SUPREME COURT OF INDIA

Mathura Prasad

Vs

Union of India and Others

Appeal (Civil) 4634 of 2006 (Arising Out of Slp) No. 25654 of 2005)

(S. B. Sinha and Markandeya Katju (Cj), JJ)

01.11.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

Appellant was engaged as a casual labour in the year 1978 for a period of four months. He was posted in Ganj Basoda Station. Subsequently, he was appointed at Bina Depot in the year 1981 and served upto 30.6.1982. He was appointed similarly on a few more occasions and was declared as a monthly rated casual labour in 1986. He was issued a service card wherein the details of his service as a casual labour were recorded from time to time. Service Card contained the particulars of the places, number of days and the capacity in which he had worked.

Pursuant to or in furtherance of a scheme of regularization in 1989, his name was short-listed. The service card was sent for verification. A purported report dated 31.5.1990 was sent by an Electrical Foreman, Ganj Basoda challenging that it was a fake one; whereupon a major penalty was imposed on him, inter alia, on the charges; firstly, his service card bearing No. 303774 was fake; and secondly, that he secured employment on the basis of the fake service card.

A departmental inquiry was initiated. The Inquiry Officer upon considering the materials placed on

records in his report, stated:-

"This employee worked with the Works Inspector (Pul) Beena. His record was said to be at Beena with the IOW (East) but it came to be known from there that the record I.O.W. (M) was with the petitioner. Having gone there the matter was worked in to. There the full record of Works Inspector (Pul) Beena became available. I.O.W. (M) Vidisha gave it in writing that Shri Mathura Prasad S/o Babu Lal as per his service card No. 303774 worked under the Works Inspector (Pul) Beena as canal Khalasi w.e.f. 30.6.81 to 18.7.81 who is mentioned at S.No. 101 in the L.T.I. Register and at that time he was working under the Works Inspector (Pul) Beena K.L. Shridhaaran. NCMR Sheet was also seen. The name of the employee is mentioned in sheet No. 66253 of 18.7.81."

The disciplinary authority was, however, not satisfied with the report. It was sent it back to the Inquiry Officer under a demi-official letter dated 2.11.1993 stating:-

"You were nominated as enquiry officer in case of S-5 served to Shri Mathura Prasad, MRCL Khalasi on dated 5.7.90. You have submitted your enquiry report on 15.10.93, while going through enquiry report, it is not clear how you have come on the conclusion and you have given the final findings.

The file is being sent to you back. Kindly submit your report giving clear remarks about every points of charges framed in SF-5. You are hereby advised to re-submit your enquiry report by enquiring properly to this office immediately."

Without any further inquiry and without giving any further opportunity of hearing to Appellant, the Inquiry Officer opined that the said service card was fake, stating:-

"On 4.12.93 the perusal of the record of the matter of the A.R.E. Shri S.C. Upadhyaya also was made and it was given in writing to Shri Mathura Prasad S/o Babu Lal that the service card bearing No. 303774, the copy of which has been given on 3.3.92 has not been issued by the R.T.I. (Sec) Gunjbasoda but according to that your name has been showed against the T.I. of Phulle at S.No. 8 in the L.T.I. Register which has not been verified by any of the FRTI (Sec.) which is at page No. 64 and bears the signatures of the ARE and Mathura Prasad. From this thing it transpires that the card No. 303774, which has been given to Mathura Prasad S/o Babu Lal, has not been issued by RTI (Sec.) Gunjbasoda. Therefore, this card is forged."

Relying on or on the basis of said purported report of the Inquiry Officer, punishment of removal from service was imposed by the disciplinary authority by an order dated 26/28.4.1994. The punishment of removal of service of Appellant was confirmed by an order dated 7.7.1994 passed by the Appellate Authority i.e. Upper Divisional Electrical Engineer, Bhopal.

Appellant filed an Original Application before the Central Administrative Tribunal, questioning the

said order of the disciplinary authority as also the Appellate Authority. By a judgment and order dated 13.2.2001, the Tribunal allowed the said application and directed reinstatement of Appellant with consequential benefit but with 50% back- wages. The Tribunal arrived at the said conclusion on the premise that the disciplinary authority at the first instance having differed with the findings of the Inquiry Officer was enjoined with a duty to record reasons therefor and record its own findings on the said charge that the evidence was sufficient for the purpose as required under Rule 10(3) of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short the Rules). It was further held by the Tribunal that there was no finding with regard to endorsements of work rendered by Appellant between 1978 to 1986 contained in the service card of Appellant are inaccurate in particulars.

Respondent herein preferred a Writ Petition before the Madhya Pradesh High Court thereagainst wherein, inter alia, it was contended that a finding of fact having been arrived at by the disciplinary authority that the service card was fake, the Tribunal could not have interfered therewith. It was further contended that only because the entries therein were in relation to the service by Respondent-Appellant, the same by itself was not a fresh ground for overturning the finding of the disciplinary authority. The High Court agreed with the said contentions and allowed the Writ Petition, inter alia, holding:-

"The Inquiry Officer surmised that as the entries in the service card was not issued by the PW-1, Ganj Basoda, when he submitted the first report. Therefore, the Disciplinary Authority wanted him to give specific findings thereon and he gave further finding that the card was a fake. Therefore, the second inquiry report is virtually a continuation of the first inquiry report and the second report rightly considered the charge and recorded appropriate findings therein which he had failed to do in the first report. The fact that the first respondent might have served as Casual Labourer in the year 1978 and again from 1981 to 1983 and from 1985 to 1989 as per the endorsements contained in the service card, to repeat, is not relevant. The charge was not that the first respondent did not serve during that periods. The charge was that he obtained fake service card where several entries were genuinely made. It is apparent that when such entries were made in the years 1981 and 1985, the authorities were not aware that the service card was a fake. Only when it was sent for verification to the authority who is said to have issued the service card, it was found that the service card was not issued by that office and it was realized that it was a fake."

The short question which falls for our consideration is application of sub-Rules (2) and (3) of Rule 10 of the Rules.

Rules were framed by the Union of India in exercise of its jurisdiction under the proviso appended to Article 309 of the Constitution of India. Sub- Rules (2) and (3) of Rule 10 of the Rules read thus:-

"10. Action on the Inquiry report.

(1) .....

(2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, regards its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

Indisputably the Inquiry Officer was enjoined with a duty to enquire into the charges of misconduct levelled against Appellant. He enquired into the matter. He found that the contents of the service card were correct. In other words, the particulars in regard to the period of work, place of work and the nature of work entered into therein were correct. He might not have been recorded that the service card was genuine or fake but substance of the allegation against Appellant was as to whether he had obtained an appointment by using a fake service card.

The disciplinary authority merely sent a demi-official letter to the Inquiry Officer. He did not pass any order. The file was sent back to him for a clear remark on every point of charges framed against Appellant. It could not have been either an order passed in terms of sub-Rule (2) of Rule 10 or sub-Rule (3) thereof. The disciplinary authority was a statutory authority. He was, therefore, bound to act within the four corners of the statute. Procedures relating to conduct of a disciplinary proceeding have been laid down by the Rules. He was bound to follow the same scrupulously. It is one thing to say that he wanted the Inquiry Officer to state the points to clear the said findings arrived at by him on each of the charges separately, but he did not have his jurisdiction to issue the direction under either of the sub-rules of Rule 10. Inquiry Officer held a further enquiry in furtherance of the direction of the disciplinary authority. He proceeded on the basis that his Disciplinary Authority required him to hold further enquiry. Inquiry Officer, therefore, pursuant thereto or in furtherance of the said letter dated 2.1.1993 issued by the disciplinary authority could not have arrived at a different finding, when no further opportunity was given to Appellant herein and no reason was recorded therefor. Even in his report dated 21.12.1993 he arrived at the conclusion that the service card was forged only because the purported card had not been issued by RTI (Sec), Ganj Basoda.

Whether any of the entries contained in the said card was correct or not, was not verified. It could not have been held to have no relevance for arriving at a finding that the same was a forged one.

Curiously the disciplinary authority in its order dated 26.4.1994, inter alia, recorded:-

"I have decided to impose upon you the penalty of compulsory retirement/removal/dismissal from service. You are therefore, compulsorily retired/removed/dismissed from service with"

The punishment proposed was vague. The Tribunal, therefore, although relied on sub-Rule (3) of

Rule 10, in our opinion, arrived at the right conclusion as the matter having not been remitted to the disciplinary authority for a further inquiry under sub-Rule (2) of Rule 10 of the Rules, the same was illegal and without jurisdiction. It had not been disputed before us and it would be a mere repetition to state that the entries contained in the service record were correct. The High Court, therefore, may not be correct in arriving at its conclusion in its judgment.

The Inquiry Officer in his first report might not have specifically recorded his findings with reference to each of the charges levelled against Appellant but he arrived at a finding on analysis of the materials on record. If he was to differ with the said findings on the basis of any fresh materials, he was enjoined with a duty to grant another opportunity of hearing to Appellant.

Even if the Inquiry Officer had, in his first report, proceeded on surmises and conjectures as was observed by the High Court, the disciplinary authority could disagree with the said finding but it was, therefor, required to record its reasons. No reason was recorded. Sub-Rules (2) and (3) of Rule 10 aim at achieving the same purpose. If sufficient materials are not available on record, a direction for holding a further inquiry may be issued in terms of sub-Rule (2) of Rule 10 so as to enable the department to lead further evidence before him. For the said purpose also, reasons are required to be recorded by the disciplinary authority. An opportunity of hearing to the delinquent officer is required to be given. However, in the event, the disciplinary authority comes to the conclusion that the conclusion arrived at by the Inquiry Officer on the basis of materials placed by the parties are incorrect, he may disagree with the said findings but even, therefor, he is required to record reasons in support thereof. The requirement of sub-Rule (2) or sub-Rule (3) having not been complied with, the Inquiry Officer could not have arrived at a different finding. The High Court unfortunately did not consider this aspect of the matter.

When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under sub- Rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

Shri S.N. Chandra Shekhar & Anr. v. State of Karnataka & Ors. wherein this Court held:-

"34. The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

35. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, this Court referring to Cholan Roadways Ltd. v. G. Thirugnanasambandam held:

(SCC p. 637, para 14)

14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Ltd. v. G. Thirugnanasambandam, this Court observed: (SCC 253, paras 34-35)

'34 It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See E. v. Secy. of State for the Home Deptt). Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 Public Law, p. 788.'"

(See also Sonepat Coop. Sugar Mills Ltd. v. Ajit Singh, SCC paras 23 & 24.)

36. The order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit. (See Bangalore Development Authority v. R. Hanumaiah)."

The said dicta shall apply to the facts of the present appeal also.

The impugned judgment, therefore, cannot be sustained. The appeal is, thus, allowed. However, the matter is remitted to the disciplinary authority. It may pass an appropriate order upon application of his mind afresh in the light of the observations made hereinabove.

Appellant is entitled to costs. Counsel's fee assessed at Rs.15, 000/-.