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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 2336 of 2003

1. Pramila More, W/o. Late Tej Ram More, Aged about 58 years, R/o. Ranipara, Ward No.5, Ratanpur, District Bilaspur, Chhattisgarh
2. Ravi Kumar More, S/o. Late Tej Ram More, Aged about 38 years, R/o. Ranipara, Ward No.5, Ratanpur, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Department of Revenue, Mantralaya, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh
2. Collector, District Janjgir-Champa, Chhattisgarh
3. Superintendent (Land Records), District Office, Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Animesh Verma, Advocate
For State	:	Mr. Rahul Mishra, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2019

1. Being aggrieved of the order dated 30.01.2002, whereby the services of the original petitioner/deceased employee-Tejram More was terminated, the present writ petition has been filed.

2. The brief facts of the case is that the deceased employee was working as a Revenue Inspector in the office of the Land Records, District Janjgir-Champa. The deceased employee was subjected to disciplinary proceedings wherein a charge-sheet was issued on 08.02.2001.

3. The charges mainly leveled against the deceased employee were that:

> **(i) The deceased employee in the capacity of Revenue Inspector mutated and transferred the lands in about 48 cases in contravention to the provisions of Section 110 of the M.P./C.G. Land Revenue Code, 1959.**

(ii) The deceased employee has in the capacity of a Revenue Inspector illegally registered 986 cases under the Ceiling Law with ulterior motives on account of which the State Government could not acquire those lands.

(iii) The deceased employee had purchased a land for Rs. 1 lakh for construction of house of Rs.6.4 lakhs, which was disproportionate to the income of the deceased employee, in addition to the fact that the deceased employee was having disproportionate assets. The purchase of the properties and the house constructed was also without intimation or prior permission obtained of the employer. Thus, was in contravention to the service Rules.

(iv) That, the deceased employee was unauthorized absent from duty for a period of about 197 days.

(v) That, the deceased employee had been making false complaints against the superior officers in respect of certain compassionate appointments made, which on inquiry was found to be untrue and false complaints.

(vi) That, the deceased employee decided the mutation proceedings without having power and jurisdiction for the same under the provisions of M.P./C.G. Land Revenue Code.

4. To the said charge-sheet, the deceased employee furnished a detailed reply and the contents of which, the respondents found to be not satisfactory and the employer took a decision to hold a departmental enquiry. After the departmental enquiry, the Inquiry officer finally submitted his report, giving a finding that the charges No. 1, 4, 5 & 6 to be proved, charge No. 2 to be partly proved and the charge No.3 as not proved. The Disciplinary Authority however in addition to agreeing with the findings so far as charges No. 1, 4, 5 & 6 and further disagreeing with the findings so far as charges No. 2 & 3 held that the charges No. 2 & 3 also stood proved and treating all the charges to be proved, the Disciplinary Authority vide the impugned order (Annexure P/7) dated 30.01.2002 inflicted with the punishment of termination from service, which has led to the filing of the present writ petition.

5. The foremost contention of the deceased employee assailing the impugned order of termination is that the entire action on the part of

the respondents is without any basis or cogent evidence, thus the findings given becomes a perverse finding and unsustainable at all. The further contention of the deceased employee is that the Inquiry officer as well as the Disciplinary Authority have not considered the evidence that the deceased employee had led before the Inquiry officer and have also not appreciated the cross-examination part of the witnesses on behalf of the management by which the deceased employee has convincingly established that none of the charges leveled against the deceased employee are established or proved. That the findings and the punishment both are without sufficient material based on the assumptions and presumptions, thus amounting to perversity and is liable to be set-aside.

6. The further contention of the deceased employee is that the impugned order of termination is also bad in law for the reason that once when the Inquiry officer has held that charge No.3 is not proved and the charge No. 2 is partly proved. If at all, if the Disciplinary Authority disagreed with the said findings before proceeding further, the deceased employee ought to have been issued with a show cause notice seeking explanation on the point of disagreement by the Disciplinary Authority to the said two charges. In the absence of such a show cause notice being issued, the whole action gets vitiated deserving quashment of the impugned order.

7. It was also the contention of the deceased employee that the departmental enquiry also was with a malafide intention as the deceased employee in the past has made certain serious complaints against the then Deputy Collector, under whom the deceased

employee was working alleging certain irregularities committed by the Deputy Collector in the course of granting compassionate appointments contrary to the service Rules and Government policy. According to the petitioner/deceased employee, it is these complaints, which were made by the deceased employee, which has led to the initiation of the disciplinary proceedings.

8. It was also alleged by the deceased employee that the malafides stood more established from the facts that the person against whom, the deceased employee had made complaints i.e. the Deputy Collector was himself appointed as a Presenting Officer and therefore the Deputy Collector would have definitely acted and proceeded in a manner prejudicial to the interest of the deceased employee with malafides and for this reason also, the inquiry proceedings gets vitiated.

9. The deceased employee also contented that the presenting officer i.e. the Deputy Collector against whom the deceased employee had on an earlier occasions leveled many complaints acted malafidely in the course of the departmental enquiry. According to the petitioner, the said presenting officer had tampered with the evidence produced during the course of evidence. That in addition to tampering with the records, he had also destroyed certain material evidence, particularly in respect of the medical evidence, which the deceased employee intended to bring before the Inquiry officer, so far as the charge relating to the authorized absent is concerned. That on all these grounds, the petitioner prayed for the quashment of the impugned order dated 30.01.2002.

10. Per contra, the counsel appearing for the respondent-State submitted that none of these grounds raised by the petitioner are sustainable as they are without any cogent evidence led by the deceased employee. According to the counsel for the respondents, the plain reading of the impugned order dated 30.01.2002 would clearly reflect that the Disciplinary Authority has passed the order after elaborately considering the evidence that has come before the Inquiry officer. The Disciplinary Authority has also discussed in respect of each of the charges and the evidence that has come and as such it cannot be said that the impugned order has been passed without application of mind or without appreciating the evidence that has come before the Inquiry officer and the impugned order is also a well reasoned speaking order.

11. It was also the contention of the respondents that the perusal of the inquiry proceedings and the findings given by the Inquiry officer would show that the deceased employee has been given a fair and reasonable opportunity of defense during the course of the departmental enquiry, which further reduces the scope of interference in the present writ petition. The respondents stressed hard on the scope of interference by the writ Court in a disciplinary proceeding.

12. It was also the contention of the respondents that before termination order was passed, the deceased employee was served with a copy of the inquiry report along with the show cause notice, which further would establish that the deceased employee has been granted sufficient, fair and reasonable opportunity of defense and also the

principles of natural justice was dully complied with and on these grounds also the writ petition deserves to be rejected. Thus, for the aforesaid reasons, the State Government submitted that the impugned order does not warrant interference and as there is no illegality and the petition deserves to be rejected.

13. Having heard the contentions what is reflected from the aforesaid factual matrix of the case is that the deceased employee was working as Revenue Inspector under respondents and he was issued with a charge-sheet on 08.02.2001. Thereafter, he was subjected to a departmental enquiry.

14. Enquiry officer submitted his enquiry report holding that the charges except for charge No.2 and charge No.3 as proved. So far as charge No.2, the finding of the enquiry officer was that it stood partly proved and as regards charge No.3 the finding of the enquiry officer was that it is not proved.

15. If we peruse the charges that were levelled against the deceased employee it would reveal that charge No.2, 3 & 4 were the major charges which were levelled against the petitioner. What also cannot be brushed aside is the fact before the deceased employee was served with a charge-sheet there had been certain serious complaints levelled by the deceased employee against the Deputy Collector, Hiralal Verma. The complaint was in respect of certain grave irregularities and illegalities committed by the Deputy Collector in the course of making certain recruitment by way of compassionate appointment. The action against the deceased employee in the instant case started immediately thereafter and he was subjected to

issuance of a charge-sheet on 08.02.2001 and the disciplinary proceedings that followed. Another thing which needs to be taken note of is that in the disciplinary proceedings that was initiated against the deceased employee the very same Deputy Collector against whom the deceased have levelled serious allegations was made the presenting officer. Most of the witnesses examined during the course of the departmental enquiry were all employees/officers directly sub-ordinate to the said Deputy Collector who was the presenting officer.

16. As regards charge No.2 and charge No.3 is concerned, apparently the disciplinary authority had disagreeing with the findings given in respect of the said two charges taken a contrary view by treating both the charges as proved and proceeded to issue with the order of termination of service dated 30.01.2002.

17. Admittedly, before issuance with the order of termination or before issuing with the second show cause notice the disciplinary authority did not issue any show cause notice calling for an explanation on the view of the disciplinary authority disagreeing with the finding on charge No. 2 & 3. It is by now a well settled proposition of law that in the event if the disciplinary authority disagrees with the finding of an enquiry officer he has to give reasons for disagreeing and thereafter call upon the delinquent employee calling upon his explanation on the views of the disciplinary authority so far as the findings of the enquiry officer on which the disciplinary authority is in disagreement. This has not admittedly occurred in the instant case. Another aspect which needs consideration is that so far the charge No.4 is

concerned, there are evidences which has been brought before the enquiry officer which would clearly depict the presenting officer in course of the certain documents which were presented tore of the pages of the register which was called upon from the hospital from where the petitioner had taken treatment and which was his defence so far as the charge No.4 regarding unauthorized absence is concerned. This all the more depicts the manner in which the presenting officer conducted himself during the course of the enquiry. It also clearly reflects that there was great element of bias on the part of the presenting officer against the deceased employee.

18. So far as allegation of bias is concerned, the Supreme Court in case of **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, 2001(1)SCC 182**, was of the view that the doctrine of natural justice is not only to secure the justice, but also to prevent miscarriage of justice. According to the Supreme Court, there has to be a fairness in the procedure and the fairness should be visible to any prudent man in the society.

19. If we take into consideration the allegation of bias raised by the petitioner in the present writ petition, what cannot be brushed aside is the fact that the deceased employee infact had raised serious allegations and charges against the then Deputy Collector under whom the deceased employee was working. The said Deputy Collector was also subjected to an enquiry on the complaint made by the deceased employee. However, immediately thereafter the deceased employee also and what is more surprising is that the same Deputy Collector against whom the employee had lodged the

complaint was appointed as a Presenting Officer. By this act on the part of the respondents in appointing the same Deputy Collector as Presenting Officer shows malafide on the part of the department. Moreover, what can also be safely inferred is, in the given factual backdrop of the case, such Presenting Officer was bound to proceed against the petitioner with full of vengeance and with malice. The act of vengeance and malice on the part of the Presenting Officer is also evident from the conduct of the Deputy Collector/Presenting Officer, who in the course of deceased employee's adducing certain evidence in respect of the medical evidence to justify the charge of unauthorized absence for a considerable period of time, had torn the records of the Hospital in front of the Enquiry Officer so as to destroy the evidence or defence of the deceased employee.

20. In case of **Girjashankar Pant (Supra),** the Supreme Court in paragraphs 10,11,20 and 35 held as under :

> **"10. The word Bias in popular English parlance stands included within the attributes and broader purview of the word malice, which in common acceptation mean and imply spite or ill-will (Strouds Judicial Dictionary (5th Ed.)Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record o come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.**
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> **11. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal enquiries, intention, as distinguished from motive is the all-important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse (see in this context Jones Bros. (Hunstanton) v. Steven: 1955 (1) Q.B. 275).**
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> **20. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependant upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste: this is however, apart from the issue of bias which**

> **would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman v. The State of Bihar & Ors. (1973 (3) SCC 333) seem to be rather apposite. This Court observed:**
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> > **The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.**
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> **35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case (supra).”**

21. In case of **M. Shankar Narayanan, IAS Vs. State of Karnataka and Others, AIR 1993 SC 763**, the Supreme Court had observed that the court may draw a reasonable inference of malafide from the facts pleaded and established but such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. Likewise, it was also the view of the Supreme Court that there has to be very strong and convincing evidence to establish the allegations of malafide especially alleged in the petition as the same cannot merely be presumed. According to the Supreme Court, there must be cogent evidence available on record to come to the conclusion as to whether infact there exist a bias or malafide move which resulted in the miscarriage of justice.

22. In case of **Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others,** 2003(2)SCC 132, the Supreme Court has held that burden of proving malafide lies very heavily on the person who alleges it. Mere allegation is not enough. The authority making

such allegation is under the legal obligation to place specific materials before the court to substantiate the said allegation.

23. In view of the aforesaid principles as laid down by the Supreme Court and also the conduct of the Deputy Collector who was appointed as a Presenting Officer, particularly his act of tearing the document of the Register produced from the Government Hospital from where the deceased employee is said to have undertaken treatment, established sufficient bias on the part of the authorities, as also the Presenting Officer in the course of conducting Departmental Enquiry. The Enquiry Officer also has not taken this aspect seriously.

24. The second aspect which also needs consideration is that, so far as the charge No. 2&3 are concerned, one of the charge was partly proved and the other charge was not proved in the enquiry report submitted by the enquiry officer.

25. Now, in the event if the disciplinary authority defers with the report submitted by the enquiry officer or alteast defers with the findings given in respect of certain charges, what is expected is that the disciplinary authority should have given a notice to the delinquent on his deferring of the findings given by the enquiry officer and giving his reasons for holding the charge to be proved which would enable the delinquent to give his explanation and reply so far as deferring with the findings submitted by the enquiry officer is concerned.

26. Recently, the Supreme Court in case of **S.P. Malhotra Vs. Punjab National Bank & Others, 2013 (7)SCC 251**, dealing with the

principles of law on the said issue where the disciplinary authority has disagreed with the findings of the enquiry officer, in paragraphs 13,14,16,17 and 18 held as under :

> **"13. In the case of ECIL (supra), only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra (supra), wherein the judgment of ECIL (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for dis-agreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of this court in Institute of Chartered Accountants of India v. L.K. Ratna, AIR 1987 SC 71.**
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> **14. Kunj Behari Misra (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra (supra), this court held as under:**
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>> **"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."**
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> **16. The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde v. State of Maharashtra & Anr., AIR 1999 SC 3734; State Bank of India & Ors. v. K.P. Narayanan Kutty, AIR 2003 SC 1100; J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & Ors., AIR 2005 SC 1218; P.D. Agrawal v. State Bank of India & Ors., AIR 2006 SC 2064; and Ranjit Singh v. Union of India & Ors., AIR 2006 SC 3685.**
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> **17. In Canara Bank & Ors. v. Shri Debasis Das & Ors., AIR 2003 SC 2041, this Court explained the ratio of the judgment in Kunj Behari Misra (supra), observing that it was a case where the disciplinary authority differed from the view of the Inquiry Officer.**
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>> **".........In that context, it was held that denial of opportunity of hearing was per se violative of the principles of natural justice."**

18. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).”

27. In view of the aforesaid settled position as it stands, if we look into the facts of the present case, it would clearly reveal that, as regards charge No. 2&3 are concerned, the disciplinary authority has not accepted the findings given by the enquiry officer. Deferring with the same, the disciplinary authority has held that the said charges also stood proved. However, the reasons for disagreement has not been given, nor was the delinquent served with as show cause notice confined to the disagreement part first so far as charge No.2&3 is concerned, and in the backdrop of the judgments of the Supreme Court referred to in the preceding paragraphs, the findings of the disciplinary authority to that extent would stand vitiated.

28. So far as charge No.4 is concerned, from the proceedings it appears that the deceased employee had in support of his defence produced certain documents in his defence that was the Register of the Government Hospital from where the deceased employee had taken his treatment and during the course of evidence, the Deputy Collector/Presenting Officer, with malafide intention, tore off the pages of Register of the Government Hospital before the enquiry officer and destroyed the defence of the delinquent employee. Thus, the charge No.4 also cannot be said to have been conclusively proved, or there were no evidence in support of the petitioner.

29. So far as other charges which are levelled against the deceased employee is concerned, those are not so serious charges which would entail the deceased employee with a capital punishment of

termination from service. Under the circumstances, the order of termination deserves to be and is accordingly set aside/quashed.

30. As regards the reliefs that could be granted to the petitioners is concerned, it is relevant to point out that during the pendency of the writ petition, the employee namely Tej Ram More has expired on 16.11.2018 and since then the petition is being pursued by the legal heirs. Another aspect which cannot be lost sight of is that, it cannot be said that all the charges stood disproved or not proved against the deceased employee and under such circumstances the deceased employee could not be held to be totally exonerated of all the charges. Under the circumstances, in order to meet ends of justice, this court is of the opinion that in the light of the order of termination being set aside/quashed by this court, the consequential relief that the petitioners would be entitled for in the given facts and circumstances of the case would be only to the extent of retiral dues and pensionary benefits, applying the principle of "Reinstatement Without Backwages" had the employee remained alive.

31. Accordingly, it is ordered that the writ petition stands allowed in part. The order of termination stands set aside/quashed. The petitioners shall not be entitled for any backwages, however, treating the employee to be in service till the age of superannuation, the petitioners would be entitled for all the retiral benefits including pensionary benefits by calculating the said period as if the petitioner was never subjected to termination and he would have retired from the post of Revenue Inspector on attaining the age of superannuation.

32. The respondents are directed to immediately process the same and after calculating the retiral dues and also pensionary benefits, the same be released to the petitioners in accordance with law at the earliest preferably within a period of four months from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved