Bhagat Ram vs State Of Himachal Pradesh And Ors. on 24 January, 1983

Equivalent citations: AIR1983SC454, 1983LABLC662, (1983)IILLJ1SC, 1983(1)SCALE864, (1983)2SCC442, 1983(2)SLJ323(SC), AIR 1983 SUPREME COURT 454, 1983 2 SCC 442, 1983 LAB. I. C. 662, (1983) CURLJ(CCR) 80, 1983 UJ (SC) 297, 1983 (1) SERVLR 626, (1983) 1 LAB LN 810, (1983) 47 FACLR 95, (1983) 2 LABLJ 1, (1983) 2 SERVLJ 323

Bench: D.A. Desai, R.B. Misra

ORDER

1. Special leave granted. Delay condened.

2. Appellant joined service as a Forest Guard in erstwhile State of Punjab and when the State of Himachal Pradesh was formed, his service stood transferred effective from November 1, 1966 to Himachal Pradesh. At the relevant time, he was serving as Forest Guard in Kulu Forest Division. It appears that one Kali Dass of village Kharka has land of his private ownership within the area covered by the beat of the appellant. Somewhere in the early part of 1973, Kali Dass cut and felled 21 spruce trees in Tarapur 111, Forest of lower Kulu range. It was alleged that the appellant as Forest Guard and one Duni Chand, Block Officer failed to exercise necessary supervision with a view to preventing illicit felling of spruce trees. However, as soon as misdemeanour of Kali Dass came to light, an enquiry was held. In this enquiry, Kali Dass contended that he had cut and felled spruce trees standing on the land of his private ownership and he cannot be accused of any illicit felling of spruce trees from the forest area. This contention necessitated a measurement of the land claimed by Kali Dass to be of his private ownership and it is only after physical measurement and specific demarcation of boundary. It could be ascertained that of the 21 trees cut and felled, 17 were in Forest land and 4 were in the land of private ownership of Kali Dass. Kali Dass after measurement and demarcation conceded, as per his statement Annexure 1, that he bona fide believed that all the 21 trees were standing in his private land and now that on physical measurement and demarcation of boundary, it transpired that of the 21 trees, 17 were standing in the forest land, he could not have cut the same without the necessary permission. He further contended that there was an honest error about the boundary line dividing his private land with the forest land and therefore, he felled the trees. He proceeded to state that he confessed that 17 trees felled by him stood in the Government Forest land and he was bound to pay the compensation for the same and it is an admitted position that he in fact paid Rs. 3,136.66 p. to the Forest Department as and by way of compensation.

3. Thereafter, a joint disciplinary enquiry was initiated against appellant, the Forest Guard and Duni Chand, Block Officer. It would be advantageous to reproduce the charges framed against the appellant and Duni Chand. Following charges were framed against Duni Chand :

(1) Illicit felling in Tarapur III thereby causing loss to Government.

(2) Negligence in the performance of Government duty.

(3) Doubtful honesty.

The charges framed against the present appellant were as under :

(1) Illicit felling in Tarapur III due to negligence of the P. C. thus causing loss to Government property.

(2) Negligence in performance of Government duty.

(3) Doubtful honesty.

A joint enquiry proceeded against both the delinquents upto the point of recording evidence of witnesses : (1) Sh. Thampi Ram (2) Sh. Khub Ram (3) Sh. Amar Chand (4) Sh. Kali Dass and (5) Sh. N. D. Ralli. Inquiry having proceeded to that stage, the Presenting Officer applied for and obtained an Order separating the inquiry and thereafter proceeded to examine co-delinquent Duni Chand as a witness against the present appellant. Thereafter, the Inquiry Officer submitted a joint report both against Duni Chand and the present appellant. The Inquiry Officer held that charges No. 1 and 2 against Duni Chand and the present appellant were proved, but the third charge of doubtful honesty against both has not been proved. On receipt of the report, the Disciplinary Authority Arnyapal, Kulu proceeded to accept the report in respect of charges No. 1 and 2 and provisionally decided to impose the penalty of removal from service and served a notice under Article 311(2) on April 5, 1977 calling upon the appellant to show cause why the provisional penalty decided upon by him should not be confirmed. The appellant submitted his written explanation. The Inquiry Officer, after considering the same, confirmed the penalty of removal from service. The appellant preferred an appeal to the Chief Conservator of Forest without success. Thereafter, the appellant filed a revision petition to the Forest Minister, but before he received any reply as to how his revision petition was dealt with, he moved a petition under Article 226 of the Constitution in the High Court of Himachal Pradesh at Simla. A Division Bench of the High Court dismissed the petition in limine. Hence this appeal by special leave.

4. We heard Mr. R.L. Kohli, learned Counsel for the appellant and Mr. Talukdar, learned Counsel for the respondents.

5. The first contention canvassed on behalf of the appellant was that he was denied a reasonable opportunity to defend himself in the inquiry in asmuch as while the Department was represented by a Presenting Officer, till the first 3 witnesses are examined, he was not given an opportunity to seek assistance of an Officer in his defence, in para 3 (vii) of the Special Leave Petition, the appellant has averred that he was not informed and was not told that there will be a Presenting Officer on behalf of the department till three witnesses were examined on January 8, 1975. He proceeded to state that the petitioner being a Government employee in Class IV service of the level of a Forest Guard, he

could not and was not expected to cross-examine witnesses pitted against him and he was labouring under a serious handicap that his own superior who was a co-delinquent, was being defended by another officer Shri Yudaister Lal. In this connection, in para 14 of the affidavit in opposition filed by Shri K.C. Puri, Under Secretary (Forests) to the Government of Himachal Pradesh has stated as under :

> With reference to para 3 (vii), I submit that it was not obligatory on the part of the Enquiry Officer to have asked the petitioner to get appointed a Government servant of his choice to defend his case. On the other hand it was for the petitioner himself to intimate the name of any Govt. servant whom he intended to use as his Defence Counsel. It may be stated that the petitioner applied for this purpose on 27.2.75 and he was allowed to do so. It was for the petitioner to cross-examine the prosecution witnesses during the course of inquiry, but he did not do so.

> What picture emerges from the assertion and counter-assertion ? Appellant a Forest Guard belonging to lower echelons of class IV service, whose educational attainment would not be of a very high Order, with this equipment had to face an inquiry jointly held with his superior and in which there was a Presenting Officer, was expected to defend himself without any assistance. The disciplinary authority was represented by a Presenting Officer is not in dispute. It is also not in dispute that the co-delinquent Duni Chand had appointed an Officer of the department to defend him. Between these two well represented parties, appellant had defend for himself. The contention is that the appellant did not apply in time for permission to seek help of another Government servant of the department or a co-worker to defend him and as and when the permission was asked for, it was granted. In our opinion, it is a highly technical approach not conducive to a just and fair adjudication of the charges levelled against the appellant. If the department had appointed a Presenting Officer, if a co-delinquent had an officer to defend him, in our opinion, to afford appellant, a class IV semi-literate Forest Guard, reasonable opportunity to defend himself, justice and fair-play demand that the Inquiry Officer should have enquired from the appellant whether he would like to engage someone to defend him. Rules permit such permission being asked for and granted in such circumstances. The Inquiry was being held according to the provisions contained in. Central Civil services (Classification, Control and Appeal) Rules 1965 ('Rules' for short). Sub-rule of Rule 5 provides that.... The Government servant may present his case with the assistance of any Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as afore-said is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits." The procedure prescribed for the Inquiry was devised with a view to affording a delinquent Government servant facing a disciplinary proceeding a reasonable opportunity to defend himself. And by a catena of decisions it is well established that the delinquent has a right to cross-examine witnesses examined on behalf of the disciplinary authority and an opportunity to lead his own evidence and to present his side of the case. This is the

minimum principle of natural justice which must inform a disciplinary proceeding. To be precise, the provisions contained in '1965 Rules' do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a Government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fair play demand that where in a disciplinary proceeding the department is represented by a Presenting officer, it would be incumbent upon the Disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneouly to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the Inquiry without obtaining assistance, one can say there is substantial compliance with the rules. But in the absence of such information being conveyed, if the Inquiry proceeds, as it has happened in this case, certainly a very vital question would arise whether the appellant delinquent Government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative, the next question is whether the Inquiry is vitiated ? In this connection, we would like 40 to refer to a decision of this Court in G.L. Subramaniam v. Collector of Customs, Cochin wherein it was held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales would be weighted against him. That was the case in which the disciplinary authority was represented by a strained prosecutor and the question was whether the delinquent officer was entitled to the assistance of a legal practitioner ? And the answer was in the affirmative. The position is slightly different here. The department was represented by a Presenting 50 Officer, co-delinquent, a superior Officer of the appellant was equally represented by an Officer of his choice and this forest guard had to fend for himself. In such a situation, the view taken by this Court in The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendra-nath Nadkarni and Ors. Decided on November 17, 1982 (C.A. No. 3734 /82), would govern the situation. This Court said as under :

In our view we have reached a stage in our onward march to fireplay in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained, mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request to defend himself and the essential principles of natural justice would be violated.

> The principle deducible from the provision contained in Sub-rule (5) of Rule 15 upon its true construction that where department is represented by a Presenting Officer, it would be the duty of the delinquent Officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the Inquiry.

6. Turning to the facts of this case, appellant is as pointed out earlier a class IV government servant, a Forest Guard, recruited either in late, fifties or early sixties when the expectation of higher education qualification for service as a Forest Guard could not have been expected, had to participate in a disciplinary proceeding. He was pitted against a Presenting Officer representing the disciplinary authority and a co-delinquent who was his superior being defended by another officer. 3 important witnesses out of 5 whose evidence is relief-upon against the 30 appellant were examined before he became aware that he had a right to engage someone to defend him and availed of this opportunity. If after the appellant availed of the opportunity to engage someone to defend him, the Inquiry Officer has recalled the 3 witnesses who were examined when the appellant was personally present and could not even crose-examinetion them, certainly the defect in the Inquiry could be said to have been cured. That has not been done. In the return filed, the only stand taken is, as and when appellant asked for an opportunity to engage someone to defend him, permission was granted. In our opinion, in the facts and circumstance of this case, it is to technical an approach and could not be said to satisfy the test of reasonable opportunity to defend oneself in disciplinary proceeding, at the end of which alone a penalty could be imposed.

7. Three charges were framed against the appellant which have been extracted hereinbefore. Charge No. 3 imputing lack of integrity 45 (doubtful honesty) was not brought home to the appellant. In other words, the Inquiry Officer reported that the charge has not been proved.

8. Charge No. 1 alleged illicit felling of spruce trees on account of negligence of the appellant thereby causing loss to Govt. property. Charge No. 2 is merely a corollary to the first charge viz. negligence in performance of Govt. duty, both charges refer to the one fact only and are overlapping. It is admitted that one Kali Dass cut and felled 21 spruce trees. There was a dispute between Kali Dass and the Government as to whether the spruce trees which were cut and felled were standing in the Govt. forest land or private land of Kali Dass, and the dispute could not be resolved till a demarcation Daroga took measurement which revealed that out of 21 trees cut and felled, 4 were in the private lend of Kali Dass. Kali Dass could not have cut and felled 17 trees which were found standing in the Govt. forest land. That value of the trees thus illegally cut and felled was ascertained

and it is admitted that Kali Dass has paid the amount. It is therefore, conclusively established that no loss has been caused to the Government property.

9. The next question is whether there was negligence in performance, of duty. In this connection, the Inquiry Officer has observed that the duty of a Forest Guard is to see that the trees are felled after they are properly hammer-marked. He has further held that there is no exception to this rule and it applies in all cases whether the trees stand on one's private and or on Govt. forest land. The Inquiry Officer further found that the appellant did not take action to stop felling of trees on which hammer mark was not affixed. The Inquiry Officer therefore, concluded that the appellant failed in performance of his duty and he connived with the offender in the illicit felling of trees. The defence of the appellant was that he had sought the advice of his Block officer Sh. Duni Chand co-delinquent whether trees standing on private land could be felled without permission and he was informed by Shri Duni Chand that spruce trees standing in one's private land can be felled without permission. The Inquiry Officer rejected the defence but he reached this conclusion by a method which leaves much to be desired. A joint Inquiry was proceeding against the appellant and Sh. Duni Chand. After 5 witnesses were examined on behalf of the department, the Inquiry Officer separated the Inquiry at the request of the Presenting Officer and then called Sh. Duni Chand as a witness against the appellant. In his evidence, Duni Chand adopted the position that no such advice was sought nor was any such advice tendered. There is word of Duni Chand against the word of the appellant and Duni Chand was trying to clear himself of the charges. We are are not applying standard of strict proof in a criminal case, but in the facts herein narrated anyone discharging quasi-judicial function would have considerable hesitation in accepting the statement of Sh. Duni Chand. The Inquiry Officer further observed that at any rate even if such an advice was sought and tendered, no tree can be felled unless hammer mark is affixed on it and the trees felled were not bearing the hammer mark and therefore, there is negligence in performance of his duty.

10. Let us make it abundantly clear that we are not sitting in appeal over the findings of the Inquiry Officer. In a petition under Article 226, the High Court does not function as a court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, t he court can always interfere with the same. We may refer in this connection to Union of India v. H. C. Goel at 728 Gajendragadkar, J. speaking for the Court observed as under :

> It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by the public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court Under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge

framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be clamed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said" proceedings which is the basis of his dismissal is based on no evidence.

After applying this test in that case, the court proceeded to have a close look at the evidence that was led in the case and in the circumstances of the case rejected the evidence of Shri Rajagopalan, who ; claimed to have given the bribe and reached the conclusion that the finding of the Government holding the delinquent officer guilty of excepting bribe was perverse and unsupported by any evidence. More or less ; the facts before us almost lead to the same conclusion.

11. Mr. Talukdar, learned Counsel for the State, however, contended that at any rate failure to supervise felling of the trees which were not shown to have hammer mark would permit an inference that there was negligence in performance of duty. If no tree can be felled without the hammer mark then the contention of Sh. Talukdar merits consideration. No such rule was brought to our notice, however, we would proceed on the assumption that such is the rule. In that event it can be said that there was some negligence in performance of duty of the appellant and his negligence in performance of duty was likely to cause some loss to the Government. But the fact is that no loss is caused. The man who felled the trees after demarcation of boundary conceded illicit felling and made good the loss by paying compensation. The default of the appellant is in not checking the hammer mark. The Inquiry Officer may in these circumstances feel that there was some negligence in performance of the duty.

12. In the facts and circumstances of this case herein threadbare: discussed, we are of the opinion that the appellant was not afforded a reasonable opportunity to defend himself and accordingly the enquiry and consequential order of removal from service are vitiated.

13. That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary inquiry is shown to have been held in violation of principle of natural justice, the inquiry would be vitiated and the order based on such inquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the disciplinary authority to hold the inquiry afresh. That would be the normal consequence.

14. We invited Mr. Talukdar, learned Counsel for the respondent. State to address us on the question whether the game of holding the fresh Inquiry is worth the battle. More so looking to the fact that there is a very minor infraction of duty leading to a trivial charge of negligence in performance of duty which has caused no loss to the Government, we are of the opinion that it would not be fair to this low paid class IV government servant to face the hazards of a fresh inquiry.

15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held ? After all what is the purpose of holding a fresh inquiry. Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the

gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela v. A. K. Roy & Ors where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.

16. Accordingly, this appeal is allowed. The Order dated May 6, 1977 removing the appellant from service and the Order dated 31st January, 1978 of the Chief Conservator of Forest, Himachal Pradesh, Simla dismissing his appeal and the Order of the High Court dismissing his petition in limine are quashed and set aside. The appellant is reinstated in service. His two increments with future effect shall be withheld. He should be paid 50% of the arrears of salary from the date of termination till the date of reinstatement. The period between the date of termination of service and reinstatement shall be treated for other purposes as on duty. The Order reinstating the appellant in service must be carried out within four weeks from today and the arrears shall be paid within four weeks thereafter.