

Before Dr. Bharat Bhushan Parsoon, J.

MAHA SINGH—Petitioner

versus

**HARYANA TOURISM CORPORATION
AND ANOTHER—Respondents**

CWP No. 8513 of 1997

October 1, 2013

Constitution of India, 1950 - Art. 226 - Departmental Enquiry - Procedure - Petitioner chargesheeted - Dismissed from service on the basis of his alleged confession - Inquiry held and dismissed from service - No evidence recorded - Appeal also dismissed - Writ filed - Held, to visit Petitioner with evil consequences, admission needs to be clear and specific - Further held, enquiry officer called delinquent in witness box instead of calling witness of department - Procedure not followed - Entire enquiry proceedings vitiated - Punishing authority and appellate authority also did not take note of short circuiting of procedure - Writ allowed.

Held, that the Enquiry Officer without going into the circumstances and the explanation offered by the delinquent, took it a case of confession made by him. To visit its maker with evil consequences, such admission needs to be clear and specific i.e. without any conditions and explanations.

(Para 14)

Further held, that even procedure followed in conducting of the enquiry is unheard of. When after serving the charge-sheets (Annexure P-3 and P-4), reply to the charge-sheets submitted by the petitioner had not been found to be satisfactory and consequently was rejected resulting in appointment of an Enquiry Officer vide memorandum dated 17.11.1993, the Enquiry Officer was required to pen down a detailed report on conclusion of evidence of the Corporation and of the delinquent. After conclusion of evidence of the department, the petitioner was to be called upon for production of evidence in his defence.

(Para 20)

Further held, that enquiry report (Annexure P-7) reveals that the Enquiry Officer had messed up the matters and rather had chartered a path which is completely unknown and unheard of. Instead of calling for witnesses of the department in proof of charges against the petitioner, the Enquiry Officer called the delinquent in the witness box whereas his turn to produce his defence evidence was to come only after conclusion of evidence by the department.

(Para 21)

Further held, that as has been noticed earlier, neither evidence of the department was called for, nor an opportunity of defending himself was provided to the delinquent official. Rather, instead of calling witnesses of the department in the witness box to sustain the charge against the delinquent, first the delinquent himself was made to enter the witness box which is against well-established procedure of conducting of departmental enquiries and, thus, has vitiated the entire enquiry proceedings.

(Para 25)

Further held, that sequelly, shortcut adopted by the Enquiry Officer aborting the well-established principles and procedure of holding a departmental enquiry, has resulted in complete defilement of the enquiry conducted by the Enquiry Officer.

(Para 26)

N.K.Nagar, Advocate, *for the petitioner.*

K.K.Gupta, Advocate, *for the respondents.*

DR. BHARAT BHUSHAN PARSOON, J.

(1) Petitioner Maha Singh who was working as Counter Incharge at Tourist Complex, Karna Lake, Karnal, for shortages as detailed in Annexure P-5 in the stores (which was under his charge), was charge-sheeted on 17.11.1993 and 9.5.1994 for his alleged acts of omissions and commissions. After enquiry into both these charge-sheets, he was dismissed from service vide impugned order dated 27.11.1995 (Annexure P-11). His mercy petition/appeal dated 30.8.1996 (Annexure P-12) was also rejected by the Appellate Authority on 11.12.1996 (Annexure P-13). Challenging the order of dismissal (Annexure P-11) and order (Annexure P-13) vide which his appeal was also dismissed, the petitioner has filed the present petition seeking his reinstatement with continuity of service and full back wages.

2. Pleas of the petitioner in short are as under:

1. Shortage of stock resulting from performance of routine duty, is not to be equalled to misappropriation, which inherently has an element of dishonesty;
2. Acceptance of shortage of material in stores by the petitioner thereof, should not be viewed bereft of the circumstances explained in detail by the petitioner in his reply as well to the Enquiry Officer;
3. From the shortage of material in stores, the Enquiry Officer took the charge of misappropriation against the petitioner as proved even without any oral or documentary evidence of the department;

4. Shortage of material in stores of various Tourist complexes of the Corporation was nothing unusual but was a normal feature taken as wear and tear by the respondents and in no case, such shortage of material had resulted in termination, what to talk of dismissal from service of the Incharge of such stores:

5. For shortages found in the stock, the respondents had been deducting Rs.1,150/- per month from salary of the petitioner and from February, 1994 till November, 1995, the respondents had already deducted a sum of Rs.26,450/-. Recovery from the pay is a minor penalty and the petitioner having been imposed this penalty, could not have been punished again by way of dismissal order;

6. The enquiry report, order of punishing Authority as also order of Appellate Authority, are non-speaking; and,

7. Infliction of penalty of dismissal is disproportionate and in addition to being violative of Articles 14 and 16 of the Constitution of India, also offends principles of natural justice.

(3) Controverting the allegations of the petitioner, stand of the respondents is that the impugned order of dismissal was passed after following due process of law and that too in accordance with the principles of natural justice, where the petitioner had been provided full and fair opportunity of hearing. It has been elaborated that the petitioner had tried to shift his responsibility upon his helper, whereas the stocks (where shortages were found) had been directly under his charge. Asserting validity and legality of punishing order (Annexure P-11) and appellate order (Annexure P-13) and denying all allegations of the petitioner, dismissal of the petition was sought by the respondents.

(4) Learned counsel for the parties have been heard while going through the paper book.

(5) Whereas learned counsel for the petitioner has contended that the undefended petitioner was summarily dismissed from service paying complete good-bye to normative domain of conducting of departmental enquiries and thus has been seriously prejudiced resulting in vitiating of enquiry proceedings and consequent punishment order and order in appeal, plea of learned counsel for the respondents is that when the delinquent had

confessed to the charges in the enquiry, there was nothing more to be proved against him. It is argued that admission is the best proof as it is made by its author against his own interest. Validity and legality of impugned orders of punishment as also one passed in appeal, is asserted.

(6) Before rival contentions of the parties are evaluated in the interface of factual matrix and attending circumstances, it would be appropriate to take stock of the charges (which the respondents were to prove against the petitioner in the departmental enquiry) and to examine as to how proceedings in the enquiry, were conducted.

7. The charges against the petitioner were as follow:

(1) Statement of charges in first charge-sheet:

"During the course of surprise checking on 7.10.1993, misappropriation, embezzlement amounting to Rs.8207.84 have come into notice against Sh. Maha Singh (Store Keeper)."

(II) Statement of allegations in second charge-sheet:

"(i) Misappropriation/embezzlement of Corporation money by him amounting to Rs. 18,403.85 because items as per detail given in Annexure 'A' were found short in the store at the time of handing over of charge; and,

(ii) That he remained absent from duty from 17.11.93 to 16.1.94 without any intimation/authorized/ sanctioned leave."

(8) Facts are not in dispute. On 7.10.1993, during the course of physical verification, material worth '8,207.84 Ps. under the charge of the petitioner was found short. He was charge-sheeted for this lapse on 17.11.1993. For further shortages found in the stores, he was served with another charge-sheet on 9.5.1994. In the second charge-sheet, misappropriation of Corporation money amounting to '18,403.85 Ps. was found and he had also faced a charge of absence from duty from 17.11.1993 to 16.1.1994 without authorization as well.

(9) In his reply to both the charge-sheets, the petitioner had detailed the circumstances which resulted in shortage in the stores. He had also explained the circumstances of his absence from duty. Vide communication

of 17.11.1993, Divisional Manager, Haryana Tourism Corporation, Kaithal was appointed as Enquiry Officer and after completing enquiry vide report (Annexure P-8), without specifically holding the petitioner guilty of the charges against him, he was held liable.

(10) Accepting and agreeing with the report, the punishing Authority had called for response of the petitioner while issuing him a show-cause notice on that count and on receipt of the reply, had passed the impugned order of dismissal (Annexure P-11). Appeal preferred by the petitioner against the said order was also dismissed by the Appellate Authority vide Annexure P-13.

(11) Before stand taken by the petitioner is taken for appraisal, it would be appropriate to glance through the contents of the enquiry report which forms foundation of the impugned order of dismissal. Relevant portion of the enquiry report, for quick reference, is appended as below:

“CHARGE SHEET CONVEYED VIDE ENDS.T.NO.HTC/92/
ADMN-53108-09 DATED CHANDIGARH 17.11.93

Charge No.I:

During the course of surprise checking on dated 7.10.93 of main store at Karna Lake, Karnal material worth Rs.8207/86 has been found short.

Regarding this charge Sh. Maha Singh has accepted the shortages. His argument that the shortages were not deliberate or due to the negligence of his Assistant, are not appealing. Being Incharge he is responsible for the same.

CHARGE SHEET NO.HTC-93/Estt-17993-94 dated
CHANDIGARH THE 9.5.94

Charge No.II

Misappropriation of Corporation money amounting to Rs.18403-85 paise.

In this charge Sh. Maha Singh has accepted the shortage but he has stated that the amount of ciggt., wefer and mineral water should not be charged on the sale price as the same were never sold and the crockery bearing logo was supplied in the Restaurant and Motel on

returnable basis without proper indent. It is very much clear that Sh. Maha Singh has committed the act of commission & omission and liable for disciplinary action.

CHARGE NO. III

Sh. Maha Singh Remained Absent From Duty w.e.f. 17.11.93 to 16.1.94.

During enquiry, it was very much clear that he has proceeded on leave without any intimation/authorised sanctioned leave but Sh. Maha Singh has stated that the circumstances which compelled him to remain absent from duty. He has stated that on 16.11.1993 he received a message from his house that his wife was not feeling well. He himself fell ill on dated 17.11.93 and remained ill upto 16.1.94. He further stated that he could not inform his authority about his long illness due to weakness till the date of his joining. Even after joining he has not submitted any medical certificate to the authority only after issuing the charge sheet he has submitted the medical certificate to the Head Quarters Chandigarh." (emphasis added)

(12) Crux of case of the respondents culled out from para 3 of preliminary objections of written statement is reproduced, as under:

"3. That even otherwise, the petitioner has no case on merits. The petitioner being the Incharge of the Store, was entrusted with the specific quantities of the material and if on checking, the shortages are found, the same is directly attributed to the petitioner, being incharge of such stores and the petitioner has admittedly confessed the shortages being committed by him before the Enquiry Officer and has owned the responsibility of the same. Under these circumstances, the petitioner was imposed with a punishment which is fully justified. Ample opportunity was given to the petitioner to present his defence if any, before the Enquiry Officer. The enquiry report is well reasoned which was duly accepted by the punishing authority. The petitioner was also served with a show cause notice and his reply was sought. He was granted a personal hearing by the punishing authority and it is only thereafter that by a well reasoned and speaking order, the petitioner was punished. The punishment

imposed upon the petitioner was also upheld by the appellate authority. Thus in totality of the circumstances, the petitioner has no case and the writ petition deserves dismissal even on merits.”

(13) Stand of the petitioner emerging in counter by way of rejoinder in this respect, is as under:

“3. To establish misappropriation on the part of the petitioner, no evidence was lead by the department before the Inquiry Officer. In fact before the Inquiry Officer, except the statement of petitioner, no other material is in existence or produced/ established by the department. The procedure of holding enquiry has altogether been violated in the instant case. The punishment imposed against the petitioner is awfully disproportionate.”

(14) At this stage, it is time to consider the stand taken by the petitioner. In his reply to the charge-sheet, the petitioner had candidly admitted the shortage of stock in the stores under his charge but has also given the circumstances explaining such shortages. The Inquiry Officer without going into the circumstances and the explanation offered by the delinquent, took it a case of confession made by him. To visit its maker with evil consequences, such admission needs to be clear and specific i.e. without any conditions and explanations.

(15) When reply to the charge-sheet (Annexure P-3) regarding shortage of material of Rs. 8,207.84 Ps. and charge-sheet (Annexure P-4) regarding shortage of material for an amount of Rs.18,403.85 Ps. interalia is gone through, it clearly transpires that there is no clear and unconditional admission of lapse in performance of his duties by the petitioner. By no means, reply (Annexure P-6) of the petitioner to the charge-sheets (Annexure P-3 and P-4) could be taken to be an admission of misappropriation/embezzlement.

(16) It is also noteworthy that shortage regarding charge-sheet (Annexure P-3) shown in order (Annexure P-9) and for shortage shown in Annexure P-5 and charge-sheet (Annexure P-4) had not occurred, in one day. It was during a long period of time. Shortage was also not of such nature that it could be solely and exclusively attributed to the act and conduct of the petitioner particularly when the stores with stocks concededly used to remain open from early morning till late night and the petitioner was

officially provided assistance of a helper as well. Though, the store used to remain open for day and night, duty hours of the petitioner had not been staggered in such a way that he could be present all the time. His plea is that one key of the 'store' used to remain even with the helper attached to him and he alone used to issue the material in absence of the petitioner and had even misplaced some of the indents against which the material had been issued to the indenting officials, working in the kitchen. Such pleas of the petitioner had not been examined by the respondents.

(17) At this stage, relevant portion of his reply (Annexure P-6) to the charge-sheet is appended as below:

"One key of the store was with the helper. He usually issued the goods in my absence and misplaced some of indents. Enquiry in this regard may be conducted and there are in receipts from the indents in the consumption register and issue from the indent of the same period from Store register. Most of the shortage mentioned will be counted."

(18) This part of the reply not only discloses it to be a case of shortage of material of grocery items in the stores but also reveals that it was not a case of absolute admission of 'shortage' much less of alleged misappropriation/embezzlement mentioned in the charge-sheets (Annexure P-3 and P-4). It would be worth notice that qua charge-sheet (Annexure P-3), shortages were found in 16 items of stores, whereas for charge-sheet (Annexure P-4), such shortage was found in 69 items of store.

(19) Explaining shortage of various items as has been seen in the portion quoted from his reply, detailed enquiry was sought by the petitioner but apparently, no such detailed enquiry was carried out by the respondents. Even with regard to shortage of other items such as crockery, mineral water, Besan etc., the petitioner had, interalia, disclosed that at times crockery etc. used to be taken on loan by the officials of the tourist complex to be used for individual events and for short period on a specific day but was not recouped in the store. In short, it was clearly not a case of admission and the Enquiry Officer had proceeded on entirely a wrong premise. The Enquiry Officer did not move further and without receiving appropriate evidence of the Corporation, held the petitioner guilty on the basis of reply of the petitioner which was read by the Enquiry Officer only in part and not wholesomely.

(20) Even procedure followed in conducting of the enquiry is unheard of. When after serving the charge-sheets (Annexure P-3 and P-4), reply to the charge-sheets submitted by the petitioner had not been found to be satisfactory and consequently was rejected resulting in appointment of an Enquiry Officer vide memorandum dated 17.11.1993, the Enquiry Officer was required to pen down a detailed report on conclusion of evidence of the Corporation and of the delinquent. After conclusion of evidence of the department, the petitioner was to be called upon for production of evidence in his defence.

(21) Enquiry report (Annexure P-7) reveals that the Enquiry Officer had messed up the matters and rather had chartered a path which is completely unknown and unheard of. Instead of calling for witnesses of the department in proof of charges against the petitioner, the Enquiry Officer called the delinquent in the witness box whereas his turn to produce his defence evidence was to come only after conclusion of evidence by the department. It would be worth notice that even though the Enquiry Officer had wrongly put the cart before the horse by calling the delinquent official in the witness box but even then, stand of the petitioner remained the same as was disclosed by him in reply (Annexure P-6). He reiterated his stand that the shortages were not due to any detection of fraud or misappropriation but might have occurred due to negligence of his assistant, who had been provided to help the petitioner in managing the stores and particularly in his absence. The delinquent official had further clarified that shortage found in the stock was being recouped by deductions made by the respondent-Corporation from his salary every month.

(22) When the delinquent has been fair and transparent in his dealings with the respondents as also during the enquiry, version of the respondents has neither been correct nor clear. To demonstrate, relevant portion of para 2 of the preliminary objections contained in the written statement for ready reference is appended as below:

“That in the present case, the petitioner was punished after following due process of law, the principles of natural justice and the petitioner afforded full and fair opportunity of hearing. During the departmental enquiry, both the parties adduced their evidence.”

(23) Yet another portion of para 3 of preliminary objections taken in the written statement is appended as below:

“Ample opportunity was given to the petitioner to present his defence if any, before the Enquiry Officer. The enquiry report is well reasoned which was duly accepted by the punishing authority. The petitioner was also served with a show cause notice and his reply was sought. He was granted a personal hearing by the punishing authority and it is only thereafter that by a well reasoned and speaking order, the petitioner was punished.”

(24) When stand of the respondents is evaluated in the interface of actual conduct of the enquiry by the Enquiry Officer, it is found that version of the respondents that evidence had been led by both the parties before the Enquiry Officer and opportunity of defending himself had duly been given to the petitioner, is completely wrong and against record.

(25) As has been noticed earlier, neither evidence of the department was called for, nor an opportunity of defending himself was provided to the delinquent official. Rather, instead of calling witnesses of the department in the witness box to sustain the charge against the delinquent, first the delinquent himself was made to enter the witness box which is against well-established procedure of conducting of departmental enquiries and, thus, has vitiated the entire enquiry proceedings.

(26) Learned counsel for the respondents has not been able to pinpoint before this Court as to how reply (Annexure P-6) and again statement of the delinquent taken during enquiry (though absolutely against legal procedure) could be taken as admission of the delinquent qua charge of misappropriation/embezzlement against him. By no stretch of imagination, such conclusion of admission of guilt by the petitioner drawn by the Enquiry Officer could have been arrived at by any reasonably prudent man. Neither the circumstances in which the shortages had occurred (as was explained by the delinquent) had been gone into by the Enquiry Officer nor any fact finding enquiry, as was sought by the delinquent, had preceded the departmental enquiry. Sequently, shortcut adopted by the Enquiry Officer aborting the well-established principles and procedure of holding a departmental enquiry, has resulted in complete defilement of the enquiry conducted by the Enquiry Officer.

(27) It may also be noticed that neither the punishing Authority nor the Appellate Authority went into details of the explanation offered by the delinquent nor had taken note of the short-circuiting of the procedure of holding of enquiry by the Enquiry Officer nor gave opportunity of personal hearing to the delinquent.

(28) When the matter is looked upon from the side of the respondents, it transpires that shortage in material having been quantified in terms of money, had already been recouped by regular monthly deductions made from the salary of the petitioner, thus, penalising him on that count. Stand of the respondents on this count is also categorical as is mentioned in para 6 of the written statement. It is reproduced as below:

“That the contents of para-6 of the writ petition are admitted to the extent that the shortages were recovered from the salary of the petitioner in installments.”

(29) Having made recovery of loss in terms of money (regarding shortage of material) from salary of the petitioner, no case of embezzlement or misappropriation is there. Stand of the respondents in taking shortage of grocery items (which shortage had duly been recouped) to be a case of embezzlement/misappropriation, is also untenable.

(30) So far as the charge of absence without leave is concerned, concedingly, medical certificate was furnished by the petitioner as is also clear from his reply (Annexure P-6) as also apparent in his statement made before the Enquiry Officer (Annexure P-8) but required consideration was not paid to this aspect. In any case, in the enquiry report (Annexure P-8), no clear finding of charge of unauthorized absence from duty in second chargesheet (Annexure P-4) has been given by the Enquiry Officer. No notice of the charge of absence from duty has been taken in the impugned punishment order (Annexure P-11) as also in appellate order (Annexure P-13).

(31) When conduct of the respondents is examined further, it transpires that shortage of material in stores had been taken as a matter of routine and had never resulted in dismissal of an employee. A communication from respondent No.1 to the Divisional Manager, Haryana Tourism Corporation, Barkhal Lake (Annexure P-14) reveals that in case of shortage

of kitchen items amounting to Rs.1,92,104.14 Ps., further recoveries from the account of the said officials were stopped and balance amount was ordered to be written off. In yet another case of embezzlement of goods by the Counter Incharge Sanjay Kumar, who was served with charge-sheet (Annexure P-16), merely by giving warning to him to be careful in future, he was let off by respondent No.1. Why and how the case of the petitioner has been dealt with differently causing serious prejudice to him remains unexplained.

(32) Keeping in view totality of facts and circumstances as discussed earlier, the impugned orders are not sustainable in law. Therefore, dismissal order (Annexure P-11) and appellate order (Annexure P-13) are quashed. As a consequence, the petitioner would be deemed to have continued in service and would be entitled to all the consequential benefits and if he has reached the age of superannuation, the same shall be restricted till that date. Arrears would be paid with interest @ 9% per annum within two months. If the payment is not made within two months, interest would be charged @ 12% per annum.

(33) The writ petition is accepted to the extent as above.

J.S. Mehndiratta