

HIGH COURT OF MADHYA PRADESH, JABALPUR

Writ Petition No.10757 of 2007

Pooransingh Sisodia

Vs.

High Court of M.P.,
And others

Present : **Hon'ble Shri Justice Rajendra Menon,**
 Acting Chief Justice
 Hon'ble Shri Justice Anurag Shrivastava

Shri P.N.Dubey, counsel for petitioner.

Shri P.R.Bhave, learned Senior Advocate with Shri Deodatt
Bhave, counsel for respondents.

Whether approved for reporting: Yes/No.

ORDER
(7.9.2016)

Per Anurag Shrivastava, J :

By filing this petition under Article 226 and 227 of the Constitution of India the petitioner has challenged the order dated 1.10.1999 (Annexure P-4) by which he has been reverted to lowest rank of Process Writer and also the order dated 28.9.2000 (Annexure P-5) by which the appeal preferred by him against the said order of reversion has been rejected.

2. The petitioner was initially appointed as a peon on 4.2.1981 in the District Courts establishment at Damoh. Later on he got promotion as Process Writer on 15.6.1981

and thereafter promoted as Lower Division Clerk in 1996. There was a criminal case no.2122/1997 under section 147, 148, 149, 302, 427, 323 & 324 of IPC, pending against one Munna @ Manohar before Judicial Magistrate First Class, Hatta, in which the accused Munna had moved an application for release on bail, which was pending for consideration before Special Judge, Damoh. It is alleged that petitioner had instigated the parents of accused Munna, Smt.Tulsa Bai and Chakodilal to approach the Special Judge and get their son released on bail by making payment or fulfilling the demand of the Judge concerned. As directed Smt.Tulsa Bai and Chakodilal came to Damoh and approached the Special Judge at his residence and offered him money for releasing their son on bail. The Special Judge called them in Court on the same day and after making detailed inquiry, recorded the statement of Smt.Tulsa Bai Chakodilal and other staff of Court. Chakodilal and Smt.Tulsa Bai had categorically stated before Special Judge that they had been directed by petitioner to make approach to him for securing their son's bail. The Special Judge reported the matter to District Judge, thereafter Disciplinary Inquiry proceeding was initiated against petitioner.

3. The inquiry was conducted in accordance with the provisions of M.P.Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'Rules'). The Second Additional District Judge was appointed as the Inquiry Officer. After holding the inquiry he submitted the report to the District Judge, who acted as the Disciplinary Authority and after following the procedure the Disciplinary Authority passed the impugned order dated 1.10.1999, imposed punishment on the petitioner reverting him to the lowest rank

of Process Writer. The petitioner had preferred an appeal before respondent no.2, which was also rejected by order dated 28.9.2000.

4. It has been contended by the learned counsel for the petitioner that the impugned order is bad in law as no proper preliminary inquiry was held, therefore without giving the opportunity of hearing in preliminary inquiry the petitioner's fundamental right has been violated. It is also submitted that the charge framed against petitioner is vague and indefinite, due to which petitioner could not raise his defence and effectively cross examine the witnesses which vitiates the inquiry. There is no reliable evidence adduced against the petitioner. The evidence of parents of accused is not trustworthy. The Enquiry Officer had wrongly arrived at conclusion to hold petitioner guilty. The finding of Inquiry Officer is perverse, therefore impugned order is liable to be quashed and petitioner is to be reinstated as Lower Division Clerk with all benefits.

5. Learned counsel for respondents has supported the procedure adopted and findings given by the Inquiry Officer and stated that there is no procedural irregularity or flaws found in the inquiry proceedings. The findings of the Inquiry Officer are based upon due appreciation of evidence. There is no infirmity in it. Keeping in view the charge found proved and conduct of petitioner the punishment imposed upon him is not very harsh or excessive. Therefore this petition is liable to be dismissed.

6. Considering the rival contentions of the learned counsel for the parties and on perusal of record, it is found that the

allegations are, the parents of accused had approached the Special Judge in order to persuade him to grant bail to their son. As they had offered him money as a bribe, the Special Judge had recorded their statement and the statements of other eye witnesses and sent a report to the District Judge for initiating disciplinary action against the petitioner. The report of Special Judge alongwith statements of the witnesses and parents of accused may be taken as preliminary inquiry report. On the basis of this report District Judge has ordered for initiation of regular inquiry. Since copy of the report of Special Judge and statement of witnesses had already been given to petitioner, therefore there was no need to make further preliminary inquiry on the same allegations. The preliminary inquiry is conducted only to explore as to whether a regular departmental inquiry is necessary, and once after the preliminary inquiry a regular departmental inquiry is ordered and while conducting the regular departmental inquiry, statement of the witnesses recorded in the preliminary inquiry is supplied to the delinquent employee, then no prejudice is caused to the employee and, therefore, the arguments advanced before us to say that the preliminary inquiry was conducted behind the back of the petitioner is unsustainable.

7. As far as the vagueness of charge is concerned, in the charge framed except time, date and place where the petitioner had incited the parents of the accused for making approach to Special Judge, all other ingredients of misconduct has been mentioned. Smt.Tulsa Bai in her preliminary statement before Special Judge has stated that two days back the petitioner came to her house and told her

to go to Special Judge for getting the bail of her son. This indicates the place and date of the alleged mis-conduct. The copy of the statement has already been supplied to the petitioner. Therefore it cannot be said that petitioner was misled or not able to raise his defence because of vagueness of charge.

8. In the case laws **State of Uttar Pradesh Vs. Mohd. Sharif** (AIR 1982 SC 937) and **Surath Chandra Chakravarthy Vs. State of West Bengal** (AIR 1971 SC 752) relied upon by learned counsel for petitioner the charges framed were vague and indefinite and the statements of the witnesses recorded during the preliminary inquiry were not supplied to the delinquent at the time of disciplinary inquiry, therefore Hon'ble Apex Court held that the delinquent was denied reasonable opportunity to defend himself at disciplinary inquiry and quash the proceedings. In the present case the facts are different, therefore the above case laws are not applicable.

9. The scope of judicial review in the matters of administrative actions pertaining to disciplinary proceedings has been discussed and crystallized by Hon'ble Supreme Court in the case of **S.R.Tiwari Vs. Union of India** [(2013) 6 SCC 602]. In para 19 & 20 of the aforesaid judgment Hon'ble Apex Court has reiterated as:

"19. In *Commissioner of Income Tax, Bombay & Ors. Vs. Mahindra & Mahindra Ltd. & Ors.*, AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole

catena of decisions. The Court further held :

"It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."

20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure."

10. It has been argued by learned counsel for the petitioner that finding of the Inquiry Officer was perverse as there is no reliable evidence to prove that the petitioner has directed the parents of the accused to make approach to Special Judge for obtaining bail of their son by illegal means. Although the scope of judicial review may not permit reassessment of the evidence led before the Inquiry Officer, but to consider the question of perversity, if any in recording findings, we have gone through the finding of the Inquiry

Officer and we find that in the departmental inquiry eight witnesses were examined on behalf of the prosecution. The witnesses Nonhe Singh (PW3), Kalyan Singh (PW4), are the Peons of Court, J.P.Tantwaye (PW6) is Accountant, R.S.Pandey (PW7) and Khemchand Jain (PW8) are Readers. Only the witnesses B.G.Yadav (PW5) Special Judge and None Singh and Kalyan Singh, Peons had deposed in their statement that Smt.Tulsa Bai (PW1) and her husband Chakodilal (PW2) approached the Special Judge and stated that as directed by petitioner they had come for getting bail of their son and ready to pay Rs.10,000/- for the same. Therefore the statement of these witnesses are hearsay. They have no personal knowledge of the fact whether the petitioner had instigated Smt.Tulsa Bai and Chakodilal to make approach to Special Judge.

11. Now only evidence available against the petitioner is that of Smt.Tulsa Bai (PW1) and Chakodilal (PW2). As per prosecution story the petitioner had directed both Smt.Tulsa Bai (PW1) and Chakodilal (PW2) to make approach to Special Judge, but Chakodilal (PW2) in his statement had not supported the prosecution case and denied the whole prosecution story. He has deposed that he did not know the petitioner and he had no talk with petitioner regarding his son's bail. He is declared hostile. Another witness Smt.Tulsa Bai although in her examination-in-chief had supported the prosecution case, but in her re-cross examination, paras 12 & 13 she had denied her previous statements and categorically stated that petitioner had never asked her to go to Special Judge and try to get the bail of her son by offering him bribe

or gratification. Therefore the statement of Smt.Tulsa Bai gets totally contradicted in her cross-examination.

12. She has stated that she had arranged Rs.10,000/- for payment of bail order by mortgaging her land to Bihari Seth, but Bihari Seth (DW1) has denied this fact. Even her husband Chakodilal has not supported her in this regard. The Enquiry Officer has rightly disbelieved the statement of Smt.Tulsa Bai regarding offering of Rs.10,000/- to Special Judge for bail. Therefore keeping in view the contradictory statement of Smt. Tulsa Bai, which is not supported by her husband Chakodilal, the sole testimony of Smt.Tulsa Bai, cannot be relied upon. There is no other evidence produced by the prosecution to show that the petitioner had visited the house of Smt.Tulsa Bai and persuaded her and her husband Chakodilal to approach Special Judge for obtaining bail of her son. The Inquiry Officer without considering the contradictory statement of Smt.Tulsa Bai came to conclusion that the charges levelled against petitioner is proved on account of preponderance of probability. This finding is baseless and perverse.

13. The evidence of Smt. Tulsa Bai is not sufficient enough to hold that it is the petitioner who had instigated her or advised her to go to the Special Judge alongwith her husband and pay the amount. Her husband Chakodilal does not support her and in her cross-examination Smt.Tulsa Bai does not approve with regard to the previous statement made by her in the departmental inquiry. On the contrary before the Inquiry Officer, it is categorically stated by her that the present petitioner never asked her to go and see the

Special Judge. That apart, from the evidence that has come on record, we find that when Smt.Tulsa Bai and Chakodilal came to the house of Special Judge, it was the peon posted in the office of Special Judge, namely PW/3 Nonhe singh, who went to the Presiding Judge and told him about the visit of Smt. Tulsa Bai and her husband and escorted them to meet the Judge concerned. There are evidence available on record which suggests that Nonhe Singh is related to both Smt.Tulsa Bai and Chakodilal and the defence of the petitioner is that it is at the instigation of Nonhe Singh that he has been falsely implicated. This aspect of the matter has been completely over looked by the departmental authorities and the Enquiry Officer and in the absence of there being specific evidence to show that it was the petitioner who instigated Smt. Tulsa Bai and her husband to go and visit the Presiding Officer, the finding recorded by the Inquiry Officer cannot be approved by this Court. It has to be termed as a perverse finding and not supported by cogent evidence.

14. In **Kuldeep Singh Vs. The Commissioner of Police and others** (AIR 1999 SC 677) Hon'ble Apex Court in para 7 observed as below :

"In Nand Kishore v. State of Bihar, AIR 1978 SC 1277 : (1978) 3 SCC 366 : (1978) 3 SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed

against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.”

(Emphasis supplied)

15. Accordingly the petition deserves to be and is hereby allowed. The impugned order of reversion dated 1.10.1999 (Annexure P-4) and appellate order dated 28.9.2000 (Annexure P-5) are quashed. The petitioner is directed to be reinstated on his original post as Lower Division Clerk with all consequential benefits and seniority, as per rules.

(Rajendra Menon)
Acting Chief Justice

(Anurag Shrivastava)
Judge

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