

(2013) 02 JH CK 0007
In the Jharkhand High Court
Case No : W.P. (S) No. 72 of 2003

Vijay Shankar Thakur

APPELLANT

Vs

State of Jharkhand, Director, Water Resources and Irrigation
Department, Special Land Acquisition Officer and State of
Bihar

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Citation : (2013) 2 AJR 666

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Judgement

S. Chandrashekhar, J.—The only question involved in this case is whether the order of punishment passed by the disciplinary authority is based on "no evidence" and therefore, it is perverse and liable to be quashed. The petitioner has challenged order dated 23.06.1998 by which he has been dismissed from service and order dated 30.06.2001 whereby the appeal preferred by the petitioner has been rejected. The petitioner was appointed to the post of Clerk on 07.06.1984 in the office of Special Land Acquisition Officer, Hazaribagh. A Vigilance Case No. 17 of 1994 was registered u/s 7 of the Prevention of Corruption Act against the petitioner. The petitioner was arrested and he was put under suspension on 14.07.1994. An Enquiry Officer was appointed who issued show-cause notice to the petitioner on 17.05.1995 requiring him to submit his defence by 31.05.1995. The petitioner submitted his reply specifically denying the charge of taking bribe. He submitted that in January, 1993 he was transferred from Deoghar to the Office of Special Land Acquisition, Medium Irrigation Project at Hazaribagh and he has been working in the said office since then and therefore, he is not responsible for any irregularity committed in the office of Special Land Acquisition, Tenughat Project, Hazaribagh during 1994. Since he was not posted at Tenughat Project, Hazaribagh, therefore, he could not have dealt with the record relating to village Nawadih and he could not have asked for any bribe for payment of compensation to the land owners. In support

of his defence the petitioner produced a letter/certificate dated 26.07.1994 issued by Special Land Acquisition Officer, Hazaribagh certifying that the petitioner after joining the office of Special Land Acquisition, Medium Irrigation Project, Hazaribagh has been working there and he has not been posted to any other office/place since his posting there. It was further certified that one Sri Chandra Kant Singh is the incharge of record relating to Bhairwa Reservoir who is posted in the office of Special Land Acquisition Officer, Tenughat Project, Hazaribagh.

2. The enquiry report dated 15.06.1996 was submitted in which it has been recorded that the petitioner was not posted in the office of Special Land Acquisition Officer, Tenughat Project, Hazaribagh rather, since 1993 he has been posted in the office of Special Land Acquisition Officer, Medium Irrigation Project, Hazaribagh and he was not incharge of the record of the case in issue. The complainant, Sri Sagunu Mahto gave his statement before the enquiry officer and it has been recorded in the enquiry report dated 15.06.1996 that his land was acquired for Bhairwa Reservoir and for compensation he approached Office Assistant, Sri Chandra Kant Singh and Sri Raj Gopal Jha on several occasions however, the payment was not made and they demanded 10 % of the total compensation amount in bribe and as he was not in a position to give bribe to them, he made a written complaint in the vigilance department. The complainant has specifically admitted before the enquiry officer that bribe was asked from him by Sri Chandra Kant Singh and since on 07.07.1994 Chandra Kant Singh was absent, he gave the money to Vijay Shankar Thakur (petitioner) as he had seen Sri Chandra Kant Singh and Sri Vijay Shankar Thakur together on many occasions. The enquiry officer concluded that on perusal of the concerned record, he found that the petitioner was neither incharge of the record in question nor he was posted in the office of Special Land Acquisition Officer, Tenughat Project, Hazaribagh during the relevant period nor he had any connection with the Tenughat Project. The enquiry officer however, did not record his conclusion as the criminal case was pending in the Court.

3. By letter dated 24.11.1997, the petitioner was issued a second show-cause notice requiring him to submit his reply as the government had decided to dismiss him from service. The petitioner submitted his reply dated 23.12.1997 and by letter dated 23.06.1998, the petitioner was dismissed from service. The petitioner thereafter, preferred appeal which was also dismissed by order dated 30.06.2001 and therefore, the petitioner has approached this Court by filing the writ petition.

4. A counter - affidavit has been filed in which a stand has been taken that after thorough examination of the enquiry report and related documents, the charges were found true and therefore, it was decided at government level to terminate the service of the petitioner. The petitioner was given full opportunity and after considering his defence, he has been terminated from service by order dated 23.06.1998. The charges against the petitioner are grave. The petitioner was

arrested by the Vigilance Department and the case is pending.

5. Heard counsel for the parties and perused the documents on record.

6. The learned counsel for the petitioner has submitted that the facts recorded in the enquiry report clearly exonerates the petitioner from the charges levelled against him. The disciplinary authority has ignored the materials on record and the enquiry report and he has erroneously passed the order of dismissal from service. There is no evidence on record on the basis of which the order of dismissal from service could have been passed. The complainant himself has denied demand of bribe by the petitioner and the record clearly demonstrates that during the relevant period, the petitioner was not posted in the Tenughat Project, Hazaribagh, nonetheless order of dismissal from service has been passed and the appellate authority has also not considered the evidence on record and dismissed the appeal. He further submitted that even if it is assumed that the petitioner accepted the money which was to be given to one Chandra Kant Singh, this would not amount to misconduct and therefore, the punishment inflicted upon the petitioner is grossly disproportionate to the act/omission on the part of the petitioner.

7. The learned counsel for the respondents has submitted that the charge against the petitioner is serious as he was caught with the money and he was arrested on the spot on 07.07.1994. He further submitted that it is immaterial whether the petitioner was posted in the office of Special Land Acquisition Officer, Tenughat Project or he was posted else there. The criminal case is still pending in the Court. The petitioner was given full opportunity during the enquiry to defend himself and on consideration of the materials on record, the order of dismissal from service has been passed.

8. The power of the High Court under Article 226 to interfere with findings in departmental proceeding has been dealt with by the Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. Sree Rama Rao, , it has been held,

7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably

support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

9. A Constitution Bench of the Hon''ble Supreme Court in the case of Union of India (UOI) Vs. H.C. Goel, has held that the High Court under Article 226 of the Constitution of India has jurisdiction to enquire whether the conclusion of the government on which the impugned order of dismissal rests is not supported by any evidence at all. The Hon''ble Supreme Court has held as under:

20. This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311(2), the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of true of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.

10. In the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, , the Hon''ble Supreme Court has held that in a petition under Article 226, the High Court does not function as a Court of appeal over the findings of Disciplinary

Authority. But where the finding is utterly perverse, the Court can always interfere with the same.

11. In the Case of Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, , the Hon"ble Supreme Court has held as under:

17. It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence.

18. Between appraisal of evidence and total lack of evidence there is an appreciable difference which could never be lost sight of and the High Court ought not to have short-circuited the writ petition.

12. The scope of judicial review under Articles 226 and 32 of the Constitution of India has been examined by the Hon"ble Supreme Court in the case of "Kuldeep Singh Vs. Commissioner of Police and Others." In the said case, the Hon"ble Supreme Court has held that finding of guilt although, would not be normally interfered with, however, the Court can interfere therewith if the same is based on no evidence or such as could not be alleged by an ordinary prudent man or is perverse or is made at the dictates of a superior authority. In the said case of Kuldeep Singh Vs. The Commissioner of Police and Others, , the Hon"ble Supreme Court has held as under,

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

13. While examining the nature of requisite evidence for holding an employee

guilty of misconduct the Hon'ble Supreme Court in the case of Sher Bahadur Vs. Union of India (UOI) and Others, , has held,

7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set-aside.

14. It is appearing from the record of the case that the place of posting of the petitioner during the relevant period as claimed by the petitioner has not been controverted by the respondents. It has also not been disputed by the respondents that the petitioner was not incharge of the record relating to the compensation to the land owners including the complainant, Sagunu Mahto. I find from the enquiry report dated 15.06.1996 that the complainant has not named the petitioner as the person who demanded bribe, rather he has named one Chandra Kant Singh who had demanded bribe from him. There is no witness who has seen the petitioner accepting bribe from the complainant. This aspect of the matter has not been taken into account either by the disciplinary authority or by the appellate authority. In the impugned orders dated 23.06.1998 and 30.06.2001, there is no reference with respect to these evidences on record. Order dated 23.06.1998 simply records that on a consideration of the materials on record and the enquiry report, it has been decided to terminate the petitioner from service. The appellate order dated 30.06.2001 also does not deal with the issue in right perspective. Mere recording of satisfaction without there being any evidence would not satisfy the requirements in law in this behalf. The orders

passed against the petitioner are based on no evidence and therefore, the impugned orders are liable to be quashed. In the result, the writ petition is allowed by quashing the impugned orders dated 23.06.1998 and 30.06.2001. However, about 15 years have passed since the petitioner has been dismissed from service and therefore, the payment of back wages to the petitioner has to be considered.

15. In the Case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , the Hon''ble Supreme court noticed that there was no pleading or evidence as to whether the respondent therein was employed elsewhere during the long interregnum and therefore, only 50 % of the back wages till the date of reinstatement was ordered.

16. In the case of Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, , the Hon''ble Supreme Court did not approve granting of full back wages to the workman and instead only 50 % of the back wages was ordered to be paid to the workman.

17. In the case of Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others, , the Hon''ble Supreme Court after holding that the enquiry was vitiated by bias, set-aside the order and ordered 50 % back wages to the employee. It has been held;

17. So far as grant of back wages is concerned, it depends upon case to case. But in the present case as the respondent was found guilty by the Cantonment Board but the order of Cantonment Board was set-aside because it suffered from bias it will be unfair to deny 50 % back wages to the respondent (herein). The Division Bench also directed that more than 13 years have passed, therefore, it did not permit the respondent to proceed against the petition afresh. The Division Bench decided the matter on 10.01.2005 and now more than 16 years have lapsed. Therefore, it would not be fair to permit the respondent to proceed afresh in the matter. Consequently, we do not find any merit in this appeal and the same is dismissed.

18. The respondent be reinstated with the benefit of 50 % back wages and continuity of service.

18. In the case of State of Uttar Pradesh and Others Vs. Ram Daras Yadav, , the Hon''ble Supreme Court modified the order of dismissal with withholding of two increments and ordered that the employee would be reinstated in service with 50 % back wages. Similar is the view taken by the Hon''ble Supreme Court in the case of Bharat Coking Coal Ltd. through Management Vs. National Coal Workers Congress through Vice President, and in the case of "Madhya Pradesh Electricity Board and Others Vs. Miku Prasad", [reported in (2008) 16 SCC 762].

19. In the present case also I find that there is no evidence on record that the petitioner has not been gainfully employed after his termination from the service. There is no such pleading in the writ petition and therefore, I direct the

respondents to pay 50 % of the back wages to the petitioner till the date of his reinstatement in service, if the petitioner has not superannuated from the service. There shall however, be no order as to costs.