
(2009) 04 MAD CK 0139
In the Madras High Court
Case No : Writ Petition No. 30819 of 2004

S. Chakkaravarthy

APPELLANT

Vs

Neyveli Lignite Corporation Limited

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Constitution of India, 1950 — Article 22, 226, 32

Citation : (2009) 04 MAD CK 0139

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Balan Haridas, for the Appellant; N.A.K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. It has been stated that the above writ petition has been filed challenging the order of the first respondent, dated 10.3.2004, imposing the

punishment of demotion on the petitioner, demoting him to a post of Checking Inspector, in the scale of pay of Rs. 5500-150-9100, for a period

of three years and the order of the second respondent (Appellate Authority), dated 25.6.2004, confirming the same.

3. It has been further stated that the petitioner had joined in the service of the first respondent Corporation as a Conductor, on 8.4.85. Later, he

was promoted to the post of Senior Checking Inspector Grade-II and further promoted to the post of Checking Inspector Grade-I. While so, the

petitioner was issued with the charge sheet, dated 5.4.2003, stating that he had acted as a broker in arranging certificates to the public for

monetary consideration and for having collected Rs. 300/- from one

J.Manoharan, Senior Operator Grade-II, Boiler Operation, TS-II, for obtaining a community certificate.

4. It has been stated that the misconduct alleged against the petitioner does not relate to any of his activities he was expected to perform at the

Neyveli Lignite Corporation Limited. Therefore, the action contemplated against the petitioner by the respondents is without jurisdiction. In spite of

the explanation submitted by the petitioner a disciplinary enquiry had been conducted, with regard to the charges alleged against the petitioner.

During the enquiry the respondent Management had examined M.Perumal, EHC, Vigilance Department, Neyveli Lignite Corporation Limited. In

his statement M.Perumal had marked a statement alleged to have been given by one J.Manoharan. He had also produced certain statements made

by P.Poulina and Janardanan to support the allegation that the petitioner had received money for obtaining the community certificate. When,

J.Manoharan had been examined during the enquiry he had categorically stated that the petitioner had not received the sum of Rs. 300/- from him

for obtaining the community certificate. While answering the questions asked by the enquiry officer J.Manoharan had denied giving the sum of Rs.

300/- for getting the community certificate. He had also submitted that the statements made by him were at the instance of the Vigilance

Department and that it was not voluntary in nature, as it was made due to the apprehension that the house building advance would not be given to

him if he did not make such a statement. However, the enquiry officer had come to the conclusion that the charge against the petitioner had been

proved, without considering the detailed written submissions given by the petitioner, on 14.8.2003 and 25.9.2003.

5. Based on the findings of the enquiry officer, dated 18.10.2003, the disciplinary authority, the first respondent herein, had issued a show cause

notice, dated 1.12.2003, proposing the punishment of demotion to the lower category of Checking Inspector in the scale of pay of Rs. 5500-150-

9100. The petitioner had submitted a detailed explanation to the said show cause notice by his letter, dated 7.12.2003. However, the first

respondent, without considering the explanation submitted by the petitioner, had passed an order, dated 10.3.2004, demoting the petitioner to the

lower category of Checking Inspector. Challenging the said order, the petitioner

had filed an appeal before the second respondent, on 22.3.2004.

The second respondent, without considering the explanation submitted by the petitioner and without taking into account the objections raised in the

said appeal, had dismissed the appeal by a cryptic order, without giving any reason for dismissing the appeal. In such circumstances, the petitioner

has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

6. The petitioner has raised various grounds in challenging the impugned proceedings stating that the initiation of disciplinary proceedings against the

petitioner is without jurisdiction, as the charge does not relate to his employment in the respondent Corporation and therefore, it would not amount

to misconduct as alleged by the respondents. In view of the admission made by J.Manoharan, during the enquiry, the charges alleged against the

petitioner should have been held to be without any basis. However, the enquiry officer had erroneously held that the charges against the petitioner

were proved. The reasons given by the respondents for imposing the punishment of demotion on the petitioner is arbitrary, illegal and without any

basis. Imposing of such a punishment on the petitioner has caused grave injustice and irreparable loss to him.

7. The main contentions raised on behalf of the petitioner are that the petitioner has been held to be guilty for the charges levelled against him even

though there was no evidence to prove the said charges. The charges alleged against the petitioner have nothing to do with his employment in the

respondent Corporation. In his deposition made during the enquiry held on 24.9.2003, J.Manoharan, had stated that he had not given Rs. 300/- to

the petitioner, as alleged. Therefore, the main charge against the petitioner had no basis. Further, P.Poulina had not appeared before the enquiry

officer during the enquiry. However, her statement had been relied on by the enquiry officer to arrive at his conclusions. In such circumstances, the

recorded statement of P.Poulina should not have been considered to prove the charges levelled against the petitioner since the petitioner had no

opportunity to cross examine her. Even though the enquiry officer ought not to have questioned J. Manoharan during the enquiry asking for

clarifications, with regard to the statement made by him, while answering the said questions it was made clear that the statements made by

J.Manoharan before the authorities of the Vigilance Department were made under compelling circumstances. Therefore, the enquiry officer ought not to have relied on such statements made by J. Manoharan before the authorities of the Vigilance Department. Even though J. Manoharan had stated that the petitioner gave him the information as to when the Village Administrative Officer would be available, for issuing the community certificate, it cannot be concluded that the petitioner was in the habit of taking bribe from various persons for obtaining the certificates from the Village Administrative Officer concerned.

8. It has been further stated that the petitioner had submitted a detailed reply to the show cause notice, dated 1.12.2003, issued by the disciplinary authority. However, while passing the order, dated 10.3.2004, the disciplinary authority had not considered the explanation submitted by the petitioner. Further, the appeal filed by the petitioner, on 22.3.2004, before the appellate authority, had been dismissed with a cryptic order, dated 25.6.2004, without giving any reasons for confirming the order of the disciplinary authority. None of the grounds raised by the petitioner in the appeal had been considered by the appellate authority while passing his order, dated 25.6.2004.

9. In the counter affidavit filed on behalf of the respondents the allegations and averments made by the petitioner have been denied. It has been stated that the petitioner is a `workman" governed by the standing orders of the respondent Corporation. Therefore, the petitioner has an effective alternative remedy under the provisions of the Industrial Disputes Act, 1947. Without taking recourse to the alternate remedy available to the petitioner, he has approached this Court by filing the present writ petition, under Article 226 of the Constitution of India. Since disputed questions of facts are involved, this Court cannot be called upon to decide on the factual issues.

10. It has been further stated that a charge memo, dated 5.4.2003, had been issued to the petitioner containing the charges levelled against him. The petitioner had submitted his explanation, dated 16.4.2003, denying the said charges. Since the explanation submitted by the petitioner was not found to be satisfactory the disciplinary authority had ordered for a departmental enquiry, which was conducted in accordance with law, by

affording a reasonable opportunity to the petitioner to defend himself against the charges levelled against him. Two witnesses were examined and

four exhibits had been marked on behalf of the respondent Corporation. A full-fledged enquiry had been conducted and the petitioner had

participated in the enquiry. Following the enquiry, the enquiry officer had submitted his report, on 18.10.2003, holding that the charges levelled

against the petitioner had been proved. Thereafter, the disciplinary authority had issued a show cause notice, dated 1.12.2003, to the petitioner

and he had sought for the objections of the petitioner to the enquiry report. In reply, the petitioner had submitted his representation, dated

9.12.2003, asking for a copy of the enquiry report. Based on his request the petitioner was given a copy of the enquiry report, on 11.12.2003.

Thereafter, the petitioner had submitted his detailed objections, on 17.12.2003. After considering the materials, including the objection raised by

the petitioner, the disciplinary authority had passed the final award, dated 10.3.2004, imposing the punishment of demotion on the petitioner. The

appeal, dated 22.3.2004, filed by the petitioner before the second respondent appellate authority, had been rejected by the proceedings, dated

25.6.2004, confirming the punishment imposed on the petitioner by the disciplinary authority. Since the appellate authority was concurring with the

findings of the enquiry officer as well as the disciplinary authority, detailed reasons had not been given while dismissing the appeal filed by the

petitioner.

11. It has also been stated that strict rules of evidence do not apply to departmental proceedings. Therefore, from the admission of J.Manoharan,

the involvement of the petitioner in corrupt practices have been revealed. Since the petitioner had committed certain acts amounting to serious

misconduct he was imposed with the punishment of demotion to a lower category of employment in the respondent Corporation. The statement of

P.Poulina and Janardanan had established the first part of the charges. The statement of J.Manoharan had proved the second part of the charges.

Retraction of his earlier statement by J.Manoharan does not prevent or disallow the enquiry officer from relying upon his earlier statements.

Further, the petitioner cannot compel the respondent Corporation to produce its witnesses to establish the charges. A copy of the enquiry report

had been furnished to the petitioner, on 11.12.2003, on his request and the representation of the petitioner, dated 17.12.2003, had been

considered by the disciplinary authority before the impugned order was passed. Since the misconduct of the petitioner had been proved beyond

doubt, he was imposed with the punishment of demotion to a lower category of employment. The punishment imposed on the petitioner cannot be

said to be disproportionate in nature as the misconduct committed by him is of a grave nature. In such circumstances, the writ petition preferred by

the petitioner is devoid of merits and therefore, it is liable to be dismissed.

12. In the reply affidavit filed on behalf of the petitioner he has denied the allegation of the respondents that the petitioner ought to have availed the

alternative remedy available to him, under the Industrial Disputes Act, 1947, as he is covered by the definition of "workman" under the said Act. It

has been further stated that the writ petition had been admitted by this Court, on 26.10.2004, and the respondents had chosen to file a counter

only on 6.4.2009. Further, it is a case of no evidence and therefore, the issue of maintainability of the writ petition cannot be raised by the

respondents, at this stage.

13. It has been further stated that the alleged statement of J.Manoharan, had been given to the Deputy Chief Engineer, Vigilance. The Deputy

Chief Engineer had not been examined during the enquiry. Instead one M.Perumal, Head Constable, attached to the Vigilance Department had

been examined. It is not his case that he had examined the persons who had given the statements to the Vigilance Department. He had merely

produced the statement alleged to have been made by J.Manoharan, P.Poulina, and S. Janardanan and they had been marked. The statements

given by them were not proved in the enquiry, either by examining the person who had taken the statements or the person who had given the

statements. Therefore, the statements cannot be relied upon for the purpose of proving the allegations made against the petitioner. In fact,

J.Manoharan, who had given the statement had been examined as a witness in the enquiry on the side of the respondent. In fact, he had deposed

that he had not given any money to the petitioner and that the petitioner had not obtained any certificate on his behalf. Further, while replying to the

question put to him by the enquiry officer he had clarified that his statement had

been given, as required by the Vigilance Department since he had feared that his house building advance would be stopped.

14. It has been further stated that it is for the respondent Corporation to prove the charges alleged against the petitioner and it is not for the petitioner to disprove the allegations made against him. The statement of S.Janardanan does not name any one and the statements of P.Poulina, Janardanan and J.Manoharan do not prove the charges levelled against the petitioner. In such circumstances, the impugned orders passed by the respondents are devoid of merits.

15. The learned Counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contentions.

15.1. In *Kuldeep Singh Vs. The Commissioner of Police and Others*, , the Supreme Court had held as follows:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

15.2. In *Rajasthan State Electricity Board Vs. Union of India (UOI) and Others*, , the Supreme Court had held as follows:

By now it is a well-settled principle of law that availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution.

15.3. In *Roop Singh Negi v. Punjab National Bank and Ors.* 2009(1) SCC (L&S) 398, the Supreme Court had held as follows:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The

enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15.4. In Central Bank of India Ltd. Vs. Prakash Chand Jain, , a Division Bench of this Court had held as follows:

...In this connection, reference was also made to some cases where this Court has held that a finding by a domestic tribunal like an enquiry officer can be held to be perverse in those cases also where the findings arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before the Tribunal. Thus, there are two cases where the finding of a domestic tribunal like the enquiry officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the tribunal. In each of these cases, the findings are treated as perverse. It is in the light of these principles that we have to see whether the industrial tribunal, Delhi, in the present case, was justified in refusing to accord approval to the order of dismissal which was passed on the basis of the evidence recorded by the enquiry officer, Sri Tipnis....

15.5. In Indian Airlines and Others Vs. W.B. Correya, , a Division Bench of this Court had held as follows:

Held, the procedure adopted by the enquiry officer is certainly defective, detrimental and prejudicial to the case of the respondent herein. If the statement (recorded behind the back of the delinquent employee) is not put to the witness and he had not been given an opportunity to deny or affirm the same there is, in fact, no evidence of that witness in the course of chief examination at all and it is very doubtful whether such a statement, notwithstanding copies thereof had already been furnished to the worker, can be used as substantive evidence against the worker concerned. It is

this aspect of the matter that weighed with Ramanujam,J., who held that the failure to put these statements to the witnesses and the witnesses not having affirmed their statements...not having stated that they stood by their statements...violated the principles of natural justice. On the face of it, the procedure followed by the enquiry officer is certainly defective and prejudicial to the respondent herein.

15.6. In A.V. Krishnamurthy Vs. Govt. of Tamilnadu and Others, , a Division Bench of this Court had held as follows:

It is well-settled that disciplinary proceedings before a Dept. Tribunal are quasi judicial in nature and any conclusion to be reached by such a tribunal must be on the basis of acceptable evidence. Such evidence must have some degree of definiteness. It is true the Departmental Tribunal is not governed by the strict and technical rules of evidence. But if the Tribunal has rendered a finding based on no acceptable evidence that could be regarded as an error of law to be corrected by a writ of certiorari. This Court has power under Article 226 to enquire whether the conclusion of the Departmental Tribunal is supported by any acceptable evidence at all.

16. Per contra, the learned Counsel appearing on behalf of the respondents had relied on following decisions in support of his contentions:

16.1. In Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane JT 2004(8) SC 103, the Supreme Court had held as follows:

This Court in the case of State of Haryana and Anr. v. Rattan Singh which is also a case arising out of non-issuance of ticket by a conductor held thus:

In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence --- not

in the sense of the technical rules governing court proceedings but in fair common sense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by Court, while absence of any evidence in support of the finding is an error of law apparent on the record and the Court can interfere with the finding.

In the present case, evidence of the Inspector is some evidence which has relevance to the charge and the Courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the Court but the Tribunal to assess the evidence of the conductor.

16.2 In *Tamilnadu State Transport Corporation v. C.Durai and another* 2005 Writ L.R. 136, it was held that no writ petition should ordinarily be entertained when there is an alternative remedy, except in very rare cases when there are some compelling reasons to do so. Even when there is a violation of natural justice or the order is without jurisdiction, the writ petition can still be dismissed when there is an alternative remedy available.

16.3 In *Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu*, , the Supreme Court had held as follows:

The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well known factors. It cannot set aside a well reasoned order only on sympathy or sentiments.

Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved.

16.4 In *Thangamalar Transports v. K.A.G.Travels and 3 Ors.* 2006 1 L.W. 12, a Division Bench of this Court had held as follows:

6. No doubt, in this case, the writ petitions have been allowed by the learned

Single Judge. However, there are several cases where a Division

Bench of the High Court had allowed the writ petition but thereafter in the appeal the Supreme Court not only allowed the appeal but dismissed the

writ petition on the ground of availability of alternative remedy e.g. S. Jagadeesan Vs. Ayya Nadar Janaki Ammal College and Another, ; U.P.

State Birdge Corporation Ltd v. U.P. Rajya Setu Nigam Karmchari Sangh 2005 AIR SCW 3149. Hence there is no absolute principle that a writ

petition cannot be dismissed on the ground of alternative remedy after it has been allowed or on the ground that it has been pending for a long time.

Learned Counsel for the writ petitioners (respondents in the appeals) has submitted that there is allegation of violation of natural justice and hence

the writ petitions cannot be dismissed on the ground of alternative remedy. This Court in The Member Secretary, National Council for Teachers

Education, New Delhi and Anr. v. Pauls Teachers Training Institute, Pondicherry 2005(1) MLJ 559 has held that there is no absolute principle that

merely because there is an allegation of violation of natural justice or that the impugned order is without jurisdiction, a writ petition cannot be

dismissed on the ground of alternative remedy.

16.5 In S. Babuji v. The Registrar (General), High Court and Ors. 2008 W L.R. 508, a Division Bench of this Court had held as follows:

13. We are conscious of our realm of jurisdiction under Article 22 of the Constitution of India, as this Court cannot sit in appeal over the findings

of the Enquiry officer nor could substitute its finding like the Appellate Authority. As a matter of fact, jurisdiction of Court in Judicial Review is

limited. However, the disciplinary proceedings being quasi criminal nature, there should be some evidence to prove the charge. In fact, the charges

in a disciplinary proceedings are not required to be proved like, the criminal trial beyond all reasonable doubt. In reality, the High Court can

interfere with the finding of inquiry report or the order of punishment imposed by the Disciplinary Authority if it is found to be without jurisdiction or

not passed on evidence or arbitrary or perverse.

16.6. In G. Akbar Vs. The Union of India (UOI), , a learned Single Judge of this Court had held as follows:

5. It is settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the

appellate authority, the appellate authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on

facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ

jurisdiction shall not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that

the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before

the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings,

while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the

delinquent, for that of the departmental authorities, vide Apparel Export Promotion Council Vs. A.K. Chopra, .

6. It is also settled law that in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt

has not application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the

delinquent has committed misconduct, vide Lalit Popli Vs. Canara Bank and Others, .

17. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the respondents and in view of the

decisions relied on by the learned Counsels in support of their contentions and on a perusal of the records available, this Court is of the considered

view that the charges levelled against the petitioner cannot be sustained.

18. It is seen that the enquiry officer had examined M.Perumal, Head Constable of the Vigilance Department of the respondent Corporation, who

had marked a statement said to have been given by J.Manoharan. He had also produced certain statements made by P.Poulina and Janardanan.

Further, J.Manoharan, who was examined during the enquiry had categorically deposed that the petitioner had not received the amount of Rs.

300/- for getting the community certificate, as alleged. He had further stated that he had made certain statements before the authorities of the

Vigilance Department of the respondent Corporation making certain allegations against the petitioner. However, he had stated, during the enquiry,

that such statements had been made by him only at the instance of the authorities of the Vigilance Department and due to the apprehension that he would not be given the house building advance. Even though the statement of P.Poulina had been relied on by the enquiry officer to arrive at his conclusions, she had not appeared before the enquiry officer. Therefore, the petitioner did not have the opportunity to cross examine her on the statement made by her against the petitioner.

19. Further, there is nothing on record to show that the disciplinary authority had taken into consideration the explanation submitted by the petitioner to the show cause notice issued to him before passing the impugned order, dated 10.3.2004. Even though various grounds had been raised in the appeal filed by the petitioner the appellate authority, without considering the same, had passed an order, dated 25.6.2004, confirming the order of the disciplinary authority, without giving reasons for his decision.

20. The contention of the learned Counsel for the respondents that the availability of an alternative remedy to the petitioner, under the Industrial disputes Act, 1947, would disentitle the petitioner from maintaining the present writ petition before this Court, under Article 226 of the Constitution of India, cannot be sustained in the given facts and circumstances of the case. Once it is found that there was no evidence available on record to sustain the charges levelled against the petitioner, it would be a futile exercise to drive the petitioner to avail the alternative remedy, even if it is available, as contended on behalf of the respondents. In such circumstances, the impugned orders passed by the respondents are set aside. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.