IN THE HIGH COURT OF JUDICATURE AT PATNA

Shashank Kumar Lal

v.

The State of Bihar & Others

Civil Writ Jurisdiction Case No. 9803 of 2015

17 August 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the departmental inquiry conducted against the petitioner was vitiated due to procedural irregularities and non-compliance with the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005?

Headnotes

Presenting Officer was absent all throughout, and instead the enquiry officer had himself donned upon himself the role of the Presenting Officer, in complete violation of Rule 17(5)(c) and 17(6) of the Rules, 2005, resulting in the entire inquiry having stood vitiated. (Para 12)

Entire findings of the Inquiry Officer is based on no evidence, inasmuch as neither any witness had appeared during the course of departmental inquiry to prove the allegations levelled by the prosecution nor any documentary evidence was proved so as to conclusively prove the allegations. (Para 13)

Order of punishment rests on no evidence since the same is based on a perfunctory enquiry report. (Para 18)

Petition is allowed. (Para 22)

Case Law Cited

Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570; State of U.P vs Saroj Kumar Sinha, (2010) 2 SCC 772; Union of India v. Ram Lakhan Sharma, (2018) 7 SCC 670; Shankar Dayal v. State of Bihar, CWJC No. 7207 of 2016; Panchanan Kumar v. Bihar State Electricity Board, 1996 (1) PLJR 401; Kuldeep Singh v. The Commissioner of Police, 1999 2 SCC 10; Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324

List of Acts

Bihar Government Servants (Classification, Control and Appeal) Rules, 2005

List of Keywords

Departmental Inquiry, Natural Justice, Presenting Officer Rule 17(6), Procedural Lapse, Reinstatement, Back Wages, No Evidence, Quashing of Dismissal, Vigilance Case

Case Arising From

Challenge to dismissal from service under order dated 10.10.2014 passed by Additional Secretary, Department of General Administration, Government of Bihar, and rejection of review dated 09.06.2015.

Appearances for Parties

For the Petitioner: Mr. Ashish Giri, Advocate; Mr. Sumit Kr. Jha, Advocate; Ms. Riya Giri, Advocate; Mr. Bivutosh Kumar, Advocate

For the Respondents (State): Mr. Anirban Kundu, SC-24

Headnotes Prepared by Reporter: Mr. Amit Kumar Mallick, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9803 of 2015

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Shashank Kumar Lal son of Late Dr. Hira Lal Pal current resident of Sector - 4, H, Plot No. 25, Bahadurpur Housing Colony, Patna - 800026.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. Additional Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Commissioner, Tirhut Division, Muzaffarpur.
5. The District Magistrate, Begusarai.
6. The Establishment Deputy Collector, Begusarai.
7. The Sub-Divisional Officer, Balia, Begusarai.

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kr. Jha, Advocate Ms. Riya Giri, Advocate Mr. Bivutosh Kumar, Advocate
For the State	:	Mr. Anirban Kundu, SC-24

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 17-08-2023

1. The present writ petition has been filed for quashing the order of punishment dated 10.10.2014, passed by the Additional Secretary, Department of General Administration, Government of Bihar, Patna, i.e. the respondent no.3, whereby and whereunder the petitioner has been dismissed from service. The petitioner has also prayed for quashing of the order dated

09.06.2015, passed by the respondent no.3, dismissing the review petition filed by the petitioner.

2. The brief facts of the case are that the petitioner, after being appointed in the Government service, had been working to the satisfaction of all concerned, however, while he was posted as Circle Officer, Begusarai and had got an F.I.R. instituted, bearing Sahebpur Kamal P.S. Case No. 21 of 2007, dated 11.02.2007, against the accused persons, who were creating law and order problem in construction of a boundary wall on the land of one, Shri Mahesh Prasad Yadav at Begusarai, a complaint was received by the Vigilance Department against the petitioner of demanding a sum of Rs.50,000/- by way of illegal gratification from the accused persons of the aforesaid police case, whereupon the Vigilance Department had laid a trap and had caught the petitioner accepting bribe of Rs. 8000/- from one Subhash Yadav on 22.02.2007, leading to lodging of Vigilance Case No. 24 of 2007, dated 23.02.2007. The disciplinary authority had thereafter framed charges and Prapatra (Ka) dated 19.09.2007 was served upon the petitioner, levelling the following charges:-

> *"(i) The conduct of the petitioner of having demanded Rs.50,000/- for the purpose of*

discharging his duties is a bad conduct.

(ii) Despite the complainant Subhash Yadav having deposited a sum of Rs. 10,000/- and Rs. 3,020/- in the office, as per the rules, the demand of Rs. 50,000/-, made by the petitioner from him is illegal.

(iii) It is only when the complainant had agreed to pay Rs. 10,000/- to the petitioner, out of which a sum of Rs.2,000/- was paid and he had promised to pay the remaining amount of Rs.8,000/-, the petitioner had agreed to discharge his duties and had agreed to go to the spot along with the police force."

3. The petitioner had then submitted his reply to the aforesaid chargesheet on 22.01.2008 and then the inquiry was conducted by the Commissioner, Tirhut Division, Muzaffarpur, however no witnesses were examined during the course of the departmental proceeding and finally the Commissioner, Tirhut Division, Muzaffarpur, had submitted the inquiry report dated 14.12.2013, wherein it has been stated that since the present departmental inquiry has been initiated on account of lodging of the Vigilance Case against the petitioner, pertaining to him having been caught red handed while taking bribe, all the three

charges levelled against the petitioner are found to have been proved. Thereafter, the Joint Secretary, General Administration Department, Govt. of Bihar, Patna had issued a second show cause notice dated 02.04.2014, to which the petitioner had submitted a detailed reply dated 16.04.2014, inter-alia stating therein that neither he has been supplied with the documents which he had asked for nor he has been permitted to examine any witness nor any witness has been examined by the department to prove the charges levelled against the petitioner much less him having been granted any opportunity to cross-examine the department's witnesses. Thereafter, the disciplinary authority i.e. the respondent no.3 had passed the impugned order of punishment dated 10.10.2014, whereby and whereunder the petitioner has been dismissed from service merely on the pretext that chargesheet has already been filed by the police in the pending Vigilance Case No. 124 of 2007, before the learned trial court. The petitioner is stated to have filed a review petition, however, the same has also stood dismissed by an order dated 09.06.2015, passed by the respondent no.3.

4. The learned counsel of the petitioner has submitted that the entire departmental proceeding suffers from several procedural lacunas, the first being non-compliance of Rule

17(6) of the Bihar Government's Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules, 2005').

5. It is submitted that Rules 17 & 18 of the Rules, 2005, lay down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of charge memo by the disciplinary authority enabling the delinquent to respond thereto, casting an equal obligation on the disciplinary authority to satisfy itself, as to whether the allegations are required to be pursued & only after the disciplinary authority is satisfied as also upon completion of such exercise as mandated under Rule 17(3) R/w. Rule 17(4), the disciplinary authority can either enquire into the matter himself or can appoint an Enquiry Officer under Rule 17(6) to enquire into the same and only thereafter, the Enquiry Officer takes over the proceeding. Under Rule 17(5)(c) and 17(6) of the Rules, 2005, the disciplinary authority has another obligation i.e, to appoint a Presenting Officer for leading the case of the Department, which in the present case has been given a go-bye.

6. It is apparent from the records that the departmental proceedings have been held dehors the prescribed procedure inasmuch as the petitioner has not been heard on the charge by

the disciplinary authority, as is apparent from a copy of the charge memo, annexed as Annexure-4 to the writ petition. The legal position in this regard is no longer *res integra,* inasmuch as the same has been settled by a judgment rendered by this Court dated 29.06.2017, passed in CWJC No. 7207 of 2016 (**Shankar Dayal vs. State of Bihar & Ors.**), relevant portion whereof is reproduced herein below:-

> *"Rule 17(3) of the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply*

on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996(2) PIJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

> *"6. ... ... The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges."*

7. It is submitted by the Ld. Counsel for the petitioner that it is apparent from the records that despite the presenting officer being requested several times by the Inquiry Officer to be present during the course of the inquiry proceedings, he failed to appear, hence the absence of the presenting officer, as mandated in Rule 17(5)(c) and 17(6) of the Rules, 2005, is a serious procedural lacuna, which has rendered the entire departmental inquiry illegal. In this regard, it would be relevant to refer to the Judgments rendered by the Hon'ble

Apex Court in the case of **State of U.P. and others v. Saroj Kr. Sinha**, reported in **(2010) 2 SCC 772** and the one rendered in the case of **Union of India v. Ram Lakhan Sharma**, reported in **(2018) 7 SCC 670**. Admittedly in the instant case, the Enquiry Officer has donned upon himself the role of the Presenting Officer resulting in the entire enquiry having stood vitiated. Reference be also had to a judgment reported in 1996 (1) PLJR 401 (**Panchanan Kumar vs. the Bihar State Electricity Board**), paragraph no. 11 whereof is reproduced herein below:-

> *"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair*

and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice. ……"

8. The Ld. counsel for the petitioner has next referred to para no. 28 of the judgment rendered by the Hon'ble Apex Court in the case of **Saroj Kumar Sinha** (*supra*), which is reproduced herein below:-

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Govt. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

9. It is thus, the submission of the learned counsel for

the petitioner that since the inquiry officer has donned upon himself the role of the Presenting Officer, the entire inquiry proceedings have stood vitiated.

10. The Ld. counsel for the petitioner has further submitted that a bare perusal of the inquiry report dated 14.12.2013 would show that neither any witness has been examined nor any evidence has been led and merely since a vigilance case has been filed against the petitioner, the Inquiry Officer, has come to a conclusion that the charges have stood proved. Thus, it is submitted that apparently the findings of the enquiry officer is based on no evidence. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank**, reported in **(2009) 2 SCC 570**, paragraphs no. 14 to 16, 21 and 23 whereof are reproduced herein below:-

> *"**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. *We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had Indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.*

16. *In Union of India v. H.C. Goel4 it was held: (AIR pp. 369-70, paras 22-23)*

"22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Govt. is acting bona fide; the said infirmity may also exist where the Government is acting mala fide & in that case, the conclusion of the Govt. not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Govt., a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the Ld. Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this

Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the

respondent that Charge 3 is proved against him is based on no evidence."

21. *Yet again in M.V. Bijlani v. Union of India16 this Court held: (SCC p. 95, para25)*

"25.... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

23. *Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence,*

which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

11. Per contra, the learned counsel for the respondent state has submitted that there is no lacuna in the procedure adopted by the disciplinary authority in conduct of the departmental proceeding. Nonetheless, the learned counsel for the respondents has not been able to deny the fact that neither any documentary evidence was produced nor any witnesses were examined, during the course of the departmental inquiry, for the purpose of proving the charges, levelled against the petitioner.

12. I have heard the learned counsel for the parties and have gone through the materials on record. This Court finds that first of all the Presenting Officer was absent all throughout,

as is apparent from the enquiry report dated 14.12.2013 and instead the enquiry officer had himself donned upon himself the role of the Presenting Officer, in complete violation of Rule 17(5)(c) and 17(6) of the Rules, 2005, resulting in the entire inquiry having stood vitiated. This aspect of the matter is squarely covered by the judgments rendered by the Hon'ble Apex Court in the case of **Saroj Kumar Sinha** (Supra) and **Ram Lakhan Sharma** (Supra) as also by the one rendered by this Court in the case of **Panchanan Kumar** (Supra).

13. This Court further finds from the records that not even a single witness has come forward to depose, during the course of the departmental proceeding and in fact the inquiry officer has himself, stated in the inquiry report dated 14.12.2013, that since a vigilance case is pending against the petitioner, that is enough for the purposes of the charges being proved, which in any view of the matter vitiates the entire departmental proceeding conducted qua the petitioner herein. This Court also finds that no documents were exhibited, during the course of the departmental inquiry, so as to enable the enquiry officer to base his findings on some evidence for the purposes of coming to a conclusion that the charges, levelled against the petitioner have been proved beyond doubt. Thus,

from a bare perusal of the inquiry report dated 14.12.2013, it is apparent that the entire findings of the Inquiry Officer is based on no evidence, inasmuch as neither any witness had appeared during the course of departmental inquiry to prove the allegations levelled by the prosecution nor any documentary evidence was adduced/exhibited/proved so as to conclusively prove the allegations, levelled by the prosecution against the petitioner herein.

14. Having regard to the aforesaid facts and circumstances of the case, this Court finds that the present case is a case of no evidence thus, the respondents have utterly failed to prove the charges levelled, as against the petitioner herein. The said aspect of the matter is squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi** (Supra).

15. In the aforesaid case of Roop Singh Negi (supra), the only evidence available with the disciplinary authority was the confession of the delinquent and the FIR. No witness was examined in the said case to prove the documents, rather the management witnesses had merely tendered the documents. This exercise was held to be insufficient by the Hon'ble Apex Court to uphold the charge and it was also held that the

allegations made in the FIR simplicitor, not proved by leading evidence, by itself cannot be treated as evidence. Thus the aforesaid judgment rendered by the Hon'ble Apex Court in the case of Roop Singh Negi (supra) squarely covers the present case.

16. In this connection, reference be also had to a judgment rendered by the Hon'ble Apex Court, reported in **1999 2 SCC 10 (Kuldeep Singh v. The Commissioner of Police and ors.)**, paragraphs no. 4 to 10, 32, 42 and 43, whereof are being reproduced herein below:-

> *"4. Learned counsel for the appellant has contended that the findings recorded by the Enquiry Officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice. It is also contended that there was no evidence worth the name to sustain the charge framed against the appellant and, therefore, the findings are perverse particularly as no reasonable person could have come to these findings on the basis of the evidence brought on record.*
>
> *5. Learned counsel appearing on behalf of Union of India has, on the other hand, contended that the enquiry was held in consonance with the principles of natural*

justice and during the course of the enquiry, full opportunity was given to the appellant to defend himself. As far the evidence is concerned, it is contended that though it is true that none of the complainants was examined but on account of Rule 16(3) of the Delhi Police (F&A) Rules, 1980, it was not required to produce the complainant in person as the Rule itself contemplated that in the absence of a witness whose presence could not be procured without undue delay, inconvenience or expense, his statement, already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that basis. It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them. Ld. counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The Court cannot, it is contended, re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the Enquiry Officer or the disciplinary authority on that evidence.

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 dictate of the superior authority.

7. In Nand Kishore v. State of Bihar, 1978(3) SCC 366, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at is conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic

enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that even, the findings recorded by the Enquiry Officer would be perverse.

8. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the evidence. This principle was laid down by this Court in State of Andhra Pradesh v. Sree Rama Rao, AIR 1963 SC 1723, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India v. Prakash Chand Jain, AIR 1969 SC 983 and Bharat Iron Works v. Bhagubhai Balubhai Patel & others, 1976(1) SCC 518. In Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and others, 1984(4) SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence & the conclusion is one to which no reasonable man could come, the findings can be rejected as

perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

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.

32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution

to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

42. The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "reasonable opportunity", contemplated by Article 311(2) of the Constitution. The "bias" in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant

which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".

43. For the reasons stated above, the appeals are allowed. The judgment and order dated 28-2-1997 passed by the Central Administrative Tribunal is set aside. The order dated 3-5-1991 passed by the Deputy Commissioner of Police by which the appellant was dismissed from service as also the order passed in appeal by the Additional Commissioner of Police are quashed and the respondents are directed to reinstate the appellant with all consequential benefits including all the arrears of pay up to date which shall be paid within three months from today. There will, however, be no order as to costs."

17. Now coming to the order of punishment dt. 10.10.2014, passed by the respondent no.3, this Court finds that

the only ground for inflicting the punishment of termination from service upon the petitioner is that chargesheet has been filed by the police, in the pending vigilance case, against the petitioner, before the Ld. trial Court, however, the impugned order of punishment dated 10.10.2014 is neither based on any evidence nor the same discusses any material, which might have been found, as against the petitioner, during the course of the departmental inquiry, since obviously there is none, and moreover, the impugned order dated 10.10.2014 also smacks of non-application of mind by the disciplinary authority as also total non-consideration of the issues raised by the petitioner, apart from the fact that the same has been passed in a mechanical manner, hence the same is not sustainable in the eyes of law, thus is fit to be set aside.

18. Having regard to the facts and circumstances of the case and for the reasons mentioned here-in-above, this Court finds that not only the departmental inquiry, conducted against the petitioner, suffers from procedural irregularity and illegality but also the order of punishment dated 10.10.2014 rests on no evidence since the same is based on a perfunctory enquiry report, which is also based on no evidence, hence both the enquiry report as also the order of punishment are unsustainable

in the eyes of law, thus the inquiry report dt. 14.12.2013 and the order of punishment dt. 10.10.2014, are set aside. Consequently, the order passed by the respondent no.3, dismissing the review petition, filed by the petitioner, dated 09.06.2015, has got no legs to stand, hence is also quashed. Nonetheless, the matter is remanded back to the disciplinary authority to conduct the disciplinary proceedings afresh from the stage of conduct of inquiry by the enquiry officer, which is directed to be concluded, within a period of Nine months from today.

19. Now, coming to the issue of reinstatement in service and grant of back wages, this Court would rely on a judgment rendered by the Hon'ble Apex Court in the case of **Deepali Gundu Sarwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors.**, reported in **(2013) 10 SCC 324**, paragraph no. 38 whereof is reproduced herein below:-

> *"**38.** The propositions which can be culled out from the aforementioned judgments are:*
>
> ***38.1.** In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> ***38.2.** The aforesaid rule is subject to the rider that while deciding the issue of*

back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/ workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact*

than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. *The cases in which the Labour Court/ Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ \workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/ Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the*

statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution & interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/ workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages.

38.6. *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of*

litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees.

38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/ workman*

cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees], [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/ workman."

20. This Court finds that the issue of reinstatement and grant of consequential benefits is squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of **Deepali Gundu Sarwase** (Supra), more particularly, paragraph no. 38.5 thereof.

21. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that onus lies on the employer to specifically plead and prove that the employee was gainfully employed, which the respondents in the present case have failed to do so. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of

natural justice or is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice has been given a go by and the petitioner has been victimized, as such I am of the view that as a consequence of quashing of the enquiry report dated 14.12.2013, the order of punishment dt. 10.10.2014 and the Order dated 09.06.2015, passed by the respondent no.3, dismissing the review petition filed by the petitioner, the petitioner is entitled for full back wages along with all other admissible consequential benefits.

22. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/sonal

AFR/NAFR	AFR
CAV DATE	16.09.2023
Uploading Date	NA
Transmission Date	NA