
(2009) 06 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 678 of 2005

Ram Kishore Goutam

APPELLANT

Vs

State of M.P. (Now C.G.) and Others

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Citation : (2009) 3 CGLJ 65

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : A.K. Yadav, for the Appellant; Shashank Thakur, Panel Lawyer, for the Respondent

Judgement

Satish K. Agnihotri, J.—This petition was filed before the State Administrative Tribunal, Madhya Pradesh at Jabalpur. After dissolution of the Tribunal this petition was received on transfer in this Court. The original application was renumbered as W.P.(S) 678/ 2005.

2. The Petitioner, by this petition, impugns the order dated 16.4.1990 (Annexure A/6), passed by the Respondent No. 4, whereby the Petitioner was imposed with a penalty of compulsory retirement from service after departmental enquiry. The Petitioner also impugns the order dated 5.11.1990 (Annexure A/8), passed in appeal and the order dated 19.5.1992 (Annexure A/9) passed in mercy appeal.

3. The brief facts, in nutshell, are that the Petitioner, while working as Constable was placed under suspension on certain allegations. A departmental enquiry was held against him on the following charges:

4. After the departmental enquiry, by order dated 10.11.1989, passed by the Superintendent of Police, Raipur, a penalty of compulsory retirement was imposed upon the Petitioner. On appeal, by order dated 25.3.1990 (Annexure A/1), passed by the Deputy Inspector General of Police, Raipur Range, the above order dated 10.11.1989 was quashed and the matter was remanded back for a fresh departmental enquiry.

5. Thereafter, as per the observations made by the Deputy Inspector General of Police, Raipur Range in the order dated 25.3.1990, a departmental enquiry was conducted and by order dated 16.4.1990 (Annexure A/6) the Petitioner was retired compulsorily.

6. The Petitioner, thereafter, preferred an appeal before the Deputy Inspector General of Police, Raipur Range. The appellate authority after having considered all the aspects of the matter dismissed the appeal on 5.11.1990 (Annexure A/8). Being aggrieved, the Petitioner preferred a mercy appeal before the Director General of Police, Madhya Pradesh, Bhopal, which was also dismissed on 19.5.1992. Thus, this petition.

7. Shri A.K. Yadav, learned Counsel appearing for the Petitioner would submit that the medical report of prosecution witness Bhukhan Lal, the roznamcha sanha and the duty register were not supplied to the Petitioner. The Petitioner was not sent for medical examination to establish the allegation that he was in drunken condition. The matter was remanded back for a fresh departmental enquiry by order dated 25.3.1990 (Annexure A/1), passed by the Deputy Inspector General of Police, Raipur Range, but in fact, no fresh departmental enquiry was held. He would further submit that before passing of the final order no show cause notice was given to the Petitioner.

8. Per contra, relying on the return submitted before the Administrative Tribunal, Jabalpur, Shri Shashank Thakur, learned Panel Lawyer would submit that the Hon"ble Court may not sit as a Court of appeal and may not reappreciate the evidence or reassess the quantum of punishment. The Petitioner was afforded opportunities at six times before the various authorities. He was supplied with list of witnesses and also the relevant documents. The Petitioner was given full opportunity to defend his case and to produce his witnesses. The appellate authority by order dated 25.3.1990 remitted back the matter only to the extent of examining the medical report of the injuries. The injury report (medical report) was duly proved by the doctor. The Petitioner was not provided assistance of a legal practitioner, as the prosecution was also not represented by any legal professional. All the authorities, superior to the disciplinary authority, have examined the case of the Petitioner in detail. Thus, there is no reason to interfere with the impugned orders as there was no perversity, illegality or irregularity in the impugned orders.

9. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

10. On perusal of the documents and after hearing the submissions of the Petitioner and the Respondents, it is evident that the Respondents have not submitted any reply or explanation to the allegation of the Petitioner that the Petitioner was not supplied with the medical report of the prosecution witness Bhukhan Lal, Rojnamcha Sanha and the duty register. The Petitioner was also not supplied with the medical report in respect of the alleged drunken conditions of

the Petitioner. The contention of the Respondents that the Deputy Inspector General of Police i.e. the appellate authority, by order dated 25.3.1990 (Annexure A/1) had remitted back the matter only for a limited purpose to examine medical report of the injuries sustained by the prosecution witness Bhukhan Lal, is not correct. In the order dated 25.3.1990 (Annexure A/1), it was held that the medical report of the Bhukhan Lal ought to have been supplied to the Petitioner and the same should have been a part of the list of documents, supplied along with the charge sheet. Since it was not done, the punishment imposed by the Superintendent of Police in its order dated 10.11.1989, passed on the basis of the departmental enquiry, as well as the departmental enquiry were quashed and the matter was remitted back for a fresh enquiry. Thus, the above stated contention of the Respondents is without merit and deserves to be rejected.

11. Further, it is evident that the Respondents/authorities have not replied to the allegation of the Petitioner that the medical report of Bhukhan Lal, Rojnamcha Sanha and the duty register were not supplied to the Petitioner. As such, it is found proved that even in the second departmental enquiry the necessary ingredients of the principles of natural justice were not complied with. After alleged departmental enquiry, the Superintendent of Police by order dated 16.4.1990 (Annexure A/6) has not replied to the specific allegation of the Petitioner and passed the same order of compulsory retirement w.e.f. 16.4.1990. In appeal, the appellate authority i.e. Deputy Inspector General of Police vide order dated 5.11.1990 (Annexure A/8), without touching to the real issue, as to whether all the documents were supplied to the Petitioner, as directed by the Deputy Inspector General of Police in its order dated 25.3.1990, dismissed the appeal. Subsequently, the mercy appeal, vide order dated 19.5.1992 (Annexure A/9), was also dismissed.

12. The second contention of the Petitioner that he was not supplied with the enquiry report before punishment of compulsory retirement was imposed by the disciplinary authority on 16.4.1990, has also not been rebutted by the Respondents. On perusal of the impugned orders it appears that no second show cause notice before imposition of punishment of compulsory retirement was given to the Petitioner.

13. A constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , while considering the effect of non supply of the report, observed as under:

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(iii) Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly....

14. The Hon"ble Supreme Court in B.C. Chaturvedi Vs. Union of India and others, , observed as under:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct is the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/ Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

15. The Hon"ble Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, , observed as under:

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no

evidence, it would be perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon its, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

16. The Hon''ble Supreme Court in S.K. Siddique Vs. Madhya Pradesh State Road Transport Corporation and another, , wherein the appointment of teachers were cancelled without giving them an opportunity of hearing, observed as under:

It is not necessary to go into all these questions. In the facts and circumstances of this case we are of the view that the Appellant should have been given an opportunity of hearing before canceling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the Appellant could be passed without complying with the rules of natural justice.

17. The Hon''ble Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , considering the concept of opportunity of hearing, observed as under:

The cardinal point that has to be born in mind, in every case, is whether the persons concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. In other words application of the principles of the natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. Therefore, fair play in action require that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be inconformity with the principles of natural justice.

18. The said principle is reaffirmed by the Hon''ble Supreme Court in Basudeo Tiwary Vs. Sido Kanhu University and Others, , wherein it is held that:

The law is settled that non arbitrariness is essential facet of Article 14 forwarding the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair just and reasonable which are components of fair treatment. The conferment of absolute

power to terminate the services of an employee is antithesis to fair, just and reasonable treatment.

19. Further, in *Canara Bank and Others Vs. Shri Debasis Das and Others*, and *Canara Bank Vs. V.K. Awasthy*, , the Hon''ble Supreme Court observed as under:

The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. It is after all an approved rule of fair play and one of the most important principles of natural justice.

20. For the reasons mentioned herein above, in the light of the well settled principle of law, it is found that the Petitioner was not supplied with the necessary documents, which were relied upon by the Respondents/authorities to establish the above stated charges, said to have been proved against the Petitioner. Thus, the impugned orders dated 16.4.1990 (Annexure A/6), 5.11.1990 (Annexure A/8) and 19.5.1992 (Annexure A/9) are quashed. The petition is allowed with costs. The Petitioner is entitled to all consequential benefits after adjustment of the benefits legally paid towards retiral dues to the Petitioner in various forms i.e. DPF, Gratuity amount, Family Pension Fund, General Insurance Scheme fund, as stated in the affidavit dated 31.3.2008, filed by the Sub Divisional Officer (Police), Baloda Bazar.

21. The cost is quantified as a sum of Rs. 10,000/-, payable to the Petitioner.

22. Having regard to the facts situation of the case, when the Petitioner has been suffering since 1990, there is no point at this stage to send back the matter for fresh departmental enquiry. The fresh departmental enquiry was already ordered by the Deputy Inspector General of Police vide order dated 25.3.1990 (Annexure A/1), with the specific direction, which was not complied with by the enquiry authority and thereafter by the disciplinary authority.