Union Of India (Uoi) vs H.C. Goel on 30 August, 1963

Equivalent citations: AIR1964SC364, [1964(9)FLR161], (1964)ILLJ38SC, (1964)66PLR305, [1964]4SCR718

Bench: J.R. Mudholkar, K. Subba Rao, K.N. Wanchoo, N. Rajgopala Ayyangar, P.B. Gajendragadkar

JUDGMENT

Gajendragadkar, J.

1. Two short question of law arise for our decision in the present appeal. The first question is whether Government is competent to differ from the findings of fact recorded by the enquiry officer who has been entrusted with the work of holding a departmental enquiry against a delinquent government servant under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules; and the other question is whether the High Court in dealing with a writ petition field by a Government Officer who has been dismissed from Government service is entitled to hold that the conclusion reached by the Government in regard to his misconduct is not supported by any evidence at all. As our judgment will show, we are inclined to answer both the questions in the affirmative. Thus, the appellant, the Union of Union of India (UOI), succeeds on the first point, but fails on the second. At the hearing of this appeal, the learned Attorney-General told us that the appellant was fighting this appeal as a test case not so much to sustain the order of dismissal passed against the respondent as to obtain a decision from this Court on the two points of law raised by it in the present appeal.

2. The above two points arise in this way. The respondent, H. C. Goel, joined the Central Public Works Department on the 26th November, 1941, and in due course, he was selected for appointment in class I post in or about 1945-46. In January, 1956, he was posted as Surveyor of Works at Calcutta. It appears that he felt that his seniority had not been properly fixed and so, he had made a representation in that behalf to the Union Public Service Commission. He happened to go to Delhi about the middle of January, 1956. Then he called on Mr. R. Rajagopalan, who was the Deputy Director of Administration, at his residence on the 19th January, 1956. His idea in seeing Mr. Rajagopalan was to acquaint him with the merits of his case. In the course of his conversation with Mr. Rajagopalan is alleged that be apologised for not having brought 'rasagullas' for the children of Mr. Rajagopalan. Thereupon, Mr. Rajagopalan frowned and expressed his displeasure at the implied suggestion. A little later, during the course of the interview, it is alleged that the respondent took out from his pocket a wallet and from it produced what appeared to Mr. Rajagopalan to be a folded hundred rupee note. Mr. Rajagopalan showed his stern disapproval of this conduct, whereupon the respondent said 'No' and put the wallet with the note in his pocket. After a few minutes the interview ended and the respondent left Mr. Rajagopalan's place.

3. Soon thereafter Mr. Rajagopalan reported the incident to Mr. Ananthakrishnan, Director of Administration, C.P.W.D., and at his suggestion be submitted a complaint in writing. In this complaint. Mr. Rajagopalan narrated the incidents as they has occurred and added that at the end of the interview, the respondent asked him whether he could meet Mr. Rajagopalan again the next day to know about the result of his representation, and Mr. Rajagopalan told him that he might make the enquiry when he happened to visit Delhi next.

4. On receiving this complaint from Mr. Rajagopalan, the appellant decided to hold a departmental enquiry against the respondent, suspended him and served a notice on him on the 9th February, 1956, setting forth the charges against him and calling upon him to show cause why disciplinary action should not be taken against him. This notice contained four charges which read thus :-

> (i) Meeting the Deputy Director, Administration, C.P.W.D at his residence without necessary permission.
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> (ii) Voluntarily expressing regret at his not having brought sweets from Calcutta for the Deputy Director's children.
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> (iii) Offering a currency note which from size and colour appeared to be a hundred rupee note as bribe with the intention of persuading Deputy Director, Sri Rajagopalan to support his representation regarding his seniority to the U.P.S.C.
>
> (iv) Violation of Rule 3 of the C.C.S. (Conduct Rules).

5. The respondent tendered his explanation and the matter was enquired into under Rule 55 of the Civil Services rules by Mr. Kapoor. The Enquiry Officer examined Mr. Rajagopalan and the respondent, considered the evidenced produced before him and came to the conclusion that the charges framed against the respondent had not been satisfactorily proved. This report was made by the enquiry officer on the 10th April, 1956.

6. The appellant considered the report submitted to it by Mr. Kapoor and provisionally came to the conclusion that the respondent should be dismissed from service, and accordingly issued a second notice against the respondent on the 14th June, 1956. The respondent submitted his explanation in response to this notice.

7. At that stage, the respondent's case was referred to the Union Public Service Commission. By its report made on the 30th October, 1956, the Commission took the view that the first charge should be dropped; the second charge was hardly a matter justifying framing of a charge against the officer; the third charge had not been proved on the basis of the available evidence; and in view of the said conclusion, the Commission thought that the fourth charge failed automatically. The Commission accordingly advised the appellant that none of the penalties provided for in Rule 49 of the Civil Rules need be inflicted on the respondent.

8. The appellant considered the matter afresh in the light of the report received from the U.P.S.C. but since it adhered to the conclusion which it had provisionally reached before issuing the second notice against the respondent, it requested the Commission to reconsider the matter and remitted the said matter to it on the 8 the December, 1956. The Commission on re-examining the matter, adhered to its earlier views and conveyed the same to the appellant on the 15th January, 1957. The appellant considered the whole case again and came to the conclusion that a case had been established against the respondent for his dismissal, and so, by its order passed on the 13th March, 1957, dismissed him from service.

9. The respondent then moved the Punjab High Court by his writ petition No. 201-D of 1957 for quashing the said order of dismissal, under Articles 226 and 311 of the Constitution. A learned Single Judge of the said High Court heard the matter and came to the conclusion that the respondent had not made out a case for quashing the order of dismissal passed against him. The respondent then preferred an appeal under the Letters Patent and a Division Bench of the said High Court which heard the Letters Patent Appeal has allowed the respondent's appeal. It has held that in view of the fact that the Enquiry Officer had made a report in favour of the respondent, it was not open to the appellant to differ from his findings and inasmuch as the impugned order of dismissal was passed by the appellant as a result of its conclusion that the findings of the enquiry officer were erroneous, the said order contravened the provisions of Art. 311 of the Constitution. That is how the writ petition filed by the respondent was allowed and his dismissal set aside. The appellant then applied for a certificate to the High Court but the said application was rejected. The appellant then moved this Court for special leave and it is with the special leave granted by this Court that it has brought the present appeal before us.

10. The first question which calls for our decision is whether it was competent to the appellant to take a different view on the evidence adduced against the respondent and proceed on the basis that the conclusions of fact record by the enquiry officer were unsound and erroneous. If it is held that the appellant was precluded from differing from the conclusions of the enquiry officer, then, of course, the subsequent steps taken by the appellant would be inconsistent with Art. 311 of the Constitution. On the other hand, if the competence of the appellant to differ from the conclusions of the enquiry officer cannot be seriously questioned, then the argument that the appellant contravened Art. 311 when it issued the second notice against the respondent cannot succeed.

11. Article 311 consists of two sub-articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the Constitutional provision contained in Art. 311, has been examined by this court on several occasions. It is now well-settled that a public servant who is entitled to the protection of Art. 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.

12. After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitlted to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima jade proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted lapon him is unduly severe. This position under Art. 311 of the Con-

titution is substantially similar to the position which government public servants under s. 240 of the Government of India Act, 1935. The scope and effect of the provisions of s. 240 of the Government of India Act, 1935, as well as the scope and effect of Art. 311 of the Constitution have been considered by judicial decisions on several occasions and it is unnecessary to deal with this point in detail, vide The Secretary of State for India v. I. M. Lal ([1945] F.C.R. 103.), High Commissioner for India and High Commissioner for India and High Commissioner for Pakistan v. I. M. Lal (75 I.A. 225); and Khem Chand v. Union of India (UOI) & Ors ([1958] S.C.R. 1080.).

13. These reported decision would show that it has never been suggested that the findings recorded by the enquiry officer conclude the matter and that the Government which appoints the enquiry officers and directs the enquiry is bound by the said findings and must act on the basis that the said findings are final and cannot be reopened. The High Court has, however, held that there are certain observations made by the Federal Court in the case of I. M. Lal ([1945] F.C.R. 103.), and by this Court in the case of Khem Chand ([1958] F.C.R. 1080.) which support the respondent's contention that the appellant was bound by the findings recorded by the enquiry officer in his favour in the present enquiry proceedings. Before referring to these observations, it is relevant to examine this contention on principle. It is obvious that the enquiry officer holds the enquiry against the respondent as a delegate of the appellant. That indeed is the character which the enquiry officer inevitably occupies when he holds a departmental enquiry at the instances of the Government. The object of the enquiry is plain. It is to enable the Government to hold an investigation into the charges framed against a delinquent public servant, so that the Government can, in due course, consider the evidence adduced and decide whether the said charges are proved or not. The interposition of the enquiry which is held by a duly appointed enquiry officer does not alter the true legal position that the charges are framed by the Government and it is the Government which is empowered to impose punishment on the delinquent public servant. Therefore, on principle, it is

difficult to see how the respondent is justified in contending that the findings recorded by the enquiry officer bind the appellant in the present case.

14. If the contention raised by the respondent were to be upheld, it would lead to illogical and almost fantastic results. If the enquiry officer makes findings against the public servant, on the respondent's contention the Government can never re-examine the matter, so that even if the Government were satisfied that the findings against the public servant were erroneous, it must proceed on the basis that the public servant is guilty and impose some punishment on his. It is obvious that this proposition is entirely inconstant with the Constitutional rights of the appellant which is the appointing authority and which has the power to impose the punishment on the respondent.

15. Similarly, if the enquiry officer makes findings in favour of the public servant, on the respondent's case that is final and however illogical, erroneous or unsound the said findings may be, the appellant is powerless and must act on the basis that the public servant is innocent. That against is a very anomalous position and it ignores the true Constitutional rights of the appellant and the character of the enquiry officer and the scope of his enquiry.

16. Sometimes, several charges are framed and findings are recorded by the enquiry officer in respect of them. In such cases, Government may accept some findings and may reject others, and it has naturally to proceed to take the next step in the light of its own conclusions. Such a case arose before this Court in The State of Assam and Anr. v. Bimal Kumar Pandit . Dealing with the requirements which the second notice must satisfy in such a case, this Court has held that the said notice must indicate to the public servant clearly the grounds on which the Government provisionally intends to act in imposing the proposed punishment specified in the notice.

17. Besides, it would be apparent that if the respondent's argument is valid, then the second notice would serve very little purpose. If, at that stage, the Government is bound to accept the findings of the enquiry officer, the opportunity which is intended to be given to the public servant to show cause not only against the proposed punishment but also against the findings recorded against him, would be defeated, because on the respondent's case Government cannot alter the said findings. In our opinion, the contention raised by the respondent is patently unsound and must be rejected.

18. In this connection, we may did that unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so requires, the enquiry officer need not make any recommendations as to the punishment which may by imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if, however, the enquiry officer makes any recommendation, the said recommendations like his findings on the merits are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, not the recommendations are binding on the Government, vide A. N. D'Silva v. Union of India (UOI) ([1962] Supp. 1 S.C.R. 968.).

19. Let us now briefly consider whether the observations on which the respondent rests his case justify his contention. In the Secretary of State for India v. I. M. Lal ([1945] F.C.R. 103.) Spens C.J. examined the provisions of s. 240(3) of the Government of India Act, 1935, and observed that the

said sub-section involves in all cases "where there is an enquiry and as a result thereof some authority definitely proposes dismissal, or reduction in rank, that the person concerned shall be told in full, or adequately summarised form, the results of that enquiry and the findings of the enquiring officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction." Mr. Chaterjee suggests that these observations indicate that it is only on the basis of the findings recorded by the enquiry officer that the second notice can be issued. In our opinion, this argument is completely misconceived. In the case of I. M. Lal, the findings were against him and it is by reference to the said findings that the observations made by Spens C.J. must by considered. If the findings are against the public servant, and the Government on considering the evidence, accepts the said findings provisionally, it would be right to say that on the said findings the second notice is served on the public servant, and so, he should be given a clear idea as to the nature of the said findings. That, of course, does not mean that the findings of the enquiry officer are binding and virtually conclude the matter.

20. The same comment has to be made about the observation made by S. R. Das C.J. in the case of Khem Chand ([1958] S.C.R. 1080.). Summarising his conclusions, the learned Chief Justice observed, inter alia, that the second opportunity to which a public servant is entitled can be effective only if "the competent authority after the enquiry is over and after applying its mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant." It is obvious that when the learned Chief Justice refers to the charges proved against the Government servant, it is not intended to be suggested that the findings made by the enquiry officer in that behalf are final. The enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to act. That is the only purpose of the enquiry held by competent officer and the report which he makes as a result of the said enquiry. Therefore, we have no hesitation in holding that the High court was in error in coming to the conclusion that the appellant was not justified in differing from the findings recorded by the enquiry officer. As we have just indicated, if it is held that the report of the enquiry officer is not binding on the Government, then the Constitutional safeguard afforded by Art. 311 (1) & (2) cannot be said to have been contravened by the appellant and the grievance made by the respondent in that behalf must fail.

21. This conclusion does not finally dispose of the appeal. 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 public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311, the High Court under Art. 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 claimed 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. In fact, in fairness to the learned Attorney-General we ought to add that he did not seriously dispute this position in law.

22. He, however, attempted to argue that if the appellant acted bona fide, then the High Court would not by justified in interfering with its conclusion though the High Court may feel that the said conclusion is based on no evidence. His contention was that cases where conclusions are reached by the Government without any evidence, could not, in law, be distinguished from cases of mala fides; and so he suggested that perverse conclusions of fact may be and can be attacked only on the ground that they are mala fides, and since mala fides were not alleged in the present case, it was not open to the respondent to contend that the view taken by the appellant can be corrected in writ proceedings.

23. We are not prepared to accept this contention. Mala fide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a bona fide exercise of power. But we are not prepared to hold that if mala fides are not alleged and bona fides are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issued without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that sine no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

24. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charged framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by he appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondents case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him ? In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the

respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

25. The facts relating to this narrow points are very few. The respondent expressed his regret to Mr. Rajagopalan that he had not brought rasagullas for his children. There is some controversy as to whether this statement was made by the respondent at the beginning of his interview with Mr. Rajagopalan or at its end. The complaint made by Mr. Rajagopalan shows that the interview began with the respondent's expression of regret that he had not brought sweets for Mr. Rajagopalan's children. Mr. Rajagopalan in his evidence stated that this statement was made by the respondent at the close of the interview. One fact is clear that the respondent did express regret that he had not taken sweets to Mr. Rajagopalan's place. If the respondent's version that he said so at the beginning of the interview is believed, particularly when it supported by the complaint made by Mr. Rajagopalan, it may show that the stern disapproval expressed by Mr. Rajagopalan on hearing the said remark from the respondent must have acted as a warning to him. That, however is another matter.

26. Then, as to the hundred rupee note which according to Mr. Rajagopalan, was taken out by the respondent from his wallet, Mr. Rajagopalan has admitted that the said note was folded double. He says that he noticed that its colour was blue and that its size was bigger than the usual ten rupee or five rupee note. Mr. Rajagopalan who appears to be a straightforward officer gave his evidence in a very honest way. He frankly told the enquiry officer that it could not be said that the hundred rupee note which he thought the respondent took out from his wallet had been offered to him by the respondent, but he thought that the whole thing had to be viewed in the context of the matter. He also admitted that his eye-sight was not prefect.

27. The respondent, on the other hand, suggested that in reply to the questions which Mr. Rajagopalan put to him he took out some papers from his pocket to find out the letter of his appointment, and as soon as Mr. Rajagopalan appeared to discourage him, he put the said paper in his pocket.

28. Now, in this state of the evidence, how can it be said that respondent even attempted to officer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that respondent did not offer him a bribe. He merely refers to the fact that respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as must to regular criminal trials as to disciplinary enquiries held under the

statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.

29. The result is, though the appellant succeeds on the principle point of law raised in the appeal, the appeal fails, because, on the merits, we hold that no case had been made out for punishing the respondent.

30. The appellant to pay the cost of respondent.

31. Appeal dismissed.