State of Andhra Pradesh and Others

Vs

Chitra Venkata Rao

Civil Appeal No. 2040 of 1974

(CJI A.N. Ray, K.K. Mathew, V.V. Chandrachud JJ )

29.08.1975

JUDGMENT

RAY, C.J. –

1. This appeal is by special leave from the judgment dated June 13, 1974 of the Andhra Pradesh High Court quashing an order of dismissal. The principal question canvassed by the Attorney-General is that the High Court should not have interfered with the findings of the Tribunal.

2. The State Government in the year 1964 received certain complaints alleging misconduct against the respondent. The Director of Anti-Corruption Bureau was asked to inquire and make a report. The Government in the light of advice tendered by the Vigilance Commission referred the matter to the Tribunal constituted under Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960.

3. Three charges were framed against the respondent. Bordly stated the charges were that the respondent claimed false travelling allowance on certain days in the month of January, April and September, 1964 the respondent denied the charges and submitted a written statement on November 4, 1968. The Tribunal made inquires and on December 9, 1968 recommended dismissal of the respondent from the service.

4. The Government thereafter gave a notice gave a notice to the respondent on February 22, 1969 to show cause why the penalty of dismissal from service should not be imposed on him. On March 20, 1969 the respondent submitted his written explanation. The Government after considering the explanation of the respondent, by an order dated May 24, 1969 dismissed the respondent from service.

5. The respondent challenged the order of dismissal in the Andhra Pradesh High Court. The High Court by Judgment dated July 27, 1970 set aside the order of dismissal on the ground that the recommendation of the Tribunal were not communicated to the respondent along with the notice regarding the proposed punishment of dismissal. The high court observed that it was open to the punished authority to issue a fresh show-cause notice regarding the proposed punishment after communicating the enquiry report and the recommendation of the Tribunal.

6. The Government thereafter complied with the directions of the High Court. The Government cancelled the order of dismissal dated May 24, 1969. The government, however ordered that the respondent shall be deemed to have been under suspension from service from May 21, 1969 until further orders. The orders of suspension was challenged by the respondent and set aside by Andhra

Pradesh High Court on March 22, 1970.

7. The Government then issued fresh notices dated September 16, 1970 and September 25, 1970 to the respondent and communicated the report Tribunal and recommendations of the Tribunal and the Vigilance Commission regarding the proposed penalty. The respondent submitted his explanation on October 6 and 23, 1970. The Government consider the same. The Commerce Department thereafter by an order dated May 5, 1972 dismissed the respondent from service.

8. The charges against the respondent were that the made three cases claims for travelling allowance for three journeys. The first journey was on January 3, 1969 from Rajahmundry to Hyderabad and Hyderabad to Rajahmundry on April 24, 1964. The third journey was from Rajahmundry to Guntur on September 13, 1964 and Guntur to Rajahmundry on September 16, 1964.

9. The respondent in his written statement filed before the Tribunal denied the charges and maintained that he travelled by first class on the days mentioned in the claim for travelling allowance. He stated that he travelled by first class from Rajahmundry to Hyderabad on January 3, 1964, in accordance with his tour programme and claimed the travelling allowance. He also said that he travelled by first class from Rajahmundry to Hyderabad on April 19, 1964 and from Hyderabad to Rajahmundry on April 24, 1964 and claimed travelling allowance.

10. In Exhibit P-45 which was his signed statement dated January 8, 1964, he stated that on January 3, 1964 he went with his joint Director from Vijayorgram to Rajahmundry in a car. In that statement he said that he went from Hyderabad to Waltair on January 7, 1964 and he claimed travelling allowance from Vijayawada to Hyderabad. In Exhibit P-45 he said that on April 19, 1964 he travelled from Rajahmundry to Vijayawada by first class and he went to Hyderabad to Rajahmundry because there was not accommodation. He waited at Hyderabad. On April 28, 1964 he got reservation and travelled to Rajahmundry.

11. The Tribunal on enquiry found the respondent guilty of charges Nos. 1 and 2. In the enquiry report December 9, 1968, the Tribunal recommended dismissal of the respondent.

12. The respondent in the High Court challenged the order of dismissal. The High Court set aside the order of dismissal on the frauds that the prosecution did not adduce every material and essential evidence to make out the charges and the conclusion reached by the Tribunal was not based on evidence. The High Court held that Exhibit P-45 was no admissible in evidence according to the Evidence Act and it was not safe to rely on such a statements a matter of prudence.

13. The High Court said that corruption or misconduct under Rule 2(b) of the Andhra Pradesh Civil Service (Disciplinary proceedings Tribunal) Rules, has the same meaning as criminal misconduct in the discharge of official duties in Section 5 (1) of the Prevention Corruption Act 1947. The High Court in that background discussed the evidence in respect of the ingredients of the charge under Section 5(1)(d) of the Prevention of Corruption Act, 1947.

14. The High Court referred to these feature in regard to the finding of the Tribunal. Four years elapsed between the journeys forming subject-matter of the charge and the framing of the charge. The respondent in his evidence said that he secured accommodation through the conductor-in-charge of the first class compartment after the arrival of the train. It was possible that the respondent might have converted his ticket to first class one once he found that first class accommodation was available on the train even thought he had purchased a ticket of lower denomination. The

conductor's chart is the only basis for showing whether a particular person travelled by first class by a particular train and not by a copy of the reservation chart kept at the starting station. Though the prosecution produced evidence to show that the respondent did not produce or reserve first class accommodation in advance, the prosecution. According to the High Court : "The prosecution utterly failed to adduce any evidence to exclude these possibilities".

15. The High Court said that is was doubtful whether Exhibit P-45 was admissible in evidence. It was said to be taken during the course of investigation. The High Court said that even if the statement is accepted, it only shows that the respondent did not actually travel on the days mentioned in the tour programme according to which travelling allowance was paid.

16. The respondent made the statement marked Exhibit P-45 on January 8, 1967. The charge-sheet was framed on November 17, 1967. The respondent filed the written statement on August 2, 1968. He field an additional written statement on November 4, 1968. It is apparent that the charge-sheets were framed after investigation.

17. It transpired on evidence before the Tribunal that one first class ticket being No. 03834 was collected at Hyderabad on January 4, 1964. The further evidence about ticket No. 03834 was that it was issued to one P. Ramachandra Raju who travelled from Rajahmundry to Hyderabad on the night of January 3, 1964. The further evidence before the Tribunal was that one first class ticket bearing No. 04049 for the journey from Rajahmundry to Hyderabad was sold to one A. S. Murty for the journey on April 19, 1964.

18. The Tribunal examined the respondent. The respondent was given full opportunity to deal with Exhibit P-45.

19. The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case. The High Court was also in error in holding that conductor's chart would show whether the respondent travelled or not. The High Court accepted the explanation that conductor's charts were burnt and, therefore, they could not be produced. Further, conductor's charts could not show the name of the persons paying the money. There was a positive evidence before the Tribunal of tickets being purchased by persons other than respondent on January 3, 1964 and April 19, 1964. These features figured prominently before the Tribunal.

20. The High Court all throughout treated the enquiry before the Tribunal as a criminal prosecution.

21. The scope of Article 226 in dealing with departmental inquiries has come up before is Court. Two propositions were laid down by this Court in State of A. P. v. Sree Rama Rao ((1964) 3 SCR 25 : AIR 1963 SC 1723 : (1964) 2 LLJ 150). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holing a departmental enquiry invalid. The High Court is a not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not biolated. Second, where the is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which

evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is nit the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the every face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorised are, if the enquiry is otherwise properly held, the sole judge of facts and if there is some legal evidence on which their finding can be based, the adequacy or reliability of that evidence did not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh said ((1969) 3 SCR 548 : (1969) 1 SCC 502) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh's case (supra) this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate Court. The findings of fact reached by an inferior court to tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of a fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K. S. Radhakrishnan ((1964) 5 SCR 64 : AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the evidence is not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising

jurisdiction to issue a wait of certiorari should not do.

25. The respondent raised another contention that the State did not give the respondent a document described as 'B' Report and Investigation Report of the Anti-Corruption Bureau. The ground advanced by the respondent in the petition before the High Court was that 'B' Report and Investigation Report to which the reference is made by the Tribunal in its report and which are relied on to support the charges, were not made available to the respondent. The High Court did not express any opinion on this question because the High Court set aside the dismissal on the ground that there was no evidence for the Tribunal to come to that conclusion. The State in the affidavit field in the High Court in answer to the respondent's petition said that 'B' report and Investigation Report are secret report which are intended for the reference of the Tribunal of Disciplinary Proceedings and the Government and, therefore, these reports are not supplied to the officers. We need not express any opinion on that answer of the affidavit. The respondent in answer to the affidavit of the state said that the affidavit of State said that the Tribunal used the 'B' Report and Investigation Report against the respondent and did not supply copies. It is because the respondent alleged in the writ petition that the Tribunal relied on 'B' Report and Investigation Report, we looked into the Inquiry Report of the Tribunal to find out whether that was a correct statement. We find that there is a reference to 'B' Report by the Tribunal only because the respondent challenged the genuineness and authenticity of Exhibit P-45. The respondent's case that if he made a statement like Exhibit P-45, the Investigating Officer would have sent it along with his report. The Inquiry Officer the investigating Officer recorded the statement of the respondent. The Tribunal has not relied on 'B' Report and Investigating Report. The respondent never demanded 'B' Report and Investigating Report. The respondent was interested before the Tribunal to displace Exhibit P-45 by doubting its genuineness. The Tribunal found that Exhibit P-45 was genuine and was a statement made and signed by the respondent in the presence of the Investigating Officer. It does not appear that the Tribunal based its finding only on Exhibit P-45.

26. For these reasons we are of opinion that the High Court was wrong in setting aside is accepted. Order by reviewing and reassessing the evidence. The appeal is accepted. The Judgment of the High Court is set aside. Parties will pay and bear their own costs.

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