

{1}

- (1) Civil Writ Petition No.1505/93
S.P.Gupta Vs. State of Rajasthan
And
- (2) Civil Writ Petition No.3852/93
Shanker Sukhani Vs. State of Rajasthan

Date of Order ::: 31/05/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr.Mahendra Singh for petitioners
Mr.B.K.Sharma, Dy.Govt. Advocate for respondent State

Both these two petitions arising out of order passed in joint inquiry and involving common questions of law & facts, are being disposed by this common order at joint request of both the parties.

In a joint inquiry initiated in pursuance of charge sheet dt.25/08/85 issued U/r 16 read with S.18 of Rajasthan Civil Services (Classification, Control & Appeal) rules, 1958 ("CCA Rules") against petitioners, they were inflicted with penalty of dismissal from services vide common order dt.06/02/93.

In a narrow compass, relevant facts are taken from CWP 1505/93 (SP Gupta Vs. State). Petitioners (1) S.P.Gupta & (2) Shanker Sukhani entered into service as Junior Engineer in 1958 & 1960 respectively in Irrigation Department of respondent State and were promoted as Assistant Engineer and Shanker Sukhani was further promoted as Executive Engineer. The delinquency relates to the period of posting of Shankar Sukhani as Executive Engineer, Irrigation (Mod.) Division, Tonk from 23/11/82 to 30/06/83 and of SP Gupta as Assistant Engineer, Irrigation Sub-Division, Uniara (Tonk)

from 17/01/81 to 27/06/83.

A complaint was made by local residents of Uniara town and also by local public representative Ramlal Gurjar stating inter alia that without there being any repair work being carried at the canal & dam in Uniara sub-division during 1981-83, amount of repair work has been disbursed to the contractor in connivance of concerned Executive, Assistant & Junior Engineers. Upon such complaint, State Government ordered to hold preliminary inquiry by S.S.Bhandari, Superintending Engineer, Ajmer; accordingly all were informed to participate in preliminary inquiry vide letter dt.14/05/83 to remain present in inquiry on 17/05/83. However, SP Gupta applied for and proceeded on leave from 16/05/83 for one month and thus did not participate in P.E., but Shanker Sukhani participated therein. S.S.Bhandari submitted report alongwith his letter dt.20/05/83 (Exp29), thereafter second preliminary inquiry was ordered to be held by AK Bhatnagar, Executive Engineer, before whom despite intimation sent to all delinquents, none of them participated in P.E., and after recording statement of witnesses, A.K.Bhatnagar sent his report (Exp30) to the State Government by recording finding of having prima facie evidence against delinquents for disbursement of payment without repair work being done at disputed area of sub-division. Upon objection being raised, third preliminary inquiry was ordered to be held by M.R.Jain Executive Engineer, who also submitted his report dt.31/03/84 (Exp31).

{3}

After taking note of three reports of P.Es., conducted at different spell, State Government finally considered to hold disciplinary inquiry and thereby charge sheets were issued U/r 16 of CCA Rules to all three delinquents including both the petitioners vide memo dt.25/08/85 alongwith statement of allegations, imputing six charges against SP Gupta and four charges against Shanker Sukhani. After service of aforesaid charge sheets, petitioners submitted their applications to supply copies of relevant documents and record, so also asking for an opportunity to inspect those records, which were required for preparation of their explanation in defence.

According to their own versions, those desired documents/ record were made available for inspection from time to time but some of records & documents were not made available for inspection - few of which has been disclosed by them in Annexures 10 & 13. However, petitioners submitted their explanation and after taking note whereof, inquiry officer was appointed vide order dt.09/04/87, and after affording full opportunity of hearing to each of petitioners as provided U/r 16/18 of CCA Rules, Shanker Sukhani was held guilty of all four charges while SP Gupta was held guilt of all charges except charge No.3, by inquiry officer in his report, which was furnished to both of them vide letter dt.16/08/91 (Ann.16) asking for their explanation against finding of guilt recorded by inquiry officer. After examination of their explanation, and after taking into consideration record of inquiry

{4}

submitted by inquiry officer U/r 16(8) of CCA rules, the disciplinary authority recorded its reasons as provided in R.16(9) of CCA rules, and concurred with finding of guilt recorded against each of petitioners and accordingly inflicted penalty of dismissal from service against each of them vide order dt.06/02/93 (Ann.18). Hence these petitions.

Shri Mahendra Singh, Counsel for petitioners urged that entire relevant record - of which reference has been made in para 15 in CWP 1505/93 was neither supplied nor made available for inspection to the petitioners and a list of such documents which were not made available, finds place on record in Ann.31, which refers that except "L" section & cross section measurement books complete record was supplied and made available for inspection which according to them, has caused great prejudice in defending their case properly before inquiry officer and it has resulted in denying an effective opportunity to defend in course of inquiry and according to Counsel, denial of reasonable opportunity has vitiated the inquiry and so also its consequential decision. In support of his contention, the Counsel has placed reliance on the decisions of Apex Court in **(1) State of UP Vs Shatrughanlal (1998(6) SCC 651)**, **(2) State of UP Vs Mohd. Sharif (1998(2) SCC 376)**, & **(3) State of M.P. Vs.P.V.Chintaman (AIR 1961 SC 1623)**.

Shri Mahendra Singh further urged that reports (Exp29 & Exp31) of preliminary inquiries

conducted by S.S.Bhandari & M.R.Jain, were relied upon as secondary evidence by inquiry officer but their authors (SS Bhandari & M.R.Jain) were not examined by the department so as to prove these P.E. Reports, and thereby petitioners were deprived of their right to cross examine these P.E. Officers in respect of findings recorded by them in their reports (Exp29 & P31) which were considered by inquiry officer while holding petitioners guilty.

Lastly Shri Mahendra Singh contended that disciplinary authority has mechanically concurred with finding of guilt recorded by inquiry officer but has failed to discuss and consider reply submitted by petitioners and has ignored the evidence led by defence witnesses in course of inquiry and thus, according to Shri Singh, disciplinary authority has not applied its mind independently to the record of inquiry as furnished by inquiry officer U/r 16(8) of CCA Rules, in such circumstances, the order of penalty legally speaking is a non-speaking and does not disclose due application of mind of competent authority which took decision to inflict penalty of dismissal from service. In this regard, the counsel has relied upon decisions of Apex Court in (1) **Union of India Vs. K.A.Kittu (2001(1) SCC 65)**, (2) **State of Punjab Vs. V.K.Khanna (2001(2) SCC 330)** so also of this Court in (3) **Hemendra Kumar Vs State of Rajasthan (1991(2) RLR 98)** & (4) **Bagdaram Vs. State of Rajasthan (1992 (2) RLR 579)**.

Respondents have filed reply to writ

petition. Shri B.K.Sharma, Dy.Govt.Advocate for the State submitted that complete record of inquiry was made available for inspection to the petitioners and so far as documents referred to in Annexure 31 i.e., "L" section and Cross section of measurement books, which are said to have been not made available, were neither noticed nor taken note of by inquiry officer while recording finding of guilt, therefore, in the absence whereof, no prejudice can be said to have been caused to them. It has also been submitted that so far as measurement book 70-72 & 257 is concerned, it could not be produced for the reason that it was retained by petitioners and the evidence which has come on record in course of inquiry it is established that these books were retained by SP Gupta or Shri Gopal Agrawal Jr.Engineer and since these books were not made available by them, inquiry officer proceeded on the basis of other material adduced in evidence for consideration and it is evident from the record of inquiry that total 66 documents were produced in evidence in the course of inquiry, including three reports submitted by preliminary inquiry officers as Exp29, P.30 & P.31, from which it appears that at all stages, due intimations were sent to the petitioners for their participation but they proceeded on leave and did not participate in preliminary inquiry. It has also been submitted that in respect of charges imputed upon petitioners, statements were recorded of local residents, PW1 Moolchandra, PW2 Ramvilas, PW3 Sheoji; besides PW5 A.K.Bhatnagar who conducted one of P.Es, PW8 Kalyanmal Sarpanch, PW6 Brijesh & Pw7

Aso Vidhani (AEns). So far as petitioners were concerned, no documents were produced by them in support of their defence but few of employees and contractors (Dw1 to Dw4) were produced in evidence.

Shri B.K.Sharma DyGA for respondent State urged that inquiry officer, after taking note of entire material including statements of departmental & defence witnesses recorded in course of inquiry and after detailed discussion whereof, held petitioners guilty of the imputed charges, as referred to above, and after the record of inquiry along with report was sent by inquiry officer in terms of R.16(8) of CCA Rules to disciplinary authority, its copy was furnished to petitioners for their explanation/objection to finding of guilt; and after taking note of the same, disciplinary authority considered entire material on record and considering objections raised by delinquent against finding of guilt, and looking to nature of charges found proved, it has rightly inflicted penalty of dismissal from service against them vide order dt.06/02/93.

In support of his contentions, Shri B.K.Sharma for respondent State placed reliance on the decision of Apex Court in ***R.S.Saini Vs State of Punjab (1999(8) SCC 90)***, ***Lalit Popli Vs. Canara Bank (2003(3) SCC 583)*** and ***B.C.Chaturvedi Vs. Union of India (1995(6) SCC 749)*** and submitted that technical rules of evidence or standard proof of fact as contemplated in the Evidence Act, are not applicable to disciplinary proceedings and the Court cannot

appreciate or reappraise so as to arrive at its own independent finding, because of scope of judicial review in matters of such nature being restricted.

I have considered rival contentions of both the parties and pondered over material on record. Sufficient material has come on record to show that while preliminary inquiries were being conducted by the officers, named above, due intimations were sent to petitioners, to whom opportunities were afforded for their participation and cooperation in course of preliminary inquiries but any how they did not participate therein and on the basis of material produced on record, prima facie case was found on record as is evident from such reports in P.Es., which were produced by department in course of disciplinary inquiry as ExP29 to P31, and these documents were made available to petitioners for inspection in course of inquiry and that apart, one of preliminary inquiry officer Shri AK Bhatnagar (Pw5) appeared as witness and who was cross examined by petitioners in course of inquiry, therefore, once report of PE was made available for inspection in course of inquiry with a view to afford an opportunity to them to prove their innocence in defence and to contradict findings recorded in P.E.; but merely because few of them who too conducted P.Es., were not produced by department as witnesses in course of inquiry, in my opinion, in any manner will not cause any prejudice to the delinquents, particularly the material on which inquiry proceeded and was made available for

inspection, and petitioners were not able to show as to how prejudice in defending their case in course of inquiry has been caused to them.

Decisions on which Sri Mahendra singh relied, in **State of MP Vs. PV Chintaman (supra)** was a case where copies of documents, to which public servant was entitled, were not supplied and documents which were demanded by delinquent were relevant so also of invaluable assistance in making out his defence in cross examination of witnesses produced in evidence against him, while in present case, it is petitioners' own case that as per Annexure 31 except "L" section & cross section of measurement books, other documents were made available to them - copies whereof were either supplied or made available for inspection. They failed to point out that the record referred to in Annexure 31 which was not made available to them, was at all considered by inquiry officer while recording finding of guilt against them, in such circumstances it cannot be said that any prejudice has been caused and therefore judgment relied upon is of no assistance to them.

As regards other decisions referred to by petitioners, they are also in relation to principle of natural justice and as per which, relevant record, if not provided or made available for inspection, and which has direct bearing on the charges imputed against delinquent, so also required for cross examination of witnesses in course of inquiry, the effect of the same will be violative of principle of natural justice. But in present case,

only record which was not made available, has been referred to in Annexure 31, for which petitioners failed to point out as to how it has caused prejudice to them and what will be the effect on finding of guilt while holding charges proved against them. It has also come on record that measurement books 70-72 & 257 were not made available to petitioners in course of inquiry as the same were retained by them. In this fact situation of present case, judgments referred to by petitioners in this regard are of no help to them.

Next submission made by Shri Mahendra Singh that inquiry stood vitiated for the reason that reports of P.Es., prepared by S.S.Bhandari and M.R.Jain produced in course of inquiry as Exp29 & Exp31 could not have been relied upon for recording the finding of guilt against petitioners, as they have been denied of opportunity to cross examine authors of reports of PEs (supra) so as to testify its veracity, in my opinion, has no substance. Once documents - reports of PEs were placed on record in course of inquiry, which too were supplied and made available for inspection, I find no error being committed by competent authority in taking note of the same; and adequate opportunity was also afforded to petitioners to contradict such findings, if at all there was conflicting opinion or finding recorded by inquiry officer or it was not supported by sufficient material on record. Merely because out of three preliminary inquiry officers, if two were not produced by the department, no prejudice at all

can be said to have caused and apart from it, petitioner also never made any request in this regard.

Last submission made by Shri Mahendra Singh that disciplinary authority has not taken note of evidence which was led in defence, so also material on record while recording finding of guilt based on record of inquiry, and accordingly the decision of inflicting the impugned penalty stands vitiated being in violation of R.16(9) of CCA Rules, in my opinion, is a jejune ground. A careful perusal of impugned order of penalty clearly depicts that what were stated by petitioners in their written reply in defence and submissions made either in course of inquiry or at the time of objection raised against inquiry report, have been duly noticed and were elaborately considered and submissions were individually examined. Once disciplinary authority agree and concur with finding of guilt recorded by inquiry officer and when there is no material on record to prima facie show contradictions in record of inquiry, in my opinion disciplinary authority was not expected to record reasons in great detail, and no error has been committed while passing the order impugned, and which in my opinion is with due compliance of Rs.16(9) of CCA Rules.

Similarly, judgments, on which petitioners relied in support of aforesaid contention, are also of no help to them in facts of present case. In Union of India Vs. KA Kittu (supra), the finding was

recorded that inquiry officer failed to take note of defence evidence led in course of inquiry while holding delinquent guilty. But in present case, from a bare perusal of inquiry report placed on record, it depicts that complete evidence of defence witnesses have been examined and considered in detail. In State of Punjab Vs. R.K.Khanna (supra, Apex Court held that competent authority has to apply its mind upon receipt of reply to the charge sheet or show cause as the case may be, as to whether a further inquiry is called for. It is the stage when delinquent submits his reply to the charge sheet and the disciplinary authority has to examine as to whether regular inquiry is to be initiated or not. But in present case, at three different occasions, preliminary inquiries were undertaken by the Government where petitioner failed to participate despite proper intimation sent by officer concerned; and after inquiry officer was appointed, full opportunity was afforded to them in course of regular inquiry. Thus it cannot be said that any prejudice has been caused to them in facts and circumstances of the case. Therefore, none of judgments referred to by petitioners, so also of this Court in **Hemendra Kumar Vs. State , and Bagdaram Vs. State (supra)**, are of no assistance to petitioners in fact situation of present case.

That apart, so far as scope of judicial review of the matter in disciplinary inquiry is concerned, the Apex Court in **B.C.Chaturvedi Vs. Union of India (supra)** held as under : -

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of the judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere whether the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(para 12)

In **R.S.Saini Vs. State of Punjab (supra)** the Apex Court held that the High Court in writ jurisdiction cannot reverse a finding of inquiring authority on the ground that evidence adduced before it is insufficient; and that even if there is some evidence to reasonably support conclusions of

inquiring authority it is not for the Court to review evidence and to arrive at its own independent finding, because the inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate its findings. Apex Court further held that adequacy or reliability of evidence is not a matter which be permitted to be canvassed before writ court. Thus viewed, scope of judicial review in disciplinary matters being restricted, this Court has to consider challenge to the impugned order with a limited degree of scrutiny which was called for, only with a view to find out correctness of grounds urged that the impugned order of disciplinary authority suffered from vice of perversity or that there was non-application of mind and was tainted by malice.

On a close reading of inquiry report accepted by disciplinary authority coupled with material on record, but without applying technical rules of evidence or of proof of fact, which is sought by petitioner to be done, because neither technical rules of evidence nor of proof of fact or evidence are applicable in disciplinary proceedings, I find that there is ample evidence on record to support the findings of guilt recorded by the disciplinary authority against them and the record of inquiry accepted by disciplinary authority while inflicting penalty against them, cannot be faulted with on grounds urged by petitioners.

Consequently, both these petitions fails and are hereby dismissed with no order as to costs.

(Ajay Rastogi) , J.