
(2015) 119 CLT 89 : (2014) 2 ILR 618 : (2014) 2 OLR 258

Orissa High Court

Case No: O.J.C. No. 6353 of 1998

G.S. Srivastav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 22, 2014

Acts Referred:

Central Industrial Security Force Act, 1968 & Section 8(1) Constitution of India, 1950 & Article 226

Citation: (2015) 119 CLT 89 : (2014) 2 ILR 618 : (2014) 2 OLR 258

Hon'ble Judges: B.R. Sarangi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Dr. B.R. Sarangi, J.

The petitioner, who was working as a Constable in C.I.S.F. filed this application challenging the order of imposition of

major penalty of removal from service by the disciplinary authority under Annexure-5 dated 18.6.1996 and confirmation thereof in appeal vide

Annexure-7 dated 17.12.1996 and reaffirmation in Revision under Annexure-9 dated 8.12.1997 on the ground that the same is in gross violation

of principle of natural justice. Accordingly, he seeks for quashing of the same.

2. The epitome of the fact in the case at hand is that the petitioner bearing Force No. 914492353 appointed as a Constable on 27.3.1991

completed his probation on 5.4.1993 and posted as a Constable at CISF Unit, Paradeep and subsequently on transfer was posted at CISF Unit,

Rourkela under the administrative control of opposite party No. 4. While he was so continuing, he was placed under suspension on 7.2.1996 in

contemplation of initiation of disciplinary proceeding against him and accordingly a memorandum of article of charges have been served vide

Annexure-1 on 5.3.1996 under Rule 34 of CISF Rules, 1969 on the allegation that while he was on duty at HSM loading point on 6.2.1996,

collected Rs. 30/- as illegal gratification from the representative of M/s. Modern Roadways Transport Corporation, Rourkela at about 15.15 hrs.,

which is a gross misconduct on his part. It is further alleged that he also arrogantly refused and used filthy language to SI/EXE, Yamuna Singh

when she wanted to physically search him being suspicious of taking illegal gratification from the transport representative. On the basis of such

memorandum of article of charges in Annexure-1, the petitioner submitted written statement denying the allegation on 11.3.1996 vide Annexure-2

and made a request to allow him to cross-examine P.W.6, namely, Prabhat Kumar Barik, the lifter of M/s. Modern Transport Corporation. Mr.

S.C. Das, Inspector/EXE was appointed as Enquiring Officer on 14.03.1996 to enquire into the charges levelled against the petitioner by the

opposite party No. 5, basing upon which the inquiry was held on 21.3.1996, 23.03.1996, 27.03.1996, 30.03.1996, 01.04.1996, 03.04.1996,

06.04.1996 and in course of inquiry, the enquiry officer examined all the prosecution witnesses except P.W.6, Prabhat Kumar Barik of M/s.

Modern Transport Corporation Ltd. and after conclusion of enquiry held that the article of charge Nos. I and II are proved vide Annexure-3. The

disciplinary authority-opposite party No. 4 served a copy of the enquiry report to the petitioner affording opportunity to him to submit his

explanation against the finding of the Enquiring Officer. The petitioner submitted his explanation to the enquiry report on 29.05.1996 vide

Annexure-4 specifically stating that the prosecution has failed to produce the witness i.e. P.W.6, Prabhat Kumar Barik, the lifter of M/s. Modern

Transport Corporation, therefore the finding of inquiry officer is vitiated having not given opportunity to the petitioner. But the disciplinary

authority-opposite party No. 4 without application of mind to the evidence and without affording opportunity to the petitioner to cross-examine the

vital witness Prabhat Kumar Barik, relied on the imputation of misconduct on the petitioner, and impugned the major penalty of removal from

service vide order dated 18.06.1996 in Annexure-5. Against such order of removal passed by the Disciplinary Authority, the petitioner preferred

an appeal under Rule 42 of CISF Rule before the appellate authority reiterating the same contention which he has stated Before the inquiring

officer as well as the disciplinary authority that he should have been given opportunity to cross-examine Prabhat Kumar Barik, P.W.6 and non-

examination of material witness amounts to violation of principle of natural justice. The appellate authority without application of mind, rejected the

appeal and confirmed the punishment imposed by the disciplinary authority vide Annexure-7 and against such order of confirmation of punishment

of removal from service by the appellate authority, the petitioner moved the Revisional Authority under Rule 42 of the CISF Rules reiterating the

same contention which he raised in the appeal, but the Revisional Authority also without application of mind rejected the application for revision

and confirmed the order of punishment of removal from service passed by the disciplinary authority under Annexure-9.

3. Mr. T.K. Mishra, learned counsel for the petitioner specifically urged that the statement of Prabhat Kumar Behera on whose statement

prosecution has initiated a proceeding, has not been examined nor any opportunity has been given to the petitioner to cross-examine him Moreso,

the inquiring officer failed to produce such evidence basing upon which the article of charges were framed against the petitioner and none

examination of material witness and without affording opportunity to the petitioner amount to violation of the principle of natural justice. Therefore,

the order of punishment imposed on the petitioner should be quashed. Further he urged that while considering the imposition of punishment, the

statement of Head Constable P.C. Sahoo, P.W. 4 that the petitioner did not misbehave the SI/EXE, Yamuna Singh and the allegation with regard

to use of filthy language is not specific has not been taken into consideration In that view of the matter, the punishment imposed is absolutely

misconceived one, thereby the inquiry proceeding is vitiated. Due to non-compliance of the provisions u/s 8(1) of CISF Act, 1968 the imposition

of measure penalty of removal from service is also vitiated. He further specifically urged that the order of imposition of measure penalty is vitiated

due to non-compliance of principle of natural justice inasmuch as though the petitioner has raised consistent contention before the Enquiry Officer,

Disciplinary Authority, Appellate Authority as well as the Revisional Authority to cross examine P.W. 6, Prabhat Kumar Bank on whose statement

the proceeding had been initiated, such opportunity has not been given to him, which amounts to non-compliance of principle of natural justice.

Therefore the entire proceeding is vitiated In order to substantiate his contention he has relied upon the judgments of the apex Court in Kuldeep

Singh Vs. The Commissioner of Police and Others, , Hardwari Lal Vs. State of U.P. and Others, and Bhubaneswar Chhatria Vs. Union of India

(UOI) and Others,

4. Mr. Sudhir Kumar Patra, learned counsel appearing for the CISF supported the stand of the opposite parties and relying upon the counter

affidavit stated that during the enquiry every possible and reasonable opportunity has been given to the petitioner and he has also been given

opportunity to cross examine the prosecution witness which he did So far as the contention regarding cross examination of Prabhat Kumar Bank of

M/s Modern Transport Corporation Ltd. is concerned, the enquiry Officer had issued notice summoning him to attend the enquiry but he did not

turn up. In response to the notice of the authorities, M/s. Modern Transport Corporation Ltd. vide their letter dated 2.4.1996 intimated that

Prabhat Kumar Bank was no more working in their organization and he had resigned from his service and his address is also not known to their

organization. Therefore, the inquiry officer finding no other alternative informed the matter to the petitioner and proceeded ahead for conducting the

inquiry wherein he recorded statement of six prosecution witnesses and defence statement of the petitioner and after completion of the inquiry

submitted the finding that the charges levelled against the petitioner are proved. Basing upon the report, the disciplinary authority imposed major

penalty of removal from service which has been confirmed by the appellate authority under Annexure-7 and also in revision by the Revisional

Authority in Annexure-9. Therefore, no illegality of irregularity has been committed by the authorities in recording the finding of guilt.

5. Considering the above contention raised by the learned counsel for the parties and after perusal of records, it appears that admittedly the

petitioner was serving as a Constable in CISF and when he was discharging his duty it was alleged that he was taking illegal gratification of Rs.

30/- from the representative of private contractor M/s. Modern Transport Corporation Ltd. at HSM loading point and when the search was

conducted, it is alleged that the petitioner abused in filthy language to S.I./EXE Yamuna Singh and did not allow for physical search and later

swallowed the currency note which was given by the lifter as illegal gratification. Therefore he was subjected to disciplinary proceeding and placed

under suspension and subsequently in contemplation of disciplinary proceeding made against him memorandum of article of charges was served

vide Annexure-1. He was called upon to file his reply and the petitioner has also filed his written statement of defence. Considering the same, Mr.

S.C. Das, Inspector/EXE was appointed as Enquiry Officer to cause an inquiry into the allegation made and after examining the witnesses and after

affording opportunity to the petitioner to cross examine him submitted his inquiry report holding that the charges No. I and II have been proved

against the petitioner. On the basis of the said inquiry report, order of removal from service has been passed vide Annexure-5 which has been

confirmed by the Appellate Authority under Annexure-7 as well as by the Revisional Authority in Annexure-9.

6. The sum and substance of the case is that while conducting the inquiry and even at the time of hearing by the disciplinary authority as well as the

appellate authority and the Revisional authority the specific stand has been taken by the petitioner that he should have been given opportunity of

hearing to cross examine P.W. 6, namely, Prabhat Kumar Bank on whose statement the proceeding has been initiated stating that he has given

illegal gratification of Rs. 30/- In course of hearing though notice was issued to P.W. 6, but he did not turn up and M/s. Modern Transport

Corporation Ltd. intimated vide its letter that Prabhat Kumar Bank left the service and he is no more continuing in their organization, thereby they

are unable to produce such witness to cross examine. That ipso facto indicates that opportunity has been denied for non-producing the material

witness, namely, Prabhat Kumar Barik to cross examine him so far as the allegation of illegal gratification of Rs. 30/- is concerned. In any case, the

matter was subjudice before the disciplinary authority, appellate authority and revisional authority and though contention was raised by the

petitioner to cross examine P.W.6, but the authorities without application of mind to that aspect proceeded with the matter mechanically and

confirmed the punishment imposed by the disciplinary authority. No specific finding has also been given to that extent. Finding in a domestic inquiry

can be characterized as perverse if it is shown that such finding is not supported by any evidence on record or is not based on the evidence

adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by

the apex Court. In State of Andhra Pradesh Vs. Sree Rama Rao, in which the question was whether the High Court under Article 226 could

interfere with the findings recorded at the departmental enquiry and such decision was followed in Central Bank of India Ltd. Vs. Prakash Chand

Jain, and in Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others,

7. In Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, it was held that where the findings of misconduct

are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse.

Applying the said principle to the present context, it appears that the person who is alleged to have given the gratification, namely, Prabhat Kumar

Barik on whose statement the entire proceeding has been initiated against the petitioner having not been examined or allowed to be cross examined

the petitioner. Therefore, the finding based on the statement of Prabhat Kumar Barik who was not been examined to support the allegation is

considered to be perverse and accordingly the same is to be rejected. If his statement is rejected as perverse, then the entire proceeding is vitiated.

This Court is conscious of the fact that neither this Court nor the apex Court can interfere with the finding of the fact recorded in a domestic

inquiry, but if the finding of guilt is based on no evidence, then it would be a perverse finding. Therefore, this Court as well as the apex Court has

jurisdiction to consider the same in conformity with the provisions of law.

8. Similar view has also been taken by the apex Court in Kuldeep Singh (supra) in Paragraph-17 which is stated as follows:

This rule, which lays down the procedure to be followed in the department enquiry itself postulates examination of all the witnesses in the presence

of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without

undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was

recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by

him then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned,

namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides

that unsigned statement shall be brought on record only through the process of examining the officer or the Magistrate who had earlier recorded the

statement of the witness whose presence could not be procured.

9. Similarly, in paragraph-3 of the judgment Hardwari Lal (supra) the apex Court held that non-observance of the principles of natural justice in not

examining the complainant, whose evidence could have revealed the truth or otherwise of the charges amounts that no proper inquiry has been held

by the authority and on that score the Court has to quash the order of imposition of major penalty of removal from service.

10. This Court in Bhubaneswar Chhatria (supra) has also referring to Hardwari Lal (supra) set aside the punishment imposed on the delinquent

holding that non-examination of complainant whose evidence could have revealed truth or otherwise of the charges is also a material factor to be

taken into consideration. Had Prabhat Kumar Barik been examined in the proceeding he could have said with regard to payment of so called illegal

gratification of Rs. 30/- to the petitioner. Therefore, non-examination of material witness and non-affording of opportunity to the petitioner amounts

to none compliance of principle of natural justice. Therefore, the proceeding is vitiated and in consequence thereof the major penalty of removal

from service in Annexure-5 and confirmation thereof in appeal Annexure-7 as well as in Revision under Annexure-9 also cannot be sustained.

11. In view of the aforesaid analysis being made and after going through the evidence on record, this Court is of the view that the finding of the

Enquiring Officer is based on no evidence and as such there is non-compliance of principle of natural justice. Therefore, this Court sets aside the

order of removal from service passed by the disciplinary authority, which has been confirmed by the appellate authority vide Annexure-7 and the

Revisional Authority vide Annexure-9.

12. Accordingly, the writ petition is allowed. Opposite parties are directed to reinstate the petitioner in service with all consequential benefits as due admission to him.