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RESERVED

Court No. - 36
Case :- WRIT - A No. - 39169 of 2012
Petitioner :- Harlal Saini
Respondent :- Union Of India And Others
Counsel for Petitioner :- Santosh Kesarwani,O.P.Agrawal,Pooja Srivastava,Yogendra Kumar
Counsel for Respondent :- A.S.G.I.,A.S.Azami,Himkanya Srivastava

Hon'ble Mrs. Sunita Agarwal,J.

Heard Sri B.K. Srivastava learned Senior Advocate assisted by Ms. Pooja Srivastava learned Advocate for the petitioner and Ms. Himkanya Srivastava learned Advocate for the respondent.

The petitioner seeks to challenge the order dated 15.5.1999, whereby his appointment to the post of Constable (CISF) has been brought to an end holding him guilty of the charges levelled against him. The charge against the petitioner in the charge sheet dated 20.1.1998 which had lead to the departmental enquiry is as follows:-

Charge

"*Force No. 884667433 Constable H.L. Saini of CISF Unit SSTPS Shaktinagar and Force No. 8923331600 Constable Shailesh K.B. of CISF Unit B.C.C.L. Dhanbad Area 12 at Begunia Headquarters Unit Line on dated 11.09.1997 at 2030 hours both consumed opium solution which resulted in the death of said Constable Shailesh K.B. on 12.09.1997 at 0210 hours at Sanctoria Hospital E.C.L and Constable H.L. Saini received treatment by Dr. M. Khalid of Lions Club Raghunath Kharkia Eye Hospital Kharkianaga, Chirkundo against payment of Rs. 5/-. Hence this act of the said Constable H.L. Saini is an act of serious indiscipline, bad conduct and criminal behaviour which resulted in the death of Constable Shailesh K.B."*

Reply to the charge sheet was submitted on 23.3.1998. The enquiry report dated 13.4.1999 was submitted exonerating the petitioner saying that the charges were not proved. The disciplinary authority put a disagreement note relegating the matter for fresh enquiry.

Against the order of disagreement dated 15.5.1999, the petitioner preferred an appeal on 6.5.1999, which was rejected on 21.10.1999. The said orders were, thereafter, subjected to challenge before the Supreme Court in a petition under Article 32 of the Constitution of India. It was dismissed as withdrawn with liberty to the petitioner to approach the High Court. In the writ petition filed before the Delhi High Court, the petitioner got it dismissed as withdrawn for filing it before the Court of competent jurisdiction.

The challenge to the dismissal order and the order of rejection of appeal is that the proceedings of enquiry was not concluded in accordance with the principles of natural justice. The alleged incident stated to have taken place at CISF Unit, BCCL, Jahria but the enquiry was conducted at a different place at Shaktinagar, where the records were not available. The disciplinary authority once found that the findings of the enquiry officer was not in accordance with law, only option left before it was to quash the same and remit the matter back for fresh submission of the enquiry report.

Earlier the enquiry report dated 5.4.1999 was not agreed by the disciplinary authority and the entire file was returned to resubmit the enquiry report which was re-submitted on 13.4.1999. In the subsequent report, the enquiry officer gave a categorical finding that the charges against the petitioner were not proved, however, the disciplinary authority disagreeing with the findings recorded in the enquiry report, proceeded to record its own finding on the basis of circumstantial evidence holding the petitioner guilty. No notice or opportunity of hearing was given to the petitioner at this stage i.e. when the disciplinary authority disagreeing with the enquiry report proceeded to record its own finding, opportunity of hearing was needed.

Reference has been made to the judgment of the Apex Court in **Punjab National Bank and others vs. Kunj Behari Misra**[1] to

1 AIR 1998 SC 2713

substantiate this submission.

It is further contended that though the disciplinary enquiry proceeds on the principles of preponderance of probabilities but the reasons supporting the probabilities from the circumstances brought before the enquiry officer are required to be recorded. It is not permitted for the disciplinary authority to arrive at a conclusion on mere surmises and conjectures to hold the delinquent employee guilty. The adequacy or sufficiency of evidence would not be seen in a challenge to the departmental enquiry, but wherein there is a case of no evidence, the principles of preponderance of probability would not be attracted as the said principle requires at least some evidence for appreciation to reach at the conclusion of guilt of the delinquent.

In a case of no evidence, the conclusion of the disciplinary authority or reasoning of the enquiry officer to hold the delinquent guilty would be bad.

Learned counsel for the respondents, on the other hand, defended the order impugned with the submission that after full fledged enquiry, the charges were found proved by the disciplinary authority. The opportunity of hearing has been provided. There was sufficient evidence to hold the petitioner guilty.

In the supplementary affidavit, the statements of the witnesses who deposed against the petitioner has been brought on record.

In view of the above rival submissions, relevant is to note that the charge against the petitioner was that he alongwith another Constable Shailesh had consumed opium on 11.9.1997 at about 20:30 hours at Begunia Headquarters Unit Line, which has resulted in death of said Constable Shailesh on 12.9.1997. The petitioner also had undergone treatment by Dr. M. Khalid of Lions Club Raghunath Kharkia Eye College. Hence this act of the petitioner has been termed as an act of serious indiscipline, bad conduct and criminal behaviour

which had resulted in death of another Constable Shailesh.

During the course of enquiry, eight witnesses were examined by the prosecution. Out of which, the key witness was PW-1 Constable Trilochan Singh who deposed in his examination-in-chief that on 11.9.1997 at about 20:30 hours, the Constable petitioner offered him a liquid which looked like tea and asked him to drink it while informing that it was opium. P.W. 1 had, however, refused and went away. When he came back in the night at about 23:30 hours, he was told that Shailesh was admitted in the hospital and, thereafter, he received message that Shailesh had died. In his cross-examination, nothing much could be elicited apart from the fact that Shailesh was eating his food while sitting at the 'Cot' and was in normal condition.

In the cross examination by the enquiry officer, PW-1 further says that he did not know as to whom the liquid containing opium was offered after he refused to drink it as the Constable petitioner went back to his place. All other witnesses had proved that Shailesh fell ill and was admitted in the hospital and died. No one had seen Shailesh and the petitioner Constable consuming opium together or the petitioner offering it or that it was consumed by the deceased Shailesh. The reference of statements of all other witnesses, therefore, is not needed here. The doctor P.W.-8 proved his report and the opinion that death was caused by some unknown poison. Another doctor PW-11 was produced to prove that the petitioner was also treated in his hospital with complaint of obstruction in the passage of urine. He has given an opinion that in case of consumption of opium, such kind of medical condition may occur.

The enquiry officer after perusal of the record before it and oral evidences came to the conclusion that the charge that Constable Shailesh consumed opium on the offering of the delinquent and had died on account of the same was not proved. P.W.-2 only states that Shailesh while having his food had told him that he had consumed

opium but no one could prove that the opium liquid was consumed by Shailesh which was offered by the petitioner. It is also not proved that he died on account of consumption of opium. No one had seen both of them sitting together or consuming opium.

This enquiry report was considered by the disciplinary authority but it has disagreed with the conclusion drawn by the enquiry officer. Having noted that the findings were not correct, it has proceeded to appreciate the evidences available on record. Noticing that the petitioner had offered opium solution to P.W. 1 who had refused to consume the same, it was presumed that the said opium solution was offered to and consumed by Shailesh. From the report of the doctor that the cause of death was “unknown poison”, it was assumed that the poison was opium. From the fact that the petitioner himself was admitted in another hospital and was treated for obstruction of urine passage, it was assumed that he had consumed opium and was admitted in the hospital for that reason. The appellate authority while looking to the correctness of order of the disciplinary authority only records the past conduct of indiscipline of the petitioner.

However, no one could assail that fresh notice was required to be given by the disciplinary authority while recording independent finding, disagreeing with the enquiry report on the same set of evidence. Learned counsel for the petitioner has brought the judgment of the Apex Court in **Punjab National Bank** (supra) to substantiate his submission that the order of the disciplinary authority is bad, inasmuch as, no opportunity of hearing was provided.

Reference has been made to paragraph nos. '17', '18' and'19' of the said report which are relevant to be quoted hereunder:-.

> *“**17.** These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (AIR 1963 SC 1612) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an*

adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (1994 AIR SCW 1050) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

18. *Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to*

represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).

19. *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."*

Considering the observations of the Apex Court in **State of Assam vs. Bimal Kumar Pandit**[2] and **Managing Director, ECIL vs. Karunakar**[3], it was held therein that the first stage of the enquiry is not complete till the disciplinary authority has recorded its finding. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiry officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority, who may take further action which may be prejudicial to the delinquent officer. In a case where enquiry report is in favour of the delinquent employee but the disciplinary authority proposes to differ with such conclusion, then that authority which is deciding fate of the delinquent officer must give him an opportunity of being heard for otherwise, he would be

2 AIR 1963 SC 1612
3 1994 AIR SCW 1050

condemned unheard. In departmental proceedings what is of utmost importance is the finding of the disciplinary authority. It was finally concluded therein that where the disciplinary authority imposed penalty by coming to a different conclusion from that of the enquiry officer, it was required to provide opportunity of hearing to the employee. The reason being that the authority which has to take a final decision and impose a penalty shall give an opportunity to the officer charged of his conduct to file his reply on the charges, otherwise not found proved by the enquiry officer.

No contrary view could be placed before the Court by the learned counsel for the respondent.

In view of the above discussed law, it is clear that the order of the disciplinary authority is in gross violation of the principles of natural justice, as admittedly, opportunity has not been provided to the petitioner. Since, it was a case where charges were not found proved by the enquiry officer, a different conclusion could be drawn by the disciplinary authority only after inviting objections of the delinquent employee.

Now, on the question of merit of the order of the disciplinary authority, relevant is to note that the disciplinary authority while disagreeing with the findings of the enquiry officer had simply recorded that since PW-1 knew that opium solution was with the petitioner who had offered it to him coupled with the fact that the Constable Shailesh was admitted in the hospital and died on account of some unknown case of poisoning, an inference can be drawn about involvement of the petitioner in offering him opium solution.

As noted above, having gone through the oral evidences on record, there is no doubt to the fact that there was no direct evidence against the petitioner that he had consumed opium with the deceased Shailesh or that he offered opium to Shailesh. No one had seen them consuming opium together or even sitting together. It is, thus, a case of

no evidence. The disciplinary authority has simply acted on surmises and conjectures to create a hypothesis of involvement of the petitioner in the death of Constable Shailesh. Mere assumption of any situation on hypothetical criteria without any supportive evidence (even circumstantial) would not be proof even on the principles of preponderance of probabilities. The said principle does not give leverage to the disciplinary authority to create a hypothesis by its own imagination without any evidence. The reason given by the disciplinary authority in the order impugned of holding the petitioner guilty is nothing but creation of his own imagination. As this is a case of no evidence, the entire decision making process culminating in the decision of the disciplinary authority suffers from perversity and arbitrariness. The order of punishment awarded by the disciplinary authority, therefore, cannot be sustained. The same is hereby quashed.

The appellate authority has simply rejected the appeal on the ground that the procedure laid down for departmental enquiry had been followed and there was no miscarriage of justice. Further the punishment awarded was commensurate with the gravity of offence. It has simply overlooked the requirement of opportunity to be given by the disciplinary authority before recording the finding of guilt when the petitioner was exonerated in the enquiry i.e. charges against him were not proved by the enquiry officer.

The order of the appellate authority, therefore, is set aside.

The petitioner is entitled to reinstatement with all consequential benefits and back wages for the period of discontinuance, inasmuch as, the employers have illegally restrained him from working by proceeding in an arbitrary manner.

Subject to the above observations and directions, the writ petition is **allowed**.

Order Date :- 28.8.2019
Brijesh (Sunita Agarwal, J.)