

(1996) 09 MP CK 0085
In the Madhya Pradesh High Court
Case No : M.P. No. 2684 of 1988

M.P. Rajya Bhumi Vikas Nigam	Vs	APPELLANT
Sita Charan Banwari and Another		RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Rajya Bhumi Vikas Nigam Adhiniyam, 1976 — Section 11(1), 17, 7

Citation : (1997) 1 JLJ 184 : (1999) 1 MPLJ 344

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; Manindra Shrivastava and Chandana Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The facts of this case filed by M. P. Rajya Bhumi Vikas Nigam (hereinafter referred to as "the Corporation" for short) are somewhat peculiar and uncommon. Sharp differences between the Chairman, Managing Director, and the President of Employees' Union of the Corporation have surfaced in this litigation and offer a sad commentary how its working and efficiency are impaired by such internal feuds.

Sitacharan Banwari, respondent No. 1 was employed as Accountant and was at the relevant time posted in that capacity in the branch office of the Corporation at Itarsi. He was served with a chargesheet by the Managing Director.

The Corporation was established u/s 3 of the M. P. Rajya Bhumi Vikas Nigam Adhiniyam, 1976 (hereinafter referred to as "the Adhiniyam " for short). u/s 17, the Managing Director is prescribed as the appointing authority and in that capacity as the disciplinary authority in respect of employees of the Nigam. The provisions of Section 17 also provide for an appeal to the Chairman of the Board

of the Corporation against the orders of the Managing Director.

The Managing Director in his capacity as disciplinary authority got an enquiry conducted against respondent No. 1, the Accountant, through Shri M. D. Saxana, Loan Officer of the Corporation. After completing the enquiry the enquiry officer submitted his report to the disciplinary authority finding majority of the charges as proved. On the basis of the enquiry report, by order passed on 2-12-1987 (Annexure-P/20), the Accountant was punished with imposition of several penalties including the penalty of removal from service on alleged proof of charge Nos. 2 and 5.

The Accountant then preferred an appeal to the Chairman. The Chairman by order passed on 15-2-1988 (Annexure-P/28) allowed the appeal, set aside the order imposing penalties on him and remanded the case for a fresh enquiry on the ground that there were several procedural illegalities resulting in denial of proper opportunity to the employee to defend himself.

Surprisingly, instead of honouring the order passed in appeal by the Chairman of the Corporation, the Managing Director of the Corporation by this petition filed in the name of the Corporation has challenged the order of the Chairman.

Shri Prashant Singh, learned counsel appearing for the petitioner- Corporation assailed the order of the Chairman passed in appeal firstly on the ground that the Chairman has ante-dated the order passed in appeal after expiry of his term of office and has thus tried to help the employee by exceeding his authority. An attempt was also made by him by taking this Court through the proceedings of the enquiry to show that the disciplinary proceedings were not vitiated by any procedural error so as to justify an order of remand.

On behalf of the respondents Shri Manmdra Shrivastava, Adv. appeared to support the order. Miss Chandana Mukherjee, Adv. appeared for the Ex-Chairman (respondent No. 2) and controverted the fact alleged against her client of anti-dating the appellate order. The learned counsel appearing for the respondents also raised a preliminary objection regarding maintainability of the petition which deserves to be considered first before I take up the other grounds urged on merits.

The preliminary objection raised by the counsel for the respondents is that this petition has been filed in the name of the Corporation by the Managing Director without any valid authority or power conferred on him by the Board of the Corporation. It is urged that in the absence of valid authorisation by the Board, this petition by the Managing Director in the name of the Corporation against its own Chairman is not maintainable. It may be stated that this preliminary objection was specifically raised in the return submitted by the respondents. No rejoinder or counter was submitted to the said return by the petitioner-Corporation. In the midst of hearing of this case, when the counsel for the respondents were making their oral submissions in reply, the counsel for the petitioner filed a document with a prayer to take it on record, which contained

the proceedings of the Board of Directors of the Corporation held on 25-6-1988. The application (I. A. No. 7377/96) filed for taking a copy of the resolution of the Board on record deserves out-right rejection on the short ground that despite a preliminary objection raised long back in the return no attempt was made to meet the objection by filing necessary documents. To permit such production at this stage would bound to reopen the whole hearing of the case. Alternatively, even if the document is accepted on record, it does not at all help the petitioner's case, the reasons for which I shall hereinafter discuss.

For the purpose of deciding the preliminary objection, a few relevant provisions of the Adhinryam will have to be examined. The Corporation, as its preamble shows, is constituted for execution of projects relating to land development with a view to achieve soil conservation to prevent loss of agricultural productivity and to secure optimum utilisation of land and water resources in the State of Madhya Pradesh. The Corporation is established u/s 3 of the Act as a body corporate with power to sue and to be sued. The constitution of Board is provided in Section 8. It shall consist of members representing the concerned departments of the State with a Chairman to be nominated by the Government for a term not exceeding three years. Section 7 of the Adhiniyam confers power of general superintendence, direction and management of the affairs and business of the Nigam on its Board of Directors. The appointment of the Managing Director and his powers are contained in Section 11. Under sub-clause (ii) of sub-section (1) of Section 11, the Managing Director is empowered to exercise such powers and perform such duties on the Board may delegate or entrust to him. No such order of delegation or entrustment of any duties by the Board to the Managing Director has been produced in reply to the preliminary objection. At the fag end of the hearing of this case, a resolution of the Board passed on 25-6-1988 has been filed. From the contents of the said resolution, which I have refused to take on record, the matter regarding filing of this petition against the order of Chairman appears to have been discussed. The contents of the resolution show that the Board of Directors were not clear as to whether the Managing Director can be allowed to take any such legal action against the decision of the Chairman of the Board. The Board of Directors, therefore, left the matter to the Managing Director to take necessary legal action. The contents of the resolution do not, therefore, expressly empower, authorise or delegate to the Managing Director any right to institute this petition in the name of the Corporation against the action of its own Chairman. The resolution, properly read, only means that the Board of Directors were unable to take any decision in the matter and left the matter to the discretion of the Managing Director. It appears to this Court that as the Board of Directors have not authorised expressly the Managing Director to challenge the action of their own Chairman, the present petition filed by the Managing Director on the basis of the aforesaid resolution cannot be held to be competent in law. The situation really was such that without a proper authorisation from the Board of Directors, as envisaged by Section 1 I(I)(ii) of the Adhiniyam, the Managing Director could not have filed the petition in the name of

the corporation. Therefore, this petition filed by the Managing Director against the decision of the Chairman, without any valid authorisation by the Board of the Corporation, is incompetent in law.

Having thus sustained the preliminary objection raised by the respondents to the maintainability of this petition, it is in fact not necessary for this Court to go into the other grounds on the competence of this petition and the merits of the order of the Chairman passed in appeal. I, however, proceed to consider the other grounds urged as my order is appealable.

Before taking up the case for consideration on merits, one more preliminary objection urged in the course of hearing by the counsel for the respondents also deserves to be considered. It is submitted that the decision of the Chairman passed in appeal in exercise of powers u/s 17 of the Act has to be held to be the decision of the Corporation itself and it is not challengeable at the instance of the Corporation. The above argument although is attractive, on closer examination of the provisions and the scheme of the Act, cannot be accepted. The disciplinary power has been conferred u/s 17 on the Managing Director. The action by the Managing Directors may be deemed to be action on behalf of the Corporation. But as an internal appeal has been provided from the decision of the Managing Director to the Chairman, the Chairman while acting as appellate authority u/s 17 exercises quasi-judicial power independent of his administrative powers which he may exercise in the capacity as Chairman of the Board u/s 7 of the Act. When the Chairman sits for deciding a statutory appeal u/s 17, it cannot be said that he represents either of the parties. His order as an appellate authority in his quasi-judicial capacity to decide a dispute between two parties i.e. the delinquent employees and the employer is, therefore, questionable by one of the parties to it. The argument, therefore, cannot be accepted that the Chairman even while exercising quasi-judicial appellate power conferred u/s 17 of the Adhmiyam was acting for and on behalf of the Corporation and the decision of the Chairman is binding on the Corporation. The acceptance of the argument as advanced on behalf of the respondent would be against the expected role of the appellate authority as an independent non-partisan forum for adjudicating upon the validity of disciplinary action taken by the Corporation through its Managing Director against its employees. (See : Administrative Law by Jain and Jain, Fourth Edn., Reprint 1993, Pages 167 and 168, under the heading "Provisions for administrative appeal or revision".)

At this stage, the next ground urged against the appellate order of the Chairman that it has been antedated after expiry of the term of the Chairman may be decided. On behalf of the petitioner very strong reliance has been placed on a copy of log book of the official vehicle Annexure-P/25. From the contents of the same it is sought to be shown that between 11-2-1988 to 15-2-1988 the Chairman was on official tour to Bhind and had used his official vehicle No. C.P.C. 5493. It is, therefore, submitted that on 15-2-1988 he could not have passed the appellate order at Bhopal after hearing the parties. Reliance has also been placed

on an extract copy of the dispatch register to show that the relevant entry at the bottom of the register at Nos. 67-A and 67-B has been subsequently inserted showing despatch of copy of the order passed in appeal on 15-2-1988 to the Managing Director and to the employee.

The Chairman as respondent No. 2 has filed a return supported by an affidavit strongly refuting the allegation that he was not at Bhopal on 15-2- 1988 so as to be able to hear the appeal and pass the appellate order. According to his version, he returned from Bhind by road in the official Jeep and boarded the train on 14-2-1988 to reach Bhopal on 15-2-1988. On 15-2- 1988, according to the Chairman, he attended the swearing in ceremony of the new Cabinet headed by Shri Arjun Singh in the Governor's House and for that purpose used his official Ambassador car log book of which has been filed. According to the Chairman, he heard the employee in his office and passed the order. The Managing Director is also stated to have been heard but he was not present when the order was signed and delivered to the employee. The Managing Director was, therefore, informed by sending a communication to him with due entry in the Dak Book. The Chairman laid down his office on expiry of his term on 17-2-1988 at Bhopal. On the above facts, it is difficult to disbelieve the version of the Chairman. The Chairman had admitted that he was on official tour to Bhind between 11-2-1988 to 14-2-1988 but there is nothing to disbelieve his version that he undertook journey by road from Bhind to Gwalior and from Gwalior to Bhopal by train. He attended the swearing in ceremony and demitted office at Bhopal on 17-2-1988. His presence on 15-2- 1988 in his office for hearing and deciding the appeal, therefore, cannot be doubted. It is clear that the Managing Director and the Chairman had no cordial relations and, therefore, such allegations have been made at the instance of the Managing Director in this case and he had taken a leading part in preferring this petition without obtaining proper authorisation from the Board. The appellate order, therefore, cannot be set aside on the ground urged that it was ante-dated and passed by the Chairman after expiry of term of his office.

I now pass on to the ground urged on behalf of the petitioner- Corporation on merits of the appellate order passed by the Chairman. The learned counsel appearing for the petitioner as also the counsel appearing for the opposite parties at length took this Court through various proceedings of the enquiry in support of their contentions respectively made on the procedural part of the enquiry and flaws if any, therein. On behalf of the Corporation it is urged that full opportunity was given to the petitioner to inspect the documents, to take copies of important documents and to lead his evidence in defence. On behalf of the employer it was pointed out that copies of important documents were not supplied, proper assistance through the co-employee for defence was not given and important witnesses were not allowed to be examined.

Leaving from discussion the charges on which lesser penalties have been imposed, for the purpose of decision of this petition, it is enough for me to

discuss the grounds in relation to two charges i. e. Charge Nos. 2 and 5.

Charge No. 2 was that the petitioner submitted false T. A. Bills and thus defrauded the Corporation. The said charge contains three instances in which the employee is alleged to have given false time and period of his journeys for official work. It is not necessary to go into the details of the various allegations made. The amount involved is not much. The journeys are said to have been undertaken partly, but a longer period of journey is shown on record only to claim T. A. In relation to one of such allegations under this head of charge, the case of the employer was that the employee had gone on visit to Vidisha but the amount which he had collected was got deposited at Itarsi through Vijay Kumar Pitaliya, the then Junior Engineer working at Itarsi. The abovenamed Pitaliya was cited as a defence witness by the petitioner vide his list of witnesses Annexure P/12. The order of the enquiry officer is contained in the upper portion of that list of witnesses in which permission to summon Vijay Kumar Pitaliya had been granted. Since he was in the employment of the Corporation, all assistance should have been given to the employee to summon Shri Pitaliya but no honest effort was made to summon him. The learned counsel for the Corporation could not point out that any effort was made to issue summons to Vijay Kumar Pitaliya so that he could appear in the case as defence witness on behalf of the employee. Denial of reasonable opportunity on this aspect, therefore, is clear.

The other charge on which the petitioner has been punished with penalty of removal from service is Charge No. 5. The allegations contained in this charge were that the employee took the official jeep with permission to take the wife of one of the employees for delivery to a maternity ward of hospital. It is then alleged that the delivery in the hospital had already taken place and the jeep was unauthorisedly used for carrying some more co- employees who went to a liquor shop and after consuming liquor the jeep was involved in an accident causing loss to the Corporation. As per the report of the enquiry officer, the only part played by the employee was to obtain the jeep for the urgency of the wife of one of the co-employees. It has then been stated in evidence that when the employee had gone to meet Superintending Engineer Shri Sikarwar at his residence, the other employees in the jeep unauthorisedly took away the jeep and then an accident occurred. One Vishnu Prasad Bhartiya was also one of the occupants of the jeep. His statement was recorded in the preliminary enquiry held by Shri C. K. Chugh, Superintending Engineer, Itarsi. Vishnu Prasad Bhartiya who was one of the occupants of the jeep and an eyewitness was cited as a defence witness by the employee in proof of his case that without his permission and without his knowledge the jeep was unauthorisedly taken while, he was inside the residence of Shri Sikarwar and that he was not directly responsible for the accident that took place. When a permission was sought to examine Vishnu Prasad Bhartiya along with other witnesses cited in Annexure-P/12, the prayer to summon him was refused by stating that he has been cited as one of the prosecution witnesses and he is no more in the employment of the Corporation. The relevant portion of the order rejecting the prayer to allow Vishnu Prasad

Bhartiya, who was listed as witness No. 8, to be examined in defence would be clear from the endorsement of the enquiry officer made on the list of witnesses Annexure-P/12.

It may be mentioned that Vishnu Prasad Bhartiya was not examined as a Prosecution witness. In such circumstances, the employee was denied the opportunity to produce Vishnu Prasad Bhartiya as a defence witness concerning in a serious charge on which he has been removed from service. Not only that he was not allowed to be examined as defence witness, but even his statement recorded in preliminary enquiry was not supplied, though demanded.

The learned counsel for the employee is right in submitting that the above action on the part of the enquiry officer was in breach of principles of natural justice and amounted to denial of reasonable opportunity of defence. See : (State of M. P. v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623, Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), , B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, and The State of Punjab Vs. Bhagat Ram, .

In the considered opinion of this Court, the above mentioned two procedural infirmities in relation to two serious charges on which the petitioner was imposed with extreme penalty of removal from service are sufficient to sustain the finding of the Chairman as appellate authority that a de novo enquiry is necessitated to afford complete opportunity to the employee to defend himself. For the aforesaid reason, I am not at all taking up for consideration other grounds such as bias on the part of Managing Director urged on behalf of the employer.

It was urged on behalf of the Corporation that no grounds were raised by the employee in the memo of appeal and, therefore, the appellate authority could not have, on his own, discover some ground to upset the order of dismissal. The ground urged has no merit. The counsel for the employee has pointed that earlier to the appeal, other communications were addressed to the appellate authority in which grievance regarding procedural lapses committed in the enquiry were highlighted. That apart, the procedure contained in M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 has been adopted in the Corporation. Under those Rules as also u/s 17 of the Adhiniyam, the appellate Authority was obliged to examine the record of the disciplinary proceedings to decide whether the procedure as laid down was duly followed and the disciplinary proceedings were conducted fairly and in consonance with principles of natural justice. The appellate authority, therefore, committed no error in delving into the record to examine the validity of the proceedings and in granting relief to the employee.

The learned counsel for the employee made strenuous efforts to point out that the manner in which and the hurry with which the enquiry was conducted on several charges with imposition of severe penalty show that the Managing Director had some personal grudge against the employee. It is pointed out that

the employee in his capacity as president of the Employee's union did make complaints against large scale acts of mismanagement and misappropriation committed by the Managing Director. The Managing Director was, therefore, ill-disposed towards the employee and was searching for an opportunity to punish him in a cooked-up disciplinary action.

It is also urged on behalf of the employee that on flimsy charges a severest penalty has been imposed and the penalty imposed being disproportionate to the charges, the appellate authority was right in interfering by directing de novo enquiry. As already stated above, the two serious procedural lapses pointed out by me, apart from the alleged bias and disproportionate imposition of punishment, are sufficient to sustain the order of the appellate authority.

As a result of the discussion aforesaid, the petition fails and is hereby dismissed with costs to be borne by the Managing Director personally as the petition was filed by him without any valid authorisation from the Board. Counsel's fee Rs. 500/-, if certified. The amount of security deposit, if any, shall be refunded to the petitioner.