

State of M.P. Vs. U.K. Khare

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Court : Madhya Pradesh

Decided On : May-02-2002

Reported in : 2002(4)MPHT544; 2003(1)MPLJ54

Judge : Bhawani Singh, C.J. and ;Ajit Singh, J.

Acts : Service Law

Appeal No. : Writ Petition No. 4742/2001

Appellant : State of M.P.

Respondent : U.K. Khare

Advocate for Def. : V.S. Shroti, Adv.

Advocate for Pet/Ap. : B. D'Silva, Dy. Adv. General

Disposition : Petition dismissed

Judgement :

ORDER

Ajit Singh, J.

1. In this writ petition, preferred under Article 227 of the Constitution of India, the State of M.P. has called in question the sustainability of the order passed by the Madhya Pradesh Administrative Tribunal (for short 'the Tribunal') in O.A. No.

162/2001, dated 7-7-2001.

2. The respondent was a Chief Engineer in the Water Resources Department (for short 'the Department'). The date of his superannuation was 31-7-2000 by only seven days before the said date the State Government by order dated 24-7-2000 dismissed him from service following a disciplinary proceeding instituted against him. The respondent preferred a departmental appeal against his punishment order but the same was also dismissed. He, therefore, approached the Tribunal for quashing of the dismissal order on number of grounds but finally confined himself only to the question of punishment imposed. The Tribunal, by the impugned order, quashed the order of dismissal of respondent and instead converted his dismissal to that of compulsory retirement. Dissatisfied with this interference by the Tribunal the State has filed the present petition.

3. The respondent joined the service of the Department as a Junior Engineer in the year 1965 and had been promoted from time to time to higher posts during the period of his service. While he was posted as Superintending Engineer, Water Resources Circle, Raipur in the year 1996 he was given additional charge of Sheonath, Water Resources Circle, Durg in the month of January, 1998. During the period he held these charges, certain irregularities were noticed by the State Government. A charge- sheet containing as many as nine charges was thus issued to him on 29-9-1999. The State Government being dissatisfied with the reply of respondent, held a regular departmental enquiry in which out of nine charges number one, three and eight were proved partially and fully. The Government accepted the enquiry report and issued a show-cause notice on 28-6-2000 to the respondent informing him that while carrying out his duties, he contravened the rules and procedure on account of which the Government had to suffer a loss. In reply the respondent asserted that whatever steps he had taken were in public interest and even as per the finding of enquiry report no financial loss was caused to the State Government. The Government however, after obtaining the approval of Public Service Commission passed the order on 24-7-2000 imposing the punishment of dismissal from service for each of the charges proved against him.

4. As regards charge No. 1 the allegations against the respondent were that he acted contrary to the instructions of the Government contained in their order dated 20-8-96 sanctioning tenders for carrying out the survey-work in respect of number of irrigation schemes mentioned in the charge and further that in the said tender, the work of jungle clearance and dag-beling were unnecessarily included as items of work and thus by committing the aforesaid irregularity he caused loss to the Government. The Enquiry Officer held that there was nothing to show that the Government had suffered any loss because of the sanction of tenders in respect of three schemes for which the tenders had been sanctioned by the respondent. The enquiry officer also observed that the Government failed to prove that the items of jungle clearance and dag-beling were unnecessary. The enquiry officer further held in his report that the Government failed to prove as to how much departmental labour was available and whether in the absence of some, it was possible to give out the work in piece work labour contract basis. The enquiry officer further, held that the respondent before calling of the tenders ought to have done an exercise as to why the whole of survey could not be done through the departmental labour or through the piece work labour contracts. His final conclusion, therefore, was that charge was only partially proved to the extent that the respondent had contravened the Government orders contained in its letter dated 20-8-96. No dishonest motive or misuse of authority for personal gain was attributed against the respondent. The part of the charge relating to 'causing of loss' as framed against him was not proved.

5. As regards charge No. 3, the allegation made against the respondent was that he, without prior administrative approval and obtaining technical sanction, sanctioned the survey work of Munrethi Anicut entrusted by Industrial Development Corporation. It was also alleged that even though the Chief Engineer had desired that the cost be reduced but the respondent sanctioned the work at 110% above the schedule of rates on 4-4-98 and thus 'tried' to misuse public funds. The enquiry officer held that the Corporation itself wanted the work to be executed quickly and it is because of this, the respondent called for the tenders in the absence of administrative and technical sanction in anticipation that these sanctions would be received later on. The administrative and technical sanctions were also admittedly granted later. Regarding advise of the Chief Engineer in

reducing the cost estimated, a guidance was sought from the Chief Engineer himself as to how it should be done but no such guidance was received. The enquiry officer concluded that the act of omission/commission by the respondent was only technical and it should not be taken seriously. He emphatically held that the charge against the respondent that he tried to mis-utilise or cause loss of public fund was not proved. In view of the aforesaid finding by the enquiry officer, the State Government ought to have dropped the charge but instead it most illegally held the charge to be proved.

6. As regards charge No. 8, the allegation against the respondent was that he had purchased cement from A-2 category contractor without getting a tender called by his specifying officer. A total 100 mtr. tonnes at the rate of Rs. 1600/- per tonne was purchased against the single tender submitted by the said contractor who was neither a manufacturer nor an authorised dealer/agent of a manufacturer. The enquiry officer while disagreeing with the reply of respondent in regard to this charge further concluded that the same was proved only to the extent that he had committed an irregularity and dereliction of duty. It was nowhere stated by the enquiry officer that the respondent in any manner secured any pecuniary gain or for that matter he caused any financial loss to the State Government.

7. The Tribunal thus held that the imposition of punishment of dismissal was clearly and wholly disproportionate to the gravity and seriousness of misconduct which have been proved against the respondent. While interfering with the quantum of punishment, the Tribunal has dealt with each of the three charges individually and has given justifiable reasons.

8. The principal contention raised by the learned Counsel for the State is that the Tribunal could not have re-appreciated the enquiry report and there was no occasion for it to interfere with the quantum of punishment. This proposition is seriously contested by the Counsel for respondent who submitted that the Tribunal was fully justified in interfering with the quantum of punishment and in fact it should have totally exonerated the respondent from all the charges levelled against him.

9. A Three Judge Bench decision of the Supreme Court in *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484, held as under :--

'A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

10. Another Three Judge Bench of the Supreme Court in *Colour Chem Ltd. v. A.M. Alaspurkar*, AIR 1998 SC 948, has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere. These two decisions were further followed by the Supreme Court in *U.P. State Road Transport Corporation v. Mahesh Ku. Mishra*, AIR 2000 SC 1151, in which the Supreme Court justified the interference by the High Court with the quantum of punishment inflicted by the disciplinary authority. In another recent decision reported in *Union of India v. K.S. Kittu and Ors.*, (2000) 1 SCC 65, the Supreme Court held that the Tribunal while exercising powers of judicial review may examine/consider contrary findings of enquiry officer; finding based on no evidence; and also instances where there are no clear findings. In the said case the Supreme Court held that the Tribunal rightly allowed the application of the employee and rightly set aside the report of the enquiry officer holding the employee guilty of permitting felling of high value species of cardamon trees, undervaluing the trees and causing loss to the State Government, more so, because there was no felling during the period of employee's posting and thus no loss of revenue was caused to the Government during that period.

11. This will show that not only this Court but also the Tribunal can interfere with the punishment imposed upon a delinquent employee, if, that definitely shocks the conscience of the Court. The law, therefore, is not as contended by the learned Counsel for the petitioner that the Tribunal can, in no circumstances interfere with the quantum of punishment imposed upon the delinquent employee after disciplinary proceedings.

12. After hearing the learned Counsel for the parties, it is clear that the allegation relating to causing of financial loss to the Government has not been proved against the respondent. There is also no allegation that the respondent made any pecuniary gain in committing the irregularities found proved against him. In the final order of dismissal passed by the Government there is no mention that the respondent caused any financial loss to the Government or that the Government incurred any loss. There is also no allegation either that the respondent possess disproportionate assets or that he obtained or attempted to obtain illegal assets or misappropriated Government property. There is also no allegation either that he indulged in falsification of Government records or that the irregularities or negligence in discharge of his duties was committed with the dishonest motive or for personal gain. Dismissal of a Government servant who is close to his superannuation entailing the forfeiture of the pension is the harshest of the punishments that can be imposed by the Government. Such punishment should be imposed in the rarest of the rare cases in which there is a clear proof of corruption, moral turpitude and the making of the pecuniary gain and much substantial financial loss has been caused to the Government. Such circumstances do not exist in the present case at all. It would not be out of place to reproduce the relevant portion of the Government instructions issued during the period 4-5-1959 to 16-8-2000 published in the year 2000. It reads as under :--

'30. In assessing the punishment to be awarded against a Government servant, due consideration should be given to his previous record and in particular to any specific instances of good or bad service that may appear therein. It is desirable that officials should be made to feel that a good character and acts of good service will stand them in good stead if their conduct should ever be called into question. If in any case the evidence does not suffice to prove the offence but only establishes

a compromising suspicion of misbehaviour or misconduct and if it is considered desirable that the person charged should cease to be employed by Government, he should not be dismissed with disgrace but be afforded an option to resign or he should only be removed from service. But, if a man has earned or nearly earned his pension, it would not be proper to remove him from service merely on suspicion because being an old servant of Government he has reached the stage in life when it would be most improbable for him to turn to any other avocation or occupation for livelihood. Removal from employment in such a case would be a most severe punishment. The Pension Rules provide that a portion of the pension may be reduced from those whose service has not been thoroughly satisfactory and thus provide for a suitable mode of punishment being inflicted to deal with such cases in order to meet the ends of justice.'

13. As already stated above the respondent secured promotions from time to time and reached the level of Chief Engineer when he was proceeded against departmentally. There is nothing in the record to show that his work has been unsatisfactory. The Government instructions referred to above clearly provide for due consideration to be given to the previous record. The Government, therefore, ought to have followed its instructions, before awarding the extreme penalty of dismissal particularly when there was nothing against the respondent in his previous service record. Needless to say that dismissal of the Government servant at the fag end of his service is an extremely harsh punishment.

14. Under these circumstances, we do not agree with the contention of the Counsel for the petitioner, that the Tribunal should not have interfered with the quantum of punishment inflicted upon the respondent. The petition is, therefore, dismissed but without any order as to costs.