IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No.635 of 2012

Braj Kishore Mahto, son of Tirpit Mahto, resident of village-Dulmi, P.O. Harhad Kander, P.S. Rajrappa Project, District-Ramgarh, Jharkhand
…. Petitioner

Versus

1. The State of Jharkhand
2. The Divisional Commissioner, North Chotanagpur Division, Hazaribagh
3. The Deputy Commissioner, Hazaribagh
4. The Deputy Collector cum Enquiry Officer, Hazaribagh
5. The Block Development Officer, Churchu Block, Hazaribagh
6. The Manager, State Bank of India, Main Branch, Hazaribagh
7. The Post Master, Sub-Post Office, Charhi, Ramgarh

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Anoop Kumar Mehta, Advocate
For the Respondent-State: Mr. Rahul Saboo, S.C.-1

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14/17.04.2021 Heard Mr. Anoop Kumar Mehta, learned counsel for the petitioner and Mr. Rahul Saboo, learned counsel for the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has approached this Court for quashing of order dated 23.08.2010 passed by the Deputy Commissioner, Hazaribagh and order dated 25.10.2011 passed by the appellate authority.

4. The petitioner was appointed as a "Panchayat Sewak" in the service of the State Government w.e.f. 11.08.2003 vide letter dated 08.08.2003 issued by the Deputy Commissioner, Hazaribagh and subsequently he was posted at Churchu Block and in the said list petitioner's name finds place at serial number 19. The petitioner served the department to the satisfaction of the Government as well as respondents for more than 5 years. Pursuant to news item with regard to certain bribe the chargesheet has been served

to the petitioner. A departmental proceeding has been initiated against the petitioner and enquiry report was submitted. Thereafter, the Disciplinary Authority has passed the impugned order whereby the petitioner has been dismissed from the service. The petitioner preferred an appeal before the appellate authority and the appellate authority affirmed the order of the disciplinary authority. Aggrieved with this, the petitioner has approached this Court.

5. Mr. Anoop Kumar Mehta, learned counsel appearing on behalf of the petitioner submits that one criminal case bearing Mandu (Charhi) P.S. Case No. 249/2008 for the offence under section 309 was lodged against the petitioner. Learned counsel for the petitioner at the outset submits that in the criminal case, the petitioner has been acquitted vide judgement dated 19.03.2021 brought on record by way of supplementary affidavit filed on behalf of the petitioner. He submits that in the departmental proceeding not even a single witness has been examined by the department concerned and no document has been proved and inspite of that the Enquiry Officer has come to the conclusion that charge against the petitioner has been proved. He submits that on the basis of enquiry report the Disciplinary Authority has proceeded further and passed the impugned order. He submits that it is well-settled that even in the departmental proceeding charge may not be proved to the hilt but in the departmental proceeding also documents are required to be proved on the basis of certain evidences adduced by the department concerned. To buttress his argument, learned counsel for the petitioner relied on judgment in the case of **" *Roop Singh Negi Vs. Punjab National Bank and Others"*** reported in ***(2009) 2 SCC 570*** wherein para 14, 15, 16 and 23 the Hon'ble Supreme Court has held as under:-

"14. Indisputedly, a departmental proceeding is a quasi-

judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basis evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

16. In Union of India V. H.C. Goel it was held (AIR PP. 369-70 paras 22-23)

> *"22..... 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, writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's arguments that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.*
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> *23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had 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 the 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 respondent's case is, is there any evidence on*

which a finding can be made against the respondent that Charge 3 was proved against him ? In exercising its jurisdiction under Article 226 on such a plea the High Court cannot consider the question about the sufficiency or adequacy or evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence 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 charge in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as if it stand 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 3 is proved against him is based on no evidence."

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23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inference drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be can under no circumstances be held to be a substitute for legal proof."

6. Learned counsel for the petitioner further submits that onus would be on the department to prove the charge and this has not been done in the case in hand and only on the basis of paper report, the petitioner has been punished. Learned counsel for the petitioner relied on judgment in the case of ***" M.V. Bijlani Vs. Union of India and Others"*** reported in ***(2006) 5 SCC 88*** wherein para 25, the Hon'ble Supreme Court has held as under:-

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not

required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

7. Per contra, Mr. Rahul Saboo, learned counsel appearing on behalf of the respondent-State submits that there is appellate order passed by the appellate authority and the appellate authority has looked into the matter in detail and passed the impugned order. He submits that after considering all aspects of the matter, impugned order has been passed. He submits that it is well settled that the High Court will not interfere under Article 226 of the Constitution of India as appellate authority in the departmental proceeding. He relied upon judgement in the case of ***" Union of India and others Vs. P. Gunasekaran"*** reported in ***(2015) 2 SCC 610*** in which in para 12 and 13 of the said judgment, the Hon'ble Supreme Court has held as under:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, appreciating even the evidence before the enquiry officer. The finding on Charge 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into appreciation of the evidence. The High Court can only see whether:-

(a) the enquiry is held by a competent authority;
(b) the enquiry is held according to the procedure prescribed in that behalf;
(c) there is violation of the principles of natural justice in conducting the proceedings;
(d) the authorities have disabled themselves from reaching a fair conclusion by some consideration extraneous to the evidence and merits of the case;
(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) appreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

8. Learned counsel for the respondent-State submits that it is well-settled law that the High Court can only interfere in the impugned order if the punishment shocks the conscience of the of the Court. To buttress his argument, learned counsel for the respondent-State relied upon judgment in the case of ***"Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu"*** reported in ***(2014) 4 SCC 108*** wherein para 28, the Hon'ble Supreme Court has held as under:-

" 28. Presently, we shall proceed to scrutinize whether the High Court is justified in applying the doctrine of proportionality. The doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court. In this regard a passage from Indian Oil Corpn. Ltd. V. Asok Kumar Arora is worth reproducing : (SCC pp. 77-78 para 20)
"20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and /or the punishment is totally disproportionate to the proved misconduct of an employee."

9. Having heard the learned counsel for the parties, the Court has gone through the materials on record. On perusal of charge-sheet, it

transpires that charge has been framed on the basis of certain paper report. The enquiry report has been brought on record as Annexure 15/1 to the writ petition. On perusal of enquiry report, the Court finds that no document has been proved before the Enquiry Officer and no witness has been adduced to prove the charge against the petitioner. It is well-settled that in enquiry proceeding at least certain witnesses are required to be examined to prove the document and charge against the delinquent which has not been done in the case in hand which is crystal clear on going through the enquiry report as Annexure-15/1. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case ***of " Roop Singh Negi" (supra).*** There is no doubt that the parameters described to look into the disciplinary proceeding under Article 226 of the Constitution of India to the High Court is there, will not interfere with the disciplinary proceeding and it is well-settled ratio decided by the Hon'ble Supreme Court in the case of "***P. Gunasekaran" (supra)*** wherein para 12 (i) of the said judgment the Hon'ble Supreme Court has held that the High Court can interfere with the finding of the fact based on no evidence. Thus this judgment is helping to the petitioner to some extent which has been relied on by Mr. Saboo in the case of no evidence adduced before the Enquiry Officer to prove the charge. So far as judgment relied on by Mr. Saboo in the case of "***Chennai Metropolitan Water Supply and Sewerage Board" (supra)*** is concerned, it is well settled provision of law that in the fact and circumstances of each case the Hon'ble Supreme Court has referred to the case of ***"Indian Oil Corporation another Vs. Ashok Kumar Arora"*** reported in ***(1997) 3 SCC 72*** in para 28 itself on which Mr. Saboo has placed reliance in that paragraph also it is held that the High Court can interfere if the findings are based on no evidence. In the case in hand, it is crystal clear that there is no evidence adduced before the

Enquiry Officer and thus these two judgments relied upon by the learned counsel for the respondent-State is not rescuing the respondents and it is well-settled that the finding recorded in the domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties. It is well-settled that the High Court can interfere under Article 226 of the Constitution of India on going through departmental proceeding, no prudent person comes to the conclusion that charge framed against the delinquent has been proved. Reference may be made in the case of **"*Kuldeep Singh Vs. Commissioner of Police and others"*** reported in ***(1999) 2 SCC 10***. Paragraph nos. 8, 36 and 37 of the said judgement is quoted here-in-below:-

> *"8.The findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to the those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. V. Ram Rao in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron works V. Bhagubhai Balubhai Patel. In Rajinder Kumar Kindra V. Delhi Admn. it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated."*
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> *36.It will be noticed that there were three complainants but only two, namely, Radhey Shyam and Rajpal Singh were proposed to be examined. Why was not the third complainant, Shiv Kumar proposed to be examined ? The reason becomes obvious from the fact that when he was examined as a defence witness, he fully supported the appellant by stating that no payment was made by Smt. Meena Mishra on that date. But he was held by the enquiry officer to be an impostor on the ground that he had not proved himself to be the actual Shiv Kumar. The enquiry officer has observed as under:-*
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> *" D.W. 1 Shri Shiv Kumar is a witness and has not proved himself to be the actual Shiv Kumar. This D.W.1 has denied that he*

had visited the police station and had ever met with the SHO. Moreover he has denied to have signed Ex. P.W.-1/A. He had not made any complaint to the SHO. His version has been contradicted by ASI Jagdish Prasad, D.W.4 the writer of this complaint, Ex. P.W.-1/A. D.W.6 ASI Bhopal Singh has also confirmed that Shiv Kumar had signed Ex. P.W.-1/A. Both these defence witnesses have been produced by the defaulter himself. so the statement of D.W.1 Shiv Kumar has not been relied upon because he is not the actual Shiv Kumar who is a complainant in this case and is a false person who has been produced by the defaulter."

37. The reasons why he has been held to be an impostor or a false person have not been indicated. The finding in this regard is wholly arbitrary and perverse."

10. The appellate authority has passed order on the surmises and conjectures rather than the evidences on record. All these aspects have been considered by the Hon'ble Supreme Court in the case of **" *Yoginath D. Bagde Vs. State of Maharashtra and Another"*** reported in ***(1999) 7 SCC 739*** wherein para 44 the Ho'ble Supreme Court has held as under:-

"44. We fail to appreciate the approach of the Disciplinary Committee which has gone by surmises and conjectures rather than by the evidence-on-record. The statements of Dr. Naranjee and that of Mr. Bapat, Advocate have not been taken into consideration by the Disciplinary Committee and it has relied upon the statement of the complainant alone to come to the conclusion that Mr. Bapat, Advocate had assured acquittal provided the complainant withdrew his transfer petitions"

11. In that judgment again the power of judicial review available to the High Court has been considered at para 51 of the said judgment which is quoted here-in-below:-

"51. It was lastly contended by Mr. Haris N. Salve that this Court cannot reappraise the evidence which has already been scrutinized by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution , act as the appellate authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is well settled that if the findings are perverse and are not supported by the evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh V. Commr. Or Police this Court, relying upon the earlier decisions in Nand Kishore Prasad V. State of Bihar, State of

Andhra Pradesh V. Rama Rao, Central Bank of India Ltd. V. Prakash Chand Jain, Bharat Iron Works V. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra V. Delhi Admn, laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstances can the Court interfere. It was observed that the power of judicial review available to a High Court as also this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

12. In that judgment it has been held that the High Court can interfere with the finding if the findings are perverse and are not supported by the evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached. In the case in hand, mere perusal of enquiry proceeding, it transpires that not even a single witness has been adduced before the Enquiry Officer and on without proving all the documents, the Enquiry Officer has submitted enquiry report and on that basis the appellate authority has passed the impugned order. The case of the petitioner is also strengthen in the light of acquittal of the petitioner in the criminal proceeding which has been arisen out of the same departmental proceeding.

13. As a cumulative effect of the discussions made above and the law laid down by the Hon'ble Supreme Court, the impugned orders cannot sustained in the eye of law and accordingly, the impugned orders dated 23.08.2010 and 25.10.2011 are quashed.

14. In the peculiar facts and circumstances of the present case the petitioner shall be entitled for all consequential benefits.

15. The writ petition stands allowed and disposed of.

16. I.A., if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/-