
(2009) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12349 of 2003 and O. A. No. 547 of 1998

Shambhunath Mishra

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) ILR (MP) 1335 : (2009) 2 MPLJ 432

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

Bench : Single Bench

Advocate : A. Adhikari, for the Appellant; Kumaresh Pathak, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R. K. Gupta, J.

Heard

The present petition is filed by the petitioner seeking for the quashment of the order dated 29-4-1997, which is Annexure-A-9, by which the petitioner is refused to join his duties.

The facts leading to the present case are that the petitioner at the relevant time was employed on the post of Patwari. Since there had been manipulation in the record, therefore along with the petitioner two other persons were also charge sheeted. They were Shri Prajapati, Naib Tehsildar and Shri Indra Kumar Dwivedi, who was employed as LDC. A joint enquiry against all three persons was conducted and a punishment of removal from services by an order dated 16-4-1990 (Annexure-A-3) was imposed.

So far as the present petitioner is concerned he filed the original application before the SAT which was registered as O.A. No. 1016/1990. He challenged the legality and validity of the departmental enquiry including the order of

punishment. The Tribunal dismissed the case on merits holding that the action taken against the petitioner is proper. The judgment passed by the Tribunal dismissing the case of the petitioner is placed on record as Annexure-A-4.

After the dismissal of the case the petitioner filed a review application which was also dismissed by the Tribunal and the copy of the same is placed on record as Annexure-A-5.

So far as Shri Indra Kumar Dwivedi is concerned who was employed as LDC also challenged the order of punishment by filing a case before the SAT which was registered as O.A. No. 37/1995. The Tribunal held that so far Shri Indra Kumar Dwivedi is concerned since he was only working as LDC, therefore the punishment which was awarded to him was disproportionate. His application was partly allowed. Shri Indra Kumar Dwivedi also preferred an appeal to the State Govt, on 7-5-1990 and his appeal was decided on 25-11-1994 and the appellate authority held that the disciplinary authority has given the fair treatment to him and accordingly the punishment of removal was confirmed by the appellate authority.

In this reference with profit, paragraph 14 of the judgment passed in O.A. 37/1995, Indra Kumar Dwivedi vs. State of M.P. and others is concerned, the same is reproduced as under :-

The applicant had filed appeal on 7-5-1990. His appeal was decided on 25-11-1994 whereas the delinquent Naib Tehsildar had filed appeal on 5-6-1990. His appeal was decided on 31-5-1993. Thus the above facts show that the disciplinary authority has not given the fair treatment to the applicant. The said Naib Tehsildar was the delinquent employee who had given pattas to the non-serving person in collusion with Patwari Shambhu Prasad Mishra the applicant had committed minor irregularities as mentioned in the charge-sheet i.e. working in the post of LDC at the relevant time the punishment awarded to the petitioner is not proportionate to the proved misconduct.

On the basis of the aforesaid paragraph from the judgment passed by the Tribunal, it is clear that so far as Shri Indra Kumar Dwivedi is concerned since he was found to be working on the post of LDC at the relevant time and there was no direct role played by him in manipulating the records. The State Govt, accepted the appeal submitted by the Naib Tehsildar Shri Prajapati and holding that the punishment is disproportionate, therefore the Tribunal held that the punishment is disproportionate.

After the judgment the present petitioner preferred a review to the State Govt, for consideration of his case also with regard to the punishment. The same was refused by the impugned order.

Learned Counsel appearing on behalf of the petitioner submitted that the petitioner earlier filed his case before the Tribunal i.e. O.A. No. 1016/1990 (Annexure-A-4), wherein the Tribunal has dismissed the appeal and the Tribunal

in O.A. No. 37/1995, Indra Kumar Dwivedi vs. State of M.P. has held that the punishment is disproportionate in his case. It is contended that the State Govt, was not justified in rejecting the application for review of the present petitioner. It is also contended by him that since a common charge sheet was issued to all the three delinquents and a common departmental enquiry was conducted, therefore even though the case of the petitioner was earlier dismissed by the Tribunal yet petitioner is entitled to claim parity with regard to the punishment imposed on the petitioner.

Counsel for the petitioner relied upon the judgment passed by the Apex Court as reported in Harinder Singh and Others Vs. State of Punjab and Others, , Sengara Singh and Others Vs. State of Punjab and Others, , Sengra Singh and others vs. State of Punjab and others and on this basis it is submitted by him that this Court in exercise of its powers under Article 226 of the Constitution of India shall have power to decide about the disparity in imposing the punishment and shall also have power to direct the respondents to maintain the parity with regard to the punishment.

The respondents relied upon the judgment passed by the Apex Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, and it was submitted that in the present case there were no similarity of the charges.

While arguing the case learned Counsel for the petitioner brought to the notice of this Court the order passed by the State Govt, on 31st May, 1993 whereby the appeal submitted by Naib Tehsildar Shri Prajapati was allowed. Shri Prajapati, Naib Tehsildar raised a ground that in the departmental enquiry it was not found proved that any undue pressure was applied by him on the Patwari, i.e. the present petitioner who prepared the forged documents for giving benefit to certain persons. The aforesaid aspect was accepted by the appellate authority and the punishment which was imposed on him of removal from services was modified and he was imposed a penalty of withholding of one annual increment.

The Tribunal recorded a finding in the favour of LDC Shri Indra Kumar Dwivedi that he has only committed minor irregularities as mentioned in the charge-sheet.

The charge against the petitioner was that he has fabricated the documents giving favour to a litigant to show his valid possession on the land. It was also the charge against the present petitioner that under the pressure of Naib Tehsildar the present petitioner has shown possession on the land by a person in Patwari Khasra No. 799/1, 59, 60, 487, 618 in the year 1975-76 till 1980-81. In the departmental enquiry there was no evidence that the aforesaid act was done by the present petitioner under the pressure of Naib Tehsildar.

It is clear in the departmental inquiry that there was no evidence that any pressure was applied by Naib Tehsildar on the present petitioner to manipulate the record which is clear from the order dated 31-5-1993 of the State Govt. Thus for these reasons it is clear that manipulation was done by the present petitioner

himself without there being any pressure by the Naib Tehsildar. So far as Shri Indra Kumar Dwivedi is concerned the Tribunal has recorded a finding in his favour that the minor irregularities were committed by him.

On the basis of the same, in two cases wherein in one case the Tribunal has allowed the case in favour of Shri Indra Kumar Dwivedi, LDC and in another case of Naib Tehsildar the State Govt, has allowed the appeal are distinguishable. The misconduct on the part of the petitioner to manipulate the record without any pressure by the Naib Tehsildar is a different and serious misconduct than the misconduct-committed by the Naib Tehsildar and Indra Kumar Dwivedi. LDC particularly when there was no material found in the departmental enquiry by the State Govt, and also by the Tribunal. While considering the appeal of Naib Tehsildar the State Govt, came to the conclusion that there was no material against the Naib Tehsildar that he has applied undue pressure on the present petitioner to induce him to manipulate the record. Then the sole conduct of the petitioner is to be taken into account without any pressure to show a favour to a particular person by showing his possession from 1975-1976 to 1980-81. In this reference the judgment cited by the learned Counsel for the respondents becomes relevant. In 1997(3) SCC 371, Kuldeep Industrial Corporation vs. Income Tax Officer and others Paragraph 6 of the said judgment is relevant which is reproduced as under :-

So far as the assessment year 1977-78, is concerned, all the three members of the Commission unanimously rejected the application on the following reasoning ;

Viewing the facts for this case against the observations made by us above, it appears to us that for the A. Y. 1977-78, the Department has a very strong case to raise objection on the ground that concealment of particulars of income or perpetration of fraud by the applicant has been or is likely to be established - particularly so in regard to the perpetration of fraud. Insofar as this year is concerned, there is clear fabrication of accounts, the balances in the accounts have been fudged; the sale vouchers and goods receipts have been cooked up, and a false facade is created to mislead the Department and cover up the real state of the assessee's business transactions. It strains our sense of credulity too far to accept the applicant's claim that all this was being done only to save its skin from some other departments and. its intentions vis-a-vis the Revenue were nothing but honourable. If that be so, how does the assessee in any case explain the inflation by Rs. 10 acs of the carried forward balance in "Kuldip Prakash Imprest Account". To our minds, the Department has also succeeded in substance in rebutting the assessee's claim of so-called inaccuracies in the Commissioner's report. We do not find any distortion or misconception of facts in the Commissioner's report, nor can we subscribe to the view that it involves any colourable exercise of his powers. In fact, the Commissioner would have failed in his duty enjoined upon him by law, if he had not raised objection for the year 1977-78." The findings recorded by the Commission are too eloquent to call for any emphasis. They could not have been expressed in more stronger language.

Another judgment i.e. Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, is also relevant of which 13 is reproduced as under : -

13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M. L. Keshwani's case. As was observed by this Court in Balbir Chand Vs. Food Corporation of India Ltd. and others, , even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different.

The ratio of the aforesaid two judgments of the Supreme Court is that merely because certain persons were punished by imposing minor penalty and others have been punished with major penalty then that would not be a ground for judicial review.

In my earlier paragraphs I have already distinguished the nature of the misconduct committed by the petitioner and also by the other two persons who were inflicted the minor penalty in appeal and also by the Tribunal. I am of the view that the petitioner's role while manipulating the record was not similar to the other two employees so that it could be said the charges against all the three employees were common in nature so that a case of discrimination is made out.

The judgment which has been relied upon by the petitioner i.e. Harminder Singh and Others Vs. State of Punjab and Others, is distinguishable because in that case all the employees were dismissed only on the charge that they have agitated which was impermissible Under rules. In that case Supreme Court held that since the charges were common, therefore a parity has to be maintained. The judgments in Sengara Singh and Others Vs. State of Punjab and Others, is also not distinguishable. The Apex Court in these cases of agitators directed for reinstatement as similarly situated agitators were not directed for the reinstatement therefore the Supreme Court found a case of disparity in imposing the punishment.

In the present case the order passed by the appellate authority i.e. the State Govt, in case of Naib Tehsildar itself indicates that there was no material against Naib Tehsildar in the departmental enquiry that Naib Tehsildar has pressurized the present petitioner for manipulating the record. Once the Naib Tehsildar is not found to be guilty in the departmental inquiry for applying undue pressure on the present petitioner then the present petitioner only becomes responsible for manipulating the record. So far as the TDC is concerned in his case the Tribunal found that he was only a LDC and was not responsible for maintenance of the record and further was not responsible to prepare the revenue record and being TDC he was to forward the record to the Naib Tehsildar, through note sheet.

In view of the aforesaid, if the wrong report or manipulated report was submitted by the Patwari i.e. the present petitioner which was acted upon then the role of the present petitioner becomes severe in comparison to other two delinquents.

On this basis the aforesaid two judgments on which the heavy reliance was placed on behalf of the petitioner shall have no application. Another judgment of the Apex Court i.e. M. Raghavelu Vs. Govt. of A. P. and Anr., (1997) 10 SCC 779 , is also considered. In the aforesaid case the Supreme Court was considering the misconduct with regard to the lack of supervision by an officer. It was held by the Apex Court that a lack of supervision cannot be held to be severe nature of the misconduct. Paragraph 5 of the said judgment is relevant which is reproduced as under :-

5 The argument of the learned Counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work cannot be punished for similar charge leveled against him. We find force in the argument of the learned Counsel for the appellant and we do not think that the argument of the learned Counsel for the respondents that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant alone for finding him guilty of the charge.

In the present case the factual scenario on appreciation of the facts of the case is entirely different. The petitioner was directly involved in manipulating the record and so far as the Naib Tehsildar is concerned he was indirectly involved even assuming that he had played role but he was indirectly involved. So far as the LDC is concerned he was only to put up the report: to the Naib Tehsildar without playing any role to prepare the record. Thus the judgment on which the heavy reliance is placed i.e. M. Raghavelu Vs. Govt. of A. P. and Anr., (1997) 10 SCC 779 is also distinguishable.

In view of my overall discussion as aforesaid, I do not find any case for interference and the petition is dismissed.