
(2007) 04 MP CK 0094

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 7047 of 2005

Ram Sharan Verma

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50(3)(ii)

Citation : (2007) 3 MPLJ 226

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : A.K. Pathak, for the Appellant; Shailesh Mishra, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

The petitioner has filed this petition against the order dated 27-4-2005 which is Annexure P/13 to the petition. This-order has been passed in compliance to the judgment passed by this Court on 9-11-2004 in W.P. No. 8088/2003 by which this Court directed the appellate authority to pass a speaking order on the appeal preferred by the petitioner.

The petitioner earlier filed a case before the State Administrative Tribunal which was registered as O.A. No. 643/93 wherein he challenged the order of removal from service which was passed on 30-11-1991. The petitioner preferred an appeal against the order of dismissal which was rejected by an order dated 12-1-1993 by the appellate authority. The said order was challenged by the petitioner in the earlier petition referred to hereinabove therefore, this Court directed the appellate authority to pass a speaking order.

The petitioner was issued a charge-sheet on 11-8-1988 which is Annexure A/2 to the petition. In the said charge-sheet, the petitioner was charged for the

following misconduct:

(i) The petitioner was in-charge of Padmania Beat of Chitrakoot Range. In the said Beat, unhammered timber wood was found in the house of villagers. Same was seized as the timber wood was found in the Padmania Beat for which the petitioner was charged. The petitioner failed to take notice of the same and did not report the matter to his higher authorities with regard to unhammered timber wood in the house of villagers.

(ii) The Beat where the petitioner was deputed, unhammered timber wood of another Beat was found in large quantity. The petitioner failed to take note of the same and did not report the matter to the higher authorities.

(iii) On 5-6-1988, a truck No. URL-7287 was bringing fire wood from Beat Padmania which were cut illegally. The said truck was seized by SAF people. Petitioner made the same illegal act legal by putting his signatures on "Zarayam", hence betrayed the State Government. The said misconduct of the petitioner was liable for disciplinary action.

The petitioner submitted reply to the charge-sheet which is Annexure P/3 to the petition. Thereafter, a departmental enquiry was conducted by the Enquiry Officer. The Enquiry Officer was appointed by an order dated 8-5-1990. The Enquiry Officer examined Shri Devraj Tiwari, Shri Shivkumar Pandey, Shri Bela and Shri Mustari as a witnesses in support of the charges. The petitioner was also given an opportunity to examine the defence witnesses but he did not examine any witnesses. The Enquiry Officer submitted his report which is Annexure P/6 to the petition. The Enquiry Officer held the petitioner guilty of Charge No. 1 fully. For Charge No. 2, the petitioner was partly found guilty. So far as Charge No. 3 is concerned, the said charge was also found proved against the petitioner.

The Enquiry Officer in internal page 6 of the Enquiry report recorded a finding that whatever documents were produced in the enquiry by the Department, on that basis, the Charge No. 3 is not proved, yet the Enquiry Officer proved Charge No. 3 against the petitioner. The Disciplinary authority thereafter imposed a penalty of removal from service by an order dated 30-11- 1991. Along with this, the findings of the Enquiry Officer were also supplied which is reflected from the foot note of the order of punishment dated 30-11- 1991.

Learned counsel for the petitioner submitted that since the Enquiry Officer himself has recorded a finding that whatever documents were produced in the enquiry by the Department, on that basis, the Charge No. 3 is not proved, therefore, the Enquiry Officer should not have held petitioner guilty for the said charge and accordingly the Disciplinary authority also should not have imposed penalty on the basis of unproved charge. On that basis, it is submitted that in the present case, the petitioner is entitled to be reinstated.

The submission so made by learned counsel for the petitioner cannot be accepted

though the counsel for the petitioner is correct in his submission that since the Enquiry Officer has recorded a finding in favour of the petitioner that no material was available in the enquiry to prove the Charge No. 3, yet the Enquiry Officer held that Charge No. 3 is proved. The Disciplinary authority has also taken into account the said charge. On that basis, the dismissal of the petitioner for Charge No. 3 cannot be sustained. The Disciplinary authority has also not recorded any disagreement relating to Charge No. 3 and yet the Disciplinary authority imposed penalty on the petitioner. On this basis, consideration of Charge No. 3 for imposition of penalty cannot be sustained.

In the present case, the Enquiry Officer has recorded a definite finding to hold the petitioner guilty for Charge No. 1. Charge No. 2 is partly found proved against the petitioner. On this basis, once the order of dismissal is based upon the proved charges also, therefore, the petitioner cannot be reinstated.

The Apex Court in *Ganesh Santa Ram Sirur Vs. State Bank of India and Another*, has laid down a principle that if the Disciplinary authority has considered unproved charge for imposition of penalty but if the imposition of penalty is also based upon the proved charges, then it will not be a case for interference to set aside the whole of the dismissal as such.

Learned counsel for the petitioner submitted that in the present case, the petitioner has not been supplied the copy of the enquiry report before the order of penalty. It is contended by him that findings recorded by the Enquiry Officer in relation to all the charges were supplied to the petitioner only along with the order of dismissal. Learned Counsel for the petitioner submitted that if the findings recorded by the Enquiry Officer have not been supplied before the passing of the final order along with the show cause notice then the dismissal is bad in law.

The question in this regard has been considered by the Apex Court in the following judgments *N.T.C. (WBAB and O) Ltd. and Another Vs. Anjan K. Saha*, . Relevant Paras 9 and 10 reads as under:

We fail to appreciate the reasoning of the High Court in the instant case that in addition to the procedural infirmity of non-supply of the enquiry report, there being non-compliance with Clause 14(4)(c) of the Model Standing Orders requiring grant of opportunity of hearing against proposed penalty, the employee has to be granted, relief of reinstatement with full backwages and the employer can be given liberty to hold a de novo enquiry.

As stated by the High Court, we do not find that the language of Clause 14(4)(c) is mandatory. In any case, non-compliance therewith cannot be held to be a more vitiating factor than non-supply of enquiry report. If the Constitution Bench of this Court in cases of non-supply of enquiry report directs the procedure to be adopted by allowing the employer to restart the enquiry from the stage of supply of enquiry report without reinstating the employee, why such a course should not be directed to be adopted where the other grievance of the employee is denial of

opportunity to show cause against proposed penalty? When the Court can direct a fresh enquiry from the stage of supply of enquiry report the next step in the enquiry of giving opportunity against the proposed penalty can also be directed to be taken. After a fresh enquiry is over from the stage of supply of enquiry report, the employee can be granted opportunity against proposed penalty in terms of Clause 14(4)(c) of the Model Standing Orders. Consequential order, if any passed, shall abide the final result of the proceedings. As held in the case of B. Karunakar if employee is cleared of the charges and is reinstated, the disciplinary authority would be at liberty to decide according to law how it will treat the period from the date of dismissal till the period of reinstatement and the consequential benefits.

On the basis of the same it is clear that formal order of reinstatement was granted because the Court directed the employer to hold a de novo enquiry and since the High Court directed to hold a de novo enquiry, therefore, for the purposes of completing the de novo enquiry it was necessary to pass formal order of reinstatement. In the present case, this Court has directed to hold any formal enquiry.

Under the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 there is no procedure for issuing a second show cause notice and to supply the copy of the enquiry report. Supply of the enquiry report is depending upon the principles of natural justice and also in view of the judgment in B. Karunakar's case.

Oriental Insurance Co. Ltd. Vs. S. Balakrishnan, . Relevant para 2 reads as under:

2. Though, the order of learned Single Judge is the main order, notwithstanding the order of the Division Bench having affirmed the same, it is unfortunate that the order has not been appended in the present appeal, which indicates utter negligence on the part of the employer in prosecuting its remedies before the Court. The Counsel wanted an adjournment to file a copy of that order, but we are not prepared to adjourn this matter on that score. The question, however, which still remains to be considered is whether the High Court was justified in interfering with an order of punishment passed by the disciplinary authority merely on the ground that non-supply of enquiry report has vitiated the entire proceedings. It had not been brought to the notice of the learned Judges of the Court that the judgment of this Court in Ramzan Khan has already been considered by this Court in the case of Managing Director, ECIL v. B. Karunakar which is a Constitution Bench decision of the Court and which clarifies the entire position. Without being aware of the correctness of law, the High Court appears to have interfered with an order of dismissal passed in disciplinary proceedings in grave charges like the one with which we are concerned in the present case. Applying the principles indicated by this Court in ECIL case to the facts of the present case, we cannot conceive any prejudice which is said to have been caused to the delinquent, and therefore, non-supply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid

premises, we set aside the impugned order passed by the learned Single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed. In view of the nature of charges against the delinquent, we were considering of directing to lodge a first information report for criminal investigation, but we are told that the university has already taken those steps, and therefore, we refrain from issuing any further direction in the matter.

Debotosh Pal Choudhary Vs. Punjab National Bank and Others, . Relevant para 8 is reproduced as under:-

8. It is true that the petitioner was not provided with a copy of the enquiry report by the disciplinary authority before imposition of the punishment of dismissal, but that circumstance has no bearing on the dismissal of the petitioner in view of the decisions of this Court in Ramzan Khan case and Managing Director, ECIL v. B. Karunakar. The said two decisions are to the effect that no order of punishment before the date of the decision in Ramzan Khan case would be challengeable on the ground that there is failure to furnish enquiry report before imposing the punishment by the disciplinary authority. In the present case, the punishment had been imposed upon the petitioner by the disciplinary authority on 8-10-1988 long before the decision of this Court in Ramzan Khan case on 20-11-1990. Therefore, we hardly find any merit in the grievance made by the petitioner.

On the basis of the aforesaid judgments, it is clear that merely because the findings recorded by the Enquiry Officer have not been supplied to the delinquent that by itself will not have the effect of setting aside the dismissal and no relief of reinstatement can be granted. In the aforesaid cases the Apex Court has considered the question with regard to prejudice due to non-supply of the copy of the enquiry report before the dismissal. The petitioner has not pleaded any prejudice which has resulted to him because of the non-supply of the copy of the enquiry report before passing the order of penalty. In the absence of any prejudice, the question for setting aside the order of penalty would not arise. This Court in Dinesh Kumar Gupta v. Kshetriya Gramin Bank and others, 2006(2) MPU 356 has considered the similar question in detail and thereafter came to the conclusion that in the absence of any prejudice, the order of dismissal cannot be set aside. The prejudice in the present case has neither been shown nor even pleaded. In this reference, if the appeal of the petitioner is perused which is Annexure P/8 to the petition, the petitioner has not submitted any grievance or prejudice due to non-supply of the enquiry report submitted by the Enquiry Officer and in the absence of any prejudice as such, the submission so made by learned Counsel for the petitioner cannot be accepted.

Learned counsel for the petitioner vehemently relied upon the judgment of the Apex Court in State Bank of India and Others Vs. K.P. Narayanan Kutty, and referred to paragraph 6 of the judgment to substantiate his arguments that in case no findings have been supplied to the delinquent before imposition of

penalty then he is liable to be reinstated. The submission so made by learned counsel for the petitioner are incorrect which is clear from the passage i.e. paragraph 6 which was relied upon the learned counsel for the petitioner which reads as under:

It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard, the learned counsel cited a decision of this Court in *Union Bank of India v. Vishwa Mohan*. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of *Vishwa Mohan* is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph, this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in *Punjab National Bank* case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the *State Bank of India (Supervising Staff) Service Rules*, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

Counsel for the petitioner also relied upon *Mathura Prasad Vs. Union of India (UOI) and Others*, and refer to paras 17, 18 and 19 of the judgment. Reading of para 18 of the same itself makes it clear that the Apex Court was considering the question with regard to power of the Disciplinary authority to disagree with the findings recorded by the Enquiry Officer and on the basis of the same, the Apex Court held that there should be sufficient material with the Disciplinary authority to record the reasons for deferment and, therefore, in para 19 the Apex Court held that when an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. In the present case, the question for supplying the findings of the Enquiry Officer does not find place under the *Classification, Control and Appeal Rules, 1966*. Supply of the copy depends upon the requirement of principles of natural justice, on the basis of *Union of India and others Vs. Mohd. Ramzan Khan*, . Thus the ratio of the judgment passed in *Mathura Prasad (supra)* shall not have any application in the present case because it is only the requirement of the principles of natural justice and not of

rules having the force of law which respondents should have strictly followed. With regard to prejudice as I have held earlier that the prejudice for non-supply of the copy has not been pleaded or shown in the petition nor even shown at the time of arguments.

Counsel for the petitioner further relied upon the judgment passed in the case of P.D. Agrawal v. State Bank of India and others, 2006 (8) SCC 776 and referred to paras 37 and 38, Paragraph 39 of the said judgment is relevant which is reproduced as under:

Decision of this Court in S.L. Kapoor v. Jagmohan whereupon Mr. Rao placed strong reliance to contend that non-observance of principles of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinabove, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S. K. Sharma and Rajendra Singh v. State of M. P. the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a strait-jacket formula.

The Apex Court in the said judgment considering the question with regard to the prejudice and its proof due to non-observance of principles of natural justice and thereafter laid down a ratio that non-furnishing of the copy of the enquiry report, by itself is not sufficient to set aside the dismissal in the absence of any proof of prejudice.

The petitioner earlier preferred a petition challenging the penalty. The said case was registered as O. A. No. 643/93. On abolition of the State Administrative Tribunal, the petition was transferred to this Court which was registered as W.P. No. 8088/2003. The question with regard to right of reinstatement due to non-supply of the copy of the enquiry report was not agitated by the petitioner in the earlier case. This Court only gave a direction to the appellate authority to decide the appeal afresh by passing a speaking order. The order was passed on 9-11-2004. Thus, the question of non-supply of the copy, its prejudice and the relief of reinstatement could have been raised or agitated or prayed for, by the petitioner in the earlier case. The petitioner's case was decided by this Court with a direction only to decide the appeal of the petitioner by passing a speaking order. Thus, since this Court earlier has not granted reinstatement and has not set aside the order of penalty in earlier case and the order passed by this Court on 9-11-2004 in W. P. No, 8088/03 has attained finality, therefore, the petitioner

now cannot be permitted to agitate that the order of dismissal was bad due to non-supply of the copy of the enquiry report.

In pursuance of the order passed by this Court, the appellate authority has decided the appeal which is Annexure P/12 and P/13 of the petition. The appellate authority in detail has considered the question with regard to the proof for Charge Nos. 1 and 2. The Charge No. 1 was fully proved against the petitioner, Charge No. 2 was partly proved and so far as Charge No. 3 is concerned, I have already held that there was no finding recorded by the Enquiry Officer against the petitioner yet the appellate authority and the disciplinary authority found the petitioner guilty of the said charge and the same cannot be sustained.

The appellate authority has considered that the petitioner was given a reasonable opportunity to defend him in the enquiry as he was given time on 6-9-1991, 18-9-1991, 30-9-1991 and 20-10-1991 to bring his defence witnesses but the petitioner failed to bring and examine the defence witnesses, therefore, the enquiry was closed and the Enquiry Officer proceeded to record the findings.

Learned counsel for the petitioner also submitted that there was no material to hold the petitioner guilty of the charges. It is contended by him that the findings of the Enquiry Officer are perverse. The Court exercising the powers of judicial review under Article 226 of the Constitution of India cannot re- appreciate the findings recorded by the Enquiry Officer. The Court has to see whether there has been some material to hold the petitioner guilty of the charges or not. The Apex Court in *Lalit Popli Vs. Canara Bank and Others*, has laid down the guidelines with regard to exercise of powers of judicial review by the High Courts and thereby laid down a principle that while exercising powers of judicial review, Courts cannot akin to adjudicate the case on merit as an appellate authority. Relying upon the said principle, the arguments so advanced by learned counsel for the petitioner is considered whether there had been some material in the enquiry to hold the petitioner guilty of the charges.

So far as Charge No. 1 is concerned, there had been material in the enquiry against the petitioner to hold him guilty of the said charge. The petitioner was In-charge of Padmania Beat of Chitrakoot Range. In the said Beat, unhammered timber wood was found in the house of villagers. Same was seized as the timber wood was found in the Padmania Beat for which the petitioner was charged. The petitioner failed to take notice of the same and did not report the matter to his higher authorities with regard to unhammered timber wood in the house of villagers. This was the main crux of Charge No. 1. This itself is a major charge for which the Enquiry Officer has held the petitioner guilty of the charge. So far as Charge No. 2 is concerned, it relates to the aspect that in the Beat where the petitioner was deputed, unhammered timber wood of another Beat was found in large quantity. The petitioner failed to take note of the same and did not report the matter to the higher authorities. Counsel for the petitioner submitted that the timber wood which was found in the petitioner's Beat was not belonging to the

Beat of which the petitioner was In-charge, therefore, the petitioner could not have been charged for the same.

The submissions so made by learned counsel for the petitioner cannot be accepted. The petitioner was In-charge of Padmania Beat where the timber wood was found, he failed to take note of the said large quantity of unhammered timber and did not report to any authority about the same. Even assuming that the said timber was belonging to another Beat, it is not the charge against the petitioner there had been illegally felling of trees in his Beat. The Charge against the petitioner had been that in the Beat where he was In-charge, unhammered timber wood belonging to another Beat was found in a large quantity but the petitioner failed to make report of the same to any of his higher authorities and for this reason this charge has been found partly proved against the petitioner. On the basis of the charges as such, I do not find that this is a case where there is no evidence against the petitioner but it is a case where there is evidence against the petitioner. The question with regard to sufficiency of evidence is not to be seen while exercising the powers of judicial review under Article 226 of the Constitution of India.

The sufficiency of evidence alone is to be seen and the Court cannot act as an appellate authority to re-appreciate the findings recorded by the Enquiry Officer. The appellate authority has also considered all the grounds submitted by the petitioner in his appeal and thereafter has passed the order. No grievance at the time of argument was made by learned counsel for the petitioner that the appellate authority has failed to consider any ground which could have been decided by him and not decided.

Learned counsel for the petitioner also relied upon the judgment passed in Anil Kumar Vs. Presiding Officer and Others, and on that basis it is submitted that the Enquiry Officer has not applied his mind to the evidence to show its applicability. The submission so made by learned counsel for the petitioner cannot be accepted. The Enquiry Officer while discussing the evidence has also taken into account the statement of witnesses and after discussing the evidence has arrived at a conclusion that the petitioner is guilty for Charge No. 1 fully, and partly for Charge No. 2. The judgment under the circumstances shall have no application.

Under the circumstances, the order passed by the appellate authority also does not warrant any interference. No other point is argued. The petition stands dismissed. No order as to costs.

Petition dismissed.