

Jogeswar Bagh Vs. Registrar (Admn.) Orissa High Court and 3 ors.

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Court : Orissa

Decided On : Jan-07-2009

Reported in : (2009)107CALLT332(NULL)

Judge : B.S. Chauhan, C.J. and; B.N. Mahapatra, J.

Appellant : Jogeswar Bagh

Respondent : Registrar (Admn.) Orissa High Court and 3 ors.

Disposition : Petition allowed

Judgement :

B.S. Chauhan, C.J.

1. The instant case reveals a very sorry state of affairs that there remains a complete darkness in the light house itself. The matter relates to an employee working under the District & Sessions Judge Court, Sundargarh, whose services have been terminated without following the procedure known in law for imposing the major punishment, by the District Judge, Sundargarh and against which appeal has also been dismissed by the Appellate Committee consisting of the Hon'ble Judges of this Court.

2. The facts and circumstances giving rise to the case are that Petitioner, a Scheduled Caste person, while working as a Process Server, Nizarat, Civil Courts, Rourkela, was attached to the Court of J.M.F.C., Rajgangpur to work as Night-

Watchman-cum-Sweeper.

He submitted an application for Casual Leave (C.L.) vide application dated 1.5.1993 for five days and sought permission to leave the headquarters for attending the marriage of his sister. The said application was rejected by the authority concerned and Petitioner was informed accordingly. Petitioner left the key bunch of the Court at the residence of the Officer concerned on 2nd May, 1993 and left the headquarters without permission to attend his sister's marriage. Petitioner joined the duty on 10th May, 1993. A show cause notice dated 12.5.1993 was served upon him alleging that he remained absent without leave, leaving the key bunch at the residence of the Presiding Officer and leaving the headquarters without permission and he was asked to show cause as to why disciplinary actions be not taken against him. He submitted the reply dated 11.6.1993 explaining the circumstances that he left the headquarters without permission as he was refused Casual Leave to attend the wedding of his sister as it was necessary for him to remain present there. After the marriage of his sister, he has to look after his ailing father as there was nobody to take his father to the hospital, and pleaded for being pardoned. Considering his reply to the said show cause, an Order Dated 26.8.1993 was passed by the Registrar-cum-Presiding Officer, Sundargarh holding the Petitioner guilty of remaining absent from duty from 1.5.1993 to 10.5.1993 without leave and leaving the headquarters without permission and treating his reply as admission to the guilt. The recommendation was also made to the District Judge-cum-Disciplinary Authority, Sundargarh (hereinafter called the 'Disciplinary Authority') to the effect that the delinquent be given severe punishment so that it would be lesson to others for committing such misconduct. The said order also reveals that the Petitioner had also threatened the Presiding Officer, he was very arrogant and he had caused greater problem to the department. On the basis of the same, the Disciplinary Authority vide Order Dated 14.9.1993 imposed the punishment of removal from service for remaining absent for aforesaid said period of 9/10 days and while passing the order of punishment, the past conduct of the Petitioner, particularly that he had earlier been punished two times in Disciplinary Proceedings had also been taken into account. Being aggrieved Petitioner preferred an appeal before this Court, which was dismissed vide Order Dated 10.8.1995. Hence this Writ Petition.

3. Learned Counsel for the Petitioner has submitted that in spite of request in writing, documents had not been supplied to the Petitioner to prepare his defence. In fact no inquiry has been conducted. The alleged charge-sheet was nothing but a show cause for holding a preliminary inquiry. So at the most the show cause could end on the findings of the preliminary inquiry. No second show cause notice was served upon him before imposing the punishment as required under the law. Proceedings had been conducted in utter disregard to the statutory rules as well as the principle of natural justice. The punishment imposed is disproportionate to the delinquency committed by the Petitioner. The past conduct could not have been taken into consideration not being a part of the charge sheet. Thus the order impugned is liable to be quashed.

4. On the contrary Mr. P. Panda, Learned Addl. Standing Counsel for the Opposite Parties submitted that the past conduct of the Petitioner had been very dissatisfactory as he had been imposed punishment in two departmental enquiries. One for committing a theft in the Court premises and for that Rs. 3,136 was ordered to be recovered and in another for unauthorized absence one annual increment without cumulative effect had been stopped. Thus it was a fit case for imposing punishment of removal from service. The inquiry had been conducted strictly in accordance with law and no interference is warranted in this matter. The petition is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

6. The services of the Petitioner were governed by the Orissa District and Subordinate Courts' Ministerial Services (Method of Recruitment and Conditions of Service) Rules, 1969 (hereinafter called the 'Rule, 1969'). Rule 16 thereof provides that conditions of service in regard to matters not covered by these Rules, 1969 shall be the same as are or as may from time to time be prescribed by the State Government. The notification has been issued to the effect that matters not governed by the Rules, 1969 shall be governed by the Orissa Civil Services (classification, Control & Appeal) Rules, 1962 (hereinafter called the Rules, 1962). So far as holding Disciplinary Proceedings is concerned, Rule 15 of the Rules,

1962 provides the procedure for imposing major penalties, providing that no order of imposition of major penalty can be passed without holding the inquiry in accordance with the procedure prescribed therein. It provides for giving a charge-sheet along with the statement of allegations on which they are based. The delinquent shall be supplied with all the records on which the allegations are based and shall also be permitted to inspect and take extracts from the documents and official records. Delinquent has a right to file a written statement in defence and inquiry has to be conducted examining the witnesses, permitting the other side to cross-examine them. The Inquiry officer would submit the report regarding its findings on each of the charges together with reasons thereof. The inquiring authority may also recommend the punishment to be inflicted when the charges are established on the findings. The Disciplinary Authority is to take into consideration the entire record of the inquiry and make available the copy of the inquiry report along with the proposed punishment as required under Rule 15 (10)(i)(a) of the Rules, 1962 to the delinquent. The delinquent would submit the reply to the said show cause and after considering the same the punishment can be imposed.

7. In the instant case the so called show cause/charge-sheet dated 11.5.1993 reads as under:

OFFICE OF THE DISTRICT JUDGE-CUM-DISCIPLINARY AUTHORITY,
SUNDARGARH Departmental Proceeding No. 4 of 1993

XXX XXX XXX XXX XXX XXXPARTICULARS

You Sri Jogeswar Bagh, Process server, Nizarat, Civil Courts, Rourkela attached to the Court of J.M.F.C. Rajgangpur to work as Nigh Watchman-cum-sweeper are charged as followings:

(i). That the J.M.F.C. Rajgangpur in his letter Nos. 519 dated 2/ 3.5.1993 reports, that on 1.5.1993 you applied for Casual leave w.e.f. 1.5.1993 to 6,5.93 with permission to avail the holiday on 2.5.93 and to leave the headquarters.

(ii). The same was rejected by J.M.F.C, Rajgangpur and the order of rejection was seen by you.

That, on 2.5.93 at about 9.00 A.M. you came to the residential office of the J.M.F.C, Rajgangpur kept the key bunch of the Court and left the headquarters without any permission.

(iii). That the J.M.F.C Rajgangpur reports in his letter Nos. 561 dt. 10.5.93, that you have not joined in your duty till 10.5.93.

That above acts of your amounts to unauthorized and willful absence and negligence in duty.

Therefore, you Sri Jogeswar Bagh, is called upon to show cause on or before 11.5.93 in duplicate as to why disciplinary actions deemed proper shall not be taken against you, failing which appropriate action as deemed proper shall be taken.

Should you desire to be heard in person, you may indicate your intention by the date fixed.

Sd/-11.5.93

Dist. Judge-cum-Disciplinary Authority,

Sundargarh.

8. Therefore, it is evident from the later part of the show cause/so called charge-sheet that it was served upon the Petitioner to show as to why disciplinary actions shall not be taken against him. He submitted his reply accepting his guilt and the Inquiring Officer in his report dated 26.8.1993 had made certain observations against the delinquent employee, particularly, threatening the Presiding Officer and being arrogant and further causing great problem to the department, and recommended for severe punishment so that the other employee may learn a lesson. There is nothing on record to show that on what basis such a findings had been recorded. It was not a part of the so called show cause/charge-sheet. No evidence had admittedly been recorded in the instant case. After considering the

inquiry report, the order of punishment dated 14.9.1993 had been passed by the Disciplinary Authority taking into consideration various factors which has never been disclosed to the Petitioner either in the said so called show cause/charge-sheet or issuing a second show cause notice along with inquiry report.

9. Admittedly, the process required under Rule 15 (10)(i)(a) of the Rules, 1962 to serve the copy of the inquiry report along with proposed punishment had not been complied with. More so, the question of taking into consideration his past conduct was unwarranted and impermissible as it had never been a part of the so called show cause/charge sheet. The non issuance of second show cause along with inquiry report may not be fatal in every case if it is established that no prejudice has been caused to the delinquent employee. But in a case like instant, where inquiry had been concluded merely taking into consideration the explanation furnished by the delinquent employee to the show cause/charge-sheet it may be fatal. In such a fact-situation, it was unwarranted for the Inquiring Officer to make comment that delinquent employee had threatened the Presiding Officer, he was arrogant and caused a great problem for the department. More so, the Disciplinary Authority could not have considered his past conduct as such a course would violate the principles of natural justice as the Petitioner had no opportunity to furnish any explanation on those issues. It is for the Opposite Parties to establish that non compliance of the statutory requirements has not caused any prejudice at all. Proof of prejudice is unnecessary where requirement of statutory provision is mandatory. 'It will come from a person who has denied justice that the person who has been denied justice is not prejudiced.' (Vide S.L.Kapoor v. Jagmohan and Ors. : [1981]1SCR746 ; and State of U.P. v. Shatrughan Lai and Anr. : [1998]3SCR939 .)

10. Against the order of the Disciplinary Authority, Petitioner preferred an appeal before the Appellate Committee of this Court, but the same has been dismissed by the Committee without giving any reason.

11. The alleged show cause/charge sheet seems to be only a notice of holding a preliminary inquiry and the purpose of holding the preliminary inquiry is only to have a finding of fact as to whether regular disciplinary proceedings are required

to be held, and no punishment can be imposed on that. A preliminary inquiry has nothing to do with the inquiry conducted after issue of charge-sheet, unless it is to be relied upon in regular inquiry, (vide *Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar* : (1960) IILLJ61SC ; *Champak Lal Chiman Lal Shah v. Union of India* : (1964) ILLJ752SC ; *Government of India, Ministry of Home Affairs and Ors. v. Tarak Nath Ghosh*, : (1971) ILLJ299SC ; and *Narayan Dattaraya Ramteerathakhar v. State of Maharashtra and Ors.* : AIR 1997 SC2148).

12. The scope of judicial review in such matter is limited to the process of decision making and not against the decision itself as it lies to correct the errors of law or fundamental procedural requirements which may lead to manifest injustice. The Court can interfere with the impugned order in exceptional, circumstances. In exercise of such a power, the High Court cannot trench on the jurisdiction of the statutory authority to re-appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. When the conclusion of the authority is based on evidence, the Court is devoid of power to re-appreciate the evidence. Interference is permissible provided the Court comes to the conclusion that the finding of fact recorded by the authority is not based on facts or authority fails to take into consideration the relevant facts. (Vide *Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and Ors.* : (1999) ILLJ947SC ; *The General Court MartiJ and Ors. v. Col. Aniltej Singh Dhaliwal* : 1998 CriLJ1402 ; *N.R. Nair and Ors., v. Union of India and Ors.* : [2001]3SCR353 ; and *S.J.S. Business Enterprises (P) Ltd., v. State of Bihar and Ors.,* : AIR 2004 SC2421).

13. It is equally well settled that where a quasi-judicial authority record findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the order suffers from the infirmity of non-application of mind and stands vitiated, and such a finding can be held to be perverse and hence unsustainable (vide *Rajinder Kumar Kindra v. Delhi Administration*, AIR 1984 SC 1805).

14. In Commissioner of Income Tax, Bombay & Rs. , v. Mahindra & Mahindra Ltd., and Ors. : [1983]144ITR225(SC) , the Apex Court held as under:

It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

15. In Smt. Shalini Soni v. Union of India : 1980 CriLJ1487 , the Supreme Court held:

It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

16. The ground for interference may be where the Court comes to the conclusion that exercise of power is manifestly arbitrary unreasonably or there is manifest error in the exercise of such power or in isolation of the statutory provision or error of law apparent on the face of the record. (Vide State of U.P. & Ors. v. Renusagar Power Co. and Ors. : AIR 1988 SC1737); Karnataka State Industrial Investment and Development Corporation Ltd., v. Cavalet India Ltd. : (2005)4SCC456 ; Maharashtra State Seeds Corporation Ltd., v. Hari Prasad Drupadrao Jadhao : (2006)IILLJ107SC ; and Mathura Prasad v. Union of India and Ors. : (2007)ILLJ 1021 SC .

17. In CIT (Central), Calcutta v. Daulat Ram Rawatmull : [1973]87ITR349(SC) , the Supreme Court held as under:

There should, in our opinion, be direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact.

18. In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Ors. 1992 Supp. (2) SCC 312, the Supreme Court held that 'if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the findings so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the findings are rendered infirm in law.'

19. The scope of judicial review against quantum of punishment is also very limited. The issue has been considered by the Hon'ble Supreme Court time and again and it has been held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and would violate the mandate of Article 14 of the Constitution. (Vide Bhagat Ram v. State of Himachal Pradesh and Ors. : (1983)ILLJ1SC ; Ranjit Thakur v. Union of India and Ors. : 1988 CriLJ158 ; Union of India and Ors. v. Giriraj Sharma : (1994)ILLJ604SC ; S.K. Giri v. Home Secretary, Ministry of Home Affairs and Ors. 1995 Supp (3) SCC 519; Bishan Singh and Ors. v. State of Punjab and Anr. : (1997)ILLJ926SC ; and B.C. Chaturvedi v. Union of India and Ors. : (1996)ILLJ 1231 SC).

20. In Ranjeet Thakur (supra), the Apex Court observed as under

But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even' as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

21. The said Judgment has been approved and followed by the Apex Court in Union of India and Ors. v. G. Ganayutham : (2000)ILLJ648SC , and after examining elaborately the concept of reasonableness, rationality and proportionality, the same view has been reiterated.

22. In *B.C. Chaturvedi (supra)*, after examining various earlier decisions of the Supreme Court, the Court observed that in exercise of the powers of judicial review, the Court cannot 'normally' substitute its own conclusion or penalty. However, if the penalty imposed by an Authority 'shocks the conscience' of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced him to do so, though he had no intention to do so. (*Vide Giriraj Sharma (supra)*). The Court may further examine the effect, if order is set aside or substituted by some other penalty.

23. In *G. Ganayutham (supra)*, the Apex Court has considered the entire law on the subject and compared the Indian Law with English, Australian and Canadian Laws, and held that in case the Court comes to the conclusion that the punishment awarded is disproportionate or the Disciplinary Authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be remitted back to the appropriate authority for reconsideration and it is only in very rare cases that the Court might to shorten the litigation-think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. In *Aniltej Singh Dhaliwal (supra)*; *U.P.S.R.T.C. and Ors. v. A.K. Paru* : AIR 1999 SC1552 ; and *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Ors.* : (2004)2SCC130 , the Apex Court has taken the same view.

24. In *v. Ramana v. A.P.S.R.T.C. and Ors.* : (2005)III LLJ725SC , the Supreme Court reconsidered the whole issue, compared the Indian Law with English Law on judicial review and after placing reliance on large number of Judgments, came to the conclusion that every administrative order should be rational and reasonable and the order should not suffer from any arbitrariness. The scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be 'shocking to the conscious of the Court, in the

sense that it was in defiance of logic or moral standards.' In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, it may, in exceptional and rare cases, itself can impose appropriate punishment by recording cogent reasons in support thereof.

25. In the case of *State of Meghalaya and Ors. v. Mecken Singh N. Marak* 2008 AIR SCW 4726, the Supreme Court has observed that a Court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the Court, cannot be subjected to judicial review.

26. In *State of Madhya Pradesh and Ors. v. Hazarilal* : (2008)IILLJ715SC , the Apex Court held that issue of proportionality may always be determined by the Court and Court is clear with the order of determination. While deciding the said case, Apex Court placed reliance on its earlier Judgments in *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Co-operative Bank Employees Association and Anr.* : (2007)IILLJ724SC ; and *M.P. Gangadharan and Anr. v. State of Kerala and Ors.* : AIR 2006 SC2360 .

27. In *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* : (2005)ILLJ738SC , the Apex Court placing reliance upon its earlier Judgments in *Colour-Chem Ltd. v. A.L. Alaspurkar and Ors.* : [1998]1SCR663 ; and *Regional Manager, Rajasthan Road Transport Corporation v. Sohan Lal* : (2004)IILLJ 1078 SC held that in case the past conduct is not a parr of the charge-sheet, punishment should not be awarded

considering the same, it would amounts to violation of principle of natural justice.

28. Similar view has been reiterated by the Apex Court in *Indra Bhanu v. Committee, Management of M.M. Degree College and Ors.*, AIR 2004 SC 248.

29. Thus, it is evident that scope of judicial review is limited to the extent that Court may examine whether inquiry has been conducted in consonance with the statutory requirement and authority has given strict adherence to the principles of natural justice, the decision has been taken relying upon relevant materials and order is not perverse being based on irrelevant materials and the delinquent had been given a fair opportunity to meet the charge and punishment is not disproportionate to the gravity of the misconduct. In exceptional circumstances, where the punishment imposed is disproportionate to the delinquency to the extent that it shocks the conscience of the Court, the Court may interfere with the quantum of punishment also.

30. If the instant case is examined in the light of the aforesaid settled legal propositions, we are of the view that the Disciplinary Proceedings have been conducted and concluded in utter disregard to the statutory provisions. The alleged show cause/charge-sheet seems to be basically to find out a fact as to whether there was sufficient material against the delinquent on the basis of which a regular inquiry could be held. The Registrar-cum -Presiding Officer treated the reply to the said show cause as a confession/admission of guilt and recommended severe punishment so that other employees may also learn a lesson. It was further observed by him that the delinquent employee had threatened the Presiding Officer concerned and he caused a problem for the department. The said remarks in his report were unwarranted and uncalled for and could not have been made as the same has not been the case of any person nor these allegations have been mentioned in the alleged show cause/ charge sheet. He made unwarranted observations without any basis and foundation. The Disciplinary Authority went further taking into consideration the past conduct of the employee though it was not permissible for him to do so and imposed the punishment of removal basing on the same though it has never been disclosed to the Petitioner. Copy of the Inquiry Report.along with second show cause notice had never been served upon the

Petitioner/delinquent. Had it been served upon him, he could have furnished explanation for the same. Thus it is not a case in which it can be safely held that cause of the Petitioner had not been prejudiced. As the inquiry had been concluded relying upon the admission of the delinquent employee and that too taking into consideration the explanation furnished by the Petitioner to the so called show cause/charge-sheet, the punishment so imposed is disproportionate to the extent that it shocks the conscience of the Court.

31. In view of the above, the Writ Petition succeeds and is allowed.

The order of punishment is hereby set aside. The Petitioner be reinstated in service with consequential benefits. In view of the fact that Petitioner had been out of service for a long time, he might be in gainful employment, therefore the issue of grant of back wages is considered. Learned Counsel for the Petitioner fairly conceded that he would be satisfied if 20% of the back wages are awarded to the Petitioner. In view of thereof, we direct the Opposite Parties-authorities to make the payment of 20% of the back wages from the date of removal till the date of joining. The same shall be paid within a period of three months from the date of joining. No costs.

B.N. Mahapatra, J.

I agree.

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