

(2010) 11 AHC CK 0310

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34712 of 2006

Inder Jeet Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0310

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri K.S. Chauhan, learned Counsel for the Petitioner, Sri Triloki Singh, holding brief of Sri Ajay Bhanot, for the Respondents and perused the record.

2. The orders impugned in this writ petition are dated 14.9.2005 and dated 28.12.2005. The first order has been passed by the Respondent No. 3 dismissing the Petitioner from service and the later one is the appellate order rejecting his appeal passed by Respondent No. 2. The allegations levelled against the Petitioner are that while posted as Constable at the historical monument Taz Mahal, Agra, he threatened two Bangladeshi visitors despite of having purchased the tickets of Rs. 20/- and demanded a bribe of Rs. 500/- and on their showing inability to pay so much amount, ultimately realised Rs. 50/-. This complaint was made by those foreign visitors to control room whereat In-charge, Himanshu Pandey was present and he called the Petitioner who was identified by two complainants that he has obtained a bribe of Rs. 50/- under threat.

3. It is contended that the complainants were not examined by the authorities concerned and secondly that there are some contradictions in the statement of PW-1 and PW-2.

4. Having gone through the record, I find that the authorities concerned sent notices to the complainants also by registered post at their residential addresses

of New Delhi and Bangladesh but the said registered letters were returned with endorsement "addressee did not appear". Since other witnesses were available to prove the guilt of the Petitioner, the authorities concerned proceeded to record the statements of other witnesses and having assessed the said evidences, the enquiry officer submitted his report finding the Petitioner guilty and the same has been concurred by the disciplinary authority pursuant whereunto the impugned orders have been passed.

5. Submission of the learned Counsel for the Petitioner is that the complainants at the time of identification and verification before Respondent No. 3, did not say anything in words but only moved head. However, he could not dispute that the identification and verification of the complainants was actually made before Himanshu Pandey, and that being so, he was also identified by other witnesses. I find no reason to interfere with the finding of facts since in a matter of disciplinary proceeding, this Court do not sit as an appellate authority. Believing or not the evidence is within the exclusive domain of the disciplinary authority and unless the same can be shown to be perverse, no interference is called for. The circumstances in which this Court may interfere exercising the power of judicial review with the disciplinary proceedings has been considered by a Division Bench of this Court in Special Appeal No. 1299 of 2005 (Subedar Pathak v. General Manager and Ors.) decided on 7.11.2005 wherein it has been held as under:

In the matter of departmental proceedings judicial review is permissible to consider whether there is any error in the decision making process or not resulting in denial of adequate opportunity of defence. Further, if there is any violation of substantive provision of law, in such case also the proceedings may be vitiated. The Court will not reappraise the evidence and sit in appeal over orders passed by the departmental authorities. In the case of State Bank of Patiala and others Vs. S.K. Sharma, the Hon'ble Apex Court after considering catena of cases on the issue summarized the principles, which may vitiate the departmental proceeding. Relevant portion of the aforesaid judgment is quoted below:

(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 provisions has normally to be complied with was explained hereinabove 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) herein below 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 violation of a procedural provision, which is not 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 said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or the Tribunal should make appropriate directions (including 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 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 of 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 principles of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding 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 of 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.

6. None of the above factors I find exist in the present case warranting any interference in the matter. The guilt of the Petitioner concerning his behaviour with foreign visitors coming to historical monuments not only a serious misconduct, but it also gives a bad impression of the nation also and, therefore, it has to be dealt with seriously. Therefore, the Petitioner does not deserve any sympathy. I find no error on the face of record warranting interference.

7. The writ petition lacks merit. Dismissed.