

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10552 of 2009

Ashok Kumar Rai, son of Late Shri U.N. Rai at present C.I.S.F. Unit, F.C.I., Gaya, P.O. Katari Hill Road, Gaya, Permanent resident of Ashok Kumar Rai, C/o Shri R.P. Choudhary at Lohia Nagar, P.O. Suhirrd Nagar, P.S. Begusarai, Dist. Begusarai.

... .. Petitioner/s

Versus

1. The Union Of India.
2. Director General, C.I.S.F., Block No.13, C.G.O. Complex, Lohi Riad, New Delhi.
3. I.G. C.I.S.F. Office, Boring Road, Patna.
4. Deputy I.G.C.I.S.F., Eastern Zone, Patna.
5. Assistant Commandant, C.I.S.F.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore, Sr. Adv. Mr. Ravindra Kumar Rai, Adv.
For the UOI	:	Mr. Kumar Priya Ranjan, CGC Mr. Niraj Kumar

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 15-05-2018

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the order dated 4.5.2009 passed by the Director General, C.I.S.F., Block No.13, C.G.O. Complex, Lodhi Road, New Delhi, the order dated 29.8.2008 passed by the I.G., C.I.S.F. Office, Boring Road, Patna and order dated 30.5.2008 passed by the respondent no.4, Deputy I.G., C.I.S.F., Easter Zone, HQ Patna and order dated 21.3.2008 passed by the Assistant Commandant, C.I.S.F., whereby and whereunder, two increments have permanently been frozen which have commutative effect.



The present case has been initiated on account of complaint received against the petitioner to have entered into the N.T.P.C. Unit, VSTPC, Vindhyanagar, Uttar Pradesh with civilian on 1.1.2007 in the night at 1.45 hrs., the civilian entered into a scuffle with Rajendra Kumar where the petitioner remained standing as a mute spectator which led to issuance of a charge-sheet against the petitioner dated 26.9.2007. The petitioner was put under suspension and, later on, suspension order was recalled and he was asked to participate in the departmental proceeding. In the departmental proceeding, altogether 11 witnesses have been examined. The Enquiry Officer has found the charge proved against the petitioner, whereafter, the second show-cause was issued to the petitioner which was replied, after consideration of the same, the Deputy Inspector General of CISF Headquarter, Eastern Zone Headquarter, the Disciplinary Authority, has passed the order of penalty of reduction of pay by two stages in time scale of pay for a period of two years with cumulative effect. Against that, the petitioner filed appeal before the Inspector General, C.I.S.F., Boring Road, Patna, who did not find any defect for interference in the order and the same has been affirmed by the Director General, C.I.S.F., New Delhi dated 4.5.2009.



Learned counsel for the petitioner has raised a grievance that the enquiry has not been done properly without following the principle of natural justice which is the cardinal principle of any domestic enquiry or the departmental enquiry as the cross-examination is the integral part of the natural justice, if any person is deprived of the same, it cannot be said that proper procedure has been followed.

Learned counsel for the petitioner submits that though this Court cannot re-appreciate the evidence or may not like to enter into the weight of evidence to arrive to a finding of the guilt but, then, certainly under the judicial review the Court will see as to whether the decision making process has been properly followed or not. In support of the submission, he has drawn attention towards the manner the proceeding has been conducted by the Enquiry Officer taking a plea that he was not given proper opportunity for cross-examination of the prosecution witnesses who were examined, cross-examined and re-examined and, thereafter, after re-examination, if the petitioner was not given opportunity to further cross-examine to those portion of the statement which was taken on re-examination, apparently, enquiry suffers from illegality.



The original record has been produced before this Court for its perusal and, on perusal of the records, it is found that all the prosecution witnesses have been examined by the Presenting Officer, whereafter, the petitioner requested for adjournment for three days but, after the examination of each witness, two days time was granted to prepare for the cross-examination and, accordingly, all the witnesses were cross-examined by the petitioner but, the faulty procedure was adopted on account of the fact that after cross-examination of each witness, again each witness was called for re-examination and after re-examination, the petitioner was not given opportunity to cross-examine those part of the statement which was recorded after recall of the witnesses.

Learned counsel for the petitioner has submitted that if the Enquiry Officer had recalled each witness which is nothing but filling of the lacuna and even then the petitioner was not given opportunity to cross-examine the prosecution witness and, as such, the enquiry proceeding vitiates and this Court requires interference in the matter.

Learned counsel for the C.I.S.F. has submitted that there is no flaw in holding the departmental proceeding, the record does not show that the petitioner was not given opportunity of



cross-examine even re-examination but, at the end of the proceeding, he was asked as to whether he has to say anything but, he did not raise any objection rather requested for filing of the written argument which was allowed and, accordingly, he filed the written argument after the enquiry was concluded. On the strength of this position, learned counsel for the CISF has submitted that as no prejudice has been caused to the petitioner on the fact that when the petitioner was called upon at the end of the enquiry as to whether he has to say anything then straightway he could have sought the chance for cross-examination of those witnesses who were re-examined after the cross-examination was over. In support of his submission, he has placed reliance on the judgment in the case of *Union of India & Ors. Vs. Alok Kumar* reported in (2010) 5 SCC 349 wherein the procedure to be followed in the departmental proceeding has been elaborately dealt with in paragraph no.92 which provides that in normal circumstances, the Court should not act as an appellate court to re-appreciate the evidence but, has to see that any prejudice has been caused to the delinquent, in absence of showing the same, the Court would not interfere with the departmental proceeding. Even if there may be some flaw in the departmental proceeding but, that will not vitiate the proceeding unless it is shown that the prejudice has been caused to



the delinquent. In support of his submission, he has placed paragraph no.92 of the judgment which reads as follows:-

“92. We are not able to accept the contention addressed on behalf of the respondents that it is not necessary at all to show de facto prejudice in the facts of the present cases. We may notice that the respondents relied upon the judgment of this Court in the case of ECIL (supra), that imposition of punishment by the Disciplinary Authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those cases where prejudice was caused to the delinquent. Otherwise right from the case of S.L. Kapoor (supra), a three Judge Bench of this Court and even the most recent judgment as referred by us in Kailash Chandra Ahuja's case (supra) has taken the view that de facto prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, of course, depending upon the facts and circumstances of a given case. Judicia posteriora sunt in lege fortiori. In the later judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to



persuade the Court to interfere with the departmental inquiry or set aside the orders of punishment.”

Another judgment has been relied by the Union of India in the case of ***State Bank of India & Ors. Vs. Ramesh Dinkar Punde*** reported in ***2006 (7) SCC 212*** paragraph nos. 6, 9 and 13. In all these paragraphs, the Hon’ble Apex Court has held that while exercising the judicial review, the Court cannot place himself as an appellate authority. There is no quarrel on this proposition as has been submitted by the counsel for the Union of India but, certainly, the Court will examine the decision making process not the decision and if there is inherent flaw, in such circumstances, the judicial review does not prohibit for the constitutional court to interfere with the action of the inferior court or the authority. The sum and substance that has been dealt with in paragraph no.15 to 22 of the said judgment reads as follows:-

“15. In Union of India (appellant) v. Sardar Bahadur (respondent) (1972) 2 SCR 218 it is held as under:

A disciplinary preceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the



same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.

16. *In Union of India (appellant) v. Parma Nanda (respondent) (1989) 2 SCC 177 it is held at page SCC 189 as under:*

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for



the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

17. In *Union Bank of India (Appellant) v. Vishwa Mohan (respondent)* (1998) 4 SCC 310, this Court held at page SCC 315 Para 12 as under:

"12. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the inquiry report/findings to him."

18. In *Chairman and Managing Director, United Commercial Bank and Ors. (Appellant) v. P.C. Kakkar (respondent)* (2003) 4 SCC 364, this Court held at page SCC 376 para 14 as under:

"14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all



possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court In Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996) 9 SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

19. *In Regional Manager, U.P. SRTC, Etawah & Ors. (appellants) v. Hoti Lal and Anr. (respondents) (2003) 3 SCC 605, it was pointed out as under:*

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is a must and unexceptionable."



20. In *Cholan Roadways Ltd. (appellant) v. G. Thirugnanasambandam (respondent)* (2005) 3 SCC 241 this Court at page SCC 247 held:

"15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic inquiry."

21. Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance with such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.

22. In the case of *T.N.C.S. Corpn. Ltd. and Ors. (appellants) v. K. Meerabai (respondent)* (2006) 2 SCC 255 such plea had been rejected by this Court. It was pointed out at page SCC 267 para 29 as under:

"29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,735/- is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such



allegation earlier and, therefore, a lenient view should be taken by this Court and relief prayed for by both the parties can be suitably moulded by this Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money mis-appropriated. In the instant case, respondent employee is found guilty of mis-appropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or mis-placed sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by the disciplinary and Appellate Authority."

Another judgment has been relied in the case of ***State Bank of Patiala & Ors. Vs. K. Sharma*** reported in ***AIR 1996 SC 1669*** for the purposes the petitioner had not raised the objection at any stage, so no prejudice has been caused to the petitioner and, as such, the proceeding will not vitiate. Further he has submitted that after the closure of the evidence, he has not raised a plea that he was not allowed to cross-examine the witnesses who were re-examined. The Hon'ble Court has in paragraph no.32 of the aforesaid judgment identified where the Court would interfere without showing prejudice and where without showing the prejudice by delinquent in defending his case, the Court would



refuse to interfere with the order of punishment. It will be relevant to quote paragraph no.31 and 32 of the aforesaid judgment which reads as follows:-

“31. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

32. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character. (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.



(3) *In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of*



view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived it then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or



the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".

(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may



have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

In the case of no notice, no opportunity and no hearing, the Court has held that when the defect is fundamental in character, the Court may not insist on proof of prejudice in such cases. So this part of the judgment itself shows that when the defect in procedure is fundamental in character, no prejudice is required to be shown but, it has to be seen that whether the Enquiry Officer has committed illegality fundamentally. The cross-examination of a witness is a core and part and parcel of natural justice and if the person is not allowed to cross-examine the witness, in such circumstances, on the face of it, it appears that fundamental illegality has been committed. The purpose behind the cross-examination is that the delinquent, if so like, he may put a question on the fact which was brought by the witness and if he refuses to cross-examine, the matter ends but, it is the primary duty of the Court or Tribunal or a person who is holding the departmental enquiry to follow the fundamental principle of departmental enquiry. Either in the common law or in any proceeding, when a witness was brought and the other side is not allowed to cross-examine, that part of the statement made cannot be placed on reliance or arrive to a right conclusion. The basic thrust is that if a delinquent, if so like, he can challenge the



statement made by the witness or he can derive something from the witness to his advantage and denial of the same cause irreparable injury to the Delinquent.

In the considered opinion of this Court, when an enquiry was conducted, cross-examination was done, there was no occasion for the Enquiry Officer to call each witness for re-examination and if he had called the witness for re-examination, in such circumstances, it was the duty of the Enquiry Officer to ask the Delinquent, if so like, he may cross-examine the witness. In the last any explanation sought will not repair the fundamental defect committed by the Enquiry Officer and, as such, the findings recorded by the Enquiry Officer is not sustainable and its effect would be that the orders passed by all the three authorities are not sustainable in law. Accordingly, all are quashed.

The matter is remanded back to the authority, if so like, the Enquiry Officer who will give an opportunity to the petitioner to cross-examine only to the extent of re-examination and after cross-examination or re-examination, he will submit the enquiry report afresh and, on that basis, the Disciplinary Authority will take decision in accordance with law.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.



The payment of back wages will be subject to result of the departmental enquiry.

The original record which has been produced before this Court for perusal is being returned to the counsel for the Union of India.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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