

Mohan Swaroop Shrivastava Vs. the State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Aug-17-2012

Appellant : Mohan Swaroop Shrivastava

Respondent : The State of M.P. and ors.

Advocate for Pet/Ap. : Shri. N.C.Beohar

Judgement :

HIGH COURT OF MADHYA PRADESH : AT JABALPUR Writ Petition No :

2205. of 2002 Mohan Swaroop Shrivastava - V/s - State of MP and others Present
: Honble Shri Justice Rajendra Menon.

----- Shri N.C.Beohar,
counsel for the petitioner.

Shri B.P.Pandey, Deputy Government Advocate, For respondent No.1/State.

Shri P.R.Bhave, Senior Advocate, with Shri Bhanu Pratap Yadav, for respondent
Nos.2 and 3.

----- Whether
approved for reporting: Yes / No.

ORDER

17/08/2012 Challenging the order-dated 9.11.2001 - Annexure P/15 removing the petitioner from service on the basis of misconduct proved in a departmental inquiry; and, the order-dated 2.4.2002 - Annexure P/20, by which his appeal has been rejected, petitioner has filed this writ petition.

2- Petitioner Mohan Swaroop Shrivastava was appointed on 22.4.1977 as a Clerk in the establishment of the District Court and between the year 1986 to 1990, he was working as an Execution Clerk to the Court of Additional Chief Judicial Magistrate, Pichor, District Shivpuri.

In the said Court one Criminal Case bearing No.1/1994 (Old No.91/1981 - State versus Suresh) was pending.

It was found that the records of this case were entrusted to petitioner Mohan Swaroop Shrivastava and the case was decided on 31.3.2000 by the court of competent jurisdiction.

Evidence was recorded in this case in the year

1993. and after recording of evidence, it transpired that more than seven important documents that were filed alongwith the challan were missing from the records.

The records that were found missing were a case diary, certain fraudulently obtained receipts, a sealed envelope, an open envelope, certain original receipts and an envelope containing signature of the accused person Suresh and others. During the time of recording of evidence, it was found that the original documents are not available.

Based on the aforesaid when a complaint was received, a show-cause notice was issued to the petitioner on 2.5.1999 vide Annexure P/1, and thereafter a preliminary inquiry was conducted into the matter.

In the preliminary inquiry, the Additional CJM, Pichor found that the records were entrusted to the petitioner, he was in custody of the same and prima facie it was found that he is responsible for the act complained of.

Based on the report of the preliminary inquiry - Annexure P/7 dated 9.4.99, a charge-sheet was issued to the petitioner vide Annexure P/2 on 27.5.99.

Petitioner submitted his reply to the same and finding the reply to be unsatisfactory one Shri S.R.Dohre, Additional District and Sessions Judge, Pichor was appointed an Enquiry Officer.

The Enquiry Officer conducted the inquiry and submitted his report - Annexure P/5 to the competent authority on 13.12.2000.

Thereafter, a show cause notice was issued to the petitioner and the impugned action taken.

The appeal filed by the petitioner having been rejected, this writ petition is filed impugning the action in question.

3- Shri N.C.Beohar, learned counsel for the petitioner, took me through the material available on record and the enquiry proceedings and argued that petitioner was transferred from Pichor in the year 1989 and when he was transferred he had handed over the records to one Shri Ram Biharilal Dohre.

Even though petitioner had submitted an application calling for and seeking certain copies of the documents showing handing over of charge by the petitioner to Shri Ram Biharilal Dohre, these documents were never produced and without producing these documents the petitioner was held guilty of the charges leveled against him.

4. The fiRs.contention advanced by Shri N.C.Beohar was to the effect that non-production of documents pertaining to handing over of charge to Shri Ram Biharilal Dohre and non-examination of this most important witness vitiates the entire inquiry and, therefore, in the absence of the aforesaid material being available on record the petitioner cannot be held responsible.

That apart, it was argued by learned counsel that certain documents called for by the petitioner vide Annexure P/6 were not supplied and as the entire enquiry was conducted in an illegal manner and the finding recorded is a perveRs.finding, the

same is unsustainable.

5- It was thereafter argued by learned counsel that the appeal of the petitioner has been rejected vide order - Annexure P/8 in a very casual manner, the same does not show application of mind and, therefore, the entire action stands vitiated.

Finally, it was argued by learned counsel that the stage of preliminary inquiry the important documents were not given and the preliminary inquiry conducted without taking note of the charge given by the petitioner to Shri Ram Biharilal Dohre was unsustainable.

In the end, Shri N.C.Beohar argued that the findings recorded by the Enquiry Officer is perverse and based on such a perverse finding, the action taken is unsustainable.

6- Shri P.R.Bhave, learned Senior Advocate, appearing for the High Court and the establishment of District and Sessions Judge Pichor, produced the entire original inquiry file and argued that the inquiry has been conducted in accordance to law, full and fair opportunity of defence was given to the petitioner, all the documents called for vide Annexure P/6 were supplied to the petitioner.

As far as the documents pertaining to handing over of charge to Shri Ram Biharilal Dohre is concerned, Shri Bhave invites my attention to the proceedings of the inquiry and points out that these documents were not at all available in the record of the Court and when the application was filed by the petitioner in this regard the Enquiry Officer directed for production of these documents, the documents were searched for in the office of District and Sessions Judge, Shivpuri and in the Court at Pichor, and the 4 memorandum received from the competent authority of the Court shows that in the record of the Court no such document with regard to handing over of charge by the petitioner to Shri Ram Biharilal Dohre is available.

Shri P.R.Bhave invites my attention to the reply submitted by the petitioner to the initial show-cause notice issued on 2.5.99 and in his reply to the charge-sheet, which are available at page Nos.22, 24 and 55 of the original inquiry file so also the proceedings of the departmental inquiry and emphasized that at the stage of

preliminary inquiry and even while submitting his reply to the charge-sheet, it was never the case of the petitioner that he had given these documents to Shri Ram Biharilal Dohre at the time of handing over of charge.

7- It was pointed out by Shri P.R.Bhave, learned Senior Advocate, that what the petitioner submitted in the inquiry was the document - Annexure P/21, which was the list of files handed over by the petitioner, but in the said list of documents handed over, which were received from the Malkhana have not been indicated.

It is pointed out that the original records pertaining to the criminal case were deposited in the record room, they were received by the petitioner as is evident from the material available on record, but there is no document or material available to show that after 27.4.1989 petitioner ever handed over these documents to any person like Shri Ram Biharilal Dohre.

It is stated that the contention of the petitioner with regard to his handing over of charge alongwith these documents to Shri Ram Biharilal Dohre and his effort to seek for certain copies of these documents, which were never available, was nothing but an after-thought to somehow prepare a defence to wriggle out of the allegations leveled against him.

It was argued by learned Senior Advocate that if the petitioner wanted, he could have summoned Shri Ram Biharilal Dohre as a witness, cross-examined him on this issue and having not done so, it is stated that this defence of the petitioner was nothing but a lame excuse to somehow justify his action and the Enquiry Officer having rejected the claim now, no case is made out for interference.

8. As far as the procedure followed in the inquiry is concerned, Shri Bhave submits that the entire inquiry was held in accordance to law, full and fair opportunity was granted to the petitioner and in the absence of any procedural violation being established, except the allegation of non-production of documents and handing over of charge to Shri Ram Biharilal Dohre, which infact was never available in the record, no substantial procedural irregularity is pointed out.

Accordingly, Shri Bhavé argues that there is no infirmity in the inquiry and, therefore, on this count interference is not called for.

9- Finally, learned Senior Advocate produced the original file on the basis of which the appeal of the petitioner was decided and pointed out that in the file a detailed noting, running to more than four pages, is available, which is approved by the Administrative Judge of the High Court, who has rejected the appeal.

It is stated that Annexure P/18 is only a communication of the result of the appeal whereas a detailed order is available in the file, which could be obtained by the petitioner.

Accordingly, learned Senior Advocate submits that the entire action is proper and the same does not call for any interference.

10- I have learned counsel for the parties and have gone through the entire records, including the bulky inquiry file, consisting of more than 120 pages.

11- The allegation against the petitioner was that between the period 1986 to 1990, when he was working in the Court of Additional CJM, Pichor as an execution clerk, he was incharge of all the criminal charges which were pending in the said Court.

Case No.1/94 (Old No.91/1989) was deposited in the Malkhana and vide Entry No.81 dated 17.3.1981 it was deposited.

Thereafter, vide Entry made in the records of the Malkhana and in pursuance to Order No.2902 dated 11.10.1985 passed by the then District and Sessions Judge, Shivpuri, the records were transferred to the Nazrat and thereafter they were tagged alongwith the original file, which were pending in the Court of Additional CJM, Pichor and the execution clerk i.e..

the petitioner, received the documents as is evident from the records.

It is indicated that after receipt of the records on 11.10.1985 when the petitioner was transferred out of Pichore, he handed over the entire file alongwith these documents to one Shri Abdul Sattar Khan and in the handing over and taking over

of charge of documents, it is clearly indicated that the documents were given to Shri Abdul Sattar Khan.

Thereafter, in the year 1989 when the petitioner again resumed charge on the same post in accordance to the order passed by the District and Sessions Judge, Shivpuri on 21.4.1989, the entire record of Case No.91/1981 (New No.1/94) was again handed over by Shri Abdul Sattar Khan to the petitioner on 27.4.1989.

It is indicated in the charge-sheet that the records were in custody of the petitioner as on 27.4.1989 and thereafter the same is missing and there is no document available to show handing over of these documents by the petitioner either to any section or any other officer and, therefore, holding the petitioner guilty of misplacing/willfully removing the documents to cause undue benefit to the accused person, which resulted in their acquittal, the charge-sheet was issued to the petitioner.

Before issuing the charge-sheet as already indicated hereinabove, a show-cause notice was issued to the petitioner and the petitioner submitted his reply and thereafter a preliminary inquiry was conducted.

12- When a show-cause notice - Annexure P/1 was issued to the petitioner on 2.5.1989 and when the petitioner submitted his reply to the same vide Annexure P/6, he only requested for going through the documents pertaining to taking over and handing over of charge between the petitioner and Shri Abdul Sattar Khan on 21.10.1986 and 27.4.1989.

At that point of time, it was never the case of the petitioner that the records have been handed over to Shri Ram Biharilal Dohre not did he summon for any documents.

The documents pertaining to handing over and taking over charge from Shri Abdul Sattar Khan were given to the petitioner.

A preliminary inquiry was held and based on the prima facie case found in the preliminary inquiry report dated 9.4.1999, charge-sheet was issued to the petitioner.

When this charge-sheet was issued to the petitioner, the petitioner did not come out with a case that he had handed over the documents while giving charge to Shri Ram Biharilal Dohre.

7 On the contrary, he only stated that in the list of files, which were given by him on his transfer in the year 1989, particulars of this case are mentioned and thereafter he stated in the reply that in the trial held in the case and in which evidence was recorded in the year 1993, statement of various witnesses have been recorded.

He referred to the statement of PW-11 Brij Vallabh Shrivastava and various other witnesses to emphasize that these witnesses have referred to the documents and, therefore, the contention cannot be right.

Based on the evidence and material that came on record, the finding has been recorded.

13- During the proceedings of the inquiry, petitioner did not make any complaint with regard to the procedure followed by the Enquiry Officer.

He only demanded for certain documents particularly the document with regard to handing over of charge to Shri Abdul Sattar Khan and Shri Ram Biharilal Dohre.

As far as the documents pertaining to Shri Abdul Sattar Khan is concerned, they were made available, but with regard to the documents pertaining to handing over charge to Shri Ram Biharilal Dohre, the Enquiry Officers order was implemented and a communication was made to the Enquiry Officer that no such document is available in the record and, therefore, they cannot be supplied.

It is in the backdrop of these facts that the allegations leveled and the grounds raised in this writ petition are to be considered.

14- As far as the procedural irregularity or impropriety in conduct of the inquiry is concerned, it is clear that full and fair opportunity of defence was granted to the petitioner, the petitioner did not make any complaint with regard to the procedure followed.

His only complaint before this Court not is with regard to non-production of documents pertaining to handing over of charge to Shri Ram Biharilal Dohre and non-examination of Shri Ram Biharilal Dohre.

As far as the documents are concerned, the Enquiry Officer has ordered for production of these documents and it was found that no such documents are available and, therefore, there is no question of providing these documents.

Once the record establishes that the documents were not available, there is no question of denial of opportunity to the petitioner, 8 as the documents demanded by the petitioner were never available or infact did not exist at all.

The inquiry cannot be held to be vitiated for non-supply of the documents, which is shown to be not at all existing or not available.

As far as summoning of Shri Ram Biharilal Dohre is concerned, the Enquiry Officer has considered this aspect of the matter and has found that even without the examination of this witness the charge leveled against the petitioner are proved and as the petitioner has not made any request for summoning this witness, the witness was not summoned.

That being so, if it was the defence of the petitioner that he had given charge to Shri Ram Biharilal Dohre and the documents in question were given to him, it was for the petitioner to establish his defence by leading evidence and the petitioner having failed to summon the witness in this regard, he cannot shift the blame on the establishment by contending that proper opportunity has not been granted to the petitioner.

It is, therefore, a case where the inquiry was found to be held in accordance to law, there is no procedural irregularity and, therefore, the inquiry stands properly conducted and on this count no interference is called for.

15- As far as the claim of the petitioner with regard to charges not being proved, the findings being perveRs.or the fact of his having given the documents to Shri Ram Biharilal Dohre is concered, I am of the considered view that these contentions of the petitioner are mis- conceived and cannot be accepted.

16- Shri P.R.Bhave, learned Senior Advocate, is right in contending that the petitioner has made out a defence, which is unsustainable.

It is clear from the records that when a show-cause notice was issued to the petitioner before conducting a preliminary inquiry on 2.5.1999 and when specific allegations were leveled against him in this regard, it was never his case that these documents were given by him to Shri Ram Biharilal Dohre when he was transferred out of Pichor in the year 1989-90.

On the contrary, at that point of time, instead of giving a reply he only called for documents pertaining to handing over and taking over of charge from Shri Abdul Sattar Khan as is evident from Annexure 9 P/6.

Thereafter, when the charge-sheet was issued to him on the basis of the prima facie case indicated in the preliminary inquiry, at that point of time also it was never the case of the petitioner that these documents were given by him to Shri Ram Biharilal Dohre while he was transferred in the year 1989-90.

In reply to the charge-sheet and at the initial stage of the inquiry it was his defence that the documents are not available with him, he produced a list of files which were given by him to Shri Ram Biharilal Dohre vide Annexure P/22 on or around 24.1.1990 and tried to emphasize that the file of Case No.91/1981 was also given.

But, alongwith this list, which contains the particulars of more than 300 files, there is no mention of any other document like the original files of a criminal case and other material.

Infact when the charge was given to Shri Abdul Sattar Khan, two lists were available one pertaining to the case file and other pertaining to the material in the criminal case, which forms part of the record which were handed over.

In this case surprisingly the petitioner produced a document - Annexure P/21, but with regard to other records he submitted an application and it was found that no such document of handing over of charge is available.

If the petitioner was in possession of the document - Annexure P/21, then it is surprising as to how he is not in possession of all the other material like original records of the criminal case, which were given to Shri Ram Biharilal Dohre.

Instead, petitioner deliberately during the process of inquiry filed an application for summoning these documents and on inquiry it was found that no such document pertaining to handing over of charge to Shri Ram Biharilal Dohre in January 1990 is available.

When this fact was brought to the notice in the inquiry proceedings, the petitioner kept quiet and permitted the inquiry to go on even without summoning Shri Ram Biharilal Dohre for examination in support of his defence.

17- In view of the above, I am of the considered view that the contention of the petitioner that he had given charge to Shri Ram Biharilal Dohre in the year 1990 and at that point of time the missing documents were available, is not correct.

It is nothing but an after- 10 thought which has been put up as a defence by the petitioner in the departmental inquiry.

At the fiRs.instance when a show-cause notice was issued to the petitioner before the preliminary inquiry, the petitioner should have come out with such a defence and in support thereof should have summoned Shri Ram Biharilal Dohre, this having not been done; the Enquiry Officer and the Disciplinary Authority have rightly held that the petitioner has not established his defence and has found that the allegation leveled in the charge-sheet are proved.

From the statement of witnesses available on record and the documents, which were produced in the inquiry, it was clearly established that on 27.4.99 Shri Abdul Sattar Khan gave all these documents to the petitioner and after 27.4.89 these documents were missing.

As the documents were given to the petitioner on the said date and thereafter they were in the custody of the petitioner and as the documents were found to be missing immediately thereafter, and there being no evidence available on record to show that petitioner have given these documents to any other person, the

respondents have not committed any error in holding the petitioner guilty of the charges leveled and taking the impugned action.

18- Contention of the petitioner that the inquiry stands vitiated for non-following of procedure or that the charges are not proved cannot be accepted.

In a departmental inquiry the charges are not to be proved as is required in a criminal case.

If the preponderance of evidence and the material available on record does show that the allegations leveled in the charge-sheet are correct, it is enough for taking a departmental action.

In the present case, the evidence available on record did show that the petitioner was in possession of these documents on 27.4.89 when Shri Abdul Sattar Khan gave him charge and thereafter the documents went missing and as there is nothing to show that the petitioner has transferred these documents to any other authority or person, in holding the petitioner responsible for the same the authorities have not committed any error.

This Court while exercising limited jurisdiction in a petition under Article 226 of the Constitution with regard to a departmental inquiry, does not sit over the decision of the departmental 11 authority as if it is exercising appellate jurisdiction.

If a reasonable procedure has been followed for conducting the inquiry and if the findings recorded in the inquiry is a possible finding, which can be arrived at on the basis of the evidence available, the same cannot be interfered with by this Court.

19- In the present case, the evidence do establish that the documents were given to the petitioner on 27.4.1989 by Shri Abdul Sattar Khan and thereafter the petitioner was in custody of the documents and there is nothing to show that the petitioner ever gave these documents to any other person.

The petitioner is responsible for custody of the document and if they have gone missing the respondents have rightly held the petitioner guilty of the same.

20- If it was the case of the petitioner that he had handed over the documents to Shri Ram Biharilal Dohre, the petitioner should have come out with such an explanation at the very fiRs.instance when the preliminary inquiry was being conducted or atleast in reply to his charge-sheet.

At that point of time, he was only insisting that the records are available, statement of witnesses have been examined in the inquiry in the year 1993, the witnesses have testified with regard to the documents and, therefore, the documents are not missing.

He never stated that the documents were given by him to Shri Ram Biharilal Dohre.

It is only when the inquiry commenced that the petitioner as an after thought came out with a story of giving of charge alongwith the documents to Shri Ram Biharilal Dohre, knowing fully well that by summoning these documents which were not at all in existence, he would create a confusion and try to take advantage of the same at a later date.

This attitude of the petitioner and the manner in which the defence was put up by the petitioner clearly goes to show that his defence was an after-thought and cannot be accepted not for exonerating the petitioner of the allegation.

21- Accordingly, I am of the considered view that the inquiry was properly conducted and in the inquiry the allegations leveled against the petitioner stands adequately proved and, 12 therefore, in taking action the respondents have not committed any error.

22- As far as the appeal being decided by non-speaking order is concerned, the detailed order is available in the original inquiry file and the approval of the same by the Administrative Judge clearly shows that application of mind and various reasons for rejecting the appeal are available and, therefore, it cannot be said that the appeal has been rejected in a casual manner.

Even otherwise, in the facts and circumstances of the case, on these counts interference into the matter is not called for.

23- Even though during the couRs.of hearing of the writ petition, Shri N.C.Beohar referring to a judgment of the Supreme Court in the case of Karnesh Kumar Singh and others versus State of Uttar Pradesh - AIR 196.SC 1418.the said case pertains to recording of evidence and the effect of section 114 of the Evidence Act.

The said judgment is not applicable in the facts and circumstances of the present case.

24- Accordingly, finding no ground to interfere into the matter, the writ petition is dismissed.

(RAJENDRA MENo.) JUDGE Aks/-

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