

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6130 OF 2005**

Lalta Prasad

...Petitioner

Vs

Union of India & Ors.

...Respondents

Mr. G.S. Walia, Advocate for the Petitioner

Mr. T.J. Pandian, Advocate for the Respondents

**CORAM : DR. MANJULA CHELLUR, CJ &
M.S. KARNIK, J.****DATED : 2ND JUNE, 2017****ORDER:**

1. The Petitioner challenges the judgment and order dated 8th April, 2005 passed by the Bombay Bench of the Central Administrative Tribunal. The Tribunal by the impugned order dated 8th April, 2005 dismissed the original application filed by the Petitioner. The Petitioner by an order dated 13th June, 2003 passed by the Disciplinary Authority was removed from service. The Petitioner's appeal against the order removing him from service was modified by the Appellate Authority vide order dated 29th August, 2003 to penalty of compulsory retirement from service with 25% cut in pension. The Revisional Authority by an order

dated 21st February 2004 rejected the revision filed by the Petitioner. The Tribunal dismissed the Original Application(OA), filed by the Petitioner which order is impugned by way of the present Petition.

2. The brief facts which culminate in the order of the dismissal of the OA before the Tribunal are stated thus:

The Petitioner while working as Office Superintendent-II under DRM (P) at Bhusawal was issued memorandum of charge-sheet dated 24th June, 2002 on the following charges:

“ARTICLE-I

He attempted to dupe Shri Sitaram Gangurde to the tune of Rs.53,000/- by giving false information that he has been paid excess money of Rs.53,000/- as his retirement dues.

ARTICLE-II

He duped Smt. Laxmibai, widow of Shri Shankar Gaikwad to the tune of Rs.30,000 by furnishing false information that she has been paid excess amount of Rs.30,000 as her husband's

retirement dues.

Thus by the aforesaid acts, he failed to maintain absolute integrity, devotion to duty and behaved in a manner unbecoming of a railway servant and thereby contravened the provisions of Rule No.3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules 1966”.

The Petitioner denied the charges. Shri A.B. Mantri was appointed as an Enquiry Officer to hold enquiry against the Petitioner.

3. The following documents were sought to be relied upon during the course of enquiry.

LIST OF DOCUMENTS

1. Complaint from Shri Sitaram Gangurde.
2. Recorded statements dated 27.2.02 and 1.3.02 of Shri Lalta Prasad.
3. Recorded statements dated 27.2.02 and 1.3.02 of Shri S.A. Patel.
4. Statement dated 27.2.02 of Shri Ashok Daga Nikam.
5. Statement dated 27.2.02 of Shri D.N. Karande, independent witness.

6. Statement dated 27.2.02 of Shri P.M. Ubale, Hd. Constable/RPF/MMR.
 7. Statement of Shri Sitaram Gangurde.
 8. Statement dated 28.2.02 of Smt. Laxmibai Gaikwad.
 9. Xerox copy of pass book of Smt. Laxmibai Gaikwad.
 10. Pay-in-slip dated 12.2.02 filled up by Shri Lalta Prasad in the a/c of Smt. Laxmibai maintained at SBI/Lasalgaon.
 11. Withdrawal form of SBI/Lasalgaon filled up Shri S.A. Patel for Rs.30,000/-.
 12. Statement of Shri Bandu Vispute, Sepoy, Pay Office, Bhusawal.
 13. Statement of pass book of Shri Lalta Prasad showing withdrawal of Rs.30,000/- from SBI/Railway Colony Branch, Bhusawal dated 18.2.02.
 14. DRM(P)BSL's confidential letter No.CON.P14.MISC.LP dated 1.3.02.
 15. Voucher of Shri Sitaram Gangurde for the delivery of cheques to him witnessed by Shri. Lalta Prasad.
 16. Voucher of Smt. Laxmibai Gaikwad witnessed by Shri Lalta Prasad.
4. It would also be material to reproduce the list of witnesses examined during the course of enquiry.

LIST OF WITNESSES

1. Shri S.N. Ganti, CVI (A/Cs) CSTM.
2. Shri U.C. Bodake Ex-CVI(P) now CEI(HQ) CSTM
3. Shri D.N. Karande, Ex-SLWI/MMR W/Shop, now CEI(HQ) CSTM.
4. Shri P.M. Ubale, Hd. Constable/RPF/MMR now at SUR.
5. Shri Ashok Daga Nikam, Licensed Porter, MMR.
6. Shri Bandu Vispute, Sepoy/Pay Office/Bhusawal.

5. The Petitioner submitted his written defence mainly contending that Shri Sitaram Gangurde who has allegedly been duped by the Petitioner has not been examined. It is further submitted that the statement of Shri Sitaram Gangurde recorded by the Vigilance on 27th February, 2002 has been written and witnessed by Shri B.N. Gangurde and that the identity of Shri B.N. Gangurde is unknown. Shri B.N. Gangurde has not authenticated the documents viz: a complaint of Shri Sitaram Gangurde dated 25th February 2002 (Exhibit-P-1) and the statement of Shri Ashok Daga Nikam (Exhibit-P-4).

6. During the course of the enquiry it is also contended that the other Complainant Smt. Laxmibai Wd/o. Shankar Gaikwad has not been examined though she is a material witness. She has alleged that she is duped by the Petitioner to the tune of Rs.30000/- by furnishing false information that she has been paid excess amount of Rs.30000/- as her husband's retirement dues.

7. The Enquiry Officer submitted his report which was furnished to the Petitioner by a letter dated 5th March, 2003. The Petitioner submitted his representation dated 27th March, 2003 to the Enquiry Officer's Report.

8. After considering the representation dated 27th March, 2003 and the materials on record the Disciplinary Authority imposed the penalty of removal from service by a speaking order dated 13th June, 2003.

9. The appeal filed by the Petitioner against the order of removal was partly allowed by the Appellate Authority vide

order dated 29th August, 2003. The penalty of removal from service was modified to compulsory retirement from service with 25% cut in pension. The Revisional Authority by an order dated 20th January, 2004 rejected the revision filed by the Petitioner thereby confirming the order passed by the Appellate Authority.

10. The challenge to these orders before the Central Administrative Tribunal failed and the Tribunal was pleased to uphold the order passed by the Revisional Authority.

11. Heard learned Counsel for the Petitioner and the learned Counsel for the Respondents. Learned Counsel for the Petitioner contends that the Enquiry Officer has placed reliance on the pre-recorded statements of the witnesses though these witnesses have not been examined during the course of the enquiry. The learned Counsel for the Petitioner also assails the order of the Tribunal and the findings of the Enquiry Officer by contending that the complainants have not been examined and yet their statements recorded during the preliminary enquiry have been relied upon

to come to the conclusion that the charges levelled against the Petitioner are proved.

12. The charge against the Petitioner is that he attempted to dupe Shri Sitaram Gangurde to the tune of Rs.53000/- by giving false information that he has been paid excess amount of Rs.53000/- as his retirement dues. The second charge against the Petitioner is that he duped Smt. Laxmibai Wd/o. Shankar Gaikwad to the tune of Rs.30000/- by furnishing false information that she has been paid excess amount of Rs.30000/- as her husband's retirement dues.

13. In the preliminary enquiry held by the Vigilance Department the statements of the complainants viz. Shri Sitaram Gangurde and Smt. Laxmibai Wd/o. Shankar Gaikwad were recorded. During regular enquiry the complaint of Shri Sitaram Gangurde was relied upon. The witnesses examined during the enquiry viz: Shri S.N. Ganti and Shri U.C. Bodake in their evidence have narrated the details of the incident. The evidence of Shri S.A. Patel was recorded to corroborate the contents of the complaint

lodged by Shri Sitaram Gangurde with the Vigilance Branch.

14. We find that the Enquiry Officer has relied upon the pre-recorded statements of the complainants and the evidence of some witnesses to corroborate the version of the complainants. As indicated earlier the charge against the Petitioner is specific in as much as he attempted to dupe Shri Sitaram Gangurde and Smt. Laxmibai Shankar Gaikwad. During the course of the enquiry however, neither Shri. Sitaram Gangurde nor Smt. Laxmibai Shankar Gaikward is examined.

15. It is contended by the Respondents that there was adequate material on record to prove the charges and mere non-examination of the complainants will not vitiate the enquiry. In the case of **Nand Kishore Prasad Vs. State of Bihar, AIR 1978 SC 1277** the Apex Court has held that the disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rule of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of

definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

16. It is settled law that a disciplinary proceedings is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. The departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required.

17. A profitable reference can be had to the decision of the Apex Court in the case of **State of Andhra Pradesh Vs. Chittra Venkata Rao AIR 1975 SC 2151** where it is held that:

“In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible evidence which has influenced the finding. Again if a finding of fact is based on no

evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal”.

18. It would also be material to rely upon the observations of the Apex Court in the case of **Bank of India Vs. Degala Suryanarayana 1999(5) SCC 762:-**

“Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding

upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity, i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained”.

19. The Apex Court in the case of **High Court of Judicature at Bombay through its Registrar Vs. Udaysingh 1997(5) SCC 129** held thus:

“The power of judicial review of the High Court under article 226 of the Constitution of India was taken away by the power under article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate (authority) on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the

decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence”.

20. From the record it appears that no attempt whatsoever was made by the Enquiry Officer to examine the complainants Shri Sitaram Gangurde and Smt. Laxmibai Shankar Gaikwad. The Enquiry Officer ought to have investigated the charges consistent with the requirement with situation in accordance with the principles of natural justice as the impugned order involves

adverse penal consequences against the Petitioner. We may hasten to add that we have not arrived at any finding based on the sufficiency or insufficiency of the evidence before the Enquiry Officer, but we feel that a fair opportunity ought to have been granted to the Petitioner by examining the complainants. We are also conscious of the fact that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the prescribed act may not be applied with equal vigour; but even in disciplinary procedure, the charge framed against a public servant must be held to be proved before any punishment could be imposed on him.

21. The Apex Court in the case of **Laxmi Shankar Pandey Vs. Union of India AIR 1991(2) SCC 488** has held that the inquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross examine the witnesses produced and examined, should be given and that the enquiry should be consistent with the rules of natural justice and in conformity with the statutory rules prescribing the modes of enquiry. What particular rule of natural

justice should apply to a given case depends to a great extent on the facts and circumstances of the case.

22. A useful reference can also be made to the decision of the Apex Court in the case of **B.C. Chaturvedi Vs. Union of India and others 1995 (6) SCC 749** wherein it is held that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of Judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

23. In the facts and circumstances of the present case we find that in all fairness the complainants should have been examined. On the basis of the complaint made by the complainants which resulted in serious charges being levelled against the Petitioner it was imperative for the Enquiry Officer to have examined the complainants and offer an opportunity to the Petitioner to cross examine them.

24. If upon examination of the complainants or in the event their evidence cannot be recorded despite attempts being made to secure their presence, it is then that the Enquiry Officer can base his findings on the basis of the other material on record.

25. We are not persuaded to accept the contention of the learned Counsel for the Petitioner that the non-examination of the complainants would vitiate the enquiry. In the light of the material on record before the Enquiry Officer and particularly the stand taken by the Petitioner that the amount of Rs.30,000/- taken by the Petitioner from Smt. Laxmibai Shankar Gaikwad was by way of loan which the Petitioner has since repaid, that we are not inclined to hold the enquiry as vitiated. It is only with a view to give a fair opportunity to the Petitioner that we are adopting this course. Hence the following order:

ORDER

1. The Writ Petition is partly allowed setting aside the orders passed by the Disciplinary Authority,

Appellate Authority, Revisional Authority and the Central Administrative Tribunal by remanding back the matter to the Enquiry Officer to examine two complainants Shri Sitaram Gangurde and Smt. Laxmibai and pass a fresh order by taking into consideration the entire material which is already in existence and the evidence to be recorded in terms of the above order.

2. Six months time is granted from today to complete the enquiry and pass a fresh order on the departmental enquiry.
3. The enquiry to be completed in terms of procedure under the Rules and the Respondents are at liberty to appoint fresh Enquiry Officer, if earlier Officer has either retired or not available.