

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 1513 OF 2000

ALLAHABAD, this the 23rd day of August, 2007.

C O R A M:

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. P.K. CHATTERJI, ADMINISTRATIVE MEMBER

Akshaiber Mishra, S/o late Kailash Mishra, R/o 160 St. Gaya Colony,
Mughalsarai, District Chandauli.

.....Applicant

V E R S U S

1. Union of India through its General Manager, Eastern Railway, Calcutta.
2. D.R.M. E.Rly, Mughalsarai, District Chandauli.
3. Additional Divisional Railway Manager, E. Rly., Mughalsarai, Chandauli.
4. Sr. Divisional Mechancial Engineer, E. Rly., Mughalsarai, District Chandauli.

.....Respondents

Present for the Applicant: Sri A.K. Srivastava.

Present for the Respondents: Sri K.P. Singh.

ORDER
BY DR. K.B.S. RAJAN, JUDICIAL MEMBER

In *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, the Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:-

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with.

Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. (Emphasis supplied)

2. By a subsequent decision in the case of **Union of India v. G. Ganayutham, (1997) 7 SCC 463**, the Apex Court has held as under:-

To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

3. For a penalty order, therefore, to be sustained, the basic requirement is that the procedure prescribed should be religiously followed and the findings arrived at by the Inquiry officer should not be perverse. Though evidence cannot be re-apprised, for ascertaining whether the findings are based on proper evidences, the court could certainly refer to the depositions and documents so

that it could render a finding whether the Inquiry Report is vitiated on account of the same being perverse. Again, in so far as disciplinary authority is concerned, though he need not have to repeat the version of the Inquiry Report, when certain objections against the Inquiry Report is taken in the representation, the Disciplinary Authority is expected to apply his mind, refer to the objections raised by the delinquent official and arrive at a just conclusion and failure to do so would justify a ground of appeal before the Appellate authority. When in the appeal, the appellant raises factual as well as legal points, those are to be duly met with by the Appellate authority since, the appellate authority has the power re-appreciate the evidence. It is only at the Revision level, that only legal issues could be gone into.

4. With the above legal position, the case has to be analyzed to ascertain whether the applicant has made out a case against the orders of penalty and further appellate and revisional orders.

5. Brief facts of the case as per the OA are as under:-

(a) One Dr. S. Mallik, Divisional Officer, Eastern Rly. Hospital, Mughalsarai made a complaint against the applicant alleging that the applicant had misbehaved with him. On the basis of the same, the applicant was issued with a charge sheet levelling against him the following charges:-

Article I

That the said Shri Akshaiber Mishra, while functioning as Painter Gr. I during the period led a mob of approx. 10 persons on 13-6-96 at about 9.30 hrs & entered the OPD room of Dr. S. Mallik in the divisional Rly. Hospital/MGS & abused and threatened him of dire consequences, thus violated Rule 3(1)(iii) of Railway Service Conduct Rule 1966 as amended from time to time.

Article II

That during the aforesaid period and while functioning in the aforesaid office, Shri Akshaiber Mishra, Painter Gr. I, T.No.1232 along with approx 10 persons prevented Dr. S. Mallik to perform his official duty on 13.6.96 at about 9.30 hrs at Divns. Rly. hospital, Mughalsarai thus violated Rule 3(1)(iii) of Rly. Service Conduct

Rule 1966 as amended from time to time.

Article III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Akshaiber Mishra, Painter Gr. I, T.No.1232 led a mob of approx 10 persons on 13.6.96 at about 9.30 hrs. and incited which resulted in assault of Dr. S. Mallik in the OPD room at the Divnl. Rly. Hospital Mughalsarai, thus violated Rule 3(1)(iii) of Rly. Services Conduct Rule 1966as amended from time to time.

6. The inquiry authority has rendered his findings as under:-

"Shri A.K. Mishra C.O. led the mob of approx 10 persons on 13.6.1996 at about 9.30 hrs and the mob entered the OPD room of Dr. S. Mallik and abused him.

On 13-6-1996 the mob assaulted Dr. S. Mallik in his OPD room at about 9.30 hrs but the C.O. Shri A. Mishra personally assaulted Dr. Mallik or not, this could not be proved."

7. The disciplinary authority has imposed upon the applicant the penalty of reducing the pay to Rs 1320/- per month in his present scale of pay and that the same would not result in postponement of future increments. However, no time limit during which the currency of penalty would exist was not reflected there in the penalty order. On appeal the appellate authority had upheld the penalty order. Revisioning authority also after considering the revision petition dismissed the same. Raising various legal and factual issues, the applicant has filed this OA with a prayer that the impugned penalty order and appellate/revisional order be quashed and set aside, as this is a case of no evidence.

8. Respondents have contested the OA and their version is that there is no need to interfere with the order as the orders passed are well within the provisions of the Rules and regulations and no legal lacuna has been pointed out.



9. Counsel for the applicant in his written arguments that this is a case of no evidence. The depositions would show that there was absolutely no evidence of the allegation that the applicant either threatened the medical officer ~~for~~ abused him.

10. Counsel for the respondents, though given opportunity to file written arguments chose not to give any written arguments. After the time granted for the same has lapsed, the case has been considered. The following are the depositions about the applicant:-

(a) Statement of Shri M.K. Gupta Prosecution witness:

Ans: No. I do not recognize Sri A. Misra.

Ans: I cannot say that Sr. A. Mishra was present here.

Ans: I do not know the leader and under whose guidance the incidence took place.

Ans: I did not see this person on 13.06.1996 in hospital premises.

Ans: I gave my written statement based on the facts heard from the crowd.

(b) Deposition of Shri Muniram:

I recognized only A. Mishra amongst persons involved in assaulting.

Shri A. Mishra was insisting Dr. Mallik to issue the death certificate.

Shri A. Mishra was not involved with the assault.

Sri A. Mishra did not threat Dr. Mallik.

Sri Mishra's roll was that he was assuring the crowd tht death certificate will be issued soon. He was also mentioning that please keep quiet.

Sri A. Mishra was not abusing Dr. Mallik.

Sri A. Mishra approached to Dr. Malik with about 8 to 10 youngsters and insisted Dr. Mallik to issue death certificate and this was the only mistake and misdeed of sri A. Mishra.

Sri A. Mishra was leading the mob and he was also telling that 'please be silent. I am arranging the issue of death certificate.'

(c) Statement of Shri Kashi Ram.

Neither I saw Sri. A. Mishra nor that he was known to me.

I could not see any assault or quarrel with Dr. Malik.

That statement is correct that mob was abusing Dr. Mallik but I could not see the assault

I saw 10 to 15 persons mob was there but I could not recognize the leader.

(d) Statement of Shri Sikandar:

I could not see the leader but about 10 persons were available in the mob.

I could not hear the mob rather I went to perform my own duty.

Sri A.K. Mishra is not yet known to me so on that day I could not recognized the leader or Sri Mishra.

(e) Statement of the applicant:

At about 10/15 hrs I met Dr. Malik in his chamber after keeping out the crowd from the chamber and requested him to issue the death certificate.

R. 8: Dr. Malik has also stated on 28-6-96 that when you were in his chamber some body of crowd persuaded the crowd to remail calm and crowd went out from the room. Who was that person? you or some body else?

Ans to Q. 8: Yes. that was myself who requested the mob to remain clam and thereafter the mob went out from the room.

11. The above would show that none of the witness from the side of the prosecution could with certainty state that the applicant led the group or that he had either abused or threatened with dire consequences. The above depositions have been extracted not to re-appreciate the evidence but to see as to whether the inquiry report is based on no evidence.

12. Certain valid legal issues have been raised in the Appeal. Objections raised are as under:-

"In the appeal: *Punishment is on improper form and the order is non speaking; hence it is against D.A. Rules, 1968;

*There is no provision to impose any punishment for ever;

*E.O. clearly mentioned on p.3 para 8 "That Shri A. Mishra personally assaulted Dr. Malik or not, this could not be proved."

13. The appellate authority had, while confirming the penalty had observed,
"The enquiry officer has clearly pointed out that though the appellant could not

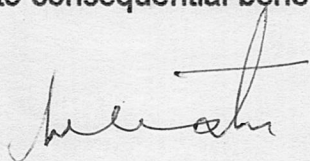
be pointed in assaulting the officer/Doctor, but he created a situation which led to the stage where the Doctor was manhandled and humiliated. Not only was the Doctor Manhandled and humiliated, but the hospital working was also suspended for some period of time." The contention of the appellant in the next part of para marked (D) is wrong and ill founded. This is amply proved during the preliminary enquiry conducted by three officers on 20-6-96 i.e., APO(I) MGS, AME (OP) MGS and ASC/MGS apart from having been proved during the enquiry into this case by AOM(C)/MGs.

14. It is a matter for consideration here that the applicant's ground that there is no provision for imposition of penalty without any time limit has not been met with. The enquiry officer has not stated that the applicant created a situation which led to the stage where the Doctor was manhandled and humiliated. This is not as per enquiry report. The Appellate Authority has relied upon the preliminary enquiry report which was not one of the listed documents. Thus, the Appellate authority has gone out of the parameter within which only he ought to have confined his decision. In the revision petition, the applicant had brought about the inconsistencies in the deposition of the witnesses and contended that there is no evidence in the matter. The Revision authority has not dealt with such issues but only stated that the punishment already given stands good.

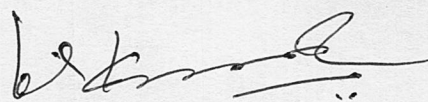
15. From the extract of deposition of witnesses, it could be safely stated that the case is one of no evidence. The penalty imposed without prescribing the time limit cannot be legally held valid. The appellate authority has gone beyond his jurisdiction in taking into account the Preliminary Enquiry Report, which is not a part of the listed documents. Further his construing the enquiry report that the applicant created a situation whereby the Doctor was humiliated is not correct.

Thus, there is legal lacuna in the Enquiry Report, the Disciplinary Authority's

order as well as The Appellate Authority's order. If these fall to the ground, the revision order also follows suit. Hence, the ^{impugned &} ~~following~~ orders are struck down as illegal and it is declared that the applicant shall be paid his normal pay and allowances, without considering the reduction as given in the penalty order and the arrears thereof shall be paid to the applicant within a period of two months from the date of receipt of this order. In addition, the applicant shall be entitled to consequential benefit, i.e. refixation of pension and other terminal benefits.



(P.K. CHATTERJI)
ADM. MEMBER



(Dr. K.B.S. RAJAN)
JUDICIAL MEMBER