

UNION OF INDIA

v.

SARDAR BAHADUR

October 29, 1971

[C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND
K. K. MATHEW, JJ.]*Civil Servant—Enquiry—Reliance on statements of witnesses in a criminal case without calling witnesses—If permissible.**Scope of enquiry—Interference by High Court on findings.**Punishment imposed on basis that all charges proved—Finding by Court that only some charges are proved—Interference with punishment imposed—Propriety.**Civil Services Conduct Rules, r. 13(5)—'Likely to have official dealings', scope of.*

After the respondent (a section officer in the Ministry of Industry and Commerce) was acquitted in a criminal case, an enquiry under r. 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, was held against him on the basis of three charges. Statements of the witnesses in the criminal case were tendered in evidence in the enquiry without calling the witnesses. The Inquiring Officer rejected those statements and found that only the third charge was proved and not the first two. The third charge was that he borrowed a sum of money without obtaining previous sanction of the Government and placed himself under pecuniary obligation to the lender and thereby contravened r. 13(5) of the Central Civil Services (Conduct) Rules, 1955. The lender was the representative of a firm which was an applicant for licences, and though the application was made to a section in which the respondent was not working, it would in due course have to be dealt with by the section in which the respondent was working. The Disciplinary Authority found that all the charges had been proved and passed an order compulsorily retiring the respondent from service.

A Single Judge of the High Court quashed the order and the letters patent appeal filed by the State was dismissed.

In appeal to this Court, it was contended that the statements rejected by the Inquiring Officer should have been admitted, that all the three charges should have been held to be proved and that the order of compulsory retirement was justified.

HELD: (1) Tribunals should observe rules of natural justice in the conduct of the inquiries, that is, no material can be relied upon to establish a contested fact unless spoken to by a witness who is subjected to cross-examination. In the present case, the persons whose statements were sought to be relied on were in station, but were not produced for cross-examination by the respondent. They should have been recalled, and tendered for cross-examination by the respondent. The Inquiring Officer was therefore justified in refusing to receive the statements as evidence. [223 A-D]

M/s. Barailly Electricity Supply Co. Ltd. v. Workmen, [1971] 2 S.C.R. 617 at 629 and *State of Mysore v. S. S. Makapur*, [1963] 2 S.C.R. 943, 952, followed.

- A (2) But the interference by the High Court with respect to the third charge was not justified. [225 F-G]

The second part of r. 13(5) of the Civil Services Conduct Rules forbids a civil servant from borrowing money from a person with whom he is likely to have official dealings. The words 'likely to have official dealings' take within their ambit the possibility of future dealings between the officer concerned and the person from whom he borrowed the money.

- B In the present case, even if the applications were dealt with at the initial stage by another section the respondent should have known, that in due course, the section in which he was working would have to deal with them. Therefore, when he borrowed money a few days earlier the respondent contravened the rule. [225 A-C]

(3) A disciplinary proceeding is not a criminal trial and therefore the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that the lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court was wrong in sitting as a court of appeal over a decision based upon it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry was properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. [225 D-G]

State of Andhra Pradesh v. S. Sree Ramu Rao, [1964] 3 S.C.R. 25, 33, followed.

Jugal Kishore Bhaduni v. Union of India, A.I.R. 1965 Pat. 196, approved.

- E (4) If the order of the punishing authority could be supported on any finding as to substantial misdemeanour for which the particular punishment could be imposed it is not for the court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. Therefore, the punishment of compulsory retirement imposed was not liable to be quashed even though the first two charges had not been proved. [226 G-H; 227 A-C]

State of Orissa v. Bidyabhushan Mahapatra, [1963] Supp. 1 S.C.R. 648, 666, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1758 of 1970.

- G Appeal by special leave from the judgment and order dated April 20, 1970 of the Delhi High Court in Letters Patent Appeal No. 75-D of 1966.

R. H. Dhebar, P. H. Parekh, S. P. Nayar and Urmila Kapoor, for the appellant.

Mohan Behari Lal, for the respondent.

- H The Judgment of the Court was delivered by

Mathew, J. This is an appeal by Special Leave filed by the Union of India from the judgment in appeal under clause 10 of

Letters Patent of the Delhi High Court confirming the decision of a learned Single Judge allowing Civil Writ No. 716-D of 1964 filed by the Respondent by quashing the order made by the President on 23rd April, 1963 compulsorily retiring the Respondent from service.

The Respondent, Shri Sardar Bahadur, was employed as a Section Officer in the Ministry of Commerce and Industry in the Steel & Cement Section (B) which along with other sections like Industries Act and Industrial Policy etc. was under the control of Shri P. S. Sundaram, Deputy Secretary in that Ministry at that time.

In April, 1956, the Ministry invited applications for grant of licences to set up steel re-rolling mills.

On June 14, 1956, one Shri-Nand Kumar representing Messrs Ram Sarup Mam Chand and Messrs Mam Chand and Company of Calcutta applied for five licences to set up steel re-rolling mills. He also handed over on June 25, 1956 to the respondent a cheque for Rs. 2,500/- drawn on the Punjab Co-operative Bank Limited in favour of Shri P. S. Sundaram. The cheque was certified by the bank as good for payment upto September 24, 1956. At the back of the cheque, there was a signature which purported to be that of Shri P. S. Sundaram. It may be noted at this stage that Shri P. S. Sundaram, the Deputy Secretary had denied the signature to be his. Above the signature the respondent wrote the words :—

“Please pay to Shri Sardar Bahadur.”

Lower down the respondent wrote the following words :—

“Please collect and credit the amount into my account. First payee's endorsement may kindly be guaranteed on my behalf and risk.”

This cheque was duly cent to the account of the respondent and the amount of Rs. 2,500/- was credited to his account in the State Bank of India, New Delhi.

The respondent was prosecuted by the Special Police Establishment on the allegations that the amount covered by the cheque was taken by him as illegal gratification for using his official position illegally and in a corrupt manner in order to procure licences for Messrs Ram Sarup Mam Chand of Calcutta who had filed applications in that behalf and that the signature of Shri P. S. Sundaram had been forged by him. The respondent was charged with offences punishable under Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act, 1947 and

A Section 161, 467 and 471 of the Indian Penal Code. The respondent was acquitted of all the charges on June 20, 1960. Thereafter, it was proposed to hold an inquiry against him under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 on the basis of the following charges :—

B 1. "That he failed to inform Shri P. S. Sundaram Deputy Secretary, Ministry of Commerce and Industry, New Delhi, that a cheque for Rs. 2,500/- in the name of Shri Sundaram had been issued by Shri Nand Kumar of Messrs Ram Sarup Mam Chand and Messrs Mam Chand & Company of Calcutta, whose applications for grant of licences for establishing steel-re-rolling mills were pending in the Ministry of Commerce and Industry, as security in connection with the said applications when he knew that no such deposit was to be made;

C 2. That he failed to inform Shri P. S. Sundaram that the said Shri Nand Kumar had given him a cheque bearing Shri Sundaram's signature and had asked him to deposit it in his account which he had done after asking the bank (instead of showing the cheque first to Shri Sundaram himself) to guarantee the said signature of Shri Sundaram; and

D 3. That he borrowed a sum of Rs. 2,500/- (the amount covered by the cheque referred to above) from the said Shri Nand Kumar, without obtaining previous sanction of the Government and placed himself under pecuniary obligations to the extent of Rs. 2,500/- and thereby also contravened rule 13(5) of the Civil Services (Conduct) Rules, 1955."

E F The enquiry was held and the Inquiry Officer found that the first two charges were not proved as the identity of P. S. Sundaram the payee of the cheque, had not been established with Shri P. S. Sundaram, Deputy Secretary. But the Inquiring Officer found that the third charge has been proved.

G The findings of the Inquiring Officer on the first two charges were not agreed to by the Deputy Secretary, Ministry of External Affairs, exercising the powers of the President. He found that all the charges had been proved. The President after consultation with the Union Public Service Commission passed an order on April 22, 1968 holding that the charge of gross misconduct and failure to maintain absolute integrity and devotion to duty as a Government servant had been substantially proved against the respondent and imposing the penalty of compulsory retirement on him. The respondent was directed to be retired from service with immediate effect.

It was this order which was quashed by the Single Judge in the writ petition filed by the respondent. The Letters Patent Appeal against the order filed by the Union of India before the Division Bench was dismissed.

It was contended on behalf of the appellant that the Inquiry Officer went wrong in finding that charges Nos. 1 & 2 had not been proved and that the President was right in holding that these charges had been proved and therefore the High Court should have found that charges Nos. 1 & 2 were proved, as there was evidence to support the charges. It was contended that the Inquiring Officer wrongly rejected the copies of the statements of the witnesses examined in the original trial, which statements if admitted, would have fully established the first two charges against the respondent. Counsel for the appellant argued that the provisions of the Evidence Act are not applicable to disciplinary proceedings and therefore the statements of the witnesses in the criminal trial ought to have been admitted and relied on for establishing the guilt of the respondent on the first two charges. Counsel relied on the following observations of Venkatarama Iyer, J. in *Union of India v. Varma*⁽¹⁾ :—

“Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground the procedure followed was not in accordance with that which obtains in a Court of law.”

In *M/s. Bareilly Electricity Supply Co. Ltd. v. The Workmen and Others*.⁽²⁾ the scope of the above observation was considered and this is what Jaganmohan Reddy, J. said :—

“But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true.”

(1) [1958] S.C.R. 499.

(2) [1971] (2) S.C.C. 617 at 629

- A We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced the persons whose statements were sought to be proved for the cross-examination of the respondent. In *State of Mysore v. S. S. Makapur*⁽¹⁾, this Court said that the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the statements relied on by the appellant. As there was no material before the Inquiring Officer to show that P. S. Sundaram mentioned in the cheque is P. S. Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved.
- B
- C
- D

- Coming to charge No. 3 the Single Judge as well as the Division Bench said that although there was great deal of suspicion on the *bona fides* of the transaction in the respondent borrowing money from Nand Kumar, suspicion cannot take the place of proof. They, therefore, held that the charge has not been proved. The third charge, as already stated, was that the respondent borrowed Rs. 2,500/- from Nand Kumar without obtaining the previous permission of the Government and placed himself under a pecuniary obligation to the extent of the amount and thus contravened the provisions of Rule 13(5) of the Central Civil Services (Conduct) Rules 1955 which reads :—
- E
- F

- “(5) No Government servant shall, save in the ordinary course of business with a bank or a firm of standing, borrow money from or otherwise place himself under pecuniary obligation to any person within the local limits of his authority, or any other person with whom he is likely to have official dealings, nor shall he permit any member of his family, except with the previous sanction of the Government, to enter into any such transactions :
- G

- Provided that a Government servant may accept a purely temporary loan of small amount, free of interest, from a personal friend or a relative or operate a credit account with a bona fide tradesmen.”
- H

The Inquiring Officer found that the respondent had borrowed Rs. 2,500/- from Nand Kumar without obtaining the previous permission as required by Rule 13(5) and thereby contravened the provisions of the sub-rule. The learned Single Judge held that although it was proved that the money was borrowed and the respondent placed himself under pecuniary obligation to Nand Kumar, there was no evidence nor had it been found either by the Inquiring Officer or by the President that Nand Kumar was a person with whom the respondent was likely to have official dealings. He further said that the evidence of Shri N. S. Satureman was quite clear that application for licence of M/s Ram Sarup Mam Chand was received in the Industries Act Section which was called I.A.(I) Section whereas the petitioner was working in the Steel & Section where the copies of these applications started coming only in July 1956 and so in June 1956 when the cheque was issued it was not possible to see how in the absence of any other evidence the petitioner could be regarded as being in a position where Nand Kumar was likely to have any official dealings with him in the matter of the grant of the licences. The Division Bench accepted this finding.

It may be noted that the first part of sub-rule 13(5) of the Central Civil Services (Conduct) Rules 1955 says that no Government servant shall borrow money from or otherwise place himself under a pecuniary obligation to any person within the local limits of his authority, save in the ordinary course of business with a bank or a firm of standing. The second part of the sub-rule forbids him from borrowing money from any other person with whom he is likely to have official dealings. The appellant at no time had a case that the respondent contravened the first part of the sub-rule in borrowing the amount from Nand Kumar. So, neither the learned Single Judge nor the Division Bench had occasion to consider the application of the first part of the sub-rule to the facts of the case. Even in the Special Leave Petition the appellant did not rely on the first part of the sub-rule. We do not, therefore, think it necessary to consider the scope of the first part of the sub-rule or its application to the case here.

A finding cannot be characterised as perverse or unsupported by any relevant materials if it is a reasonable inference from proved facts. Now what are the proved facts : Nand Kumar as representative of M/s Ram Sarup Mam Chand and M/s Mam Chand and Company of Calcutta filed five applications for licences to set up steel re-rolling mills on 14-6-1956. On 25-6-56, a cheque drawn in favour of P. S. Sundaram was given to the respondent by Nand Kumar for Rs. 2,500/-; the cheque was endorsed and the amount credited in the account of the respondent. When the respondent borrowed the amount in question from

- A Nand Kumar, he was not working in the Industries Act Section. Nand Kumar knew that the respondent was working in the Steel & Cement Section of the Ministry and the applications for the grant of licences for setting up the steel plant re-rolling mills would go to that Section. Even if the applications were to be dealt with at the initial stage by the Industries Act Section the
- B respondent at least was expected to know that in due course the section in which he was working had to deal with the same. This is borne out by the fact that in July 1958 copies of the applications were actually sent to the Steel & Cement Section where the respondent was working. If he, therefore, borrowed money from Nand Kumar a few days earlier it seems rather clear that he placed
- C himself under pecuniary obligation to a person who was likely to have official dealings with him. The words "likely to have official dealings" take within their ambit the possibility of future dealings between the officer concerned and the person from whom he borrowed money. A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference
- D that Nand Kumar was a person likely to have official dealings with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising
- E its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court (See *State of Andhra Pradesh v. S. Sreo Rama Rao*⁽¹⁾). No doubt there was no separate finding on the question whether Nand Kumar
- F was a person likely to have official dealings with the respondent by the Inquiring Officer or the President. But we think that such a finding was implied when they said that charge No. 3 has been proved. The only question was whether the proved facts of the case would warrant such an inference. Tested in the light of the standard of proof necessary to enter a finding of this nature,
- G we are satisfied that on the material facts proved the inference and the implied finding that Nand Kumar was a person likely to have official dealings with the respondent were reasonable.

- H The Division Bench said that the conclusion of the Single Judge that there was no evidence before the Inquiring Officer that Nand Kumar was likely to have official dealings with the respondent was not wholly un-warranted, and as there are limits to

(1) [1964] 3 S.C.R. 25 at 33.

A
the powers exercised by a Single Judge under Article 226 of the Constitution, there are limits to the powers of a Division Bench while sitting in appeal over the judgment of a Single Judge. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was in the circumstances of the proved facts in the case a reasonable one, we do not think there was anything which prevented the Division Bench from interfering with the order of the Single Judge. In *Jugal Kishore Bhadani v. Union of India*⁽¹⁾, the Court observed :—

B

C
“It is well established principle of law that unless the statute otherwise provides an appellate Court has the same power of dealing with all questions, either of fact or of law, arising in the appeal before it, as that of the Court whose judgment is the subject of scrutiny in the appeal.”

D
The respondent contended that he did not borrow Rs. 2,500/- from Nand Kumar. His case was that Nand Kumar owed him Rs. 500/- and that when he gave the cheque to the respondent it was on the understanding that Rs. 2,000/- would be repaid to him and that was done immediately. The respondent produced a receipt executed by Nand Kumar for having received Rs. 2,000/-, but Nand Kumar was not examined to prove the genuineness of the receipt. The Inquiring Officer has considered the question at length in his report and he came to the conclusion that the case of the respondent that he did not borrow Rs. 2,500/- from Nand Kumar cannot be accepted. The learned Single Judge found that the petitioner had borrowed the amount of Rs. 2,500/- from Nand Kumar. That finding was endorsed by the Division Bench. As it was a reasonable inference from materials before the Inquiring Officer that Nand Kumar was a person likely to have official dealings with the respondent and since the respondent borrowed money from such a person without the permission of Government, the finding of the Inquiring Officer and the President that the respondent had contravened Rule 13(5) of the Central Civil Services (Conduct) Rules, 1955 should not have been interfered with by the High Court.

E
F
G

H
It may be recalled that the punishment of compulsorily retirement was imposed upon the respondent on the basis that all the three charges had been proved against him. Now, it is found that only the third charge has been proved. The question then is whether the punishment of compulsorily retirement imposed by the President can be sustained even though the first two charges have not been proved.

(1) A.I.R. 1965 Patna 196.

- A** Now it is settled by the decision of this Court in *State of Orissa v. Bidyabhushan Mohapatra*⁽¹⁾ that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment.
- B** The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established.

C We reverse the judgment under appeal and hold that order of the President imposing the punishment of compulsorily retirement was not liable to be quashed.

In the result, the appeal is allowed, but in the circumstances, there will be no order as to costs.

V.P.S.

Appeal allowed.

(1) [1963] Supp. 1 S.C.R. 648 at 666.