
(1980) 08 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 26 of 1970

Madan Lal

APPELLANT

Vs

The Chief Engineer, Beas-Sutlej Link Project and Others

RESPONDENT

Date of Decision : 21-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1980) 9 ILR HP 536

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; Kamlesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gupta, J.—This letters patent appeal is directed against the judgment of Hon'ble Harydal Hardy, J. (as his Lordship then was), dated 27th July, 1970, by which he dismissed the civil writ petition of the present Appellant and upheld the order of dismissal of the Appellant from service passed on 2nd August, 1969.

2. The facts, in brief, are that Madan Lal Appellant was employed in the Lubrication Sub-Division of Beas-Sutlej Link Project (hereinafter shortly referred to as the B.S.L. Project), Mandi. He was dismissed from service vide order, dated 2nd August, 1969, passed by the Superintending Engineer, Beas-Sutlej Link, Administration and Accounts Circle, Sundernagar. His appeal against his dismissal from service was also rejected by the Chief Engineer, B.S.L. Project, on 22nd January, 1970.

3. It is an admitted case that a fire broke out in the Lubrication Store at Sambal Terrace Lubrication Sub-Division on 19th December, 1965, at about 8.15 A.M., and the Appellant was employed as a Special Chargeman in this Lubrication Sub-Division on the said date. Due to this fire a loss of about Rs. 18,000/- was estimated, and for ascertaining the cause of the fire and for fixing the liability upon the person who was responsible for this fire an Enquiry Committee was

constituted. The said committee was to report on the following references:

(i) The cause of the incident.

(ii) Responsibility for the same.

(iii) Measures to be adopted for safeguard against such fire in future.

The Inquiry Committee conducted a detailed enquiry and recorded the statements of several witnesses. The Committee vide report, dated 5th January, 1966, came to the conclusion that the fire was not due to the intentional mischief by any one and that the same was due to unintentionally throwing of a match stick at the petrol can after lighting a cigarette by the Appellant. It was observed by the Committee that the Appellant had thrown a lighted match stick on the petrol can unintentionally and due to this the fire broke out.

4. The Appellant was charge-sheeted and he was asked to give his explanation. The Appellant denied the allegations and further alleged that one Bairagi Ram Beldar filled his cigarette-lighter and tested the same, when a spark from the lighter set the lubrication-can on fire. This explanation was not considered to be sufficient, and thereafter a show cause notice was issued to the Appellant as to why a penalty of dismissal from service should not be imposed upon him, and he was further asked to give his explanation by the Superintending Engineer. The Appellant raised objections to the inquiry report and contended that the Inquiry Committee did not record the statements of the witnesses in his presence. This objection of the Appellant was considered to be valid and as such a fresh charge-sheet was served upon the Appellant on 4th April, 1967 (Annexure PF). The Appellant submitted a reply to this charge-sheet (Annexure PG), and thereafter one Shri Surjit Singh, Executive Engineer, Sundernagar, was deputed to hold an enquiry. After completion of the enquiry, Shri Surjit Singh submitted his report, dated 19th July, 1967, to the Superintending Engineer by saying that the charge against the Appellant had been proved (Annexure PH). Upon the receipt of this report, another show cause notice was issued to the Appellant on 9th August, 1967, and he was required to show cause as to why a penalty of dismissal from service be not imposed on him. The Appellant failed to submit his reply to the show cause notice, and thereupon the Executive Engineer served an order of dismissal of the Appellant from service, but this order was subsequently cancelled on 7th September, 1967 (Annexure PM), because the reply of the Appellant was received by the Executive Engineer through the Secretary of the Workers' Union, and the delay in submitting the reply seems to have been condoned. The Appellant challenged the right of the Executive Engineer to issue a show cause notice. This contention of the Appellant was accepted, and as a result thereof a fresh show cause notice was issued to the Appellant on 14th May, 1968, by the Superintending Engineer. The Appellant sent a reply to this notice. After this another show cause notice was sent to the Appellant on 8th April, 1969 (Annexure PO) from the Superintending Engineer and the Appellant again submitted his reply to this notice. The Superintending Engineer after

considering the reply of the Appellant to be unsatisfactory ordered the dismissal of the Appellant from service on 2nd August, 1969 (Annexure PQ). The Appellant feeling aggrieved from this order filed an appeal and after hearing the Appellant the Chief Engineer rejected the appeal, and the Appellant was informed on 14th February, 1970, about this rejection of the appeal.

5. The Appellant thereafter filed civil writ petition No. 26 of 1970, challenging the order of his dismissal from service and also claimed that no charge levelled against him has been proved. The learned single Judge, who heard the writ petition, found no grounds to interfere with the findings of the Executive Engineer and came to the conclusion that the Appellant was the person due to whose negligence the fire broke out and as such dismissed the writ petition after holding that no irregularity in the conduct of the proceedings before the Inquiry Officer as a violation of rules of natural justice has been committed and that the Appellant had reasonable opportunity of defending his case. It was also held by the learned single Judge that the order of dismissal of the Appellant is based upon the evidence which has been duly appreciated by the authorities concerned. In view of these findings the learned single Judge declined to interfere in the matter by invoking the provisions of Article 226 of the Constitution of India.

6. In this appeal, Shri Chhabil Dass Advocate appearing on behalf of the Appellant has contended that there is no evidence on the record which could fix the responsibility upon the Appellant and that there is nothing on record to show that the Appellant lighted the match stick inside the room and threw the same on the petrol container intentionally or unintentionally and that, in fact, there is nothing to show that the Appellant at all lighted the match stick or was smoking. It was further contended by him that a reasonable opportunity was not given to the Appellant to defend his case. The learned Counsel referred to the various statements of the witnesses and the enquiry report of Shri Surjit Singh and contended that the findings are based upon no evidence at all. In support of his contentions the learned Counsel referred to *K. Sundara Rajan v. Deputy Inspector-General of police, Tiruchirapalli and Ors.* (1972 S.L.R. 723).

7 Miss Kamlesh Sharma appearing on behalf of the Respondents contended that in a writ petition the Court is not to sit as a Court of appeal or review and that the statements of the witnesses during the course of enquiry are sufficient to fasten the liability upon the Appellant. She also relied upon *The State of Orissa and Anr. v. Murlidhar Jena* (A.I.R. 1963 S.C. 404), *Union of India (UOI) Vs. H.C. Goel*, *The State of Madras Vs. G. Sundaram*, and *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, in support of her contentions.

8. We have considered the contentions of the learned Counsel for the parties and have also gone through the record of the case and the original records of the enquiry produced by the learned Counsel for the Respondents.

9. In the *State of Orissa and another's* case (supra) it has been held by their Lordships of the Supreme Court that "any proceedings under Articles 226 and

227, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal in a departmental inquiry. However, if it is shown that the impugned findings recorded by the administrative Tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings". Similarly, in Union of India's case (supra) it has been held by the Supreme Court that a writ of certiorari can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the proceedings which is the basis of his dismissal is based upon no evidence. In the subsequent authorities, *The State of Madras v. G. Sundaram*; and *State of Andhra Pradesh and Ors. v. Chitra Venkata Rao* (supra) the same principle is again repeated. In the authority, *K. Sundrara Rajan* (supra), cited by the learned Counsel for the Appellant, the Madras High Court also relied upon the observations made in the *State of Orissa and Anr. v. Murlidhar Jena*; and *Union of India v. H.C. Goel* (supra). Therefore, in view of the clear law as laid down by the Supreme Court, the High Court is not to sit as a Court of appeal or review and if the authority concerned has relied upon the evidence which may reasonably support the conclusion that the delinquent officer is guilty of the charge then the High Court is not to set aside that finding and is not to reappraise the evidence in its own way. But, if the authority concerned has based its finding of fact on no evidence or the findings are perverse then the same is an error of law and can be corrected in a writ petition.

10. In these circumstances the report of Shri Surjit Singh, Inquiry Officer, dated 19th July, 1967, has to be read and it is to be seen as to whether the finding of fact arrived at by the Inquiry Officer is based upon some evidence or not.

11. With the help of the learned Counsel for the parties, we have gone through the evidence of the witnesses who had been produced during the course of the enquiry and upon whose evidence the Inquiry Officer had placed reliance. The persons whose statements are relevant for fastening the liability upon the Appellant are Sarvshri Ram Nath Munshi, Bairagi Ram Beldar, Parshotam Singh and S.S. Bhatnagar. None of these witnesses during the course of enquiry had stated if the Appellant lighted any match stick in the room or if any lighted match stick was thrown by the Appellant on the floor near the petrol can in which the petrol was being filled. The Inquiry Officer has held that only two persons, i.e. Parshotam Singh Beldar and the Appellant, were inside the room at the time when the fire broke out and that Bairagi Ram Beldar was outside the room. He has further held that Parshotam Singh is a non-smoker, and as such he could not be held responsible for the fire. The Inquiry Officer has further held that Madan Lal Appellant is a smoker and that he was having bidis and match stick in his possession at the relevant time. He has also found that Bairagi Ram was possessing a cigarette lighter at the relevant time but was not in the room. The statement of Shri Bhatnagar, Executive Engineer, who had concluded that the fire broke out due to the lighting of cigarette lighter by Bairagi Ram has been rejected by the Inquiry Officer. Since we are not to re appreciate the evidence, therefore, no criticism can be made upon the evidence of the persons whose

statements have been considered by the Inquiry Officer. But the Inquiry Officer has himself come to a definite conclusion that there is no evidence to suggest that the Appellant threw any lighted match stick or bidi in the room or that he was smoking at the relevant time. Miss Kamlesh Sharma appearing on behalf of the Respondents frankly conceded that there is no other direct or circumstantial evidence which can show that any lighted match stick or bidi was thrown by the Appellant on the floor near the petrol-can in the room or that the Appellant was smoking at or before the relevant time.

12. The Inquiry Officer has fixed the responsibility for the fire on the Appellant on the sole ground that he was a smoker and at the relevant time was having a match box and a bundle of bidis in his pocket. In the absence of any evidence to the effect that the Appellant was seen actually smoking or lighting a match stick in the room at that time the findings of the Inquiry Officer can be safely labelled as perverse. In these circumstances the conclusion arrived at by the Inquiry Officer that the responsibility of fire lies with the Appellant who smokes and that the fire was due to the throwing of a burning match stick inadvertently, is based upon no evidence at all.

13. In the above explained circumstances we feel that the order of dismissal of the Appellant is perverse and based on no evidence at all and we thus disagree with the finding of the learned single Judge.

14. The result, therefore, is that the order of the learned single Judge, dated 27th July, 1970, is hereby set aside and this appeal is accepted. As a consequence the order of dismissal of the Appellant from service passed by the Superintending Engineer, dated 2nd August, 1969, and of the appellate authority, Chief Engineer, Beas-Sutlej Link, dated 22nd January, 1970, as conveyed to the Petitioner Appellant vide letter, dated 11th February, 1970, by the Executive Engineer (Personnel) Superintending Engineer, Beas-Sutlej Link Administration and Accounts Circle, Sundernagar (H.P.), are quashed.

15. The Petitioner-Appellant shall be entitled to costs of these proceedings which are assessed at Rs, 200/-.