saville, ex p A (1999) 4 ALL ER 860 : (2000) 1 WLR 1855 ; R v. Secy. of State for the Home Deptt. Ex p Brind (1991) AC 696 : (1991) 1 ALL ER 720 : (1991) 2 WLR 588 ; E.P. Royappa Vs. State of Tamil Nadu and Another, ; G.B. Mahajan v. Jalgaon Municipal Council (1991) 13 SCC 91; Tata Cellular v. Union of India (1994) 6 SCC 651; Indian Express Newspapers Bombay (P) Ltd. v. Union of India (1985) 1 SCC 641 ; Supreme Court Employees" Welfare Association and Others Vs. Union of India (UOI) and Another, , the Hon"ble Supreme Court has held as below:

Case-law shows that the Court should not interfere with the administrator's decision unless it was illogical or suffered from procedural impropriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (paragraph-11)

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation, it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.(paragraph-12)

(iv) Hon"ble Supreme Court in Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, has held that the scope of judicial review in

respect of penalty/punishment is very limited and restricted and the Court must give reasons for holding the punishment to be not commensurate with the charges.

(v) In Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, Hon''ble Supreme Court has observed that in exercise of powers of judicial review under Article 226 of the Constitution, the High Court cannot act as an Appellate Authority in respect of the findings of the disciplinary authority confirmed by the Appellate Authority. The relevant paragraph of Nasrullah Khan (supra) is reproduced as below:

13. Again, the same principle has been reiterated by this Court in B.C. Chaturvedi v. Union of India. K. Ramaswamy, J., speaking for the Court, observed at SCC p. 759, para-12 as under:

12. 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 the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But the finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal 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 inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

(vi) In Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, the Hon''ble Supreme Court has observed that the High Court can modify the punishment in exercise of its powers under Article 226 only when it finds that punishment is shockingly disproportionate to the charges proved.

(vii) In view of the decision of Hon''ble Supreme Court in U.P. State Road Transport Corporation v. Vinod Kumar 2008 (1) SCC, the punishment of removal/

dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. There is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. There is no place for generosity or misplaced sympathy on the part of the judicial forums in interfering with the quantum of punishment.

(viii) The Hon''ble Supreme Court has further observed in *State of Meghalaya v. Mecken Singh N. Marak* 2008 (7) SCC 580, that while considering proportionality of punishment, the Court should also take into consideration, the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands. By fettering discretion of appellate authority to impose punishment which should be short of removal from service, the High Court misdirected itself while exercising its power under Article 226.

(ix) The Hon''ble Supreme Court has held in *Praveen Bhatia Vs. Union of India (UOI) and Others*, that the scope of judicial review is limited and the powers of the Court to interfere with the quantum of punishment is extremely restricted. The Court can direct only when relevant factors have not been considered. In very rare cases, Court may also indicate punishment which ought to be imposed.

(x) Hon''ble Supreme Court in *Noharlal Verma v. District Co-operative Central Bank Ltd.* 2008(14) SCC 445, has observed that writ Court normally does not substitute its own decision for the decision of the disciplinary authority unless the decision of the disciplinary authority shocks conscience of the Court, or no "reasonable man" would impose such punishment, or the decision-maker while making the decision.

8. It has been observed by Hon''ble the Supreme Court in *S.S. Balu and Another Vs. State of Kerala and Others*, that where the petitioner approached the High Court after a long delay, the relief prayed for may be denied on the ground of delay and laches. Hon''ble Supreme Court has also observed in *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*, that the Court can refuse at its discretion the relief where there is delay and laches. Subsequently, in view of the observations made by the Hon''ble Supreme Court in *Union of India (UOI) and Others Vs. Har Dayal*, and in *Union of India (UOI) and Others Vs. M.K. Sarkar*, the Court may decline to interfere in the petition on the ground of delay/laches.

9. We have heard the learned Counsel for the writ petitioner and we have also gone through the record of inquiry officer, disciplinary authority as well as Appellate Authority. We are of the considered view, the petitioner, at the relevant time, while working as Naib Nazir in the office of Sub-Judge-cum-Judicial

Magistrate, 1st Class, Solan, has been charged for two above charges which after proper inquiry were found to have been proved and District and Sessions Judge as a disciplinary authority has also affirmed the findings of the inquiry officer. Consequent upon the order dated 10.7.2003 of Hon"ble Chief Justice for collecting evidences as further inquiry/regarding the defence plea of petitioner that the money was remitted to the party concerned through money order, the disciplinary authority found that the said assertion of the petitioner was an afterthought. The Hon"ble Chief Justice after careful consideration has rightly not interfered with the findings of the disciplinary authority and has not interfered in the quantum of penalty imposed by the disciplinary authority.

10. In our respectful consideration, this Court may not give indulgence and interference in the impugned order dated 1.4.2002 (Annexure P-5) as well as in order dated 6.8.2003 (Annexure P-6) as prayed for by the petitioner on the ground of laches/delay alone for challenging these orders after 7-8 years respectively, however, the writ petition is being adjudicated on the merits.

11. In view of the settled position as indicated above, this Court cannot sit as an appellate authority over the finding of the disciplinary authority as well as Appellate Authority i.e. the decision of Hon"ble the Chief Justice taken on the administrative side. Keeping in view the gravity of the charges against the petitioner, the report of inquiry officer affirmed by disciplinary authority as well as the Appellate Authority, the said punishment of removal of petitioner from service does not shock the conscience of this Court. Therefore, in our respectful consideration, this Court is not inclined to interfere in the order dated 1.4.2002 (Annexure P-5) as well as 6.8.2003 (Annexure P-6). The writ petition being devoid of merits is therefore, liable to be dismissed.

Accordingly writ petition is dismissed.