
(2013) 03 JH CK 0080
In the Jharkhand High Court
Case No : WP (S) No. 348 of 2005

Manohar Das

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 3 AJR 191 : (2013) 2 JLJR 224

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manish Kumar, for the Appellant; Sunil Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of the order dated 30th September, 2003, whereby he has been awarded punishment of a black mark in his service record and it has further been ordered that the suspension period would be adjusted half earned leave with no monetary benefit. The order of appellate authority dated 18.5.2004 has also been challenged and a prayer seeking quashing of entire departmental proceeding, suspension order, enquiry report and charge-sheet has also been made. The petitioner was appointed in the year 1979 and he joined BMP-15 at Deoghar. During his service career, he was rewarded several times. On 17.2.2003, the petitioner was suspended in contemplation of departmental enquiry on the allegation that he had abused and attempted to assault the Provost. The petitioner was served a charge-sheet dated 27.3.2003 and he was directed to submit his reply within 15 days. The petitioner submitted his reply on 28.4.2003 denying the charge. He specifically submitted that he was getting ready to report for duty and during that time, the Provost came and abused him and therefore, there was an altercation (tu tu mai mai). The enquiry report was submitted, in which, the charge against the petitioner was found partly proved. The disciplinary authority passed the order of punishment on 30th September,

2003 awarding one black mark in the service record of the petitioner and it was also directed that the period of suspension would be treated as half earned leave and nothing would be paid to him for half earned leave. The petitioner preferred an appeal, which was also dismissed on 18.5.2004. The petitioner has contended that the impugned orders have been passed without considering the materials on record and the orders are passed on surmises and conjecture.

2. A counter-affidavit has been filed on behalf of the respondents, in which it has been pleaded that the prosecution witnesses have supported the allegation against the petitioner. The petitioner belongs to a disciplined force where indiscipline is treated very seriously. The order of punishment is just and proper, which does not require any interference by this Court.

3. Heard counsel for both the parties and perused the documents on record.

4. Learned counsel for the petitioner has submitted that the prosecution witness namely Baidyanath Singh, has not supported the charge of assault against the petitioner. The prosecution witness Rameshwar Rai had stated that the incident could be averted due to intervention of Awadhesh Tiwary, however, said Awadhesh Tiwary has not been examined. The charge against the petitioner has been found proved only on the evidence of Provost (Pramod Kumar Mishra). Neither the enquiry officer nor the disciplinary authority considered the specific plea of the petitioner that he had gone for shave in a saloon in order to get ready for reporting for the duty and the Provost had abused him. The learned counsel for the petitioner has further submitted that this is a case, where the findings in the departmental enquiry has been recorded against the petitioner without there being any credible evidence on record.

5. In a case where 11 workmen, under some misconception treating 2nd January as holiday were proceeded against in a departmental proceeding and after enquiry, were ordered to be dismissed from service, the Hon'ble Supreme Court has held that the punishment imposed was excessive and disproportionate to the misconduct against them. In the said case of Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, , the Hon'ble Supreme Court has held as under:--

6. In our judgment, this is one of those cases in which it can plainly be said that the punishment imposed was one which no reasonable employer would have imposed in like circumstances unless it served some other purpose. There was a practice of substituting for a holiday falling on a Sunday, the day next following. This appears to have been done in the appellant Company for a number of years. In this year also the 2nd of January would have been & holiday but for the contrary decision of the Management. From the record it does not appear that there was anything very special requiring attention on that day. But assuming there was, the absence of the eleven workmen on the 2nd was not something for which no lesser punishment could have been imposed. The absence could have been treated as leave without pay; the workmen might even have been warned and fined. It is impossible to think that any other reasonable employer would

have imposed the extreme punishment of dismissal on its entire permanent staff in this manner. Assuming for a moment, that three workmen were warned and taken back, the employer knew very well that they could not join in view of the intervention of the Union. On the whole, therefore, though we emphasize again that a Tribunal should not interfere with the kind or severity of punishment except in very extraordinary circumstances, we think that interference was justified in this case because the punishment was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed.

6. In the case of *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, , the Hon"ble Supreme Court has held as under:--

39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.

7. In the case of "*Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court has held that there is a distinction between some evidence and no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

8. In the case of "*Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court has held that even on proved charges of disobedience of order of superior officer to eat food, sentence of one year and thereafter, dismissal from service with added disqualification of being declared unfit for, in future, civil employment was disproportionately excessive. The Hon"ble Supreme Court has held as under:--

25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial

review.....

9. In the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , the Hon"ble Supreme Court has held:--

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India.

10. In the case of "Management of the Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, , the allegation against the workman was that he issued legal notices to the Federation and to the International Chamber of Commerce, which brought discredit to the Federation. In the departmental enquiry, the charge against the employee was found proved and an order of termination from service was passed. The Hon"ble Supreme Court while holding that the punishment was disproportionate to the misconduct alleged and established, has observed:--

The Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige.

11. In a case where an employee remained absent from duty for more than 6 months and was removed from service the Hon"ble Supreme Court found that since the employee fairly admitted his guilt and explained the reason for his absence by stating that he did not have any intention or desire to disobey the order of higher authority or violate any of the Company"s rules and regulations but the reason was purely personal or beyond his control, the punishment was not only unduly harsh but grossly in excess to the allegation.

12. In the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, , the Government servant, who was working as Security Assistant, was found unauthorizedly absent from duty during three consecutive periods and therefore, a departmental enquiry was instituted and the charges were found proved. Since there was no finding recorded during departmental enquiry that the absence was willful, the Hon"ble Supreme Court while interfering with the order of punishment, has observed as under:--

16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behavior was unbecoming of a Government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of Compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be

different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

13. I find that the charge of assault against the petitioner has not been proved. Although, the evidence brought on record suggests that there was an altercation between the petitioner and the Provost, the petitioner has taken a defence that the Provost abused him to which he had objected to. The petitioner namely, Manohar Das has examined himself and stated that the Provost had abused him when he was getting ready for the duty. He has further stated that during his service career, he has been awarded on several occasions and there had been no incidence of any indiscipline on his part. He has also stated that earlier also the said Provost had given a false report, on the basis of which, 24 Constables were suspended. He has also stated that the said Provost is known as a hot tempered officer and in the past, he has assaulted one Ramanand Singh also. The enquiry report also suggests that the charge of assault on Provost by the petitioner was not proved. The order of punishment has been passed only because there was an altercation between the Provost and the petitioner. The enquiry officer has not considered the specific defence of the petitioner and has not taken care to enquire about the veracity of the allegation levelled by the petitioner against the Provost. There is no evidence on record that the petitioner disobeyed the command of his senior. It is not the case against the petitioner that petitioner did not attend the duty assigned to him. The mere ipse dixit of the enquiry officer is not sufficient for holding the charge proved against the petitioner. Penalty imposed upon the petitioner is such that no reasonable person would arrive at such conclusion.

14. On perusal of the record of the case, I find that the impugned order is liable to be quashed for another reason, that is, neither the petitioner was supplied with a copy of the enquiry report nor he has been issued a show-cause notice either after the submission of the enquiry report or before the order of penalty. Admittedly, the petitioner was issued show-cause notice on 27.3.2003 alongwith the charge Memo dated 27.3.2003. Thereafter, at any stage, no show-cause notice has been issued by the respondents to the petitioner. In paragraph No. 13 of the counter affidavit, the stand taken by the respondents is extracted below:--

13. That, after a full fledged enquiry and on examination of witnesses and considering the facts and the conduct of the petitioner, the Conducting Officer, the Dy. S.P. JAP-V had submitted his report dated 6.9.2003 in which report the Conducting Officer had found that the petitioner was guilty of defiance of order of his superior officer when he was asked to report on duty on the visit of the Chief Minister as Beguler. The report was submitted by him before the Enquiry Officer

and the Enquiry officer in terms of Annexure-5 to the writ application, though found the petitioner guilty of charges partially which guilt was in itself sufficient to inflict/severe punishment on the petitioner, he being a member of a disciplined Armed Force. Still, the enquiry officer took a lenient view and instead of inflicting any severe punishment proportionate to his conduct, only the punishment of Black Mark was awarded. But, for the act of aforesaid indiscipline the petitioner should have been dismissed from his service. But, instead of dismissing him from service, a lesser punishment of Black Mark was awarded to the petitioner. There was no necessity of serving second show-cause notice to the petitioner.

15. In the case of Union of India and others Vs. Mohd. Ramzan Khan, , the Hon"ble Supreme Court has held that whenever a report is furnished holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or any, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he should desires, and non-furnishing of the report would amount to violation of rules of natural justice and making final order liable to challenge hereafter.

16. A Constitution Bench of the Hon"ble Supreme Court in the case of " Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has held:--

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which alongwith the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it.

17. After considering the judgment in the case of "B. Karunakar", the Hon"ble Supreme Court in the case of " Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, has held as under:--

17. These observations are dearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first

stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

In the result, the present writ petition is allowed. The orders under challenge are quashed.