Jiwan Mal Kochar vs Union Of India (Uoi) And Ors. on 9 August, 1983

Equivalent citations: AIR1983SC1102, (1983)4SCC148, AIR 1983 SUPREME COURT 1107, 1984 (1) SCC 200, 1983 LAB. I. C. 1295, (1983) 2 RAJ LR 452, 1983 CRILR(SC MAH GUJ) 453, 1983 CRI APP R (SC) 419, 1984 SCC (CRI) 44, 1983 2 SERVLR 452, (1983) 2 CRIMES 587, (1983) 2 LAB LN 688, AIR 1983 SUPREME COURT 1102, 1983 LAB. I. C. 1290, 1983 UJ (SC) 852, (1983) 2 LAB LN 683, 1983 SCC (L&S) 499, (1983) 47 FACLR 398, 1983 (4) SCC 148, (1983) 2 SERVLR 456

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Bench: A. Varadarajan, A. N Sen, Y.V. Chandrachud

JUDGMENT

A. Varadarajan, J.

1. This appeal by special leave is by the appellant in Letters Patent Appeal 119 of 1971 which was dismissed by the Delhi High Court. The L.P.A. was filed by the appellant against the order of a learned single Judge of that High Court dismissing the Writ Petition filed by the appellant against the order of the President of India, dated 25-1-1964 compulsorily retiring him from service with immediate effect. The appellant was an officer of the Madhya Pradesh cadre of the Indian Administrative Service. The said order was passed as a result of disciplinary proceedings instituted against the Appellant under the All India Services (Discipline and Appeal) Rules, 1955 in which he was found guilty of the whole of Charge No. 7 and a part of Charge No. 9.

2. The appellant, born on 21-1-1912, joined service in the erstwhile Gwalior State on 10-1-1938 and later came into the Indian Administrative Service. He was appointed as General Manager of the Madhya Bharat Roadways of the Madhya Pradesh Government on 18-8-1954 and he continued as such up to 8-1-1956 in which spell he functioned also as Director of Industries of the State from 14-5-1956 to 8-6-1956. He had worked as General Manager of the same Roadways again for a second spell from 5-8-1957 to 1-9-1958. During the period he was no! working as General Manager of the Roadways an investigation was started against him at the instance of the Works Manager of the Roadways and it disclosed certain irregularities committee during the period in which he was General Manager. The Finance Officer (6th respondent) who was entrusted with the investigation, submitted two reports dated 17-7-1957 and 30-7-1957 to the then General Manager. Mr. Sawant, pointing out certain irregularities in the matter of purchases of stores by one Banthia, who was

Manager of the Central Stores of the Roadways a the relevant time. Mr. Sawant suspended Banthia on 19-7-1957 and forwarded the aforesaid two reports to the State Government. Thereafter, the appellant became General Manager of the Roadways for the second spell from 5-8-1957 and he approved the draft First. Information Report which was to be filed against Banthia and Ors. on 26-9-1957. The First Information Report was actually lodged with the Police on 27-9-1957. During the Police investigation which followed certain documents including a letter which was marked as Ex. G-121 in the departmental enquiry led the authorities to suspect that the appellant also was responsible for some of the irregularities. Thereupon, a chargesheet was served, on the appellant on 17-9-1960 for a departmental enquiry. Charges 7 and 9 with which alone we are concerned in this appeal were the following:

> He connived at the supply of inferior substitute by the said firm of Niranjanlal Ramchandra in place of genuine Dodge brake linings as per orders dated 12-3-1956 and 14-5-1956, referred to in the Charges Nos. 1, 2 and 4 and the payment therefor at the rates agreed for genuine parts and on the fraud, having come to the surface tried to cover it up by being privy to the fabrication of a false and ante-dated document namely a letter dated 17-5-1956, purporting to be from the said firm of Niranjanlal Ramchandra and calculated to shield the same firm from criminal and financial liability as also himself from suspicion of misconduct.
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> Despite a clear departmental instruction to the contrary, he on 8-12-1954, placed a mere probationer, Shri Raj Mal Banthia in charge of the Central Stores of the M. B. Roadways relieving a senior and experienced officer, Shri Lekh Raj Sharma, the Works Manager, of the Supervisory control of the Stores, failed to ensure that the stores were regularly inspected and later went out of his way in shielding Shri Banthia.

3. The appellant filed his reply to the charge-sheet on 4-10-1960 and the enquiry was commenced after one Mr. Radha Krishnan who was President of the Board of Revenue, Madhya Pradesh was appointed as Enquiry Officer. The appellant filed a written reply to the charge sheet before the Enquiry Officer on 17-2-1961. After the examination of the witnesses for the department between 22-4-1961 and 1-8-1961 the appellant filed another written statement before the Enquiry Officer in respect of the charges and the evidence of the departmental witnesses on 23-9-1961. Subsequently, his defence evidence was recorded, on 22-10-1961. Thereafter, arguments were heard from 8-1-1962 to 29-1-1962 and the Enquiry Officer submitted his report on 22-3-1962, holding that the entire Charge No. 7 and a part of Charge No. 9 were proved against the appellant. The State Government considered that report and forwarded it to the Central Government on 18-7-1962 along with its recommendations. Subsequently, a show cause notice was issued to the appellant on 19-10-1962 informing him that after a careful consideration of the record of the case, the. evidence and the findings of the Enquiry Officer, the President of India agrees with the findings of the Enquiry Officer on Charges 7 and 9 that the appellant went out of the way to shield Banthia and that the President of India is provisionally of the view that the appellant is not fit to be retained in service and should be dismissed.. After the appellant submitted his reply to that show cause notice on 31-12-1962 the records of the proceedings together with the appellant's reply dated 31-12-1962 were forwarded to

the Union Public Service Commission.

4. The Union Public Service Commission on a consideration of the circumstantial evidence in the case gave its opinion in its Memorandum dated 26-12-1963 that the appellant had : passed an ante-dated order with the object of shielding N. R. Firm of Agra, suppliers of certain spare parts, and for saving Banthia from the responsibility of having accepted non-genuine parts, that the latter part of the Charge No. 7 has been proved and that Charge No. 9 has been proved to the extent that the appellant went out of his way. to shield Banthia. The Union Public Service Commission advised in that Memorandum that the penalty of compulsory retirement should be imposed on the appellant. Thereupon, the impugned order dated 25-1-1964 was passed by the President retiring the appellant compulsorily and it was served OR him on 5-2-1964. The appellant's Re-view Petition filed under Rule 19 against the order of compulsory retirement was dismissed by the Central Government on 15-12-1965. The appellant's Memorial presented under Rule 20 on 23-1-1967 was pending when he filed the Writ Petition in the High Court challenging the order of compulsory retirement on 6-12-1968. The Memorial was rejected by the President on 14-5-1970 and the Writ Petition was thereafter heard and dismissed by the learned single Judge on 19-2-1971.

5. The gravamen of the charge against the appellant was that he connived at the supply of inferior substitutes by N. R. Firm of Agra in the place of genuine Dodge brake linings, that when the fraud came to light the appellant tried to cover it up by being privy to the fabrication of a false and ante-dated document, viz. a letter dated 17-5-1956 (marked as Ex. G-121 in the departmental enquiry) and endorsed it on 30-5-1956 and that the fabrication was intended to shield N. R. Firm from financial and criminal liability and himself from suspicion of misconduct.

6. Before the learned Judges who heard the Letters Patent Appeal, Mr. G.D. Gupta who advanced arguments on legal aspects on behalf of the appellant, submitted that the evidence relied upon against the appellant was purely circumstantial and it should be such as to exclude the possibility of the appellant's innocence, that the findings of the Enquiry Officer were vitiated as based on mere suspicion and no evidence and on inadmissible material and that the guilt of the appellant has not been established such as to stand scrutiny and reasonableness consistent with human conduct and probabilities. On the other hand, Mr. I.N. Shroff appearing .for respondents 1 and 2, Union of India and the State of Madhya Pradesh, argued before the learned Judges that the order of compulsory retirement made by way of punishment in a departmental enquiry can be interfered with in writ jurisdiction only if there is any violation or breach of or non-compliance with any statutory requirement or rule or if there is no evidence at all in support of the charge and that the findings of the Enquiry Officer cannot be interfered with if there is some evidence which may reasonably support the conclusion ;of guilt of the delinquent officer and the Enquiry Officer has accepted the same. In this connection, the learned Counsel relied upon some decisions, of which only two may be mentioned, namely, State of Andhra Pradesh v. Shree Rama Rao and Syed Yakub v. K.S. Radha Krishnan . In the first of those decisions it has been observed (at p. 1727):

> ...The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent 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 evidence and the merits of the case or by allowing themselves to be influenced by Irrelevant considerations or where the conclusion on the very face of it is so Wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based,, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

In the second case it has been observed (at pp. 479-80) There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be 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 fact recorded by the Tribunal a writ of certiorari 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. Similarly, 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. In dealing with this category of cases, however, we must always bear in mind that a finding of recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the Tribunal, and, the said points cannot be agitated before a Writ Court.

7. The learned Judges who heard the Letters Patent Appeal did not find any violation of the principles of natural justice. They rejected the appellant's contention that the institution of the departmental enquiry against him was mala fide and found that the fact that the Enquiry Officer exonerated the appellant on several charges and found him guilty of Charge No. 7 and part of Charge No. 9 shows his impartiality and not any mala fides. The main attack on the findings of the Enquiry Officer before the learned Judges of the High Court was that it is based on a misreading of the aforesaid letter Ex. G-121 and that the finding that the letter seems to be ante-dated is based only on suspicion and surmise. The learned Judges rejected the. contention urged regarding that letter and the appellant's recording thereon and held that the inference of fact drawn by the Enquiry Officer that the letter is ante-dated is fully justified. They declined to sit in Judgment over the findings recorded by the Enquiry Officer, and observed that the High Court is not a Court of Appeal over the decision of the authorities holding departmental enquiry and that when there is some evidence

which the departmental authority holding the enquiry has considered, and evaluated and accepted for holding the delinquent officer guilty the High Court will not re-appreciate the evidence to arrive at fresh findings in proceedings under Article 226 of the Constitution. All the same the learned Judges considered the material on record and found that three sets of documents and certain circumstances considered by them lead to the conclusion that the letter Ex. G-121 was not available on the date it bears. Thus far regarding Charge No. 7

8. The appellant conceded before the learned Judges of High Court that he would not. seriously dispute the findings of the Enquiry Officer regarding the part of Charge No. 9 found against him, viz. that he passed an ante-dated order on that letter, in case the learned Judges of the High Court upheld the Enquiry Officer's finding on Charge No. 7 relating to that letter. The learned Judges rejected the challenge made before them against the findings of the departmental authority.

9. It was contended before the learned Judges of the High Court that the requirement of Rule 5(2) was not complied with and, the circumstances relied upon in the departmental enquiry for holding the appellant guilty were not communicated to him along with the statement of allegations on which the charges were based. The learned Judges rejected this contention and found that a reading of the allegations in support of the charge discloses that all the circumstances have been included in the statement of allegations attached to the charge and that they were further clarified in Mr. Jha's statement marked as Ex. G-204 in the enquiry proceedings. They have observed that in his reply to the show cause notice the appellant has dealt with each one of the circumstances relied upon by the Enquiry Officer and has questioned the correctness of the inference of fact drawn on the basis of those circumstances. They found no merit in this contention of the appellant.

10. The learned Judges rejected the appellant's further contention that the Union Public Service Commission relied upon some extraneous material in coming to its conclusion communicated in its Memorandum mentioned above. They rejected his contention that he was not given access to some official records for the purposes of preparing his written statement, and Rule 5(4) was thus violated and that there were other vitiating factors, and dismissed the appeal.

11. "Before us the appellant appearing in persons submitted that the departmental enquiry is vitiated by mala fides of the Minister and officers concerned and misuse of State power, that the letter Ex. G-121 has been misread by the Enquiry Officer hi such a manner as no reasonable man would do, that the outcome of the departmental enquiry is based on fraud and mala fides of the disciplinary authority and that the finding of guilt should not, therefore, be accepted. We may state that there was no reference to any mala fides on the part of any Minister or other officer in the course of the appellant's arguments before the High Court. There is no substance in this contention. The High Court has considered three sets of documents and several circumstances for agreeing with the Enquiry Officer's finding that Ex. G-121 is an ante-dated and fabricated document. We decline to go into the correctness of this finding of fact arrived at by the Enquiry Officer which is based on circumstantial evidence in view of the principles of law mentioned in the aforesaid two decisions of this Court. We would, however, add that we do not find any reason whatsoever to disagree with the learned Judges of the High Court in regard to the conclusion reached by them about the letter Px G-121 being ante-dated and fabricated. So far as the Enquiry Officer is concerned the appellant has

admitted before us that he had, no bias against him and that he was given all opportunities to defend himself. He has also admitted before us that there is nothing in the finding of the Enquiry Officer to show that he was influenced by any judgment against Banthia. As a matter of fact, on the date the Enquiry Officer's findings there was only an order dated 15-2-1962 of the Magistrate committing Banthia and others to take to their trial in the Sessions Court. The departmental enquiry was over soon thereafter on 23-3-1962, The appellant's submission that the Enquiry Officer was informed by the Inspector of Police that in view of that committal order he would be guilty of contempt of Court if he did, not find the appellant guilty, has to be rejected, for it is improbable that such a highly placed officer as the President of the Board of Revenue who held the departmental enquiry against the appellant would have been so informed by an Inspector of Police and that even if he had, been so informed he would have found the appellant guilty of Charge No. 7 and part of Charge No. 9 on account of any such intimidation.

12. Admittedly, the Enquiry Officer had no bias against the appellant and had given him all opportunities to defend himself in a fair and reasonable manner. There is no non-compliance with any statutory rule or requirement or any principle of natural justice. The conclusion of the Enquiry Officer regarding the appellant's guilt in respect of the entire Charge No. 7 and part of Charge No. 9 is based on circumstantial evidence which has been accepted by the Enquiry Officer and found to be acceptable even by the learned Judges of the High Court in the light of three sets of documents and other circumstances considered by them. In these circumstances there is no reason for us to come to a different conclusion regarding the appellant's guilt in respect of Charge No. 7 and part of Charge No. 9. No interference with the judgment of the learned Judges of the High Court is called in this appeal. The appeal accordingly fails and is dismissed with costs.