
(2013) 11 P&H CK 0244
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8691 of 2008

Kulwinder Singh Dhaliwal

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 1 SCT 646 : (2014) 2 SLJ 329

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Pavit Mattewal, A.A.G., Punjab for Respondent No. 1 and Mr. Pawan Kumar Mutneja, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order dated 05.02.2008 (Annexure P-1), whereby penalty of dismissal from service has been imposed upon the petitioner. The petitioner, born on 01.06.1967, joined as Civil Judge (Junior Division) on 14.02.1996. He was placed under suspension vide order dated 26.09.2003 in contemplation of disciplinary proceedings to be initiated against him. A charge-sheet dated 08.03.2004 (Annexure P-3) was served upon the petitioner under Rule 4 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short "the Rules"). The Article of Charges contained in the charge-sheet are as under:

1. That you, Shri Kulwinder Singh, Civil Judge (Junior Division), Rajpura (now under suspension), are an alcoholic and on the last day of August, 2003 at about 9.00 P.M. you in a drunken state, knocked at the door of Ms. Jatinder Walia, Civil Judge (Junior Division), Rajpura and kept on knocking at the door, when she did not open the same as she was alone in her house at that time.
2. That on 21.09.2003 at about 7.45 P.M., you Shri Kulwinder Singh, Civil Judge (Junior Division), Rajpura, visited Eagle Hotel, Rajpura, in a drunken condition, demanded liquor and chicken from the Manager of the hotel and after consuming

the same, you created a scene there and misbehaved at a public place in inebriated condition.

Your aforesaid acts, amount to misconduct on your part as per Rule 3(iii) of the Punjab Government Employees Conduct Rules, 1966, and, thus, you acted in a manner unbecoming of a Judicial Officer.

2. The petitioner filed reply. He denied the charges. However, a regular departmental enquiry was ordered to be conducted by the District & Sessions Judge (Vigilance), Haryana, as the reply was found to be unsatisfactory. The District & Sessions Judge (Vigilance), Haryana submitted enquiry report dated 26.07.2006. In such enquiry proceedings, the Enquiry Officer recorded the statements of Shri Jaswant Singh, Driver of the District & Sessions Judge, Patiala as PW-1; Constable Avtar Singh, Gunman of the District & Sessions Judge, Patiala as PW-2; Ms. Jatinder Walia as PW-3 and Shri Shiva Nand, Superintendent of Confidential Branch, Punjab & Haryana High Court as PW-4. On the other hand, the petitioner examined Shri Jasbir Singh, a transporter as RW-1; Shri Baljinder Singh, a draftsman as RW-2 and also appeared as his own witness as RW-3. After considering the oral and documentary evidence produced by the parties, the learned Enquiry Officer, in respect of first Article of Charge, recorded a finding that knocking the door twice or thrice at an early hours of the evening is not proved to be unbecoming of a Judicial Officer. He concluded as under:

21. The statement of Ms. Jatinder Walia, therefore, does not prove that the delinquent officer was in drunken state when he knocked at the door of her house at 9.00 p.m. on 31.08.2003. This article of charge, to the extent it is being decided here, is therefore, not established.

3. In respect of the second Article of Charge, the Enquiry Officer concluded as under:

36. Therefore, the department succeeds in proving the second article of charge to the effect that on 21.09.2003 at about 7.45 p.m., the delinquent officer reached Eagle Hotel in drunken condition and demanded liquor and chicken from the Manager, consumed the same there itself, created a scene in the hotel and outside it. His reaching the hotel at 7.45 p.m. in inebriated condition, and his consuming more liquor at the hotel would further point to the fact that he is an alcoholic. My conclusion in this regard is again supported by the confession made by the delinquent officer before Hon"ble Mr. Justice J.S. Khehar as appear from Ex. P4. Therefore, the part of the article one, of the charge, left to be answered later, also stands established.

4. In pursuance of such enquiry report, a show cause notice dated 27.02.2007 along with copy of the enquiry report was served upon the petitioner. The reply dated 19.03.2007 to the said show cause notice was considered by the Full Court. It was decided on 26.07.2009 to recommend the dismissal of the petitioner from service. As a consequence thereof, impugned order was passed

by the State Government on 05.02.2008.

5. Before this Court, the petitioner, who himself appeared to challenge the proceedings conducted against him, submitted that the Enquiry Officer has not followed the procedure prescribed under Rule 8 of the Rules.

6. The Department has not examined the Hon''ble Administrative Judge, who allegedly communicated alleged confession suffered by the petitioner, to the Hon''ble Chief Justice. Even the learned District & Sessions Judge, who was allegedly present at Eagle Hotel, Rajpura and witnessed the alleged misdemeanor by the petitioner, has not been examined. It is argued that there is delay in reporting the alleged incident by the learned District & Sessions Judge to the High Court. The petitioner was not subjected to medical test to find out whether he was under the influence of liquor. Since the best evidence has not been produced by the Department, therefore, the findings of guilt recorded by the Enquiry Officer have been wrongly made basis of an order of dismissal passed against the petitioner. It is also argued that the confession (Ex. P-4) is not correct record of the proceedings and that in fact the petitioner has not confessed that he was alcoholic and that he was not in a position to get out of this habit and he has taken treatment from various hospitals.

7. Having heard the petitioner as well as the counsel for the respondents, we do not find any merit in the present writ petition.

8. A perusal of the record shows that in the reply to the charge-sheet, the stand of the petitioner, inter-alia, is that he is living with his mother, aged about 70 years, wife and two children, aged about 2 years and 2 months, respectively, and there was no misdeed or misconduct on his part nor there was any occasion or reason for him to do so. He denied the incident as false and concocted one. He stated that his wife has given birth to a son on 03.08.2003 and that she was unwell and sick on 21.09.2003. Since some of the relatives have come to see his family on that day i.e. 21.09.2003, his wife was not in a position to cook the food. Therefore, in the absence of any domestic or official servant at his residence, he had gone to the Eagle Hotel to bring food for dinner. But when he came to know that learned District & Sessions Judge, Patiala, was present in the Hotel, he immediately returned back on his scooter from the parking area without even entering into the Hotel. In respect of confession, it was stated to the following effect:

The letter dated 26.09.2003 of the Hon''ble Mr. Justice J.S. Khehar mentions about complete confession on my part and admission of factual position by me, but the same is not contained in any of the Article of Charges or in the statement of imputations of misconduct as is envisaged in Rule 8 of clause 3(ii)(a) of the Punjab Civil Services (Punishment and Appeals) Rules, 1970. It is further denied that I made any admission or confession.

The information given by the Ld. District Judge, Patiala to the Hon''ble Administrative Judge is contrary to abovesaid factual position and depositions of

the independent respectable persons of the area.

9. In the reply to the show cause notice served upon the petitioner along with copy of the enquiry report, it is pointed out that he was never medically examined even after PW-1 Jaswant Singh and PW-2 Avtar Singh informed the learned District & Sessions Judge. The petitioner was said to be present in the Hotel and misbehaving under the influence of liquor. The most natural consequence was of learned District & Sessions Judge was to talk to him. He further asserts that there was no evidence that he is a habitual drinker. He controverts the findings recorded by the Enquiry Officer regarding his misdemeanor having been witnessed by PW-1 Jaswant Singh and PW-2 Avtar Singh. It is stated that the confession (Ex. P4) is not proved. He asserts that the Department has failed to prove the petitioner to be alcoholic or that he visited Eagle Hotel in drunkard condition, consumed liquor and chicken and created a scene at public place.

10. The primary argument of the petitioner revolves around proof of communication addressed by the Hon"ble Administrative Judge to the Hon"ble Chief Justice containing confession of the petitioner and that he has not confessed that he was an alcoholic and was not in a condition to get out from this habit and he has got treatment from various hospitals, but could not be cured, as the confession has not been correctly recorded. Therefore, no action on the basis of such confession can be concluded against the petitioner.

11. We do not find any merit in the said argument. Section 1 of the Evidence Act, 1872 provides that the provisions of this Act are applicable to the proceedings before the Court. Conversely, such Act is not applicable to the departmental proceedings. The Supreme Court in a judgment reported as State of Haryana and Another Vs. Rattan Singh, , has held that in domestic enquiry, the strict and sophisticated rules of evidence do not apply. All materials, which are logically probative for a prudent mind, are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The Supreme Court held to the following effect:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal,

cannot be held good.

12. In Commissioner of Police, New Delhi Vs. Narender Singh, the confession was recorded by a police official during investigation of an criminal offence. However, such confession was used in departmental proceedings. The Supreme Court held that the finding of the Tribunal and the High Court that confession was not admissible even in departmental proceedings is not correct. The Supreme Court observed as under:

23. The Tribunal as also the High Court were, therefore, not correct in arriving at the finding that the said confession was not admissible even in a departmental proceeding.

24. In Kuldeep Singh Vs. State of Punjab and Others, this Court held: (SCC p. 664, para 10)

10. Now coming to the main contention of the learned counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries....

25. It is now well settled that the provisions of the Evidence Act are not applicable in a departmental proceeding. (See Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., Lalit Popli Vs. Canara Bank and Others, and N. Rajarathinam Vs. State of T.N. and Another,

13. Following the judgment in Rattan Singh's case (supra), the Supreme Court in U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, held that only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charges.

14. In the present case, the confession is communicated to the Chief Justice by an Administrative Judge of the Sessions Division, in which the petitioner was posted. The petitioner has not denied that in fact he was called by the Administrative Judge as recorded in the said communication Ex. P-4. Such confession cannot be permitted to be disputed by the petitioner. If the confession was not correctly recorded, the petitioner should have pointed out such fact to the Administrative Judge. He never did so. Though in the reply to the charge-sheet, he denied having made any such confession, but there is no denial that he was called by the Administrative Judge, wherein he, inter-alia, was stated to have said that he was not in a position to get out of the habit and that he had sought treatment from various hospitals, but could not be cured. He also made a promise that he will not repeat this conduct later. Such confession was sent to the Hon'ble Chief Justice, after the misdemeanor was repeated.

15. In terms of the judgment in Rattan Singh's case (supra), there is no allergy

to hearsay evidence. In Narender Singh's case (supra), even the confession recorded by the Investigating Officer and hit by Section 25 of the Evidence Act, was found to be relevant in departmental proceedings. On the other hand, in the present case, the confession has been recorded by a Constitutional Authority. There is no reason to infer that such confession was not correctly recorded, more so when the petitioner has not brought to the notice to the Administrative Judge any wrong recording of such confession. It may be stated that copy of the confession was one of the documents supplied to the petitioner along with charge-sheet. Therefore, the petitioner cannot be permitted to dispute the confession recorded in the communication addressed by the Administrative Judge to the Hon''ble Chief Justice.

16. The argument that such document has not been proved, is not tenable. The proof of the document would be necessary only if the rules of evidence are applicable to the departmental proceedings. Apart from the said fact, the fact that communication has been produced from the official record of this Court by PW-4 Shivanand, kept in the ordinary course of business, is proper mode of proof of the communication.

17. Though the Enquiry Officer has held that Charge No. 1 i.e. the petitioner was in drunken condition, was not proved, but the finding recorded is that the petitioner did know the door of the house of a lady judicial officer. A finding has been returned that Charge No. 2 stands proved. We also do not find any merit in the argument that the Gunman and the Driver could not notice the petitioner sitting inside the Hotel and misbehaving with the staff in view of opaque glasses of the Hotel. Both the witnesses have categorically stated that they noticed the conduct of the petitioner inside the Hotel. They have further deposed that the petitioner mistook the vehicle of the District & Sessions Judge as that of the Superintendent of Police, as the designation plate was under cover. It is a finding by the Enquiry Officer based upon appreciation of evidence. The argument that the learned District & Sessions Judge, who noticed the misdemeanor, has not been examined does not vitiate the findings recorded. He was not a necessary witness. He was the one, who recorded the statements of the Driver and the Gunman and sent the same to this Court vide communication dated 29.11.2003. The argument that the learned District & Sessions Judge should have got medical examination of the petitioner would in fact suggest creating a further scene at a public place. The failure to adopt such a course, will not absolve the petitioner of the alleged misconduct, even if, such a course was available.

18. In The State of Uttar Pradesh Vs. Mohammad Nooh, , the parameters of exercise of writ jurisdiction has been delineated. It has been held that action of the Tribunal, if is wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error.

In *Commandant, T.N. Special Police, 9th Battalion Vs. D. Paul*, 1999 SCC (L & S) 789, the Supreme Court held that while exercising power of judicial review in respect of disciplinary action taken against a government servant, the Tribunal, cannot re-appreciate the evidence adduced to prove the charges in the disciplinary proceedings. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Court held as under:

26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See *State of Assam and Another Vs. Mahendra Kumar Das and Others*, In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (*Khem Chand Vs. The Union of India (UOI)and Others*, and *State of Uttar Pradesh Vs. Om Prakash Gupta*, Exercise of discretionary power involves two elements - (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See *K.L. Tripathi Vs. State Bank of India and Others*, It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See *Sawai Singh Vs. State of Rajasthan*, The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See *Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra* (1987) 2 Cal. LJ 344.] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See *Central Bank of India Ltd. Vs. Prakash Chand Jain*, , *Kuldeep Singh Vs. The Commissioner of Police and Others*,

19. The Supreme Court in *B.C. Chaturvedi Vs. Union of India and others*, discussed the scope of judicial review in departmental proceedings. The Court observed as under:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power

to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. ...

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

20. In the matter of judicial review in respect of the Judicial officers, the court has recently observed in High Court of Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others, as under:

18. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S. Patil and Another,

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23. There is nothing on record to even remotely suggest that the evaluation made, firstly by the Standing Committee and then by the Full Court, was so arbitrary, capricious or so irrational so as to shock the conscience of the Division Bench to justify its interference with the unanimous opinion of the Full Court. As regards the observation of the Division Bench on the reputation of the first respondent based on his ACRs, it would suffice to note that apart from the fact

that an ACR does not necessarily project the overall profile of a judicial officer, the entire personal file of the respondent was before the Full Court when a conscious unanimous decision was taken to award the punishment of his dismissal from service. It is also well settled that in cases of such assessment, evaluation and formulation of opinion, a vast range of multiple factors play a vital and important role and no single factor should be allowed to be blown out of proportion either to decry or deify issues to be resolved or claims sought to be considered or asserted. In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extraordinary case when the Court is convinced that some exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court. (See Syed T.A. Naqshbandi and Others Vs. State of Jammu and Kashmir and Others,

21. In the present case, the Enquiry Officer has not collected any material from outside sources nor any illegality or irregularity in the procedure adopted by the Enquiry officer, has been pointed out. The view taken by the Enquiry Officer is a possible view. None of the tests to interfere in the enquiry proceedings have been remotely meted out. In Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, , as well, the Supreme Court held that once a domestic Tribunal has come to a particular conclusion, it is not open to the appellate Tribunals and the Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

22. In view of the above, we find that the view of the Enquiry Officer, which was accepted by the Full Court, cannot be interfered with in exercise of power of judicial review. The findings of the Enquiry Officer as accepted by the Full Court, cannot be said to be irrational or illegal. The report of the Enquiry Officer is based upon appreciation of evidence. We do not find that the Enquiry Officer has travelled beyond the allegations or the evidence produced. Therefore, we do not find that in exercise of powers of judicial review any case is made out for interference in the extra ordinary writ jurisdiction of this Court.

23. At this stage, we may notice that 5 Annual Confidential Reports (ACRs) have been recorded since the joining of the petitioner as a judicial officer. Out of such 5 ACRs, 4 ACRs are satisfactory and one report is "B Average". Two ACRs recorded for the year 2001-02 & 2002-03 have not been finalized by the Full Court, but one of these reports is "B Average" and the other B + Good. Neither the performance of the petitioner as a Judicial Officer nor his conduct warrants any interference in the writ jurisdiction of this Court. Consequently, the present writ petition is dismissed.