
(2008) 12 JH CK 0069
In the Jharkhand High Court

Satyendra Narayan Singh

APPELLANT

Vs

The State of Bihar now Jharkhand and Others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2008) 12 JH CK 0069

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 17.2.2003 passed in C.W.J.C. No. 3056 of 1998(P), whereby the learned Single Judge dismissed the writ petition holding that the finding recorded in the departmental proceeding is not perverse and, thereby affirmed the order of dismissal passed by the disciplinary authorities.

2. The facts of the case lie in a narrow compass:

The appellant was a constable posted with Shri S.R. Sabarwal, Superintendent of Police (Training) at Hazaribagh. The appellant's case is that Shri Sabarwal used to live in one of the guest rooms of the I.P. Mess, and the appellant used to live in one of the rooms meant for orderly and servants. Shri Sabarwal used to proceed Patna a number of times as his family being at Patna. Many of times, the petitioner was also sent to Patna in connection with official and personal work of the aforesaid Officer.

3. It appears that a departmental proceeding was initiated against the appellant vide charge-sheet dated 25th July, 1988. The following three charges were leveled against him: (i) The appellant availed the leave from 01.7.1988 to 02.7.1988 but the leave allegedly shown upto 11.7.1988, (ii) The appellant charged Rs. 51/- being the railway fare from Patna to Kodarma when actual fair paid was Rs. 25/- and (iii) The appellant committed theft of Rs. 2000/- from the room of S.R. Sabarwal, Superintendent of Police (Training), while he was posted

as Orderly. The appellant asserted that on 21st July, 1988 he proceeded on leave granted by Mr. Sabarwal and went to his village home. On 22nd July, 1988, the Sub-Inspector of Sadar P.S., Hazaribagh along with one Havildar visited his house and informed that Shri Sabarwal lodged F.I.R. against him alleging theft of Rs. 2000/-. The petitioner was forced and the S.I. and the Havildar succeeded in extorting a sum of Rs. 4000/- from the father and uncle of the appellant. The appellant was then brought before Shri Sabarwal from where he was sent to jail, but he was admittedly enlarged on bail. The appellant's case is that at the instance of Shri Sabarwal, he was illegally made accused in a criminal case.

4. The Inquiry Officer submitted his report with the finding that charges have been proved and on the basis of that, the appellant was dismissed from service by the order of the same S.P. Sri Sabarwal. The appellant moved the appellate authority, but the order of dismissal was affirmed. The appellant then moved this Court by filing a writ petition challenging the initiation of departmental proceeding and also the order of dismissal. The learned single Judge took notice of the fact that the charges were framed by Shri Sabarwal who lodged F.I.R. against the appellant and the final order of dismissal was passed by the same officer namely Shri Sabarwal. Learned Single Judge also took notice of the fact that in the departmental proceeding, the appellant made a prayer for stay of the departmental proceeding on the ground of pendency of the criminal case instituted against him on the same set of charges. However, the learned Single Judge held that the report submitted by the Inquiry Officer being based on evidence and not otherwise perverse, there is no ground to interfere with the inquiry report. Consequently, the writ petition was dismissed. Hence, this appeal.

5. Mrs. Ritu Kumar, learned Counsel appearing for the appellant assailed the impugned orders as being illegal and wholly without jurisdiction. Learned Counsel submitted that the departmental proceeding was initiated at the behest of the officer Shri Sabarwal who lodged F.I.R. and he himself framed charges. Learned Counsel submitted that the entire departmental proceeding is vitiated on the ground of mala fide which is evident from the fact that the Inquiry Officer and the Inspector of Police, who were the Inquiry Officer and the Presenting Officer were subordinate to him acting under his influence and on personal motivation against the petitioner. Learned Counsel submitted that the learned Single Judge failed to appreciate that the impugned order of dismissal as well as the order passed in memorial preferred by the appellant have become vitiated on account of motivated finding of the Inquiry Officer acting under the dictate of Shri Sabarwal. Learned Counsel lastly submitted that in any view of the matter, having regard to the fact that the appellant was acquitted in the criminal case, the punishment by way of dismissal is totally disproportionate to the charges leveled against the appellant. Learned Counsel submitted that even the other two charges have not at all been proved which is evident from the certificate issued by the Railways authorities.

6. Mr. V.K. Prasad, learned Counsel appearing for the State, on the other hand,

submitted that the charges leveled against the appellant having been proved in the departmental proceeding and the order of dismissal was affirmed by the appellate authority, the learned Single Judge rightly did not interfere with the order of dismissal from service. Learned Counsel further submitted that for the charges leveled against the appellant, the order of dismissal is perfectly justified.

7. Admittedly, when the departmental proceeding was initiated, the appellant made a request for the stay of the departmental proceeding on the ground of pendency of criminal case against him. It is also not in dispute that the appellant was acquitted in a criminal case instituted on the allegation of theft of Rs. 2000/-. It is also not in dispute that so far the other charges were concerned, that related to illegal claim of travelling allowance by giving wrong information relating to journey. The appellant submitted counterfoil of Railway warrant, command certificate, railway ticket and the certificate granted by the railway authority to the effect that the appellant traveled on ticket issued on the authority of railway warrant. The railway fare for the journey was Rs. 51/-. The Inquiry Officer, however, found the charges proved and on the basis of the inquiry report, the order of dismissal from service was passed.

8. The scope of judicial review of the administrative decision particularly the disciplinary inquiry and the order imposing punishment by the authority has been discussed by the Supreme Court in catena of decisions. Normally Courts should not interfere with the administrative decisions unless it was illogical and suffers from procedural impropriety or is shocking to the conscience of the Courts. When the administrative action is challenged as arbitrary, the question will be whether the administrative order is rationale or reasonable and the test would be *Wednesbury's* test. In the case of *Chairman and Managing Director, United commercial bank and Ors. v. P.C. Kakkar* AIR 2003 SC 944 the Supreme Court observed:

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

9. In the case of U.P. Jal Nigam and Another Vs. Nareshwar Sahai Mathur and Another, , strong and hostile bias was alleged and the Supreme Court while dealing with the question of bias observed as under:

There is, however, a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or bias against the delinquent of which the other members know not or the said member is in a position to influence the decision-making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done but must also appear to be done. Would it so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him? And we repeat the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the like.

10. In the case of Union of India (UOI) and Others Vs. Naman Singh Sekhawat, , the Supreme Court held that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal Court, but the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent. Such a proceeding must be initiated bona fide. The action of the authority must be reasonable and fair.

11. In the case of State of Punjab v. V.K. Khanna (2001) 1 SCC 330, the Supreme Court while discussing the fairness in the administrative action observed:

5. Whereas fairness is synonymous with reasonableness ? bias stands included within the attributes and broader purview of the word ?malice? which in common acceptation means and implies ?spite? or ?ill will?. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice.

Their Lordships further observed:

8. The test, therefore, is as to whether there is a mere apprehension of bias or

there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.

12. In the case of Kumaon Mandal Vikas Nigam Ltd v. Girja Shankar Pant and Ors. (2001) 1 S.C.C. 182, the Supreme Court elaborately discussed about the bias and malice in the administrative action. Paragraphs 10, 11 and 35 are worth to quoted below:

10. The word 'bias' in popular English parlance stands included within the attributes and broader purview of the word 'malice', which in common acceptation means and implies 'spite' or 'ill-will' (Stroud's Judicial Dictionary, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

11. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all-important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse [see in this context Jones Bros. (Hunstanton) v. Stevens].

35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom ? in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case.

13. In the instant case, as noticed above, Shri Sabarwal, Superintendent of Police (Training), Hazaribagh under whom the appellant was working as Orderly, lodged F.I.R. against him alleging theft of Rs. 2000/- from his house. The same officer framed charges alleging theft of Rs. 2000/- and included the same with other charges. The same officer appointed his subordinate officers as the Inquiry Officer and the Presenting Officer and on the basis of inquiry report, passed the order of punishment dismissing the appellant from his service.

14. Where a delinquent is asked to appear before an enquiry officer appointed by

a person, who was deeply hostile towards him and this hostile bias of the Superintendent of Police vitiates the entire enquiry. When a senior police officer like Superintendent of Police makes allegation of theft against the subordinate officer and lodged FIR, what prevented him from proving the case before the criminal court. The prosecution even did not produce any evidence and no step was taken even by the officer, who lodged FIR and institute criminal case against the delinquent, who has been ultimately acquitted. This also shows that the Superintendent of Police was deeply hostile and there existed malice against the delinquent.

15. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, we have no hesitation in holding that the departmental enquiry and the order of punishment suffers from serious illegality and also full of bias and mala fide. The learned Single Judge has not appreciated these facts and has not considered the procedural irregularity committed by the officer, at whose instance departmental proceeding was initiated and the order of punishment was passed.

16. For the reasons aforesaid, the impugned judgment passed by the learned Single Judge is set aside. Consequently, the departmental enquiry and the order of punishment are quashed.

17. In the result, this appeal is allowed and the appellant is directed to be reinstated in service. However, in the facts and circumstances of the case, the appellant shall be entitled to only half of the wages and shall not claim any increment for the period he remained out of service.