

(2012) 07 AHC CK 0096

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30211 of 2003

Lavlesh Kumar Mishra

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2), 32

Citation : (2012) 11 ADJ 323 : (2013) 1 AWC 44 : (2013) 136 FLR 400

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : Hari Shanker Mishra and P.K. Singh, for the Appellant; Samir Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Krishna Murari, J.—Heard learned counsel for the petitioner and Sri Samir Sharma, learned counsel appearing for the respondents.

Facts, giving rise to the dispute as they emerge out from the pleadings of the parties, are as under:

The petitioner was initially appointed as Conductor on 21.11.1977 in Jaunpur Depot. Subsequently, he was promoted to the post of Office Assistant-II. In June 1994, he was transferred from Varanasi to Vindhya Nagar Depot. While he was serving in Vindhya Nagar Depot, an alleged complaint said to have been signed by 32 employees including the Conductors, Drivers and Chaukidars of Vindhya Nagar Depot was sent to Divisional General Manager, Eastern Division/Zone, UPSRTC, Varanasi, the respondent No. 2 herein, levelling charges against the petitioner and Assistant Regional Manager of the Vindhya Nagar Depot of extorting money for withdrawing the suspension order against the employee, which, in fact, were false and fabricated. The Divisional General Manager vide letter dated 30.7.1998 directed the Assistant Regional Manager, Vindhya Nagar Depot to relieve five persons out of 32 alleged signatories of the complaint for

appearing before him on 7.8.1998 in order to verify the complaint. These five persons, including the petitioner, were Shahid Parvez, Tribhuwan Yadav, Tilak Raj and Hans Nath Maurya, Conductors. In compliance of the aforesaid direction, the Assistant Regional Manager vide letter dated 4.8.1998 directed all the persons to appear before the Divisional Regional Manager on 7.8.1998. However, the petitioner alleges that he was on casual leave from 4.8.1998 to 7.8.1998 hence he could not get the notice or knowledge of enquiry being conducted by the respondent No. 2. The other four persons appeared on 7.8.1998. All the four persons denied their signature on the complaint. After returning from leave, when the petitioner came to know about the aforesaid fact, he moved an application before the respondent No. 2 explaining reason for his non-appearance on the said date with the request to fix some other date for hearing. The respondent No. 2 vide letter dated 29.9.1998 directed the Regional Manager, Varanasi Regional of the Corporation to initiate disciplinary proceedings by charge-sheeting the petitioner and inform the action taken against him. Copy of the letter which has been filed as Annexure "10" to the writ petition categorically records the fact that there are sufficient evidence against the petitioner as such he may be charge-sheeted and disciplinary proceedings be initiated against him. In compliance of the aforesaid direction issued by the respondent No. 2, the respondent No. 3 served upon the petitioner the charge-sheet dated 16.1.1999 levelling charges and vide order dated 28.1.1999 appointed Sri Sugreev Rai, Assistant Regional Manager (Karmik-I), Varanasi, copy whereof has been filed as Annexure "13" to the writ petition. The petitioner submitted his reply dated 16.4.1999. The Inquiry Officer fixed 29.4.1999 on which date Sri Shahid Parvez, Tilar Raj and Hans Nath Maurya appeared and their statement was record. They again categorically denied their signature on the complaint. Thus, only three persons were examined as witness in support of the charges levelled against the petitioner who also denied their signature on the complaint on the basis of which the disciplinary proceedings were initiated. The matter remained pending and the statement of the petitioner was recorded by the Inquiry officer on 3.12.1999 though the complaint was also against the Assistant Regional Manager of Vindhya Nagar Depot but neither he was issued any show-cause notice nor any proceedings were initiated against him. He was not even called to appear during enquiry proceedings. Striking feature to be taken note of that after statement of three witnesses was recorded, Sri Sugreev Rai, Assistant Regional Manager (Karmik-I), who was nominated as inquiry officer and was conducting the enquiry was changed on 28.9.1999 and replaced by one Sri Kailash Ram, Assistant Regional Manager (Operation), Varanasi, who recorded the statement of the petitioner on 3.12.1999 and finally submitted report dated 5.5.2000 holding the petitioner guilty of the charge of extorting money from the other employees by coercion. The report was forwarded to the respondent No. 3, the Regional Manager, who issued a show-cause notice dated 23.3.2000 requiring the petitioner to submit his reply to the enquiry report. The petitioner submitted his reply on 23.5.2000. The respondent No. 3 vide order dated 31.5.2000 imposed a major penalty of dismissal from service upon the petitioner. The petitioner

challenged the order of dismissal by filing Writ Petition No. 24184 of 2001 which was dismissed vide order dated 30.1.2002 on the ground of availability of alternative remedy of appeal u/s 69 of the State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981. Thereafter, the petitioner preferred appeal which was dismissed vide order dated 13.1.2003. Aggrieved, the petitioner has approached this Court.

2. First submission advanced on behalf of the learned counsel for the petitioner is that decision regarding initiating proceedings was not independently taken by the disciplinary authority himself but at the direction of higher authority hence the same is vitiated. Reliance in support of the contention has been placed on the judgment of the Hon'ble Apex Court in the case of Union of India (UOI) and Others Vs. B.N. Jha, . He has next contended that enquiry proceedings and all consequential action based thereon are also vitiated on account of the fact that the person who conducted the enquiry did not submit the enquiry report rather it was submitted by another person who was never appointed inquiry officer by the disciplinary authority. He has also submitted that finding of the inquiry officer proving charge is based on no evidence in as much as out of 32 complainants only three were examined who also denied their signatures on the complaint.

3. Replying to the arguments of the learned counsel for the petitioner, Sri Samir Sharma, learned counsel appearing for the respondents, has vehemently contended that the respondent No. 2 vide letter dated 29.9.1998 only forwarded all the documents against the petitioner to the then Regional Manager, Varanasi only with the observation that he should issue charge-sheet and initiate departmental proceedings against the petitioner at his own level and since no finding was recorded by him regarding proof of misconduct against the petitioner hence the departmental proceedings and punishment cannot be said to be vitiated on the ground of bias and any superior authority can initiate departmental proceedings. To support the contention, he has placed reliance upon the judgment of the Hon'ble Apex Court in the case of Commissioner of Police vs. Jayasurian and Anr., (1997) 6 SCC 75 . It has further been contended that the argument that Sri Kailash Ram who has submitted the enquiry report and did not conduct any enquiry and only submitted a report is incorrect in as much as defence statement was recorded before him and after assessing the evidence already on record, he submitted the enquiry report. He has further pointed out that Assistant Regional Manager (Karmik-I), Varanasi was appointed as Enquiry Officer and since Sri Sugreev Ram was holding the post, he was conducting the enquiry. However, after his transfer Assistant Regional Manager (Operation) Sri Kailash Ram was given charge of Karmik (I) as such he completed the enquiry and submitted report. He has further submitted that change of enquiry officer will not vitiate the enquiry proceedings. He has placed reliance on a Full Bench judgment of Orissa High Court in the case of Bauribandhu Misra Vs. I.G. of Police and Others, . Sri Samir Sharma has also urged that the statement of the witnesses recorded during the disciplinary proceedings clearly established guilt of the petitioner and thus, he has rightly been held guilty.

4. In order to resolve the controversy, vide order dated 11.8.2008, the respondents were directed to produce the original record and in compliance whereof Sri Samir Sharma has produced the original record of the disciplinary proceedings which has been perused by me. The reference of the documents in the original record shall be made at the relevant place.

On the basis of the complaint made against the petitioner and Assistant Regional Manager, Vindhya Nagar Depot alleged to have been signed by 32 employees of the said Depot including the Conductors, Drivers, Chaukidars etc., the respondent No. 2, Divisional General Manager conducted a preliminary fact finding enquiry on the basis of which he issued a letter dated 29.9.1998 asking the respondent No. 3 Regional Manager, UPSRTC, Varanasi who, admittedly, is an authority subordinate to him to issue charge-sheet and initiate disciplinary proceedings against the petitioner as there are sufficient evidence against him and inform him of the action taken. A perusal of the said document clearly demonstrates that it is in the form of direction with observation that there is sufficient evidence against the petitioner. The direction to hold disciplinary proceedings was issued only on the basis of the statement of four Conductors, out of 32 signatories, who were picked and choose by the respondent No. 2, for the reasons best known to him and the petitioner being on casual leave during the period since could not get information was deprived of appearing and defending himself. In the case of Union of India and others v. B.N. Jha (supra) where the department enquiry against the delinquent a Deputy Commander in BSF was initiated at the instance of Commandant of the Unit was held to be illegal and suffering from the vice of bias. In paragraphs 20 and 21 of the said report, the Hon''ble Apex Court has held as under :

20. Submission of Mr. Ranjit Kumar to the effect that Mr. Garcha could delegate his power to Mr. Arya cannot be accepted. The power under Rule 16(7) of the Rules can be exercise in a general manner and not in a particular, far less in a matter where Rule 46 will be applicable. The principles of specialia generaliabus non-derogant shall apply in such a case.

21. In the instant case, Mr. Garcha in his letter to Mr. M.S. Arya described himself as Commandant, BTC, TC&S which itself is a pointer to show that BTC is not a unit totally independent of TC&S. It is further not in dispute that Mr. Arya was an officer subordinate to him. His letter dated 4.9.1990 in no uncertain terms points out that he had for all intent and purpose directed Mr. Arya to initiate a disciplinary action against the respondent. The said action was to be taken on the basis of the materials disclosed therein. Such a procedure is unknown in law. An authority who is higher than the Commandant, in exercise of his power conferred upon him under Rule 46 could not have directed the Commandant of a wing of his own unit to initiate departmental proceedings. In law it was the disciplinary authority alone who was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is contemplated or not. He cannot do so at the

instance of a higher authority who had not only no role to play in the matter but also admittedly was biased.

5. In the present case also, the respondent No. 2, who was higher authority holding the post of Divisional General Manager of Eastern Division/Zone clearly vide letter dated 29.9.1998 directed the respondent No. 2, the Regional Manager, Varanasi who was subordinate to him working in his zone to initiate disciplinary proceedings against the petitioner as there was sufficient evidence against him. In view of the law laid down by the Hon'ble Apex Court, the disciplinary enquiry by the disciplinary authority against the petitioner at the dictates of a higher authority without application of independent mind by him to material on record so as to enable him to reach a conclusion as to whether the disciplinary action is contemplated or not is clearly vitiated and all consequential action thereof become bad in law. Further, the alleged complaint was made against two persons, namely, the petitioner and the Assistant Regional Manager. The fact that enquiry was directed to be held only against the petitioner clearly points out the bias of the superior authority against him. The case of Commissioner of Police v. Jayasurian and another (supra) relied upon by the learned counsel for the respondents has no application to the facts of the present case in as much as in the said case the question for consideration before the Hon'ble Supreme Court was whether the disciplinary proceedings initiated on the basis charge memo given by Assistant Commissioner of Police, who was not the appointing authority of the respondent incumbent was valid or not.

6. Considering the said question, the Hon'ble Apex Court has held that as regards the first ground given by the Tribunal, we find that the matter is covered by the decision of this Court in Inspector General of Police and another Vs. Thavasiappan, , wherein, construing, the rules applicable in that case, it has been held that any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and issue the charge memo and that initiation of a departmental proceeding and conducting an enquiry can be by authority other than the authority competent to impose the proposed penalty. In the present case, the disciplinary proceedings were not initiated by the superior authority himself rather he directed the disciplinary authority to initiate departmental proceedings against the petitioner as there was sufficient evidence against him.

The case laws relied upon by the learned counsel for the respondents are authority on the point that institution of a departmental proceedings and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty and cannot be read as an authority on the issue whether departmental proceedings initiated on a direction of superior officer in hierarchy without any independent application of mind by the disciplinary authority. The issue stands answered in the case of Union of India v. B.N. Jha (supra) which is squarely applicable to the facts of present case.

7. With respect to the second submission. advanced on behalf of the petitioner, a

perusal of the original record reveals that vide order dated 28.1.1999 the Assistant Regional Manager (Karmik-I) was appointed as the enquiry officer to conduct the enquiry since Sri Sugreev Rai was holding the post he started conducting enquiry. Subsequently he was transferred and Assistant Regional Manager (Operation) Sri Kailash Ram was given charge of Karmik-I who continued with the enquiry and after completing the same submitted the report. There is nothing on record to indicate that Sri. Sugreev Rai was appointed as enquiry officer by name rather the order dated 28.1.1999 specified that enquiry shall be conducted by Assistant Regional Manager (Karmik-I), Varanasi. Similarly, there is no order appointing Sri Kailash Ram as enquiry officer by name but since he was given charge of Assistant Regional Manager (Karmik-I) he continued with the enquiry by virtue of appointment order dated 28.1.1999 by which the person holding the post of Assistant Regional Manager (Karmik-I), Varanasi was empowered and appointed to conduct enquiry.

8. The issue whether the change of enquiry officer will vitiate enquiry proceedings has been subject-matter of consideration by Full Bench of Orissa High Court in the case of Bauribandhu Misra v. I.G. of Police and others (supra) relied upon by the learned counsel for the respondents, In the said case, the enquiry officer was transferred and thereafter some other person was appointed as enquiry officer. Each one of the enquiry officer recorded some part of the evidence and the report was submitted by the enquiry officer subsequently appointed. The argument that enquiry report was based on evidence recorded by some of the predecessor enquiring officer and as last enquiring officer who submitted the report had no occasion to observe the demeanour of all the witnesses, the enquiry report was bad in law, hence disciplinary authority cannot rest his conclusion on such enquiry report was repelled by Full Bench placing reliance upon the pronouncement of the Hon'ble Supreme Court in the case of Union of India (UOI) Vs. H.C. Goel, , Full Bench has observed as under :

After the pronouncement of their Lordships in Union of India (UOI) Vs. H.C. Goel, , such a contention is wholly untenable. One of the questions that arose in that case was whether Government was competent to differ from the findings of fact recorded by the enquiring officer who had been entrusted with the work of holding a departmental enquiry. The matter was critically examined and their Lordships observed thus :

The interposition of the enquiry which is held by a duly appointed enquiry officer does not alter the true legal position that the charges are framed by Government and it is the Government which is empowered to impose the punishment on the delinquent public servant. Therefore, on principle it is difficult to see how the respondent is justified in contending that the findings recorded by the enquiry officer, bind the appellant (Government) in the present case.

The ratio of the decision clearly implied that the disciplinary authority imposes the punishment without recording evidence and without having any opportunity of marking the demeanour of the witnesses. If the ultimate punishing authority

can take the decision without marking the demeanour of witnesses, it would be fantastic to say that a successor enquiring officer cannot give the report unless he himself has recorded the entire evidence. The aforesaid view runs counter to the argument that an enquiry report submitted by the last enquiring officer cannot be based on the evidence of his predecessors. The Supreme Court decision was followed in *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, .

Our view is also fully supported by the decision in *Deputy Inspector General of Police, Coimbatore and Others Vs. P. Amalanathan*, .

On the aforesaid analysis, we are of opinion that the successor enquiring officer can submit the enquiry report on the basis of materials collected by his predecessors. The Calcutta case is distinguishable on fact and the observations in the Gujarat decision are contrary to law. If any of these decisions purported to law down any general propositions to the contrary, we are unable, with respect, to accept them as laying down good law.

9. A perusal of the original record has clearly revealed that after transfer of Sugreev Rai from the post of Assistant Regional Manager (Karmik-I) vide order No. 2823/2000 dated 17.4.2000 Sri Kailash Ram was given additional charge of Assistant Regional Manager (Karmik-I), Varanasi and since the appointment of enquiry officer was made by post and not by name, he continued with the enquiry and in view of the law laid down referred to in the preceding paragraphs, the change in enquiry officer will not vitiate the enquiry officer. The argument advanced on behalf of the petitioner that Sri Kailash Ram conducted and completed the enquiry unauthorizedly without being appointed as enquiry officer also stands belied from the original record. Thus, the second argument advanced on behalf of the petitioner has no force and is liable to be rejected.

10. The third question which arises for consideration is whether the charges levelled against the petitioner stood proved in the disciplinary proceedings or findings are based on no evidence. There is no dispute about the fact that the alleged complaint was signed by 32 signatories out of which only three were examined by the enquiry officer. A perusal of the original record clearly demonstrates that all the three witnesses produced by the department denied their signature on the complaint in their examination-in-chief. Witness Sri Shahid Parvez during cross-examination clearly admitted that he had not seen the suspension order but was informed by Station In-charge that one Hansh Nath Maurya and Tilak Raj, Conductors were suspended by the Regional Manager and this information was given to him by the petitioner. There is not even a whisper of involvement of the petitioner with respect to the suspension order or having asked for or accepted any gratification for recall of the suspension order. The second witness Tilak Raj also during cross-examination did not make any allegations against the petitioner either with regard to any forged suspension order of any employee or demand and acceptance of any illegal gratification for recall of the order. The third witness Hansh Nath Maurya also categorically stated

in the cross-examination that he has no proof with respect to the allegations made in the complaint and that he never put his signature on the alleged complaint on which fact finding enquiry was conducted by the Divisional General Manager. All the three witnesses produced by the department either in their examination-in-chief or during cross-examination ever made any allegation which could even remotely go to establish the charge levelled against the petitioner that he has failed to maintain integrity towards his duty, misused his post by producing forged and fabricated suspension order of the employees and coerced them for illegal gratification for withdrawal of the suspension order. The original record produced before me further reveals that no other evidence or other witness was produced by the department to support and substantiate the charge levelled against the petitioner. Thus, the finding recorded by the enquiry officer that charge levelled against the petitioner stands proved is, as a matter of fact, based on no evidence at all.

11. It is well settled that strict rules of evidence are not applicable to departmental enquiry proceedings. What is required is that allegation against the delinquent officer must be established by such evidence which may lead a reasonable person to arrive at a conclusion upholding the charges. However, mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court though while exercising the jurisdiction of judicial review normally does not interfere with the findings of fact arrived at in the departmental enquiry proceedings except where fact of mala fides is established or where there is no evidence to support the finding of guilt arrived at.

12. In Union of India (UOI) Vs. H.C. Goel, , the Constitution Bench has observed as under :

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.

13. Again in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, , the Hon"ble Apex Court has held as under :

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 dictates of the superior authority.

Again in paragraph 9 of the said report, the Hon''ble Apex Court has observed that "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.

In the case in hand, from the perusal of the original record produced before me it is more than apparent that the enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of reasonable opportunity contemplated by Article 311 (2) of the Constitution. Acting as quasi judicial authority, it was his imperative duty to conduct an impartial enquiry. Even though all the three witnesses who were produced by the prosecution not only denied their signature on the complaint but also did not utter a word with respect to the charges levelled against the petitioner either in their examination-in-chief or during cross-examination yet the enquiry officer held that charge against the petitioner stands proved. Even the appellate authority also did not advert himself to the aforesaid facts and aspect of the matter. There being absolutely no evidence in support of the Charge framed against the petitioner and the findings of fact recorded by the enquiry officer being vitiated by reason of the fact that they are not supported by any evidence on record are wholly perverse. The impugned order based on such evidence is not liable to be sustained.

For the facts and discussions stated above, the writ petition stands allowed, The punishment order dated 31.5.2001 passed by the respondent No. 4 as well as the appellate order dated 13.10.2002 passed by the respondent No. 2 are hereby quashed. The petitioner shall be entitled to reinstatement in service with full back wages and all consequential benefits.

However, in the fact's and circumstances of the case, there shall be no order as to costs.