
(1993) 07 RAJ CK 0012
In the Rajasthan High Court
Case No : C.W.P. No. 981 of 1988

Mani Kant Arya

APPELLANT

Vs

Rajasthan Khadi and Village Industries Board and Another

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Constitution of India, 1950 — Article 309, 311(2)

Citation : (1994) 1 LLJ 685 : (1993) 2 WLC 341

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : G.L. Pareek, for the Appellant; G.S. Bapna, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This petition involves a challenge to the order dated March 18, 1987 (Exhibit-10) passed by the Secretary, Rajasthan Khadi and Village Industries Board, Jaipur (for short "the respondent Board") as also to the decision of the working committee of the respondent Board taken in its meeting held on February 28, 1987.

2. Petitioner Mani Kant Arya, who was employed as District Industries Inspector, and who was at the relevant time posted at District Industries Centre, Banswara, was suspended by the respondent Board vide order dated October 22, 1982 in contemplation of a departmental inquiry. His suspension was followed by a memo dated December 7, 1982 issued under the signatures of the Secretary of the respondent Board. Petitioner was charged with the allegation of misappropriation of funds of the Board which were recovered from the workers. Petitioner replied the charges vide Exhibit-3 dated January 15, 1983. Shri Kamal Kishore Goswami was appointed as Inquiry Officer by an order dated October 5, 1985. During the pendency of inquiry, suspension of the petitioner was revoked by an office order dated February 24, 1984. He was however again suspended by order Exhibit-6 dated July 24, 1984. Shri Kamal Kishore Goswami started the inquiry but he was replaced by one Shri Jitmal Kachhara. A third Inquiry Officer namely Shri

Shantilal Bordia was ordered to inquire into the matter vide order dated March 18, 1985.

3. According to the petitioner he was suffering from a severe skin disease and on account of his sickness he had nominated Shri Mukund Singh Chauhan as his representative in the departmental inquiry.

4. On the basis of the inquiry held against him, the Executive Committee of the respondent Board took a decision to compulsorily retire the petitioner. On the basis of the decision order dated March 18, 1987 came to be issued by the Secretary of the Board for compulsory retirement of the petitioner.

5. Petitioner has questioned legality of the impugned order by asserting that he has been punished without holding any inquiry in accordance with the provisions of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. His grievance is that, record was not made available to him for the purpose of inspection. No evidence was produced before the Inquiry Officer who has recorded findings without taking into consideration the fact that no evidence has been produced in support of the charges. Petitioner was not paid his subsistence allowance during the period of suspension and he was seriously prejudiced on account of his inability to defend himself. Another submission made by the petitioner is that Secretary of the respondent Board had no authority to issue the order of punishment. In its reply the respondent Board has admitted the factum of suspension of the petitioner. Respondent Board has pleaded that the petitioner is guilty of making interpolation in the chargesheet as well as in his reply which have been filed before this Court. Further case of the Board is that Shri Kishore Goswami held inquiry on March 22, 1984, April 21, 1984, and September 10, 1984, but the petitioner did not participate in the inquiry. Regarding appointment of Shri Jitmal as Inquiry Officer, respondent Board has asserted that Shri Jitmal was appointed for the purpose of filing FIR with the Police and he had nothing to do with the departmental inquiry. When Shri Kamal Kishore Goswami was transferred, Shri Shantilal Bordia was appointed as Inquiry Officer. According to the respondent Board regular departmental inquiry was held and on that basis inquiry report Annexure-R.2 was submitted. Inquiry Officer held that charges levelled against the petitioner have been proved. On the basis of the inquiry report the Executive Committee of the Board considered the matter and decided to order compulsory retirement of the petitioner. Respondent Board has pleaded that action taken against the petitioner does not suffer from any infirmity.

6. In his rejoinder the petitioner has stated that he has not made any interpolation either in the charge sheet or in the reply to the charge sheet. He has pleaded that no evidence was recorded by the Inquiry Officer and the Inquiry Officer has proceeded on an erroneous assumption that the petitioner has admitted his guilt. He has also pleaded that retention of money by him cannot be equated with embezzlement and without supply of copy of report of the Inquiry Officer, order of punishment could not have been passed against him.

7. Record of the inquiry held against the petitioner has been produced by the learned counsel for respondent Board. This record shows that after receipt of complaints against the petitioner from various sources order of his suspension was passed and charge sheet dated December 3, 1982 was served upon him. His reply to the chargesheet is available at page 38 of File No. 12(1). Order of appointment of Shri Kamal Kishore Goswami as Inquiry Officer is available at page 46. This file contains a large number of applications submitted by the petitioner regarding his claim for payment of subsistence allowance. Report of the Inquiry Officer is available at pages 244 to 246. This report is based on a statement which is said to have been made by the petitioner on December 4, 1985 and which is available at page 250 of the file. Note sheets produced along with the record shows that after the receipt of report of Inquiry Officer, Office of the Board noted that inquiry had not been held according to the Rules and finding recorded by the Inquiry Officer was not specific. On that premise, Secretary of the Board wrote on January 27, 1986 to the Inquiry Officer Shri Shantilal Bordia (Assistant Director) that he should make proper inquiry because finding on the charge levelled against the petitioner, which is not based on any evidence, cannot be treated as correct. Letter written by the Secretary to the Inquiry Officer on January 27, 1986 is available at page 243 of the File No. 12(1). A second inquiry report was submitted by the Inquiry Officer on October 21, 1986. This inquiry report is available at pages 303 to 306 of the file. Second report of the Inquiry Officer was placed before the Executive Committee of the respondent Board. The Committee considered the same in its meeting held on February 28, 1987 and resolved that the petitioner be given compulsory retirement. On that basis order dated March 18, 1987 (Exhibit-10) was issued by the Secretary of the Board. After receiving the order of compulsory retirement, the petitioner filed a petition before the Secretary of the Board on April 13, 1987 with a prayer for review of the decision taken by the Executive Committee. He made another representation to the Secretary of the Board in the form of an appeal on May 29, 1987. A copy of this appeal was also addressed to the Chairman of the respondent Board. This is available at pages 348 to 354 of the file. The matter was again placed before the Executive Committee of the Board in its meeting held on January 12, 1988 and the same was ordered to be rejected. Assistant Secretary of the Board communicated this decision to the petitioner vide his letter dated March 16, 1985.

8. Argument of Shri Pareek, learned counsel for the petitioner, that inquiry was not held in accordance with the provisions of 1958 Rules, is supported by the materials which is available on record of the inquiry file. First report submitted by the Inquiry Officer shows that on December 4, 1985 the date of inquiry was fixed and on that very day the petitioner was called upon to make his submissions. The Inquiry Officer did not record any evidence on behalf of the Board in support of the charges. Secretary of the Board himself found that the Inquiry Officer had not adopted the correct procedure. He, therefore, issued direction to the Inquiry Officer by letter dated January 27, 1986 that he should submit a detailed inquiry

report based on facts. In that letter the Secretary has clearly written that no evidence has been produced by the departmental representative and without that, finding of guilt has been recorded against the petitioner. In the second report it has been mentioned that on September 19, 1986 the Presenting Officer produced the photo copies of the receipts which are said to have been issued by the petitioner in lieu of the money received by him from workers. It has then been noted that the petitioner made reference to his previous statement wherein he had admitted that he had received the money and that a sum of Rs. 9,285 had been deposited in the State Bank of Bikaner & Jaipur (Sirohi Branch) on September 9, 1986 in pursuance of the direction given by the Chief Judicial Magistrate. The Inquiry Officer then considered the evidence and held the charges as proved. Copy of the inquiry report was placed before the Executive Committee of the respondent Board and the Committee of the Board took decision to order compulsory retirement of the petitioner. Action of the Presenting Officer in merely producing the receipts cannot be equated with tendering of evidence. Even though the technical rules contained in the Evidence Act are not applicable to domestic/departmental inquiries, basic rules of natural justice have to be complied with and for compliance of the same it is essential that the documents which are produced during the course of inquiry are proved before the Inquiry Officer and an opportunity is given to the delinquent to cross-examine the witnesses. That procedure had not been followed by the Inquiry Officer and, therefore, I hold that the finding recorded by the Inquiry Officer on the question of interpolations made by the petitioner in the record is not sustainable. Inquiry Officer has committed another illegality in holding that the petitioner has not been able to produce evidence in support of his assertion that he had not made interpolation in the receipts. In recording this finding the Inquiry Officer has ignored the basic rule that burden of proving charge against a delinquent is always on the charging authority and only exception to this rule is where the delinquent admits the charge. Since no evidence has been produced in support of the charge of interpolation in the receipts, the petitioner could not have been found guilty of making interpolation of record.

9. I would have quashed the order of punishment on the aforesaid ground but record of the case shows that in his statement made before the Inquiry Officer on December 4, 1985, the petitioner has admitted that he received the amount from labourers of Sirohi District. He also admitted that he had given receipts on the letter pad of the Board and had taken money from the labourers. What he further stated is that he was prepared to deposit the amount. When he again appeared before the Inquiry Officer on September 19, 1986 he did not retract from the aforesaid statement. Instead, he reiterated this statement and asserted that he had deposited the amount in the bank on September 9, 1986. This shows that the petitioner himself admitted the charge of having received money from the labourers of Sirohi District and having retained the same with him for a considerably long period. Statement made by the petitioner in respect of charges No. 1, 2 and 3 runs in the following words:

vkjksi la-1

eSaus ckalokM+k ftys ds dkexkjksa ls izkIr jkf" k dks cksMZ dk;kZy; ls izkIr jlhnsa esa dkVh fiVh dj fljksgh ftys ds dkexkjksa dks ugh nh gS A vkjksi esa fooj.kkuqlkj fljksgh ftys ds dkexkjksa ls eSaus jde izkIr dh gS A tks esjsikl gS og eSa tek djkus dks rS;kj gw? A

vkjksi la- 2

eSaus yssVj iSM ij vkjksi esa of.kZr dkexkjksa dks jlhnsa nsdj jde izkIr dh gS tks eSa pqdkus dks rS;kj gw? A

vkjksi la- 3

eSaus dksbZ jlhnsa essa dkVh fiVh ugh dh gS vkSj u gh gsjkQsjh dk vijk/k fd;k gS- ;g vkjksi eq>s Lohdkj ugha gS A

In his report the Inquiry Officer has noted as under :

fnukad 19-9-86 dks Jh e.khdkUr vk;Z mifLFkr gq, A izLrqdrkZ vf/kdkjh Jh jkethykyk "kekZ us Jh vk;Z }kjk olwy dh xbZ jde ds ,ot esaa Jh vk;Z }kjk fljksgh ftys ds dkexkjksa dks nh xbZ jlhnsa dh QksVks izfr;k? izLqr dh ,oa dgk fd jde vk;Z }kjk gh yh x;h gS A Jh vk;Z u bl ij dgk fd eSa iwoZ esa vius fyf[kr c;ku esa ;g Lohdkj dj pqdk gw? fd eSaus jkf" k yh gS A oks :i;k 9285@&:- Fkk A ;g jde eSaus LVsV cSad vkQ chdkusj ,.M t;iqj fljksgh esa eq[; U;kf;d eftLV?sV ds funsZ"kkuqlkj tek dj nh gS vkSj vkidks fnukad 9-9-86 ls lwfpr dj pqdk gw? A

Jh vk;Z ds Lo;a ds c;ku izLrqdrkZ vf/kdkjh }kjk Jh vk;Z }kjk ysVjisM ij nh xbZ jlhnsa dh izfr;k? izLqr djus] mudk voyksdu djus ,oa Jh vk;Z }kjk m? ysVj isMksa ij nh xbZ jlhnsa dh iw.kZ jkf" k fljksgh U;k;ky; esa tek djus ds vk/kkj ij Jh e.khdkUr vk;Z vkjksi la[;k 2 esa cksMZ ds _kh dkexkjksa ls jkf" k olwy dj jkf" k ds cnys ysVj isM ij jlhnsa nsdj jkf" k izkIr dh ijUrq bl jkf" k dks buds }kjk cksMZ dk;kZy; ugha fHktokbZ xbZ] tkss xcu dh laKk esa vkrk gS A bl izdkj Jh vk;Z cksMZ dh jkf" k xcu djus ds nks"kh lkfr gksrs gS A

From the statement of the petitioner and the finding recorded by the Inquiry Officer on this score, it is clear that the charge of unlawful retention of money of the Board and consequential misappropriation/embezzlement of money of the Board has been proved. It is important to mention that the petitioner had retained money not for few days or months but for more than five to seven years. He thought of depositing the amount with the Board only after the charge sheet was served upon him. Since this part of the finding of Inquiry Officer is based on the admission made by the petitioner himself, any infirmity in the procedural aspect of the inquiry or failure of the Executive Committee of the Board to give reasons in support of its decision will not have the effect of vitiating the order of punishment. It cannot be disputed with any element of justification that charge of embezzlement, which has been found proved against the petitioner on the basis of his own admission, is an extremely serious charge. If the Executive Committee of the Board took a decision to order compulsory

retirement of the petitioner on the basis of this charge, no fault can be found with the order dated March 18, 1987. This will be the conclusion notwithstanding the fact that a part of the finding recorded by the Inquiry Officer is vitiated on account of violation of rule of natural justice or his failure to follow the basic rules of departmental inquiry. The order of compulsory retirement passed against the petitioner can be supported on the finding of embezzlement of money of the Board and, therefore, even if other charge of making interpolation in the receipts is held as not proved, punishment imposed on the petitioner cannot be termed as disproportionate or arbitrary. In this context reference deserves to be made to the decisions of Supreme Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, Therein the Supreme Court observed:-(p.248):

"The reasonable opportunity contemplated by Article 311(2) has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the Court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court... .If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice."

Judgments of the Supreme Court in *Kashinath Dikshita Vs. Union of India (UOI) and Others*, *M.A. Khalsa v. Union of India and Ors.* (1988) SCC 436 and *Brijnandan Cunsal v. State of U.P.* 1988 LIC 105, are of little help to the case of the petitioner. In the case of *Kanathdikshita* their Lordships observed that reasonable opportunity was denied to the petitioner because relevant documents had not been made available to the petitioner for cross-examination for the witnesses. In *M.A. Khalsa* case their Lordships of the Supreme Court found that the petitioner had made false claim for Rs. 156.80 as hono-urarium payable to a Senior Clerk working under him and held that the punishment was justified but looking to the long length of service, their Lordships ordered his reinstatement with penalty of stoppage of two increments with cumulative effect and of consequential loss of his seniority. In *Brijnandan's* case their Lordships held that decision of the Government regarding dismissal of the appellant was vitiated because copy of the report which was adverse to the delinquent was not made available to him. *M.A. Khalsa's* case does lend support to the case of the petitioner to some extent but in view of the fact that the said decision does not make a reference to the earlier Constitution Bench decision in *State of Orissa v. Bidya Bhushan*(supra), this Court is bound to follow the Constitution Bench

decision. That apart, a total reading of the order in M.A. Khalsa's case show that the Supreme Court had ordered modification of the penalty only on compassionate grounds and this order cannot be read as laying down a principle of law, that in cases of embezzlement/misappropriation, the delinquent has a right to have his penalty reduced in each and every case.

10. One grievance made by the learned counsel for the petitioner merits acceptance notwithstanding the fact that order of his compulsory retirement by way of punishment is found to be justified. This grievance relates to non-payment of full subsistence allowance to the petitioner and failure of the respondents to give him benefit of fixation of pay and grade increments. Shri Pareek argued that the petitioner was not paid full subsistence allowance and he was not extended the benefit of fixation of his pay. Learned counsel for the respondent could not show as to whether full payment of subsistence allowance had been made or not and whether other benefits of the suspension period had been given to him or not. Since the petitioner was an employee of the Board till the date of his compulsory retirement, his relationship with the Board as its servant subsisted and, therefore, it was obligatory for the respondent Board to have given him the benefit of full subsistence allowance for the period of suspension along with annual grade increments and pay fixation. Since the Board has failed to do so, direction deserves to be given in this regard by the Court.

11. For the reasons mentioned above, the writ petition is dismissed insofar as it relates to order dated March 18, 1987. Respondent Board is however directed to make payment of the subsistence allowance due to the petitioner for the period of his suspension and while doing so it should give benefit of revised pay fixation to the petitioner and also to give him benefit grade increments. This should be done within a period of four months from the date of submission of certified copy of this order.