
(2018) 07 MP CK 0045
In the Madhya Pradesh High Court
Case No : Writ Petition No. 965 Of 2006

Jawaharlal Soni

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 05-07-2018

Acts Referred:

Constitution of India, 1950 — Article 32, 226

Citation : (2018) 07 MP CK 0045

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : A K Sethi, Rishabh Sethi, Vivek Patwa

Judgement

The petitioner before this Court has filed this present writ petition being aggrieved by the punishment order dated 18/1/2005 by which a punishment of compulsory retirement has been inflicted upon him as well as the order rejecting his appeal dated 13/1/2006.

Facts of the case reveal that the at the relevant point of time the petitioner was working on the post of Town Inspector and a complaint was lodged by

one Manohar Bohra against the present petitioner. A preliminary enquiry took place on 10/2/2004 and the report was submitted to Superintendent of

Police, Ujjain. Thereafter based upon the fact finding enquiry a charge sheet was issued on 31/8/2004 levelling two charges against the petitioner. The

petitioner denied the charges levelled against him and enquiry officer was appointed. Enquiry officer has held the charges proved and thereafter

disciplinary authority has passed the impugned order inflicting punishment of compulsory retirement on 18/1/2005.

Learned counsel for the petitioner has straightway referred to the charge sheet and following two charges were levelled against the petitioner :

(a) That on 16/12/2003 the petitioner has seized Kerosene from two persons and thereafter without taking any legal action against them, they were

released, which according to respondent No.3 amounts to gross negligence on the part of the petitioner and shows the suspicious conduct.

(b) The petitioner being the responsible officer as T.I. has not taken any legal action against the criminals and thus have acted against the conduct rules.

He has thereafter referred to the statement of witnesses and his contention is that it is a case of no evidence and the petitioner has been made

scapegoat in the matter. Learned counsel for the petitioner has further submitted before this Court that the incident is dated 16/12/2003 and on

16/12/2003 the petitioner was required to give evidence before the Court of 3rd Additional Sessions Judge, Ujjain in S.T.No. 291/2003. Learned senior

counsel for the petitioner has further stated that the petitioner left Police Station at 09:05 Hrs., and returned back to the Police Station after giving

statement before the Court on 23:15 Hrs., and the incident took place in the afternoon on 16/12/2003 and therefore as he was not present at the Police

Station he has been implicated falsely by the Department for the reasons best known to the respondents and the impugned order deserves to be

quashed.

Learned counsel for the respondent â?" State has argued before this Court that some of the witnesses ie., PW-3, PW-4 and PW-5 have stated about

the involvement of the present petitioner and there is no procedural irregularity committed by the enquiry officer and therefore, in absence of any

procedural irregularity the scope of interference by this Court is quite limited. He has stated that the petitioner was awarded opportunity of hearing

and the charges have been proved in the matter, hence, punishment has rightly been awarded to the petitioner and the question of interference by this

Court does not arise.

Heard learned counsel for the parties at length and perused the record.Â Â

Undisputedly, facts of the case reveal that the petitioner was working as Town Inspector and the documents established that there is an entry in the

rojnamcha on 16/12/2003 which reflects that the petitioner left the Police Station at 09:05 hrs., and came back to the Police Station at 23:15 hours. The

incident took place at about 3:00 pm and at the relevant point of time the

petitioner was certainly not at all present in the police station. There was no charge against the petitioner that he has committed any interpolation in the rojnamcha or the certificate issued by the learned Sessions Judge has been fabricated / manipulated or it is a forged certificate. Undisputedly, the petitioner was very much present on 16/12/2003 before the learned Sessions Judge and he was not in the Police Station as reflected from the rojnamcha entries.

It is true that in case of Departmental Enquiry, appreciation of evidence should not be done by this Court. However, when it is a case of no evidence or the findings arrived at by the enquiry officer are perverse findings, this Court does have jurisdiction to go through the evidence also. The

prosecution witness Manohar has categorically stated that it was one Y.S. Sengar, A.S.I. of the Police who was the person who has apprehended the

people carrying the kerosene illegally. Similarly, PW2 has also stated that Y.S. Sengar was the person who has apprehended people carrying 250 litres

of kerosene and they have not at all stated that it was the petitioner who has apprehended the persons carrying kerosene illegally. Unfortunately, no

charge sheet has been issued to Y. S. Sengar who was Inspector of Police and merely because as the petitioner was Town Inspector posted at that

particular police station he has been made a scapegoat. Not only this, in case persons carrying kerosene illegally were apprehended by Y. S. Sengar,

he was the person and it was his duty to lodge First Information Report.

Resultantly, as the petitioner was not present at the spot he was in the court, it is a case of no evidence so far the petitioner is concerned.

The apex Court in the case of General Manager (P) Punjab & Sind Bank and others Vs. Daya Singh reported in (2010) 11 SCC 233 has dealt with

the scope of judicial review in a departmental enquiry. Paragraph 25 of the aforesaid judgment reads as under :

25. As held in T.N. C.S. Corporation Ltd. vs. K. Meerabai (2006) 2 SCC 255 the scope of judicial review for the High Court in departmental

disciplinary matter is limited. The observation of this Court in Bank of India vs. Degala Sriramulu (1999) 5 SCC 768 are quite instructive: ""Strict rules

of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer

must be established by such evidence acting upon which a reasonable person

acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel (AIR 1964 SC 364, (1964) 4 SCR 718). the Constitution Bench has held:

a. "The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

In the light of the aforesaid judgment and keeping in view the facts and circumstances of the case, this Court is of the considered opinion that the findings of fact arrived at by the enquiry officer are perverse findings and, therefore, deserves to be set aside.

The apex Court in the case of Kuldeep Singh Vs. Commissioner of Police and others reported in (1999) 2 SCC 10, has again dealt with the scope of judicial review in a departmental enquiry. Paragraph 6, 9 and 10 of the aforesaid judgment reads as under :

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in

its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.

In the light of the aforesaid, as already stated earlier, the findings arrived at against the petitioner are perverse findings, his misconduct has not been proved based upon the evidence on record, therefore, the report of the enquiry officer, the order passed by the disciplinary authority and the order passed by the appellate authority deserves to be quashed.

Resultantly, as the findings arrived at by the enquiry officer are perverse findings, this Court is of the considered opinion that the impugned order passed by the respondents dated 18/1/2005 inflicting punishment of compulsory retirement is hereby quashed. The order dated 13/1/2006 dismissing the appeal is also quashed. The petitioner was due for retirement on 30/06/2005 and the punishment was inflicted on 18/1/2005, this Court has quashed the order of punishment and therefore, the respondent shall treat the petitioner in service upto the age of superannuation ie., 30/6/2005 and the petitioner shall be entitled for all consequential benefits treating him in service upto 30/6/2005 excluding backwages. The respondents are directed to release terminal dues of the petitioner including pension, gratuity etc., positively within 3 months from the date of receipt of certified copy of this order.