
(2016) 06 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 5582 of 2005

Dhirendra Kumar Pannalal Dixit

APPELLANT

Vs

Visvesvaraya National Institute of Technology, Nagpur

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 531 : (2016) LIC 3588 : (2016) 5 MhLJ 878

Hon'ble Judges : B.P. Dharmadhikari and Kum. I.K. Jain, JJ.

Bench : Division Bench

Advocate : Shri D.V. Chauhan, Advocate, for the Appellant; Shri Anand Parchure, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Kum. I.K. Jain, J.(Oral)—This petition arises against the order of removal of petitioner from service passed by respondent on 30-08-2005.

2. Briefly stated facts are that;

Petitioner a post graduate in Power Engineering was appointed as a Lecturer with Visvesaraya Regional College of Engineering at Nagpur (VRCE) now known as VNIT a deemed University. In the year 2004, he was working as Assistant Professor in the Mechanical Engineering.

3. On 11-05-2004, petitioner was served with a charge-sheet. The articles of charge alleged that three students Rajesh Rentapalli, Saurav Kumar and Malay Biswas of VIIIth Semester Mechanical Engineering lodged complaints on 26-12-2003 alleging therein that petitioner was compelling them to join tuition and accepted money from those students.

4. Petitioner responded to the charge-sheet vide his written statement dated 01-06-2004. He raised a defence of false implication and denied the charges in to.

5. The Director of respondent/Institute appointed Shri Justice M.S. Deshpande,

former Judge of this Court as an Enquiry Officer to hold an enquiry into the charges framed against the petitioner. During the course of enquiry, in all five witnesses were examined including complainant Malay Biswas. Considering the evidence and material made available on record, Enquiry Officer came to the conclusion that charges framed were not proved.

6. Report of enquiry was submitted to the disciplinary authority. Second show cause notice was issued to petitioner in the background of resolution of Board of Governors dated 06-07-2005. In response to the second show cause notice dated 20-07-2005, petitioner submitted his explanation on 05-08-2005. The Disciplinary Authority on 30-08-2005 disagreeing with the findings recorded by Enquiry Officer imposed punishment of removal of petitioner from service, which is the subject matter of instant Writ Petition.

7. The learned Counsel for petitioner Shri D.V. Chauhan assailed the order of punishment removing the petitioner from service on several grounds. The basic challenge is to the fundamental error committed by the Disciplinary Authority in disagreeing with the findings recorded by the learned Enquiry Officer that there was no evidence to hold the petitioner guilty of the charges levelled. Another contention raised on behalf of petitioner is that principles of natural justice were violated as second show cause notice issued to him indicates that Disciplinary Authority finally arrived at the conclusion and as per Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, tentative reasons which were to be communicated to the petitioner were not communicated. The learned Counsel would submit that the reasons recorded by the Disciplinary Authority are grossly erroneous and the punishment imposed on the petitioner removing him from service is against the principles of natural justice, arbitrary and illegal.

8. In response to the submissions raised on behalf of petitioner Shri Parchure, learned Counsel for respondents submitted that in totality of the facts and circumstances, previous complaints and past antecedents of petitioner findings recorded by Enquiry Officer were not accepted by Disciplinary Authority and by assigning proper reasons Disciplinary Authority has arrived at the conclusion that petitioner was to be removed from the service. The learned Counsel would submit that learned Enquiry Officer had not properly considered the evidence and material placed on record. Complaints of two other students were totally ignored and so Disciplinary Authority was right in disagreeing with the findings recorded by learned Enquiry Officer.

9. In view of the rival contentions raised by learned Counsel for the parties, we have to now examine the first contention raised by petitioner. It is not in dispute that at the relevant time, petitioner was working as an Assistant Professor in Mechanical Engineering and he was governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is also not in dispute that three students who made complaint against the petitioner were attached to petitioner since July, 2003. He was the project guide of Mr. Rajesh Rentapalli,

Saurav Kumar and Malay Biswas, who made complaints against him on 26-12-2003. As mentioned in articles of charge, petitioner forced these three students to join his tuition classes and took money from them and thereby;

(1) obtained illegal gratification,

(2) misused his official position for personal gain, and

(3) committed gross irregularity in the discharge of official duties with a dishonest motive.

10. To substantiate the charge, Institute examined one of the three complainants Malay Biswas. Rajesh Rentapalli and Saurav Kumar were not examined by the institute.

11. It is stated by Malay Biswas before the Enquiry Officer that Prof. Dixit was his project guide. Saurav Kumar and Rajesh Rentapalli were also attached to Prof. Dixit. He states that he could not get material for project and told Prof. Dixit about it. Prof. Dixit told him that material would have to be procured from abroad or Cement Industries in India. Malay Biswas further states that Prof. Dixit said that Rs. 2000/- would be required for that purpose. They collected Rs. 2000/- and handed over to Prof. Dixit. He then says that after they paid money Prof. Dixit supplied them material. The said material was for 7th Semester. That time Prof. Dixit told them that Rs. 4000/- would be required for procuring the material for final report.

12. In the cross examination it is admitted by Malay Biswas that once in the first year he approached his teacher in one of the subjects to examine his paper liberally. Prof. Dixit called and told him that he would have to improve his performance. From the admissions elicited in the cross examination of Malay Biswas it can be seen that his performance in the examination was not satisfactory. He could not collect the material for project and asked Prof. Dixit to procure material for him. It is also evident from the cross examination of this witness that he informed the acting Head of the Department Dr. N.V. Deshpande and Prof. C.S. Moghe that Prof. Dixit was asking them for payment. He then states that Dr. Deshpande and Prof. Moghe told them that their project guide would be changed if they file a complaint.

13. Dr. N.V. Deshpande was examined as a witness by the Institute. The evidence of Mr Deshpande shows that Prof. Padole informed him about the grievances of students that Prof. Dixit was demanding money from them. There is no whisper in the evidence of Dr. Deshpande that students complained to him in person. Prof. Padole is also examined during the course of enquiry. He does not name petitioner. His evidence shows that Prof. Chatterjee informed him about the complaints from students against the professor. Prof. Chatterjee, too does not name the petitioner. Thus the evidence of these three faculty members is in conflict with the evidence of Malay Biswas. It is apparent from the cross examination of Malay Biswas that he did not attend mock seminar for preparing

them for the next seminar. Prof. Dixit, Prof. Thombre and Dr. Deshpande had to assess the final seminar. There is unequivocal admission in the cross examination of Malay Biswas that his performance in the final seminar was extremely poor. Thereafter, he was called by Prof. Dixit and Prof. Dixit told him to improve his performance. All these facts brought in the cross examination of Malay Biswas would indicate the strong motive for Malay Biswas to implicate the petitioner with ulterior motive to change the project guide anyhow.

14. Having considered that evidence of Malay is not reliable and since Institute chose not to examine the other two complainants Rajesh Rentapalli and Saurav Kumar, learned Enquiry Officer came to the conclusion that it was impossible to hold petitioner guilty of misconduct alleged and held charges as not proved. Date 13th June, 2016

15. Needless to state that when the Inquiry Officer (IO) exonerates the charged officer/employee (CO) of all charges, normally such officer is not guilty. The disciplinary authority (DA) therefore exonerates him & drops the charges. However, if the findings of IO are not acceptable to it either in part or fully, in that event it gets right to disagree with such of the findings which it finds unsustainable. It has to follow the procedure prescribed in service rules. The DA after getting the inquiry report, has to evaluate it & if it accepts the report as it is, the officer can not be punished. But when it finds that some findings of the IO are bad, it has to record its tentative reasons for its disagreement & then serve a notice upon the CO calling upon him to explain as to why the findings in report in his favour should not be accordingly modified or reversed. In present matter s the IO has totally exonerated the CO, it was not necessary for the DA to first have explanation of CO before proceeding to evaluate the report. But in a hypothetical case, if the report finds CO guilty of few charges & not guilty of the remaining, the DA will have to follow the procedure stipulated by the Hon. Apex Court in case of *Union of India v. Mohd. Ramzan Khan* (1991) 1 SCC 588 & *ECIL v. B. Karunakar* (1993) 4 SCC 727. But in this case that contingency did not arise as the CO was acquitted of all the misconducts by the IO.

16. But then the opportunity to be extended or its nature does not change & the DA can not arrive at a final verdict on fact of guilt or otherwise without first extending to the CO an opportunity to urge why & how a particular finding in his favour should not be varied. The Rule 15 (4) of CCA & CCS Rules employs the word "tentative reasons" with some purpose. The DA can not conclude the findings on fact without extending such an opportunity to the CO or behind his back. If it does so, the principles of natural justice expounded in cases of *Mohd. Ramzan Khan* & *B. Karunakar* (supra) stand violated. It is therefore apparent that the prima facie view of DA is expressed in these tentative reasons for its inability to agree with the findings of the IO. These tentative reasons emanate from the report of the IO or the material which has been proved on record of departmental inquiry. If the tentative reasons do not spring from the inquiry records, the so called reasons do not constitute legally sustainable grounds for

issuing a show cause notice to the CO. If the show cause notice issued by the DA is found vitiated on any ground, then also the finding of IO can not be discarded. If the explanation furnished by the CO is found satisfactory, the tentative reasons of the DA become unsustainable & the report of IO exonerating the CO must be given effect to. Hence, in cases where the IO exonerates the CO fully, the employer or the DA have to establish availability of legally sustainable material to form a tentative reasons to disagree with the conclusions of IO & adherence to the principles of natural justice thereafter. It is these tentative reasons which thereafter govern the further course of action & fate of disciplinary proceedings.

17. In the instant case report of enquiry was submitted to disciplinary authority, it was placed before the Board on 6.7.2005 and the Board of Governors disagreed with the findings recorded by learned enquiry officer. On 20.7.2005, show cause notice was issued to the petitioner. In this show cause notice reasons for disagreeing with the findings of learned enquiry officer, were summarized, thus :

"(a) No cognizance has been taken by the Enquiry Officer of the written complaints Exh.C3 and C4 in the entire report and instead motives have been imputed to the complaint of Shri Biswas without any evidence/documents on record to warrant this conclusion.

(b) The conclusion of the Enquiry Officer that Shri Malay Biswas was vindictive is not acceptable since it is based merely on your statement and is not substantiated by any evidence.

(c) The Enquiry Officer has totally ignored the testimony of Dr. N.V. Deshpande and the minutes of Grievance Committee (Exh.C6).

(d) The Enquiry Officer has stressed more on the purported lack of "finality to the order of punishment based on the previous incident" instead of considering in totality the evidence presented by the Institute on the present charges.

(e) It is clear that the learned Enquiry Officer has been selective in his choice of evidence to discuss in the report and has not taken proper cognizance of the documents placed on record."

18. Regarding reasons (a), (b), (c), and (e), we have discussed supra that complaints C3 and C4 were of no use to the institute in absence of evidence of Shri Rajesh Rentapalli and Shri Saurav Kumar. Both the complainants were kept away from the witness box and so complaints C3 and C4 remained unproved.

19. In this connection, learned counsel Shri Anand Parchure for the respondent submits that complaints C3 and C4 have been proved by Dr. N.V. Deshpande and learned enquiry officer ought not to have ignored the same. We are aware that the strict rules of evidence are not applicable to the departmental proceedings. At the same time, it cannot be overlooked that contents of a document are required to be proved by the author of document as he is the best witness to prove the contents. Dr. N.V. Deshpande simply refers that complaints C3 and C4

were submitted by Shri Rajesh Rentapalli and Shri Saurav Kumar. He does not speak of contents therein. In this background, learned enquiry officer rightly kept complaints C3 and C4 out of consideration. We, therefore, find reasons (a) and (c), in show cause notice, unsustainable and unacceptable being contrary to the spirit of law.

20. In respect to reason (b), we have elaborately considered the evidence of Shri Malay Biswas and admissions elicited in his cross examination clearly indicating a strong motive to implicate the petitioner. We do not find any perversity, illegality or incorrectness in the reasons recoded by learned enquiry officer. We also do not find any substance in the submission of learned counsel for the respondent that reliance should have been placed on the evidence of Dr. N.V. Deshpande and complaints C3 and C4 ought to have been considered by learned enquiry officer.

21. So far as reason (d) is concerned, in our opinion, previous record would have been relevant to the extent of imposing punishment, in case the delinquent is held guilty and the charges levelled against him are proved. The last reason i.e. (e), is general in nature and vague. In this situation none of the reasons stated to disagree with the findings of learned Enquiry Officer would sustain.

22. In this connection learned counsel Shri D.V. Chauhan for the petitioner submits that it is a case of no evidence and placed reliance on the decision of this Court in Vasant Narayan Damle v. the Honourable Chief Justice, High Court of Judicature at Mumbai and others (2002 SCC Bom. 1394). This was a case of total absence of any legal evidence and so relying upon the decision of the Honourable Supreme Court in High Court of Judicature at Bombay v. Shashikant S. Patil, it was held that interference by the writ bench was warranted. In the present case also there was no legal evidence against the petitioner to prove the charges and so learned enquiry officer came to the conclusion and rightly so that the charges levelled against the petitioner were not proved.

23. We have carefully considered the reasons summarised by the disciplinary authority in show cause notice for disagreeing with the findings recorded by learned enquiry officer. On going through the record and material, placed during the course of enquiry, we find that the submissions urged on behalf of respondent and reasons (a) to (e) in show cause notice need to be rejected.

24. It was then contended by learned counsel for petitioner that disciplinary authority, which had disagreed with the findings recorded by learned enquiry officer and had held that the charges levelled against the petitioner were proved, had acted in violation of the principles of natural justice as an opportunity of hearing, at the stage when the disciplinary authority developed inclination that the findings recorded by learned enquiry officer were not acceptable and were liable to be reversed, was denied to him. Learned Counsel submitted that the findings recorded by learned enquiry officer, which were based essentially on an appreciation of evidence recorded by him were considered by the disciplinary authority in the absence of petitioner without any notice to him and the

disciplinary authority on an appraisal of evidence, came to the conclusion that the charges levelled against the petitioner were established. The disciplinary authority having taken a decision proceeded thereafter to issue a notice to the petitioner to show cause why major penalty of removal from service, which shall not be a disqualification for future employment, be imposed upon him. Petitioner submits that the disciplinary authority had already made up its mind and it was only in respect of the proposed punishment that a notice was issued to the petitioner. Petitioner submitted that an adequate opportunity of hearing, which should have been afforded to him before taking decision on reappraisal of evidence that he was guilty of charges levelled against him, was required to be given to him and since the same was denied, there was violation of the principles of natural justice. In support thereof, learned counsel placed reliance on the decision of the Honourable Apex Court in *Yoginath D. Bagde v. State of Maharashtra and another*, (1999) 7 SCC 739). In paragraph 23, the Honourable Supreme Court observed, thus:

"It was contended by learned counsel for the appellant that the Disciplinary Committee, which had disagreed with the findings recorded by the enquiry officer and had held that the charges against the appellant were proved, had acted in violation of the "principles of natural justice" inasmuch it did not give an opportunity of hearing at the stage when it developed the inclination that the findings recorded by the enquiry officer were not acceptable and were liable to be reversed. It was further contended that the findings of the enquiry officer, which were based essentially on an appreciation of the evidence recorded by him were considered by the Disciplinary Committee in the absence of the appellant without any notice to him and the disciplinary authority on a reappraisal of the evidence came to the conclusion that the charges against the appellant were established. The Disciplinary committee thus having taken a decision, proceeded thereafter to issue a notice to the appellant to show cause why he should not be dismissed from service and a recommendation to that effect be not made to the Governor. It was also contended that the Disciplinary committee had already made up its mind and it was only in respect of the proposed punishment that a notice was issued to the appellant. Consequently, the appellant, it is contended, was denied an adequate opportunity of hearing which should have been afforded to him before taking a decision that he was guilty of the charges levelled against him."

25. The facts before the Honourable Supreme Court in *Yoginath Bagde's* case (*supra*) were almost identical. The only difference was that a judicial officer therein was governed by the Maharashtra Civil Services (Disciplinary and Appeal) Rules and in the present case, petitioner is governed by the CCS and (CCA), Rules which are in *pari materia* with the Maharashtra Civil Services Rules.

26. In present matter, the DA a governing body consisting of several persons & as stated above they, have issued a notice to the CO on quantum of punishment while exercising their right to differ with the findings of IO. The opportunity to

show cause is no doubt, given to the CO, but then as the same is in backdrop of the punishment already decided to be imposed on him. The DA ought to have first given him an opportunity to justify the findings of the IO or to rebut its reasons for differing with the findings of IO. Thereafter only it could have recorded finally its finding on acceptance or rejection of the said report of IO. First it ought to have rejected such explanation of CO & thereafter only it could have deliberated on the proposed punishment. Having decided the quantum of punishment before hand, there was no point in calling the explanation of CO on its reasons for not agreeing with the findings of IO. The DA has nowhere used the words "tentative" or "prima facie" to demonstrate that its deliberation were not final. The procedure followed here is faulty & vitiates the punishment order.

27. Scope of scrutiny by us in this writ petition is restricted to the tentative reasons or reasons of the disagreement. There is no question of DA pointing out new reasons or additional material to assail the report of IO. The respondents or DA in this case has not taken any such stance. Thus if the reasons dug out by the DA are bad, the writ petition has to be allowed. There is no question of DA being extended second chance to consider the report of IO to find out whether it can give certain other or better reasons to justify its disagreement. Rightly, the respondent employer has not sought any leave from this Court to enable the DA to again evaluate the Inquiry report.

28. It is settled proposition that when the disciplinary inquiry is held vitiated, the employer is to be given an opportunity to proceed further with it after curing the lacuna i.e from the stage of defect. We, here, find that there is no point in remanding the matter back to the DA. We have found the reasons of DA to disagree with the report of IO itself bad & unsustainable. We have also held that the report of IO is without any error. Moreover, the Petitioner CO has already superannuated long back. Such an opportunity would have been warranted if the reasons gathered by the DA for its disagreement with the IO were legally viable. In present facts, the writ petition deserves to be disposed of finally by this Court.

29. Petitioner has claimed back wages on reinstatement. No submissions on back wages were made by parties in the course of arguments. In view of this, so far as back wages are concerned, we find that grant of 50% back wages to the petitioner would meet the ends of justice.

30. In the above premise we allow the writ petition and set aside impugned communication-cum-order dated 30.8.2005 passed by the Board. The petitioner shall be deemed to have been reinstated in service, till his superannuation with all consequential benefits including 50% back wages which shall be paid to him, within a period of four months. There shall be no order as to costs.