

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No. 252/2008 & CM No.17912/2008 (stay)**

Decided on : 10th March, 2015

UNION OF INDIA Appellant
Through Dr. Ashwani Bhardwaj, Advocate
versus

GIRIJA SHANKAR SHUKLA Respondent
Through Mr. Parvinder Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is the regular second appeal filed by the appellant against the judgment dated 31st May, 2008 passed by the learned ADJ in RCA No. R-5/2007 by virtue of which the appeal of the respondent was allowed and the order dated 14th November, 2005 passed by the learned Civil Judge dismissing the suit filed by the respondent for declaration and permanent injunction was set aside.

2. The only substantial question of law which has been framed by this Court on 20th May, 2013 is “whether the finding of the first appellate Court setting aside the judgment and decree passed by the trial Court suffers from any perversity? If so, what are its effects?”

3. Before dealing with the said question, it may be pertinent here to give a brief background of the case.

4. The respondent was an employee of the Central Industrial Security Force (for short, 'the CISF') and was posted as Sub-Inspector Execution at Shakurbasti, Delhi at the time of his removal from service vide order dated 23rd October, 1991 passed by the Commandant, CISF, Delhi.

5. The allegation against the respondent was that he had refused to collect as well as accept the movement order dated 16th April, 1991 by virtue of which he was to proceed to CISF Unit FBP, Farakka. It is alleged that though the order of movement was dated 16th April, 1991; on 17th April, 1991, he was present in the unit when he was asked by the Inspector G.S. Sahdev to receive the movement order which he refused. Because of this act of delinquency, a departmental enquiry was ordered against him. The enquiry officer was appointed and he was charge-sheeted.

6. The enquiry officer is purported to have issued notice to the respondent herein on 16th April, 1991 with a direction to appear on 25th August, 1991. Though the notice of the said date of 25th August, 1991 was received by him, he failed to appear as a consequence of which the

enquiry officer recorded the statements of five witnesses and closed the enquiry proceedings on 28th August, 1991 and then gave the report on 27th September, 1991 holding him guilty of having refused to accept the posting order to CISF Unit FBP, Farakka (for movement). Because of this proof of act of delinquency, the respondent was visited with the punishment of removal from service.

7. The appeal filed by the respondent before the department was unsuccessful. Consequently, it resulted in filing of a suit by him before the trial Court. The suit was for declaration and consequently, relief was dismissed by the trial Court which resulted in filing of an appeal by him before the Court of learned ADJ. The Court of learned ADJ set aside the judgment and decree passed by the trial Court dismissing the suit and allowed the appeal. While allowing the appeal, the learned first appellate Court took note of the fact that respondent had pleaded that he was sick and therefore, was unable to accept the movement order.

8. The factum that he had denied to receive the movement order was also noted. It also took note of the fact that on 20th August, 1991 itself, he had sent a communication to the enquiry officer that he is sick and therefore, unable to appear before the enquiry officer on 25th August,

1991 and this letter about the sickness of the delinquent official/respondent was received by the enquiry officer on 22nd August, 1991 and yet without giving an opportunity to the respondent, it proceeded to hold an enquiry and found him guilty.

9. The learned ADJ after hearing the arguments of both the sides arrived at a conclusion that the respondent had been denied the principles of natural justice inasmuch as on the very first date of his appearance, it was not accepted that the enquiry officer would record the statements of the witnesses and that too even if it is assumed that the statements of witnesses of the presenting officer were recorded correctly only two witnesses were cited namely Inspector G.L. Gopa and Sub-Inspector Karan Singh while as in addition to these two witnesses, department also examined three more witnesses and recorded their cross-examination and did not agree to adjourn the matter even for giving an opportunity to the respondent to adduce his defence. All these facts were taken into consideration by the learned ADJ as a ground for setting aside not only the enquiry on the ground of violation of principles of natural justice but also on the ground that the order of punishment was one which was passed *mala fide* and passed with a pre-determined mind.

10. Feeling aggrieved, by the aforesaid judgment of the ADJ, the Union of India has filed the present appeal against the said judgment and the only question which has been formulated by this Court is with regard to the perversity in the finding of the judgment and decree passed by the trial Court.

11. The judgment would be said to be perverse only if there is absolutely no evidence supporting the conclusion having been arrived at by the learned ADJ. In the instant case, after perusal of the record and hearing the arguments of the learned counsel for the parties, I am of the considered opinion that the judgment of the learned ADJ does not suffer from any perversity, on the contrary, the only irresistible conclusion which one could have drawn from the facts and the evidence recorded by the appellant that whatever may be the act of delinquency on the part of the respondent as alleged by the appellant, still there has been a gross violation of principles of natural justice and serious illegality has been committed by holding an enquiry in violation of the doctrine of *audi alteram partem*. The reason for this conclusion is not one but the series of facts which admittedly are reflected from the facts of the case and which are enumerated hereunder:-

A) It is not in dispute that the respondent had taken the plea that he was sick. The prayer of the petitioner for adjournment of the case was admittedly received by the enquiry officer on 22nd August, 1991 for adjourning the matter on 25th August, 1991 on the ground of sickness. The said prayer was rejected by the enquiry officer only on the ground that it had not been accompanied with the medical certificate. Even if it is assumed that the request for adjournment was not accompanied with a medical certificate, the minimum which was expected of the enquiry officer was to adjourn the matter by a day or so and call upon the delinquent official/respondent to produce the medical certificate. In any case, even if it is assumed that on 25th August, 1991, he did not appear, that was the first date of appearance and even on the first date of appearance, what is expected to be done by the enquiry officer is only with regard to preliminaries by completion of documents i.e. supplying the documents to the respondent/delinquent official and ensuring that he is duly represented by a defending officer and adjourn the matter by a day thereafter for the purpose of producing evidence by the department.

B) As against this, the enquiry officer instead of adjourning the matter as on 25th August, 1991, recorded the statements of the witnesses by

turning down the request of the adjournment made by the respondent. The enquiry officer recorded the statements of not only two prosecution witnesses namely Inspector G.L. Gopa and Sub-Inspector Karan Singh but also proceeded to record the statements of three other witnesses namely ASI Gurbachan Singh; Inspector G.S. Sahdev; and Constable R.P. Singh who were not at all cited as witnesses by the prosecution. It is totally unheard of that on the very first date, not only the statements of the witnesses who are cited as witnesses on behalf of the department were recorded, but also the statements of those witnesses who are not cited, were also recorded and cross-examined. This act clearly shows that the present appellant did not want to leave anything to chance. The enquiry officer was proceeding with a pre-determined mind to fix the respondent and hold him guilty. The learned ADJ has rightly observed that the very holding of the enquiry was actuated by *mala fides* and shows bias on the part of the enquiry officer.

C) Thirdly, even if it is assumed that all the five witnesses were perfectly and validly recorded by the enquiry officer, even then the enquiry officer was enjoined to give some time to the respondent and dispatch a copy of the order sheet to him for the purpose of adducing his

defence. This has not been done. Therefore, this has also caused serious prejudice to the case of the respondent. Curiously, the fact of holding of enquiry by enquiry officer on a single date, the learned trial Court has observed that even if it is assumed that the enquiry was held on a single date, the petitioner must show the prejudice caused to him. The very fact that the enquiry has been held on a single date and concluded on that very same date itself, is causing prejudice to the respondent inasmuch as it has resulted in dispensing with his services. Therefore, all these facts clearly show that there is absolutely no perversity in the finding of fact arrived at by the trial Court.

D) Fourthly, in addition to this, the enquiry officer has observed that the respondent has not produced any medical certificate while as before the enquiry officer, ample evidence has been produced on record by way of dates as well as medical certificates to show that he is suffering from orthopedic problem and merely because he has gone to the department or to the unit to collect his medical reimbursement does not discount his illness and it cannot be said that he ought to have appeared before the enquiry officer for the purpose of completion of enquiry.

12. For the reasons mentioned above, I feel that there is no perversity in the finding of fact returned by the trial Court setting aside the judgment of the Civil Judge. The scope of judicial review does not entitle the court to see the quality of decision but only the process in which that decision has been arrived at.

13. In the instance case, the process of arriving at the decision against the respondent itself has grave faults one of which is violation of principles of natural justice.

14. For this reason, the question which is formulated above regarding the perversity of the judgment of the learned Appellate Court is without any merit and, therefore, the appeal is dismissed without any merit.

V.K. SHALI, J.

MARCH 10, 2015

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