

(2011) 02 SC CK 0055

In the Supreme Court Of India

Case No : Civil Appeal No. 2175 of 2011 (Arising out of SLP (C) No. 1314 of 2008)

Union of India (UOI) and Others

APPELLANT

Vs

Manab Kumar Guha

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : (2011) 4 JT 19 : (2011) 3 SCALE 145 : (2011) 11 SCC 535 : (2011) 2 SCC(L&S) 316 : (2012) 3 SCR 272

Hon'ble Judges : H. S. Bedi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Naresh Kaushik, Sadhna Sandhu, A.K. Sharma and B. Krishna Prasad, for the Appellant; Asha Jain Madan and Mukesh Jain Madan, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In this Special Leave Petition, the Union of India and its functionaries assail the judgment and order dated 6th of March, 2007 passed by the Division Bench of the Calcutta High Court whereby while allowing the appeal preferred by the writ Petitioner-Respondent it had set aside the order of the learned Single Judge and quashed the order of his compulsory retirement.

2. Leave granted.

3. Short facts giving rise to the present appeal are that the writ Petitioner-Respondent (hereinafter referred to as 'writ Petitioner') was a constable in the Railway Protection Force and on 5th June, 1995 deployed for duty at Asansol Railway Station. One Harish Chandra Ram made a complaint that the writ Petitioner along with another constable dragged him to the yard, assaulted him and robbed Rs. 400/- and key of a tractor from his possession. He was put under suspension and on 28.6.1995 served with the memo of charge containing the following allegation:

On 5.6.95 while he was deployed for duty at Down Marshalling Post/Asansol along with Const. Nil Rameshwar from 16/00 Hrs. to 24/00 Hrs. they jointly caught hold of a passenger namely Harish Chandra Ram who had gone at the west end of Platform No. 3/4 of Asansol Rly. Station at about 19/00 Hrs. to ease himself dragged him to the yard, assaulted him and robbed Rs. 400/- and the key of a tractor from his possession. On search 2 Nos. of 100 rupee notes and key of a tractor were recovered from Const. Rameshwar.

4. The enquiry officer held him guilty of the charge and the disciplinary authority agreeing with the same inflicted the punishment of removal from service. The writ Petitioner preferred appeal and the Appellate Authority allowed the appeal, set aside the order of removal and directed for de novo enquiry and while doing so, observed as follows:

2. However, I find that there were some gross irregularities in the course of the proceeding enquiry. First, from the very beginning of the proceeding the delinquent should have been given the option to engage a "friend" for defending his case and thereafter in presence of his "friend" the enquiry should be started. Secondly, the complainant was not examined during the course of proceeding enquiry. Thirdly, the complainant's story of disposal/delivery of a tractor at Burdwan and boarding a train from Asansol after that required further examination by E.O. and cross examination by the delinquent.

5. Thereafter a de novo enquiry was held in which the writ Petitioner was allowed to engage a friend. However, Harish Chandra Ram, the victim was not examined. Nonetheless the enquiry officer held the writ Petitioner guilty of the charge. A copy of the enquiry-report was made available to the writ Petitioner and he submitted his reply. The disciplinary authority considered the report of enquiry officer and reply of the writ Petitioner and passed the order of removal from service. As regards the plea of the writ Petitioner regarding non-examination of Harish Chandra Ram, the disciplinary authority observed as follows:

... In the 3rd para, he has alleged that the complainant Sri Harish Chandra Ram could not be presented in the enquiry and hence the complaint is false. But this defence of Shri Guha cannot be accepted because the fact of the matter is that Harish Chandra Ram was illegally detained and released by const./Guha along with C/Rameshwar and C/Guha has clearly accepted in his statement about incident except of course that he has not snatched money. So, one cannot deny the complaint as false just because in the later date the complainant could not come before. It is evident from the case file that the E.O. has taken all pains to call Shri Harish Chandra Ram from his native place many times but it appears that under fear in mind complainant could not dare to attend departmental enquiry which was conducted at RPF Post. However, written complaint which is duly supported by seizure list cannot be denied as such.

6. Writ Petitioner preferred appeal and the Appellate Authority partly allowed the appeal and substituted the punishment of removal from service to that of

compulsory retirement.

7. Writ Petitioner assailed the aforesaid order before the Calcutta High Court which dismissed the writ petition by order dated 10th of April, 2002. On appeal by the writ Petitioner, the Division Bench of the Calcutta High Court set aside the order of the learned Single Judge and quashed the order of compulsory retirement and that is how the Appellants are before us.

8. Mr. Naresh Kaushik, learned Counsel appearing on behalf of the Appellants submits that every effort was made to examine the victim Harish Chandra Ram and only on the ground that he was not examined, the order of compulsory retirement ought not to have been set aside. He points out that the xerox copy of the complaint filed by the victim was placed on record and the enquiry officer on appraisal of the materials had recorded the finding of guilt which ought not to have been interfered by the High Court in appeal. He points out that the High Court while exercising the power of judicial review do not act as a Court of appeal, appreciate evidence and records findings.

9. Ms. Asha Jain Madan, learned Counsel, however, appearing on behalf of the Respondent points out that the Appellate Authority while setting aside the order of removal earlier had found it bad on account of non-examination of the victim Harish Chandra Ram and the story put by him that after disposal of the tractor, he came to board a train at Asansole required further cross-examination. She submits that in the de novo enquiry, Harish Chandra Ram did not appear and as such the order of removal suffers from the same vice.

10. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Kaushik.

11. True it is that the Appellate Authority while setting aside the order of removal and directing for de-novo enquiry earlier had found the same bad in law on account of various grounds including the ground of non-examination of the victim Harish Chandra Ram. Thereafter in the de novo enquiry, the enquiry officer had taken pains to call Harish Chandra Ram from his native place but he did not appear during the enquiry. It is not the case of the writ Petitioner that the disciplinary authority purposely withheld Harish Chandra Ram from appearing in the departmental enquiry. Harish Chandra Ram had given a written complaint, a copy of which was produced during the course of enquiry which supports the charge levelled against the writ Petitioner. Further writ Petitioner in his defence had accepted the detention of Harish Chandra Ram and his release. However, he has denied the allegation of snatching of money from him but from his own defence, it is evident that he had accepted the incident except of course that he had not snatched the money. On the basis of the materials on record, the enquiry officer held the writ Petitioner guilty with which the disciplinary authority as also the appellate authority agreed. It is well settled that High Court while exercising the power of judicial review from the order of the disciplinary authority do not act as a Court of appeal and appraise evidence. It interferes with the

finding of enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order of learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review.

12. In the result, the appeal is allowed, impugned order is set aside but without any order as to costs.