
(2016) 03 RAJ CK 0089

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 347 of 2002

New India Assurance Co.Ltd. & Others

APPELLANT

Vs

Sh.R.N.Sen (Died) through LRs

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 RLW 1659

Hon'ble Judges : Mr. Ajay Rastogi and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. V.S. Yadav, Advocate, for the Appellant; Mr. Aruneshwar Gupta, Counsel along with Dr. Saugath Roy, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J. - Instant special appeal is directed against order of the Id. Single Judge dt. 23.07.2001.

2. The brief facts of the case are that the respondent was initially appointed as Assistant Administrative Officer upon selection on 04.08.1977 and he was denied promotion on the post of Administrative Officer and that came to be challenged at his instance by filing of Writ Petition No.2306/1983. While discharging his duties for the alleged delinquency committed by him, he was suspended vide order dt.22.11.1984 and a charge-sheet for imposing major penalty came to be served upon him on 23.03.1985 and in all six charges were levelled against him which are of wilful insubordination, disobedience of lawful order, negligence of work in performance of duty and commission of act subversive of discipline.

3. Reply was submitted by the respondents to the charge-sheet and thereafter the Enquiry Officer was appointed and after affording reasonable opportunity of hearing, as contemplated under the scheme of Rules, the Enquiry Officer found the charge Nos.1, 2, 4 & 5 proved and charge Nos. 3 & 6 partially proved, which came to be affirmed by the disciplinary authority and looking to the nature of

allegations made against him, the respondent was punished with the penalty of removal from service vide order dt.20.10.1987 u/R.23(f) of GI (CDA) Rules, 1975 and the departmental appeal preferred before the appellate authority came to be rejected vide order dt.12.02.1990. The respondent challenged order of penalty dt.20.10.1987 and appellate authority dt.08.03.1990 by filing Writ Petition No.1652/1990.

4. It was nowhere the case of the respondent that either the procedure prescribed under the disciplinary Rules has not been followed or opportunity of hearing was not afforded or there was violation of principles of natural justice. However, his submission was that the finding which was recorded by the Enquiry Officer, in reference to each charge, was perverse based on conjectures and surmises and such enquiry report on which the disciplinary authority has relied upon and passed order of penalty is not sustainable in law.

5. The Id.Single Judge as a super appellate authority examined the findings recorded by the Enquiry Officer in reference to each charge and there was no reference made in respect of the charge Nos.5 & 6 and on the contrary, it was observed by the Id.Single Judge that charge Nos.5 & 6 need not to be mentioned as they were not proved. However, the fact is that the charge No.5 was found to be proved and charge No.6 was partially proved.

6. On the basis of the material on record, the Id. Single Judge on appreciation of each charge observed that the finding recorded by the Enquiry Officer for each charge is perverse and on the basis of such perverse finding, the order of penalty dt.20.10.1987 and so also the appellate order dt. 08.03.1990 are not sustainable with the direction that he shall be entitled to all benefits which have been accrued to him had he not been removed from service.

7. At the outset, it may be noticed that the respondent-employee R.N. Sen died during pendency of the present proceedings and left intestate being unmarried, his other brothers moved application for being impleaded as Legal Representatives and that permission was granted by this court pursuant to which, the appeal is being prosecuted by the brothers of deceased employee late R.N. Sen.

8. When the appeal came to be listed at admission stage, this court while admitting the appeal stayed the operation & effect of order of the Id. Single Judge vide order dt. 29.05.2002 and that order throughout remained stayed and order of the Id. Single Judge has not seen the light of the day.

9. Counsel for appellants submits that the standard of proof in departmental proceedings required is that of preponderance of probability and not proof beyond reasonable doubt and the disciplinary proceeding is not a criminal trial and where there is some relevant material available on record which was accepted by the authority and reasonably supports the conclusion holding the employee guilty, it is not the function of the High Court u/Art.226 of the Constitution to review the material and come to an independent finding and thus,

the procedure which was adopted by the Id. Single Judge, in appreciation of evidence recorded during the course of enquiry proceedings, as super appellate authority u/Art.226 of the Constitution and observing that the finding recorded by the Officer is perverse is not legally sustainable and further submits that the Id. Single Judge has exceeded its jurisdiction in examining the finding recorded by the Enquiry Officer during the course of enquiry u/Art.226 of the Constitution.

10. Counsel submits that it was nowhere pleaded by the respondent that there was either violation of General Insurance (Conduct, Discipline & Appeal) Rules, 1975 or the procedure prescribed by law has not been followed or he has been deprived of being afforded an opportunity of hearing or there was a violation of principles of natural justice or defect in the decision making process adopted by the disciplinary authority. The charge Nos.5 & 6 have been found to be proved/partially proved by the Enquiry Officer and the Id. Single Judge has not even examined the same and arrived to the conclusion that the charge Nos.5 & 6 were not proved, which is factually incorrect and in these facts & circumstances quashing of order of penalty is not legally sustainable and deserves interference by this court.

11. Counsel for respondent supported the order impugned passed by the Id. Single Judge and submits that the findings recorded by the Enquiry Officer in holding the delinquent guilty may certainly be examined by this court even in the limited scope of u/Art.226 of the Constitution and the Id. Single Judge has independently examined the charges and material on which the charges were found to be proved by the Enquiry Officer in its report and on prima facie appreciation arrived to a conclusion that the finding recorded by the Enquiry Officer is perverse and if this court may examine the charges which are levelled against the delinquent and the finding recorded during the course of enquiry, there is no tangible evidence on record which could substantiate the same and the finding recorded by the Enquiry Officer being apparently perverse for which the Id. Single Judge has assigned cogent reasons and that being so, no error has been committed by the Id. Single Judge in passing of the order impugned which may call for our interference by this court.

12. We have heard counsel for the parties and with their assistance perused the material available on record.

13. It has been settled by the Apex Court and no more remains *res integra* that in exercise of jurisdiction u/Art.226 of the Constitution the High Court cannot act as an appellate authority and its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The judicial review is not akin to adjudication of the case on merits as an appellate authority.

14. In *B.C. Chaturvedi v. Union of India* reported in (1995) 6 SCC 749, the scope of judicial review in departmental proceedings was examined by the Apex Court and it was observed that review by the court is a decision making process and

where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

15. This came to be further examined by the Apex Court in *R.S. Saini v. State of Punjab* reported in (1999) 8 SCC 90 in para Nos.16 & 17 and the Apex Court observed that the scope of interference is rather limited and has to be exercised within the circumscribed limits. It would be relevant to quote para Nos.16 & 17 of the judgment *supra* which reads *ad infra*:-

"16. Before advertent to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."

16. This came to be further examined by the Apex Court in the case of *S.R. Tewari v. Union of India & Anr.* reported in 2013 (3) SCT 461.

17. Keeping the principles laid down by the Apex Court into consideration and as noticed by us, it was nowhere the case of the respondent that either the prescribed procedure under the Rules has not been followed or there is a violation of principles of natural justice or he has been deprived of reasonable opportunity of hearing at any stage during the course of departmental proceedings and on perusal of the order impugned, we can notice that the finding on each charge has been examined & re-appreciated by the Id. Single Judge, of the statements recorded during the course of enquiry, as an appellate authority, in our view, was not a scope available to this Court u/Art.226 of the

Constitution.

18. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous or the court may be justified in exercising the power of judicial review if the impugned order suffers from malafide, dishonest or corrupt practices, for the reason, that the order has been passed by the authority beyond the limits conferred upon the authority under the law but it is not the case set up by the respondent.

19. In our view, it was not open for the Id. Single Judge within the limited scope of judicial review u/Art.226 of the Constitution not akin to re-appreciation of evidence as a super appellate authority and come to its own conclusion on the proof of a particular charge, as scope of judicial review is limited to the process of making decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding.

20. In the instant case, the Id. Single Judge in its order impugned re-appreciated the finding independently which has been recorded by the Enquiry Officer in its report and on his own appreciation held that the finding recorded by the Enquiry Officer is perverse. Although, there is no re-appreciation made by the Id. Single Judge in respect to the charge Nos.5 & 6 since the Id.Single Judge proceeded on the basis that charge Nos.5 & 6 are not proved, which is factually incorrect.

21. In our considered view, the Id. Single Judge has exceeded in its jurisdiction in re-appreciating the findings recorded by the Enquiry Officer as an appellate authority and such finding recorded by the Id.Single Judge is not sustainable in law.

22. At last, counsel for the respondent submits that even if the charge has been found to be proved, the punishment of removal from service is shockingly disproportionate and requires interference by this court.

23. We have already observed that since the respondent employee died during pendency of the proceedings leaving behind intestate as he was unmarried and his brothers moved application to prosecute the matter as his legal representatives and apart from it, looking to the nature of allegations levelled against him and proved, the punishment inflicted upon him cannot be said to be shockingly disproportionate which may require interference by this court.

24. Consequently, the instant special appeal succeeds and is hereby allowed and order impugned passed by the Id.Single Judge dt.23.07.2001 is quashed and set aside.

25. No costs.