
(1991) 09 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 673 of 1987 (R)

K.R.S. Naddar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Citation : (1991) 09 PAT CK 0003

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In This application, the Petitioner has prayed for issuance of a writ of certiorari for quashing of an order dated 29.4.1985 (3.5.1985) passed by Respondent No. 4 and as contained in Annexure-1 to the writ application, an order dated 17th October, 1985 passed by Respondent No. 3 and as contained in Annexure 3 to the writ application, as also the order dated 6th/9th of March, 1987 passed, by Respondent No. 2 and as contained in Annexure-7 to the writ application.

2. The fact of the matter lies in a very narrow compass.

3. The Petitioner admittedly at the relevant time was employed as a Naik of Central Industrial Security Force and was posted at Dahibari.

4. A disciplinary proceeding was initiated against him for enquiring into an allegation that while on duty on 25.9.84 at Dahibari Coal Dump Check Post Area No. XII, the Petitioner accepted an illegal gratification of Rs. 330/- other than legal remuneration from a D.O. holder namely Papoo in the presence of No. 7737129 constable Munshi Ram. The Articles of charge as against the Petitioner reads as follows:

He while on duty on 25.9.84 a Dahibari Coal Dump Check Post of Area No. XII accepted an illegal gratification of Rs. 330/- other than legal remuneration from a D.O. holder named Papoo in presence of No. 7737129 Constable Munshi Ram.

5. The case of the Petitioner appears to be that the aforementioned amount of

Rs. 330/- was given to one Satpal Kumar, Sub-Inspector as a loan by one Papoo @ Anil Kumar Khanna and he was merely asked by the said Papoo to hand over the said amount to Sri Satpal Kumar which he did. Before the Enquiry Officer, the Department examine various witnesses including one Sri B. Lal Durani, Assistant Commandant, S.I. Sukhbir Singh, S.I. Satpal Kumar and constable Munshi Ram as also the aforementioned Sri Anil Kumar Khanna @ Papoo.

6. The Enquiry Officer, upon analysis of the evidence, held:

No. 7112302 Naik K.R.S. Naddar is serving in CISF since 1971 for a long period of 14 years of service he should know from experience that the acceptance of money from civilian at check post is an act of gross in discipline.

As per the statement of Shri Anil Kumar Khanna @ Papoo that he knew K.R.S. Naddar since last 4/5 years he must have been handing over illegal gratification used quite some time.

If the intention of the delinquent was clear he should have not taken the all money from civilian at the Check post so he should have informed the matter to his senior officers which he failed to count thus it is seen that the delinquent has not taken any precautions or effective steps to intimate the competent authority for his acceptance of money from civilian check post.

7. Respondent No. 4 being the disciplinary authority by reason of the impugned order dated 29.4.1985/3.5.1985 as contained in Annexure-1 to the writ application, awarded the following punishment as against the Petitioner:

i. No. 7112302 Naik K.R.S. Naddar is awarded penalty of reduction of minimum pay scale of Rs. 225/- in the time scale of pay for a period of two years with effect from the date of issue of order. It is further directed that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay.

ii. The period of his suspension w.e.f. 23.10.1984 to 2.4.1985 is confirmed and he shall not get anything more than what he has already received as subsistence allowance.

8. The Petitioner preferred an appeal before the Respondent No. 3 as against the said order. Respondent No. 3 by reason of the impugned order dated 17th October, 1985, dismissed the said appeal holding:

(a) the plea that the Appellant was new to the area has been found to be false as the Appellant had been known to the D.O. holder who offers the bribe money for the last 4-5 years;

(b) Undoubtedly, in the instant case, he passed on the entire amount of illegal gratification to S.I. Satpal Kumar and did not appropriate the money himself. But it has also come on record that the personnel posted at the checkpoint of Dahibari Coal Dump used to get their weekly amount from the S.I. which also indicates

that the Appellant was acting as a link for collection of such illegal money.

(c) The plea of spotless past record does not minimise the gravity of offence proved to have been committed by the Appellant.

The appeal preferred by the Petitioner on those grounds was rejected.

9. The Petitioner, thereafter, filed a revision application on 21.12.1985, a copy whereof is contained in Annexure-4 to the writ application.

10. The Respondent No. 2, the revisional authority, upon receipt of the said revision application, issued a notice upon the Petitioner by his letter dated 26/29 September, 1986 (Annexure-5) to show cause as to why he shall not be dismissed from service stating:

I have examined the case records carefully and evidence on record. I find that the charge of accepting of illegal gratification from a D.O. holder namely Papoo has been proved and is too serious to be treated so lightly and deserves serious punishment commensurate with the gravity of the proven misconduct. Accepting of illegal gratification is a serious offence which cannot be leniently treated in a disciplined force like CISF.

In view of the above position and considering the gravity of the offence, the Petitioner deserves to be dismissed from service. Accordingly, by virtue of the powers vested in me under Rule 49 of CISF Rules 1969 as revisioning authority, I propose to enhance the punishment to that of dismissal from service. The Petitioner is given an opportunity to show cause as to why the punishment of dismissal from service should not be imposed. His reply, if any, in this regard should be submitted within 10 days from the receipt of this show cause notice. If no reply is received within the period stipulated above, it will be deemed that he has nothing to state and further orders will be passed accordingly.

11. On receipt of the said show cause notice, the Petitioner filed a detailed show cause taking various points therein including:

(a) that no witness of the prosecution stated that he took any illegal gratification from anyone;

(b) there is nothing on record to show that there was any linkage between him and S.I. Satpal Kumar;

(c) there was no allegation of taking illegal gratification in accepting the sum of Rs. 330/- at the request of someone to hand over to Sri Satpal Kumar because of his absence. Thus, the said amount was not received with any motive of reward.

(d) There is no evidence that the Petitioner was in a position to show any favour to Sri Papoo nor there was any evidence to indicate as to why money would have been given by him to CISF personnel.

No such allegation in the chargesheet was made that the Petitioner had been

known to the D.D. holder who offered the bribe money for the last 4-5 years.

(e) the observation of the appellate authority (Respondent No. 3) to the effect that the circumstantial evidence and oral as well as written evidence on record leave no doubt in the mind that the Petitioner and other CISF personnel posted at the Dahibari checkpost used to collect illegal gratification from D.O. holder to allow the trucks through the check post and the Petitioner is the link in the process were without any evidence whatsoever nor any such allegation had been made in the chargesheet or in the statement of allegations.

12. By reason of the impugned order, as contained in Annexure-7 to the writ application, Respondent No. 2, however, enhanced the punishment to that of dismissal from service with effect from the date of service of a copy of such order upon the Petitioner holding:

I have again looked into the matter very carefully, and find that the charge of accepting illegal gratification has been clearly brought home without any shadow of doubt. In reply to the show cause notice his contentions are devoid of merit. His contention at (i) is not correct as the grounds submitted by him in his revision petition were rightly considered while issuing him show cause notice for enhancement of penalty. His contention at (ii) is not relevant as under Rule 9 of CISF Rules 1969 revisioning authority is quite competent to enhance the penalty, if he considers so. His contention at (iii) and (iv) are also not correct as it is evident on record that he had accepted Rs. 330/- from Shri Papoo a D.O. holder at his place of duty which is forbidden. It is seen from prosecution exhibit No. 1 which inter alia indicates that when the Assistant Commandant took the statement of the Petitioner and asked him as to who he received the money from Papoo, the Petitioner unconditionally replied that he feels sorry for accepting money. As such the charge of accepting money by him from a civilian for his vested interest is clear proved. His contention at (v) is not accepted as the E.O. has rightly conclude the report on the basis that the Petitioner himself has admitted to this fact in cross examination. His contention at (vi) is also not acceptable as the DIG in his Appellant order has rightly observed that the person posted at the Check post at Dahibari Coal Dump used to get the weekly amount from the Post Commander which is evident from Ext. 2 the statement of Constable Munshi Ram recorded in the PE in which he has admitted that he used to get through Post Commander from Rs. 30/- to Rs. 50/- per week. There is no harm in observing the points which come in light during the enquiry in the appellate order though it is not form the part of the charge. His contention at (vii) is not relevant as it is upto the department to lodge a FIR against the person who has offered illegal gratification and this does not rest with the Petitioners His last contention is also devoid of merit as the past unblemished service record be no relevance with the present charge.

13. Mr. M.M. Banerjee learned Counsel appearing for the Petitioner raised the following three contentions in support of this application:

(a) As all the witnesses admitted the Sri Papoo handed over a sum of Rs. 330 to the Petitioner for giving the same to Sri Satpal Kumar and the Petitioner having handed over the amount to him, no case is taking of illegal gratification by the Petitioner has been made out.

(b) As the appellate authority and the revisional authority have taken into consideration various extraneous matter, the impugned orders are bad in law and the findings of the concerned Respondents are perverse.

(c) In view of the phraseology used in Rule 49 of the Central Industrial Security Force Rules, Respondent No. 2 could have issued a notice for enhancement of penalty suo motu only and not on the basis of the revision application filed on behalf of the Petitioner.

14. Sri Debi Prasad, learned Counsel appearing on behalf of the Respondents, on the other hand, submitted that from the evidences on record, it would appear that the charge as against the Petitioner have been proved and thus this Court should not exercise its jurisdiction under Articles 226 and 227 of the Constitution of India. Learned Counsel submitted that in this case, the following facts are proved:

(i) A.D.O. holder named Pappo handed over a sum of Rs. 330/- to the Petitioner;

(ii) The Petitioner was not supposed to accept any amount from any civilian while on duty;

(iii) Although the Petitioner has handed over the entire amount to Sri Satpal Kumar, a charge of acceptance of illegal gratification has been made out in view of the provisions contained in Section 161 of the Indian Penal Code which brings within its sweep taking of an amount for the benefit of Anr. also.

15. Learned Counsel further submitted that in a domestic enquiry, charges are not required to be proved like a criminal trial and, therefore, even if there is some evidence to prove the charges against the delinquent employee, it cannot be held that the impugned orders are perverse.

16. Learned Counsel has placed before the entire evidence on records as continued in pages 27 to 35 of the brief.

17. Learned Counsel next contended that revisional authority can enhance penalty suo motu as also on the basis of revision application filed by a delinquent employee himself.

18. In view of the rival contention of the parties the questions which fall for consideration are:

(A) Whether the impugned orders as contained in Annexures 1, 3 and 7 are sustainable in law;

(B) Whether the revisional authority could exercise a suo motu power in terms of Rule 49 of the Central Industrial Security Force Rules on the basis of the revision

petition filed by the Petitioner?

19. Re. Question No. A:

It appears from the evidence of Sri Anil Kumar Khanna @ Papoo that S.I. Satpal Kumar wanted some money from him as he had been going on leave, whereupon he stated that he would give to him whatever amount he could arrange. On 25.9.84, when he went to the checkpost to give the amount to Sri Satpal Kumar, he was not there. But he met with a havildar whom he knew for 4-5 years. He later identified him as N.K. Nadar. He handed over the amount to Sri Nadar and told him to give it to Sri Satpal Kumar. After about 15 days he met S.I. Satpal Kumar when Sri Satpal Kumar told him that he had received the amount.

20. It is, therefore, clear that there was no allegations whatsoever as against the Petitioner that the said amount of Rs. 330/- was handed over to the Petitioner by way of any illegal gratification or that he had any knowledge that the amount of Rs. 330/- was to be passed on to Sri Satpal Kumar by way of illegal gratification. In fact, it is evident from Sri Khanna's evidence that he even did not know the Petitioner by name.

21. It is also admitted case that SI Satpal Kumar had received the amount from the Petitioner.

22. From the evidence of Sri B.L. Durani, Assistant Commandant, it appears that he stated that he had received information that SI Satpal Kumar had collected Rs. 330/- from a D.O. holder. This witness stated that he asked Naik Naddar whether he had taken money from D.O. holder named Papoo. He (Naddar) told him that on 25.9.84 at about 16.00 hrs. a D.O. holder Papoo gave Rs. 330/- to N.K. Naddar in presence of Constable Munshi Ram with instruction to hand over the same amount to SI Satpal Kumar. N.K. Naddar further told that he had handed over the same amount to SI Satpal Kumar on the same day.

23. Similar is the evidence of all other witnesses. It is true that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot reappraise the evidence nor can it act as an appellate authority. This Court while exercising its writ jurisdiction is not concerned with the decision but concerned with the decision making process.

24. From the report of the Enquiry Officer, itself, it appears that the same is based on surmises and conjectures inasmuch as he opined that as the Petitioner had been in service for a long period of 14 years, he should know from experience that the acceptance of money from a civilian at a Checkpost is an act of gross indiscipline. No such charges were levelled as against the Petitioner. As Anil Kumar Khanna in his evidence stated that he knew the Petitioner since 4-5 years, the Enquiry Officer jumped to the conclusion that "he must have been handing over illegal gratification for quite some time".

Both the reasonings aforementioned are not only based on no evidence, but is wholly foreign to the charges levelled as against the Petitioner.

25. Mr. Debi Prasad despite my repeated queries failed to point out any rule that acceptance of money from any civilian at Checkpost constitutes an act of gross indiscipline.

Further the findings of the Enquiry Officer to the effect that as Shri Papoo knew the Petitioner for last 4-5 years, that he had been handing over illegal gratification for quite sometime, must be held to be perverse being based on no evidence. The said finding apparently are based on the surmises and conjectures, as he used the words "he must has been handing over illegal gratification".

26. The third reasoning of the Enquiry Officer to the effect "the Petitioner, if his intention was clear, could have informed the matter to his senior officer which he failed comply" is also wholly irrelevant and not (sic) mane for the purpose of holding the Petitioner guilty of the charges framed against him is much as firstly no charge as such had been framed as against him and further as no more has been pointed out that even in such a case it was the duty of the Petitioner to inform of senior officer.

27. The disciplinary authority, more agreed with the findings of the Enquiry Officer and has not independently analysed the evidences adduced in the enquiry proceeding by the Respondents. The Petitioner in the memorandum of appeal before the Appellant authority had, inter alia, contended that the was no material whatsoever on the record a the purpose of fastening any liability upon (sic) and awarding any punishment as against (sic) but despite the same, the order as contained in Annexure 3 to the writ application appeal to have been passed on the basis of various irrelevant considerations which may enumerated as follows:

(1) As indicated hereinbefore, there nothing to show that the D.O. holder had been offering any bribe money to the Petitioner for the last 4-5 years or that it had developed intimacy with the said D.O. holder. In fact, the evidence of the D.O. holder was that he even did not know the Petitioner by the name;

(2) There is absolutely no basis for the appellate authority to come to the conclusion that the personnel posted at the Checkpost of Dahibari Coal dump used to get their weekly amount from S.I. which indicates that the Appellant was acting as link for collection of such illegal money. The Petitioner was not charged in relation to such an accusation.

(3) The observations of the appellate authority to the effect that the belated recovery of the bribe money would not in any way affect the merit of the case, is also irrelevant.

28. The Respondent No. 2 in passing the impugned order dated 6th/9th March, 1987 as contained in Annexure-7 appears to have proceeded with a predetermined notion that the Petitioner is guilty of the charges levelled against him. In fact, the notice for enhancement of penalty which is contained in Annexure-5 to the writ application itself suggests at the Respondent No. 2 had

also made up his mind that the charge of acceptance of illegal gratification has been proved as against Petitioner and is too serious to be treated lightly.

29. The finding of the Respondent No. 2 has been reproduced in paragraph 12 hereinbefore. Respondent No. 2 has not at all considered the contentions raised on behalf of the Petitioner, some of which he himself numerated in paragraphs 2 to 4 of the imagined order.

30. The revisional authority has also compiled the same mistake as that of the Appellant authority stating that it is forbidden to receipt any money at the place of duty. His opinion that the charge of accepting money by the Petitioner from a civilian for the vested invest is clearly proved, is based on no evidence nor any material has been brought on records for the purpose. The said opinion is early based on surmises and conjectures.

The revisional authority merely accepted observation of the appellate authority in (sic)er respect observing "there is no harm in serving the points which came in light during the enquiry in the appellate order though it may not form the part of the charge".

31. It is well known that a disciplinary authority cannot rely upon any material brought on records which was not the subject matter of a charge. The Petitioner was not charged for committing a misconduct or that he used to get weekly amount from the post commandant nor, in fact, there is any evidence in this regard. In fact, it was the statement of one Munshi Ram which was against himself and not as against the Petitioner.

32. A disciplinary proceeding is quasi criminal in nature. The services of Government employee cannot be dismissed except on the basis of materials which must be brought on records in course of disciplinary proceedings. It is now well known that a suspicion however high may be, cannot take place of the proof. It is also well known that no person can be deprived of his livelihood on the basis of surmises and conjectures on the part of the disciplinary authorities.

33. From what has been found hereinbefore, it is manifest that the impugned orders as contained in Annexures 1, 2, and 7 have been passed upon taking into consideration irrelevant matters not germane for the purpose of holding the Petitioner guilty for the charges levelled as against him.

Evidently, Respondent Nos. 1 to 3 in passing the impugned orders did not pose unto themselves the right question in order to try to acquaint themselves with the relevant facts only which were necessary for the purpose of coming to a just decision.

34. It is also interesting to note that Respondent No. 2 in the impugned order has himself while summing up the contents of the revision of application noticed the following:

that SI Satpal Kumar who was also chargesheeted was given lesser punishment

of withholding of two increments only. This shows that the Petitioner had been victimised.

35. If this contention of the Petitioner was correct, the same also required to be taken into consideration at least for the purpose of quantum of punishment to be awarded as against the Petitioner.

36. From the enquiry report, however, it does not appear that Satpal Kumar was also proceeded against in the departmental proceedings along with the Petitioner. Satpal Kumar in the instant case was a witness. It is therefore, possible that Satpal Kumar must have been proceeded against subsequently, but Respondents have not placed before this Court any material to show as to on what charges the said Sri Satpal Kumar was proceeded against and the punishment awarded to him. In view of the fact that Satpal Kumar was not proceeded against along with the Petitioner, the question of the Petitioner's aiding or abetting in the taking of illegal gratification, as has been contended by Mr. Debi Prasad does not arise.

37. It is also not a case where the Petitioner was charged for acting in collusion with or as an agent of Satpal Kumar. Had such charges been levelled as against the Petitioner, it was obligatory on the part of the Respondents to proceed as against Sri Satpal Kumar and the Petitioner simultaneously.

38. From the perusal of the article of charge, it is evident that the Petitioner was charged for taking illegal gratification himself.

39. Taking thus all facts and circumstances into consideration, I am of the view that the Respondent No. 4, 3, and 2 in passing the impugned orders acted illegally and without jurisdiction insofar as it took into consideration wholly irrelevant materials not germane for the purpose of making an enquiry into the charges levelled as against the Petitioner and failed to take into consideration relevant materials and thus, committed an error apparent on the face of the record. The impugned orders are also perverse insofar as the same are based on no evidence as no reasonable man would come to a finding of guilt on the basis thereof.

40. It is further evident from the records of the case that Respondent No. 2 before imposing an enhanced penalty, excepting giving an opportunity to the Petitioner to file a representation, did not offer him any other reasonable opportunity. A Division Bench of this Court of which I was a party in *M.N. Mishra Vs. Union of India and Others*, upon construction of the provision of Section 9 of the Central Industrial Security Force Act and Rule 49 of the Central Industrial Security Force Rules held that the revisional authority must also give a reasonable opportunity of hearing before imposing the enhanced punishment.

41. In this case also, as noticed hereinbefore, Respondent No. 2 proceeded with the matter with preconceived notion and thus the Respondent No. 2 failed to consider the defence raised by the Petitioner and at the same time did not deal with at all the relevant facts. It had also not considered that the disciplinary

authority and the appellate authority had awarded the Petitioner minor punishment which could not have been interfered with lightly.

42. However, in this case, as it has been found as of fact that the orders issued by the disciplinary authority as also the appellate authority, cannot be sustained, all the impugned orders which are contained in Annexures 1, 3, and 7 must be quashed.

43. Re. Contention No. B:

Section 9 of the Central Industrial Security Force Act and Rule 49 of the Central Industrial Security Force Rules, 1969 reads as follows:

Appeal and revision.- (1) Any "Enrolled" member of the Force aggrieved by an order made u/s 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of Sub-section (3), the decision of the said authority thereon shall be final:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal the prescribed authority shall follow such procedure as may be prescribed.

(3) The Central Government may call for and examine the record of any proceeding u/s 8 or under Sub-section (2) of this Section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit:

Provided that no order imposing an enhanced penalty under Sub-section (2) of sub-Section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

49. Revision.-- (1) Any authority superior to the Authority making the order may, suo motu, if it considers necessary revise an order, original or appellate, passed by such lower authority which comes to his notice within a period of one year from the date of the order.

(2) The revising authority may remit, vary or enhance the punishment imposed, or may order a fresh inquiry or the taking of further evidence in the case as it may consider necessary.

(3) The provisions of Rule 47 relating to appeals shall apply so far as may be to such orders in revision.

44. In this case like M.L. Mishra's case (supra) the Petitioner has himself invoked the revisional jurisdiction of Respondent No. 2. In this case also no contention has been raised that the Central Government by reason of its rule-making authority has created a forum which was not contemplated u/s 9 of the Act and,

thus, it is not necessary to consider this aspect of the matter. Further a revisional jurisdiction can be exercised suo motu by the authority when he comes to know about the infirmity in an order passed by the inferior authorities. Such knowledge may be derived from an application filed before him by an interested party.

45. Further it is well known that if the exercise of the power can be traced on an existing power, even though that power was not purported to have been exercised, under certain circumstances, the exercise of the power can be upheld on the strength of an undisposed but undoubted power. Reference in this connection may be made to Smt. Pratibha Singh and Another Vs. State of Bihar and Others, .

46. This aspect of the matter has also been considered by the Supreme Court in D.N. Roy and S.K. Bannerjee and Others Vs. The State of Bihar and Others, .

But in that case it was held that when the revisional authority wants to exercise its suo motu power it should intimate facts as also the grounds on which it propose to exercise that power to the party who would be affected thereby and give him an opportunity to show cause as against the exercise of suo motu power as well as against the grounds on which he wanted to exercise such power.

47. In this case, this requirement of the law has substantially been complied with by Respondent No. 2. In his notice as contained in Annexure-5 to the writ application, the Petitioner had been given an opportunity to file a representation. The Petitioner, therefore, has not been prejudiced at all. However, it is desirable that the revisional authority in a case of this nature should also specifically state that it was acting in exercise of its suo motu power.

48. For the reasons aforementioned, this application is allowed. The impugned orders as contained in Annexures 1, 3 and 7 are quashed. Let a writ of certiorari be issued. There will however, be no order as to costs.