A

NAND KISHORE PRASAD

v.

STATE OF BIHAR AND ORS.

April 19, 1978

B [R. S. SARKARIA AND P. S. KAILASAM, JJ.]

Constitution of India, 1950—*Art.* 226—*Interference by High Courts, only when an impugned order suffers from any error of law or of no evidence.*

The appellant a Bench Clerk and one Trilok Prasad Sinha, Fines Clerk were tried for various offences under sections 120B, 409, 466, 474 and 477A I.P.C. for embezzlement of a sum of Rs. 1068/- being fines recovered by the Police and remitted to the Court through Money Orders. The Trial Magistrate C discharged them. A departmental enquiry was, thereafter, instituted against him and on the inquiry report submitted by the Sub Divisional Officer, Sasaram, the District Magistrate who was the authority competent to appoint and remove the appellant, held : "The conduct of Nand Kishore Prasad is highly suspicious but for insufficient evidence proceedings against him has to be dropped." Thereafter, the Commissioner of Patna Division called upon the appellant to show cause why he should not be dismissed from service and after perusing the reply submitted by the appellant reversed the order of the District Magistrate and directed removal of the appellant from service. An appeal made to the Board D of Revenue failed. The Writ Petitions filed in the Patna High Court, against the said orders were dismissed holding that since there was some evidence albeit not sufficient for conviction in a criminal Court, it could not be quashed in proceedings under the Art. 226 of the Constitution.

Dismissing the appeal by certificate, the Court

HELD : 1. Two principles as crystallised by judicial decisions are to be borne in mind, while dealing with a case of the present type. The *first* is that E disciplinary proceedings before a domestic tribunal are of a quasi-judicial character. Therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of *some evidence,* i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. The second principle, which is a corollary from the first, is that if the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the Constitutional provisions, the order passed F by such authority cannot be interfered with in proceedings under Article 226 of the Constitution, merely on the ground that it was based on evidence which would be *insufficient* for conviction of the delinquent on the same charge at a criminal trial. [713 D-G]

Union of India v. *H. C. Goel,* A.I.R. 1964 SC 364 referred to.

2. (a) In the instant case :—It was not a case of no evidence, but of evidence which was not adequate enough to carry conviction at a criminal trial. G The High Court was, therefore, right in holding that the impugned orders did not suffer from any error of law which may warrant an interference in proceedings under Art. 226 of the Constitution. [715 G]

(b) A conjoint reading and analysis of the impugned orders of the Commissioner and the Member, Board of Revenue would show that they purport to rest on these primary facts :

H a. Fine amounting to Rs. 1,068/- was realised by the Police and sent to the Court of the Magistrate, Sasaram, by money orders, where it was received on September 4, 1950.

b. When this fine was imposed, and the aforesaid money orders were received, the appellant (Nand Kishore Prasad) was the Bench Clerk

of the Magistrate. The fine records were with him and it was he who used to issue distress warrants for realisation of outstanding fine. But after 4-9-1950 he did not take further action for recovery of the fine in question, or for ensuring that the convicts suffered imprisonment in default of payment of fine inflicted on them by the Court. A

c. A "receipt" (money order coupon) has been produced "indicating that the Petitioner (Nand Kishore Prasad) had received this amount". B

d. "It is clear from the circumstances of the case that the money realised was not deposited....I see no reason to interfere with the order of discharge" (passed by the Commissioner holding that the amount of Rs. 1,068/- had been embezzled between Nand Kishore Prasad, Bench Clerk, and Triloki Prasad Sinha, Fines Clerk). [714 A-D]

(c) While it is true that the impugned orders are unjustifiably brief it is not correct that they are totally bereft of reference to or discussion of evidence. C
There is in the impugned orders a specific reference to the money order coupon which the Member of the Board of Revenue has termed as 'receipt'. Indeed the main-stay of the impugned orders is the circumstantial evidence furnished by the conduct of the appellant in not taking further action for the realisation of the fine. [714 H, 715 A]

(d) It is true that the impugned orders do not fully measure up to the devoutly desired standard viz. desirability of writing a self-contained speaking order in disciplinary proceedings. Nevertheless, they do contain a bald and D
general allusion to the primary facts and a cryptic inference therefrom. As there was no specific reference to or discussion of the evidence, the High Court examined the record of the disciplinary tribunal not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary fact relied upon by the domestic tribunal in support of its conclusion. There is no impropriety in the course adopted by the High Court. [715 A-C]

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2313 (N) of 1968.

From the Judgment and Order dated 28th day of July 1966 of the Patna High Court in Misc. Judl. Case No. 1273 of 1974.

A. B. N. Sinha, S. K. Sinha and *K. K. Sinha* for the Appellant. F

R. C. Prasad for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J. This is an appeal by certificate under Article 133 (1)(a) and (b) of the Constitution from a Judgment dated July 28, 1966 of the Patna High Court, dismissing the appellant's writ petition under Article 226 of the Constitution, for impugning an Order of his removal from Government service. G

The facts are as follows :—

The appellant, Nand Kishore Prasad, was appointed as a ministerial servant by the District Magistrate, Shahabad, in his office at Arrah on June 16, 1930. He was confirmed in service in the year 1933. H

A In 1950, the appellant was transferred to Sasaram as a Bench Clerk in the Court of Shri R. Singh, Judicial Magistrate. His normal duty was to aid and assist the Court by putting up cases for hearing and disposal.

In April 1952, he was transferred from Sasaram to Buxer as an Election Clerk. On September 16, 1954, the Sub-Divisional Officer, B Sasaram, summoned the appellant and asked him to explain the outstanding fine of Case No. 886-C/104 T.R. of 1950 (*The State* v. *Sarju Chaubey & Ors.*), decided by Shri R. Singh, Magistrate, Sasaram, on April 26, 1950.

Three Money Order coupons, two for Rs. 500/- each and one for Rs. 68/-, were sent by the Police Sub-Inspector of Kargahar to the C Magistrate, Shri R. Singh. These amounts represented the fine recovered from the persons who were convicted in the aforesaid case. The appellant was confronted with those Money Order coupons which purported to bear the initials of the appellant, and was asked to trace if the money had been credited to the Government. The appellant inspected the records and found an entry in the Fine Register of the Court relating to the year 1951 which was to the effect, that an appeal D arising out of the case, in question, had been allowed and the fine remitted. The appellant brought that entry to the notice of the then Magistrate, Shri M. P. Singh, and submitted a written report to the Sub-Divisional Officer, stating that the initials on the Money Order coupons were not his and he had never received the amounts. The appellant further mentioned that he had discovered the aforesaid entry in the Fine Register.

E

At the relevant time, one Triloki Prasad Sinha was the Fines Clerk in the Court at Sasaram and the entry, in question, in the Fine Register was in his hand-writing. Triloki Prasad Sinha admitted that this entry of remission was in his hand-writing, but alleged that he had made it on the basis of an extract of the order of the Appellate Court, transmitted to him by the appellant. The appellant denied F that he had sent any such extract or information to the Fines Clerk and alleged that, according to the practice of the office, appellate judgments were transmitted to the Fines Clerk, in original, by all the Courts, regularly.

On January 26, 1955, the appellant was suspended from service. On February 1, 1955, the Magistrate in-charge of Fines, Sasaram, G lodged a First Information Report in the local Police Station for prosecution of Triloki Prasad Sinha and the appellant in respect of offences under Sections 120-B, 409, 466, 468, 474 and 477(A) of the Indian Penal Code. After investigation, the Police submitted a charge-sheet in the Court of the Sub-Divisional Magistrate, Sasaram, against both Triloki Prasad Sinha and the appellant.

H The Trial Magistrate, after making an inquiry under Chapter XVII of the Criminal Procedure Code, 1898, discharged both the accused persons, holding—(i) that there was nothing direct against Nand Kishore Prasad (appellant herein) to show that he had sent a

false or wrong extract to the Fines Clerk, "except the statements of a co-accused exculpating himself which is of little worth", and (ii) that "this accused cannot be connected with the receipt of the money", i.e. the Money Orders in question.

On February 29, 1956, after his discharge by the Criminal Court, the appellant submitted his joining report to the Sub-Divisional Officer, Buxer, and prayed for permission to join duty. No orders were passed on that application of the appellant, for a couple of months. His suspension was continued and on July 31, 1956, a Departmental inquiry was instituted against him on these charges :—

"(1) Dishonestly receiving Rs. 1,068/- being the fine money collected and sent by three M.Os. by the S.I. of Police, Kargahar, in respect of Criminal Case No. GR 886/TR 104 on 4-9-50 to the Court of Shri R. Singh, Judicial Magistrate, Sasaram, of whom he was the Bench Clerk.

(2) Issuing an incorrect extract of order of the Appellate Court in Criminal Appeal No. 65 of 1950 to Shri Triloki Prasad, the then Fine Clerk, and conspiring with Shri Triloki Prasad and misappropriating Rs. 1,068/- sent by the S.I. of Police, Kargahar on 4-9-50".

The inquiry was held by the Sub-Divisional Officer, Sasaram, who, after concluding it, submitted his report to the District Magistrate, Sasaram, who was the authority competent to appoint and remove the appellant from service.

The District Magistrate, ultimately, by his order, dated March 19, 1950, held: "The conduct of Shri Nand Kishore Prasad is highly suspicious but for insufficient evidence proceeding against him has to be dropped". This order of the District Magistrate was communicated to the appellant as per Memo. No. 278, dated April 19, 1960.

More than two months thereafter, a letter, dated June 29, 1960, was sent by the P.A. to the Commissioner of Patna Division, calling upon the appellant to show cause as to why he should not be dismissed from service. To this "show-cause" letter, the appellant submitted a detailed reply, representing *inter alia,* that since the Magistrate had found him not guilty, in the absence of fresh or further evidence showing that he had received the Money Orders, it would be violative of the elementary principles of natural justice, to punish him in the departmental proceedings by using a portion only of the judgment of the Court of law. He extracted copiously from the judgment of the Magistrate to show that the charges against him were baseless. He reiterated that he had not received the amount of the Money Orders, and the initials on the Money Order coupons were not his.

The Commissioner reversed the order of the District Magistrate and directed removal of the appellant from service. Since a good

A deal of argument before us centres around the legality of the Commissioner's order, dated October 8, 1960, it will be worthwhile to quote its material portion *in extenso* :

> "Although from the evidence recorded against this Clerk it appears that there was no direct independent proof of embezzlement by him, yet, in my opinion, there is strong
B suspicion against this clerk which has also been indicated sufficiently clearly by the then trying Court, Shri A. K. Sinha, Magistrate, 1st Class, Sasaram, while passing an order of discharge against him under Section 207A of Cr. P.C. in the Criminal case against him. The Court observed as follows :—
>
> C "One may suspect him about it, if at all, a Bench Clerk as he was, as the M.O. coupons purport to bear the like of his initials, but that is not enough for justifying a criminal action against him. The case is not raised beyond a stage of suspicion, if at all, as against this accused."
>
> D "It is evident that the amount of the fine was realised and sent to the Magistrate and it was received by Shri Nand Kishore Prasad. The fine records were with Shri Nand Kishore Prasad and Shri Triloki Prasad Sinha, and between them the amount of Rs. 1,068/- was embezzled. Shri Nand Kishore Prasad appears to be throughly unreliable and the punishment in respect
E of his conduct should be deterrent in nature.
>
> "Accordingly..... I hereby order that Shri Nand Kishore Prasad be discharged from service."

The appellant went in Revision to the Board of Revenue against the Commissioner's Order. The Board on August 31, 1963, by a
F short order, dismissed the Revision and affirmed the order passed by the Commissioner. This order of the Board of Revenue was communicated to him on February 14, 1964.

On September 23, 1964, the appellant moved the High Court at Patna by a writ petition under Article 226 of the Constitution, challenging his removal from service.

G The learned Judges of the High Court while observing that the Commissioner's Order was somewhat cryptic and did not make a specific and pointed reference to the evidence against the writ petitioner, noted that the Commissioner had drawn his conclusion about the guilt of the petitioner "from the fact that the petitioner was in actual charge of the fine record and it was his duty to take necessary
H action for realization of the fine until due payment thereof". The High Court further observed that "the mere fact that the Commissioner has not discussed in detail the circumstantial evidence against the petitioner, was not a sufficient ground for setting aside the im-

pugned order, because this aspect has been more elaborately referred to in the impugned order of the Board of Revenue. The High Court concluded that since there was some evidence—*albeit* not sufficient for conviction in a criminal court—in support of the impugned order, it could not be quashed in proceedings under Article 226 of the Constitution. In the result, the writ petition was dismissed.

Learned counsel for the appellant contends that the impugned orders are based merely on suspicions and conjectures, and not on any evidence whatever, and as such, are bad in law. It is submitted that the High Court had over-stepped its writ jurisdiction inasmuch as it reappraised the evidence, and reconstructed the case as if it were itself a domestic tribunal, reviewing in appeal the orders of the Commissioner and the Board of Revenue.

As against this, counsel for the Respondent submits that the High Court had examined the evidence on the record of the domestic tribunal, not to make out a new case, but to satisfy itself that the impugned orders were based on circumstantial evidence which had been cryptically alluded to by the Commissioner and more elaborately mentioned by the Member of the Board of Revenue in the impugned order.

Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallised by judicial decisions. The *first* of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of *some evidence,* i.e. evidential material which with some degree of difiniteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in *Union of India* v. *H. C. Goel*(1), "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

The second principle, which is a corollary from the first, is, that if the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Article 226 of the Constitution, merely on the ground that it was based on evidence which would be *insufficient* for conviction of the delinquent on the same charge at a criminal trial.

The contentions in the instant case resolve into the narrow issue : Whether the impugned orders do not rest on any evidence whatever, but merely on suspicions, conjectures and surmises.

(1) J.R. 1964 S.C. 364.

A conjoint reading and analysis of the impugned orders of the Commissioner and the Member, Board of Revenue would show that they purport to rest on these primary facts :—

(a) That fine amounting to Rs. 1,068/- was realised by the Police and sent to the Court of the Magistrate, Sasaram, by money orders, where it was received on September 4, 1950.

(b) When this fine was imposed, and the aforesaid money orders were received, the appellant (Nand Kishore Prasad) was the Bench Clerk of the Magistrate. The fine records were with Nand Kishore Prasad and it was he who used to issue distress warrants for realisation of outstanding fine. But after 4-9-1950, he did not take further action for recovery of the fine in question, or for ensuring that the convicts suffered imprisonment in default of payment of fine inflicted on them by the Court.

(c) A "receipt" (money order coupon) has been produced "indicating that the petitioner (Nand Kishore Prasad) has received this amount".

(d) "It is clear from the circumstances of the case that the money realised was not deposited. I see no reason to interfere with the order of discharge" (passed by the Commissioner holding that the amount of Rs. 1068/- had been embezzled between Nand Kishore Prasad, Bench Clerk, and Triloki Prasad Sinha, Fines Clerk).

It will be noticed that the recovery of the fine and its remittance to the Court as per money order (as set out in (a) above) was never disputed by the appellant. He only disputed that the initials on the money order coupons purporting to be his, were not executed by him. His implied defence was that somebody who had received the amount of the money orders, had forged his (appellant's) initials on the Money Order Coupon. On this point, at the criminal trial of the appellant, a handwriting expert was examined, who stated that no definite opinion could be given as to whether these initials were executed by Nand Kishore Prasad. The Magistrate, therefore, gave the appellant benefit of doubt on this point. But the disciplinary Tribunals (i.e. the Commissioner and the Member, Board of Revenue) have, presumably on examining the disputed initials on the Money Order Coupon (called "receipt" in the impugned order of the Board) coupled with the circumstance (b), mentioned above, unanimously reached the finding that the amount of the aforesaid Money Order was received by Nand Kishore Prasad. From the appellant's conduct in not taking any action thereafter for realisation of the fine in question, they concluded that he did not do so because the fine had been realised and the amount had been embezzled by him.

It was urged before us that since the impugned orders do not specifically refer to any evidence or discuss it, they should be taken to be based on no evidence, whatever. While it is true that the impugned orders are unjustifiably brief, it is not correct that they are totally bereft of all reference to or discussion of evidence. There is in the

impugned orders a specific reference to the Money Order coupon which the Member of the Board of Revenue has termed as a "recipt". Indeed, the main-stay of the impugned orders is the circumstantial evidence furnished by the conduct of the appellant, in not taking any further action for the realisation of the fine. A

The desirability of writing a self-contained speaking order in disciplinary proceeding culminating in an order of removal of the delinquent from service, cannot be over-emphasised. It is true that the impugned orders do not fully measure upto this devoutly desired standard. Nevertheless, they do contain a bald and general allusion to the primary facts, and a cryptic inference therefrom. There is no specific reference to or discussion of the evidence. The High Court, therefore, examined the record of the disciplinary tribunal, not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary facts relied upon by the domestic tribunal in support of its conclusion. We do not see any impropriety in the course adopted by the High Court. B C

On examination of the Tribunal's record, the High Court found that there was oral and documentary evidence before the disciplinary tribunal; that at all times material to the imposition, realisation and receipt of the fine amounts in question, all the fine records in the Court of the Magistrate, Sasaram, used to remain with the Bench Clerk, i.e., the appellant. The Inquiry Officer had examined three witnesses, namely : Triloki Prasad Sinha, Rang Bahadur Singh and Kalka Prasad. The evidence of Triloki Prasad Sinha was certainly of an accomplice character, but the evidence of Rang Bahadur Singh, who was the Fines Clerk before Triloki Prasad Sinha, and of the Head Clerk Kalka Prasad, did not suffer from such a flaw. From their evidence, it was clear that in actual practice all the fine records were being maintained by the Bench Clerk, and it was he who used to take all necessary steps, including the preparation and issue of distress warrants for realisation of outstanding fine. The Fines clerk made entries in the Fines Register in accordance with the intimation sent by the Bench Clerk. This practice continued till March 1951, when Mr. Gorden, the then District Magistrate directed that all fine records must be made over to the Fines Clerk by May 14, 1951. The fine amounts in question, were evidently recovered in execution of a distress-warrant, issued by the Magistrate. D E F

In view of what has been said above, it is clear that this was not a case of no evidence, but of evidence which was not adequate enough to carry conviction at a criminal trial. The High Court was, therefore, right in holding that the impugned orders did not suffer from any error of law which may warrant an interference in proceedings under Article 226 of the Constitution. G

In the result, the appeal meets with failure and is dismissed without any order as to costs. H

S.R. *Appeal dismissed.*