

L.MOHAPATRA, J & I.MAHANTY, J.

O.J.C. NO.7621 OF 2001.(Decided on 19.05.2010)

BABAJI SAHOO (DEAD) & AFTERPetitioner
HIM PURNAMASI SAHOO & ANR.

.Vrs.

STATE OF ORISSA & ORSOpp.Parties

CONSTITUTION OF INDIA, 1950 – ART.311.

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For Petitioner – M/s. S.R.Das, K.Jena, A.K.Mohapatra, S.K.Das &
P.Rath.

For Opp.Parties – Addl. Standing Counsel
(School & Mass Education Department).

I.MAHANTY, J. The petitioner-Babaji Sahoo filed this application challenging the order dated 11.10.1991 passed by the Orissa Administrative Tribunal in Transferred Application No.374 of 1988 rejecting his challenge to the order dated 22.1.1983 passed by the disciplinary authority dismissing the petitioner from Government service on the ground of misappropriation of Government money to the tune of Rs.15,041.60, as well as, the order of the appellate authority confirming the order of punishment and the order of the Appellate authority rejecting the petitioner's appeal. During the pendency of the writ petition, the petitioner Babaji Sahoo having died on 10.10.2006, in his place, his wife and son have been substituted.

2. The State Administrative Tribunal, came to hold that the petitioner had encashed a Government cheque for more than Rs. 15,000/- and loss of the said money is admitted by the petitioner-Babaji Sahoo, the Tribunal fixed such responsibility for such loss on the petitioner and therefore, dismissed the same.

3. The petitioner had claimed before the tribunal that after en-cashing the cheque and collecting money from the bank, he had left his bag at a nearby betel shop owned by his cousin brother from where the said bag was picked up by a child, who ran away with the same and could not be apprehended despite of the best efforts of the petitioner and by others.

The tribunal also came to a finding that the Enquiry Officer disbelieved the stand taken by the petitioner and came to hold that the petitioner had left the cash with an unauthorized person, which itself amounts to gross negligence of duty, thereby leading to misappropriation of Government money. Accordingly, it was held that the petitioner could not justify the stand taken by him.

The petitioner's other contention was that his stand was substantiated by the police submitting a "Final Report" in the case indicating "fact true, but no clue". Therefore, the stand of the petitioner that there was no justification to hold the petitioner guilty of misappropriation was rejected by the tribunal, inter alia, on the ground that filing of such Final Report does not decide the delinquency or otherwise of the petitioner. Further, there was no bar for the Government to proceed with the disciplinary proceedings for loss of Government money or its misappropriation. It appears that the police had

submitted a Final Report for the offence under Section 380 of the I.P.C. and therefore, the disciplinary authority was correct in initiating a disciplinary proceeding against the petitioner, causing huge loss in a day light robbery involving Government money of Rs.15,041.60.

4. Learned counsel for the petitioner, inter alia, raised the following contentions:

(i) That the disciplinary proceeding itself proceeded ex-parte and from the nature of report of the Enquiry Officer it would be clear that the petitioner was denied any opportunity to effectively defend himself in such inquiry proceeding and the Inquiring Officer concluded the inquiry abruptly, only on the first date on which he held a sitting.

(ii) That the tribunal as well as appellate authority failed to apply their judicial mind to the contention of the petitioner, that he had filed an immediately after loss of the bag containing cash and although the police submitted a Final Report, yet such Final Report also recorded a finding that "fact true, but no clue". According to the learned counsel for the petitioner once the police submitted the Final Report with the above endorsement, there is no justification whatsoever to hold the petitioner guilty of misappropriation.

(iii) That the disciplinary authority as well as the tribunal lost sight of the fact that, while admittedly there had been loss of Government money amounting to Rs.15,041.60, every "loss of Government money" could not be equated with "misappropriation". In other words, it is contended that while the petitioner had admitted the loss of the Government money, such admission on the part of the petitioner can never be construed to be an admission of "misappropriation".

5. Learned Additional Standing Counsel appearing for the School and Mass Education Department on the other hand, supported the impugned order and claimed that since the petitioner admitted the loss of Government money and the fact that he had left the bag in the betel shop of his cousin brother from where the bag containing the cash was stolen away, the stand of the petitioner, itself, justifies the finding of "gross negligence" on the part of the petitioner and therefore, the writ application ought to be dismissed.

6. On consideration of the submissions made and on perusal of the records of the case, it clearly appears there from that, the petitioner who was working as a 'Peon' in the Government Girls High School, Attabira for more than fifteen years prior to the date of the alleged occurrence had been terminated from his service for the loss of Government money amounting to Rs. 15,041.60. Admittedly the petitioner, who was serving as a 'Peon' in terms of his official duty was not required to act as a courier for encashing the Government cheques and bring it to the school and that too without any escort. It is admitted that the petitioner for more than fifteen years on the instruction of the Headmistress of the School had been taking the Government cheques for encashment and after collecting money used to deposit the cash with the accountant of the School. Such performance of duty by the petitioner was without any authority of law. A peon in the establishment of a school is the lowest grade staff of the institution. The school gets payment from the Government and on instruction of the Headmistress and the Accountant, the petitioner had been discharging his job for fifteen years and in course of such performance of duty he had never been negligent in discharging of such responsibility.

7. The case of the petitioner is that after he encashed the cheque from the bank, when he was boarding a bus, he felt that something had fallen on his back side of the shirt and dhoti and found it to be a semi liquid substance like vomits. Yet, he wanted to enter into the bus and return back to the School. But due to the "foul smell", the

passengers of the bus as well as cleaner and conductor of the bus did not allow him to enter, for which reason, he got off the bus and went to nearby Pan-shop, owned by a cousin brother. After hanging the said bag in the said shop, he went behind the shop, to a water tap to wash his hands and remove the said vomit from his shirt and dhoti. It is stated by the petitioner that while he returned to the Pan-shop within two to three minutes, he found that his bag had been taken by a small boy, who went running to the other side of the road and despite the best endeavour by the petitioner and others, they could not catch hold of the boy, for which the petitioner lost the cash as well as the bag.

The petitioner immediately went to the local police station and reported the said facts and also sent a message to the Headmistress of Attabira Government Girls High School as well as Block Development Officer, Attabira. It appears that, based on the F.I.R. lodged by the petitioner, though the police enquired into the same, they could not arrest the accused and therefore, submitted a Final Report for the offence under Section 380, I.P.C. noting that while the fact of theft was true, but they were unable to obtain any clue in order to arrest the accused.

8. In so far as the disciplinary proceeding is concerned, it appears that the District Inspector of Schools, Sambalpur-I, Sambalpur was appointed to act as the Inquiring Officer. His report dated 17.4.1982, which is to the following effect.

(a) It appears from the report that the Inquiring Officer issued a notice dated 2.12.1981 fixing the date of inquiry to 16.1.1982. The petitioner-delinquent submitted a petition, through post, with a prayer for engagement of a legal practitioner vide his letter dated 13.12.1981. Such petition was allowed by the Inquiring Officer on 8.1.1982 and the petitioner was directed to submit his explanation to the charges as well as list of witnesses by 14.1.1982.

On 13.1.1982 the petitioner delinquent applied for an adjournment of hearing which was allowed and the proceeding was adjourned to 6.2.1982. This fact clearly indicates that no enquiry by the Enquiry Officer was held on 16.1.1982.

(b) It further appears that, the petitioner once again by his petition dated 25.1.1982 prayed to hold inquiry at Sambalpur, instead of Attabira on the ground that he could not get any legal assistance at Attabira, but at the same time, submitted his explanation to the charges, as well as list of witnesses.

Such prayer of the petitioner was rejected by the Inquiring Officer, with a direction to him to remain present on 6.2.1982 along with his legal practitioner for hearing of the proceeding.

On 6.2.1982 the Inquiring Officer held inquiry at Attabira Government Girls High School (effectively first date of sitting of inquiry). There is no evidence on record to indicate the communication of the rejection of the petitioner's application for adjournment. On 6.2.1982, i.e., the first date on which date the Inquiring Officer actually conducted the inquiry, the petitioner having been found to be absent, the Inquiring Officer proceeded with the inquiry ex-parte.

(c) On 6.2.1982 the Inquiring Officer took note of the fact that the petitioner had submitted a list of witnesses, but since the petitioner had not appeared and even though the Accountant-cum-clerk, Sri Jibardhan Biswal of Attabira Government Girls High School was present, he recorded that, he did not like to record the statement of the Accountant due to the absence of the delinquent Government servant and further recorded that the said accountant being an employee of the institution was likely to give statement in support of the delinquent.

(d) The inquiry report itself clearly indicates that no witnesses examined by the Marshalling Officer in support of the charges framed against the petitioner and obviously none were also examined on behalf of the petitioner. Instead on the very first date of effective inquiry, i.e., 6.2.1982, the inquiry proceeded ex-parte on the basis of charges

framed against the petitioner. The Inquiring Officer concluded his inquiry and submitted the enquiry report, finding the petitioner guilty of act of misconduct including misappropriation.

9. We have gone through the inquiry report of the Inquiring Officer in detail only to highlight the fact that the Inquiring Officer not only held inquiry only on one day, i.e., 6.2.1982, but, on the same day, without recording any evidence whatsoever either from the side of the prosecution or from the side of the defence, did not even examine the Accountant who was present before him (allegedly on the ground that the said accountant was likely to make statement in favour of the, delinquent petitioner) and concluded the inquiry and reached his conclusion/finding based on the charges against the petitioner which resulted ultimately the dismissal of the petitioner from service.

10. The facts of the case as noted herein above clearly indicate plight of a very poor person i.e., a 'Peon' in the establishment of a girls High School, who, in such circumstances, has been terminated after having served the institution with a blemish-less record for more than fifteen years. What is even more surprising is, that the Inquiring Officer though was required to enquire into the charges levelled against the petitioner also came to conclude that the report of the Headmistress dated 3.7.1989 was false since the Headmistress's report, clearly supported the delinquent petitioner and since the Headmistress had given such a report, though such report was not within the scope of inquiry, the Inquiring Officer, went ahead and declared such report of the Headmistress to be false and unwarranted. Our judicial conscience compels us to record herein, the abject conduct on the part of the Inquiring Officer, by throwing to the winds all cannons of justice/law and the inquiry held was at best merely an eye-wash.

11. We are further of the considered view that both the appellate authority as well as the tribunal have not applied their judicial mind to the contentions raised by the petitioner and in fact the finding of the tribunal in the instant case that, the Inquiring Officer was justified in rejecting the prayer of the petitioner to engage a legal practitioner, is a clear error of fact. The prayer of the delinquent petitioner had been allowed by the Inquiring Officer vide order No.204 dated 8.1.1982.

12. The tribunal's further finding is that though the petitioner had been given opportunity to summon his witnesses, yet he did not furnish any name is also an error of record. In the inquiry report itself the Inquiring Officer has noted that the delinquent Government servant-Babajji Sahoo had submitted a "list of witnesses", namely, Ghasiram Sahoo, Officer-in-Charge of Bargarh Police Station, Investigating Officer and Accountant of Atabira Government Girls High School and therefore, the finding of the tribunal that the petitioner had not furnished any list of witnesses is, once again a clear error of record.

13. Apart from the above, the facts as narrated hereinabove clearly indicate, how a lowly paid Government servant working as 'Peon' at the lowest rank of the Government service had been asked to go and encash a Government cheque much beyond what the rules provide. It appears that the petitioner had sincerely performed his duty for more than fifteen years and was terminated on the allegation of 'misappropriation' by effectively equating 'loss' of Government money to the term misappropriation.

14. "Misappropriation" is a criminal offence, prescribed under Section 403 of the I.P.C., which mandates that whoever dishonestly misappropriates or converts to his own use any movable property is liable to be prosecuted for 'Misappropriation'. Although, the present case arises from a disciplinary proceeding, although the petitioner has admitted, loss to the Government exchequer, but the F.I.R. filed by him and the investigation thereto, having been completed by the police, with the conclusion that the "facts true", but Final Report having been submitted, that there was "no clue" available to apprehend

the accused, the said benefit has to enure to the benefit of the petitioner. No doubt a disciplinary proceeding may continue independent of the criminal proceeding, yet when the nature of the charge is criminal in nature, the disciplinary authority would be bound by the findings arrived at in the criminal case. It is well settled by the Hon'ble Supreme Court in the case of **Cap. M.Paul Anthony v. Bharat Gold Mines Ltd & another** reported in AIR 1999 SC 1416:

“Departmental proceedings and criminal case-Based on identical set of facts-Evidence in both proceedings common-Employee acquitted in criminal case-Said order of acquittal can conclude departmental proceedings-Order of dismissal already passed before decision of criminal case liable to be set aside.”

15. The facts in the present case clearly indicate that no evidence whatsoever was recorded by the Inquiring Officer in course of disciplinary proceeding and therefore, in terms of the judgment of the Hon'ble Supreme Court as noted hereinabove, the Disciplinary Authority is bound by the report of the police on the F.I.R. lodged against the petitioner indicating that “Facts true, but no clue”. Therefore, the Disciplinary Authorities could not have arrived at any conclusion holding the petitioner guilty of any offence for loss justifying any order of termination against him.

16. Unfortunately in the course of litigation since 1981 the petitioner expired in the year 2006 and has been substituted by his legal heirs. Therefore, in view of the aforesaid findings, we direct that the order of termination dated 22.1.1983 under Annexure-1 as well as rejection of the petitioner's appeal therefrom as well as the order dated 11.10.1991 of the Orissa Administrative Tribunal in Transferred Application No.374 of 1988 are hereby quashed.

The legal heirs of the petitioner-Babajji Sahoo will be consequently entitled to get the benefits of continuous service of the petitioner, as well as, all service benefits till the date of his death or retirement which ever is earlier as well as post retirement pensionary benefits. The opposite parties are directed to release the dues of the petitioner in favour of the legal heirs of the petitioner within a period three months from the date of communication of this order.

17. With the aforesaid observation and direction the writ petition is allowed.

Writ petition allowed.