
(2011) 03 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2381 of 2008

H.P. Kindo

APPELLANT

Vs

State of Chhattisgarh and another

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 227

Citation : (2011) 2 CG.L.R.W. 490

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sujoy Paul, Mr. T.K. Khadka and Mr. Ghanshyam Patel, for the Appellant; N.N. Roy, Panel Lawyer on behalf of Shri Kishore Bhaduri, A.A.G. for the State/respondents, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated 20-12-2006 (Annexure P/2) passed by the Under Secretary to the State of Chhattisgarh, General Administrative Department, by which one annual increment of the petitioner has been stopped with cumulative effect. The petitioner also challenges the order dated 30-10-2007 (Annexure P/1) whereunder the appeal preferred by the petitioner against the order dated 20-12-2006 (Annexure P/2) has been rejected. The facts, in brief, as stated in the petition, for proper disposal of the case, are that initially the petitioner was appointed as Deputy Collector in the year 1992. On creation of the new State on 1-11-2000, the services of the petitioner was allocated to the State of Chhattisgarh. At that time, the petitioner was posted as Additional Collector, Bilaspur. According to the petitioner, on 10-12-2003, the selection committee held a meeting to consider selection of State Civil Services Officers for their induction in the IAS cadre for the year 2002 and 2003. Accordingly, name of the petitioner was recommended and his name found place at serial No. 3. Thereafter, by notification dated 16-1-2004, the Union of India

appointed the petitioner as a member of Indian Administrative Service along with other persons. In the said select list, it was mentioned that the select list was provisional subject to grant of integrity certificate by the State Government. Other officers joined the cadre post; however, the petitioner could not join the said post on the ground of non-availability of integrity certificate,

2. The petitioner submitted an application u/s 227 of the Code of Criminal Procedure, 1973 before the Court below, which was rejected by the Special Judge, Durg. There against, the petitioner preferred a petition before this Court being M. Cr. C. No. 1052 of 2004 (H.P. Kindo v. State of Chhattisgarh and others). This Court by order dated 25-6-2005 disposed of the said petition and quashed the charge sheet in its entirety against the petitioner.

3. According to the petitioner, the petitioner was posted as Chief Executive Officer of the Special Area Development Authority, Bhilai (for short "the SADA") between 30-7-1994 and 14-8-1997. On 28-2-2004, a notice was issued to the petitioner with regard to some land dispute at the SADA, Bhilai. The petitioner submitted his preliminary objection to the show cause notice stating that the petitioner has no connection with the said FIR. However, the State Government issued charge sheet against the petitioner by leveling two charges.

4. The petitioner submitted all the documents before the respondent authorities, however, in spite of the said facts the respondent authorities are not issuing the integrity certificate. On the other hand, the respondent authorities initiated departmental enquiry proceedings against the petitioner knowing the fact that the allotment order issued by the Revenue officer of the SADA did not bear signature of the petitioner.

5. Being aggrieved by the aforesaid action of the respondent authorities, the petitioner approached the Central Administrative Tribunal, Jabalpur Bench Jabalpur by filing an original application being O.A. No. 1066 of 2005 (H.P. Kindo v. Union of India and others). The said application was disposed of by order dated 30-10-2006 with certain observations. There against, the petitioner preferred a writ petition before this Court being W.P. No. 1002 of 2007 (H.P. Kindo v. Union of India and others). The said writ petition was disposed of as withdrawn by order dated 10-4-2007 (Annexure P/3) reserving liberty to the petitioner to seek redressal of all his grievances before the first appellate authority.

6. According to the petitioner, during this period the petitioner was posted as Additional Collector, Rajnandgaon and then Raipur and finally at Bilaspur. The petitioner also received higher pay scale vide order dated 4-5-2002 (Annexure P/4). From all these facts, it appears that the benefits have been granted to the petitioner looking to his meritorious performance of service and on consideration of the fact that the service career of the petitioner is unblemished. The case of the petitioner was also considered for promotion to IAS and notification was issued on 16-1-2004 (Annexure P/5). Thus, the statement of allegation leveled

against the petitioner clearly indicates that there was no misconduct whatsoever committed by the petitioner.

7. The disciplinary authority had no jurisdiction to initiate enquiry against the petitioner on certain allegation of misconduct based on assumption regarding illegality of certain allotment. The petitioner submitted detailed reply to the charge sheet on 17-2-2005 (Annexure P/6) by denying the charges leveled against him. The respondent authorities without considering the reply submitted by the petitioner, initiated enquiry. The enquiry was conducted in complete violation of the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules, 1966"). The enquiry officer allowed examination of a witness, who was not listed witness. The documents, which were not listed documents, were allowed to be brought on record. Even the documents enlisted were also not supplied to the petitioner. After conclusion of enquiry, the disciplinary authority passed the order dated 20-12-2006 (Annexure P/2) by withholding one annual increment of the petitioner with cumulative effect. Against the said order, the petitioner preferred an appeal before the Governor, State of Chhattisgarh, which was dismissed by order dated 30-10-2007 (Annexure P/1) by maintaining the order dated 20-12-2006 (Annexure P/2). The impugned orders are illegal, arbitrary and violation of natural justice. Thus, this petition.

8. During the course of hearing, Shri Sujoy Paul, learned counsel appearing with Shri T.K. Khadka & Shri Ghanshyam Patel, learned counsel appearing for the petitioner, would submit that the finding recorded by the enquiry officer in respect of charge No. 1 is perverse, as the charge indicates that the same was for the purpose of change of land user i.e. from residential use to commercial use and allotment of the same thereafter to some persons. The finding recorded was not in respect of change of land user and allotment by the petitioner, but in respect of the fact that the petitioner was aware of illegal proceedings, and he failed to inform the concerned officers in respect of the legal position. In respect of charge No. 2, no finding has been recorded. Thus, the finding being perverse, on the basis of which punishment has been imposed, deserves to be quashed and the petition may be allowed.

9. On the other hand, Shri Roy, learned Panel Lawyer appearing on behalf of Shri Kishore Bhaduri, Additional Advocate General for the State, did not make any oral submission, nor did he file written submission, despite, on request, time granted by the Court. In the return, the respondents have taken a stand that the petitioner working as Chief Executive Officer, SADA, Bhilai had wrongly allotted the plot Nos. 13, 14, 15, 16, 17 & 18 to Birju son of Samaru, Shri Lalji son of Shri Birijlal, Shri Sanjay son of Shri Salikram, Shri Vinod Kumar Agrawal son of Ramdhani, Smt. Rajni Patel wife of Shri C.L. Patel & Smt. Shishu Patel wife of Shri H.M. Patel. Out of 6 plots, 4 plots were mutated in the name of Keshav Chowkshey son of Ram Prasad Chowksey. The petitioner has accordingly acted in contravention with the provisions of Sections 64 & 69 of the Chhattisgarh Nagar

Tatha Gram Nivesh Adhiniyam, 1973 (for short "the Adhiniyam, 1973").

10. The respondents further submitted that the conversion of the user of the land was done at behest of the petitioner. The charges against the petitioner were framed for dereliction in duty and also for violation of mandate of Section 23 of the Adhiniyam, 1973. Since, the charges involved moral turpitude and raised serious doubt about the integrity of the petitioner, a detailed enquiry was held and the punishment of imposition of stoppage of one annual increment with cumulative effect was passed on the basis of finding recorded by the enquiry officer. The allegation of mala fide is strongly denied, as no punitive action has been taken against the petitioner. The petitioner being the Chief Executive Officer, SADA Bhilai, ought to have referred the matter to the State Government prior to allotment of the above-stated land. Thus, the petitioner is not entitled to any relief and the petition may be dismissed.

11. The charges leveled against the petitioner read as under:

12. On perusal of the pleadings and the documents appended thereto, it is found in the list of documents annexed to the charge sheet were six allotments letters dated 5-11-1996 issued in favour of Birju son of Samaru, Shri Lalji son of Shri Birijlal, Shri Sanjay son of Shri Salikram, Shri Vinod Kumar Agrawal son of Ramdhani, Smt. Rajni Patel wife of Shri C.L. Patel & Smt. Shishu Patel wife of Shri H.M. Patel. In the list of witnesses, only one witness was shown i.e. Deputy Director, Town Planning & Development, Durg, who was proposed to be examined.

13. In the enquiry report, the enquiry officer has examined Shri B.K. Sinha, Chief Conservator of Forest, Raipur, who was Director and Special Secretary, Urban Administration, Bhopal, during the period from 2001 to 2005. It appears that he has also enquired the alleged irregularities in allotment of plots No. 13 to 18 and submitted an enquiry report. Other witness was Shri Rajeev Kumar Pandey, who was posted as Assistant Director, Nagar Tatha Gram Nivesh, Durg, between the period from July, 1990 to July, 1994. On behalf of the petitioner Shri S.K. Banchhor, Revenue Inspector and Shri Sunil Nimade were examined.

14. On further scrutiny, contention of the learned counsel appearing for the petitioner that he had no opportunity to examine the deposition of un-listed witnesses," get support, as it is nowhere stated in the enquiry report that a copy of the enquiry report submitted by Shri B.K. Sinha and further statements of the prosecution witnesses were supplied to the petitioner, to respond to the same.

15. The finding of the enquiry report is mainly on the basis of the report submitted by Shri B.K. Sinha. Thus, allegation of the petitioner that a document, which was not listed in the list of documents i.e. enquiry report and other documents are brought on record, stands established. The enquiry report of Shri B.K. Sinha was taken into consideration without affording an opportunity of hearing to the petitioner and the entire finding was recorded on the basis of the same. Thus, the enquiry proceeding was perverse and the enquiry report,

thereon, was a case of no evidence.

16. Secondly, as aforestated the charge No. 1 clearly stated that the petitioner while posted as Chief Executive Officer, SADA, Bhilai, Dug, converted the land user of the plot Nos. 13 to 18 and allotted the same for commercial use. The enquiry officer categorically held that the change of land user of 6 plots in question was not done during the period of the petitioner, however, when the allotment of the said plots was done by the Chairman, the petitioner failed to point out the illegalities, as the files have been processed through him. Thus, he was equally responsible for allotment done by the Chairman. The said finding in Hindi reads as under:

It was further recorded as under:

17. Further contention of the petitioner that the action taken by the petitioner was in accordance with law is not necessary to be examined at this stage, as the enquiry is held perverse in the preceding para. The enquiry report was a case of no evidence, thus it is not necessary to examine the veracity of the finding.

18. The Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, observed as under:

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron Works v. Bhagubhai Balubhai Patel. In Rajinder Kumar Kindra v. Delhi Admn. it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

19. In respect of the enquiry of charges, the Supreme Court in A. Sudhakar Vs. Post Master General, Hyderabad and Another, , observed as under:

25. In terms of Article 311 (2) of the Constitution, the procedural requirements which were required to be followed were as under:

(i) opportunity to the officer concerned to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;

(ii) he must be given a reasonable opportunity to cross-examine the witnesses

produced against him and examine himself or other witnesses on his behalf; and

(iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

20. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, , wherein the finding was recorded not in respect of the charge framed, but on other point, the Supreme Court observed as under:

20. The enquiry officer proceeded as if in the departmental proceedings the appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries was correct. According to him, apart from erection of 300 lb iron wire in Section Geedam-Bijapur, 150 lb was erected in the entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5-11-1969 and continued up to March 1970. One Shri K.C. Sariya who was the successor of the appellant stated about the maintenance of the muster rolls and ACE-8 Register. According to him, stores pertaining to estimate were accounted for and ACE-8 sheets attached to estimate file. He further stated that ACE-8 sheets were in the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.

23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

25....Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

21. The ratio laid down in *M.V. Bijlani (supra)* was referred in *Union of India (UOI) and Others Vs. Naman Singh Sekhawat*, , *Union of India (UOI) and Others Vs. Prakash Kumar Tandon*, and *Roop Singh Negi Vs. Punjab National Bank* and

Others, with approval.

22. For the reasons mentioned hereinabove and the principles of law laid down as aforesaid to the facts of the present case where the finding was not in consonance with the charge sheet, further finding was recorded on the basis of a document not supplied to the petitioner and on the basis of deposition of two unlisted witnesses for which it appears no reasonable opportunity was afforded to the petitioner to cross-examine them, the enquiry report is vitiated and quashed.

23. Consequently, the punishment order dated 20-12-2006 (Annexure-P/2) passed by the disciplinary authority and thereafter the order dated 30-10-2007 (Annexure-P/1) passed by the appellate authority in appeal are vitiated. Accordingly, both the impugned orders are quashed.

24. Resultantly, the writ petition is allowed with consequential benefits. There shall be no order as to costs.