

क्रमांक 4000-5 जी० एस०-70/12875

प्रेषक,

1. समस्त विभागीय अध्यक्ष,
कमिशनर अम्बाला मण्डल,
समस्त उपायुक्त और उप मण्डल अधिकारी, हरियाणा ।
2. रजिस्ट्रार पंजाब तथा हरियाणा उच्च न्यायालय और
जिला और सत्र न्यायाधीश हरियाणा ।

दिनांक चण्डीगढ़ 30-5-1970

विषय:- Departmental Proceedings—Extracts from the Judgments of the High Court and Supreme Court.

महोदय,

मुझे निदेश हुआ है कि उपरोक्त विषय पर मैं आपको भारत सरकार, गृह मन्त्रालय के पत्र क्रमांक 7-3-70 ए०आई० एस० (II) दिनांक 6-4-70 को इसके संलग्न पत्र क्रमांक 106/18/69 ए०बी०डी० दिनांक 24-2-70 के अनुलग्नक सहित आपको सूचना तथा मार्गदर्शन के लिये भेजू ।

2. कृपया इस पत्र की पावती दे दें ।

भवदीय

हस्ता/-

उप सचिव, राजनैतिक तथा सेवाएं,

कृते : मुख्य सचिव, हरियाणा सरकार ।

एक एक प्रति सेवा में भेजी जाती है :-

वित्त आयुक्त राजस्व हरियाणा, सभी प्रशासकीय सचिव हरियाणा सरकार :

मुख्य मन्त्री, मन्त्रीगण, समस्त संसदीय सचिवों की सूचना के लिये ।

हस्ता/-

उप सचिव राजनैतिक तथा सेवाएं,

कृते : मुख्य सचिव, हरियाणा सरकार ।

सेवा में

प्रधान सचिव, मुख्य मन्त्री हरियाणा, समस्त सचिव/निजी सचिव मन्त्रीगण/संसदीय सचिव

अशासकीय पत्र क्रमांक 4000-5 जी० एस०-70, 30-5-1970

Copy of letter No. 7/3/70-AIS(II), dated 6th April, 1970 from the Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi to the Chief Secretaries of all State Governments, except Tamilnadu.

Subject : Departmental proceedings—Extracts from the Judgements of the High Courts and Supreme Court.

I am directed to forward herewith a copy of this Ministry's O.M. No. 106/18/69—AVD dated the 24th February, 1970, on the above subject, for information and guidance.

Confidential

No. 106/18/69-AVD

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi-1 the 24th February, 1970.
 5th Phalguna, 1891.

OFFICE MEMORANDUM

An officer of the Indian Administrative Service was removed from service as a result of disciplinary proceedings taken against him by a State Government. The officer filed a writ petition in the High Court and the Court set aside the order of removal from service on the ground that the finding of the Board of Inquiry about the guilt of the officer had been affected to a significant extent by surmises and conjectures, and that the finding was given without due weight to crucial points of fact as well as law, which had a vital bearing on the charges. The Court observed that the Board of Inquiry being a Tribunal was expected to follow the principles of natural justice and the Court had to see that the proceedings against the delinquent had been held in a manner consistent with the rules of natural justice and that there was no violation of the statutory rules prescribing the mode of enquiry or a palpable error of law. The finding of guilt must be on the basis of proof which must be such as to create belief and not mere suspicion. In this connection extracts of certain judgements of some Courts are also enclosed. The essential point is that a conclusion must be based on satisfactory evidence so that there is no failure of natural justice. This is circulated for information.

Authorised for issue.

Sd/-
 (B.S. Kohli)
 Section Officer To

Sd/-
 (R.C. JOSHI)
 Under Secretary to the Govt. of India.

All the Ministries of the Government of India
 (Chief Vigilance Officer)
 New Delhi.

No. 106/18/69-AVD

dated the 24th February, 1970.

DEPARTMENT PROCEEDINGS—THEIR NATURE

Extracts from the Judgements of the High Courts and Supreme Court

"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."

It 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(2), the High 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 administration order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges 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.

High Court can issue writ if it is satisfied that the order of dismissal is based on no evidence.

He, however, attempted to argue that if the appellant acted bona-fide, then the High Court would not be justified in interfering with its conclusions though the High Court may feel that the 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, distinguish from the cases of mala fide; and so he suggested that perverse conclusions of fact may be and can be attacked only on the ground that they are mala fide, 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 the appellant can be corrected in writ proceedings.

We are not prepared to accept this contention. Mala fide exercise of power can be 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 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 bonafide; the said infirmity may also exist where the Government is acting malafide and in that case the conclusion of the Government not supported by any evidence may be the result of malafides 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 certiorary will not issue without further proof of malafides.

When the Order of dismissal is based on no evidence writ can be issued without proof of mala fide.

That takes us to the merits of the respondents contention that the conclusion of the appellant that the 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 there any evidence on which a finding can be made against the respondent that charge was pro-

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 at all in support of the impugned conclusion.

High Court cannot consider the question of sufficiency or adequacy of evidence while exercising jurisdiction under Art. 226. That is a matter within the competence of the disciplinary authority. But the High Court must enquire whether there is any evidence at all.

Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr. Rajgopalan? Mr. Rajgopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajgopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajgopalan cannot in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajgopalan is a straight forward 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 much to regular criminal trials as to disciplinary enquiries held under the statutory rules. (*Union of India Vs. H.C. Goel, A.I.R. 1964 S.C. 364*).

Where suspicion can not take the place of proof.

"It is true that so far as departmental proceedings are concerned, they are not governed by the Indian Evidence Act. In other words, the strict provisions laid down in the Indian Evidence Act are not applicable to departmental proceedings. Nevertheless the proceedings are subject to rules of natural justice. The question, therefore, is as to what a principle of natural justice is involved in such a case. The rules of natural justice are not codified and cannot be stated with exactitude. In departmental proceedings, it is unnecessary to import the strict procedure applicable to judicial trials. But where the departmental enquiry consists of the trial of a charge in which the punishing authority either by himself or through his delegate has a statutory duty to hear the delinquent or his witnesses, the procedure adopted is to a certain extent like a judicial trial and it is an open question as to whether such proceedings are purely administrative or are to be considered as quasi-judicial." (*Amulya Kumar Vs. L.M. Bakshi, A.I.R. 1958 Calcutta 470*).

Departmental proceedings though not governed by the Indian Evidence Act are subject to the rules of natural justice.

"Generally when a fact finding Tribunal arrives at its own conclusions of fact after due consideration of the evidence before it the High Court will not interfere. It is necessary, however, that every fact for and against the person proceeded against must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the person charged, he should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicious, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence partly on evidence and partly on suspicious conjectures and surmises and if it does any thing of the sort, its findings even though on questions of fact will be liable to be set aside by the High Court.)

Conclusions of Tribunal should not be coloured by any irrelevant considerations or matter of prejudice. Fact finding Tribunal.

In order to find a person guilty on circumstance trial evidence, the circumstance or the circumstances must be such as would irresistibly lead to an inference of the guilt of the person charged with the offence. Thus where in a disciplinary action against a public servant, the inference of guilt drawn by the Tribunal from the circumstances is not the only irresistibly inference

Should not base its findings on suspicion, conjectures and surmises nor should it act on no evidence

Held on facts that the conclusions of the inquiring officer in a disciplinary action against a public servant were not based on evidence but on wrong inferences drawn from evidence and that he did not exhibit the proper sense of responsibility, as a fact finding Tribunal, in arriving at his conclusions and therefore his report was quashed under Art. 226. (Golam Mohiuddin *Versus* State of West Bengal, A.I.R. 1964 Calcutta 503).

Circumstantial evidence must be such as to irresistibly lead to inference of guilt. Conclusions bases on wrong inferences from evidence

"In the present appeal it has been urged before us by Mr. Viswanath Sastri on behalf of the appellants that the view taken by the High Court that the findings of the Tribunal were not supported by any evidence is obviously incorrect and that the High Court has in fact purported to reappreciate the evidence which it had no jurisdiction to do. It is common-ground that in proceedings under Arts. 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry so that if we are satisfied that in the present case the High Court has purported to reappreciate the evidence for itself that would be outside its jurisdiction. It is also common-ground that if it is shown that the impugned findings recorded by the Administrative Tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings. That is how the narrow question which falls for our decision in the present appeal is : Was the High Court right in holding that there was no evidence on which the findings of the Administrative Tribunal could be sustained ?....

Inquiry Report can be quashed. High Court can not reappreciate the evidence for itself and sit in appeal over the findings recorded by a competent Tribunal in Departmental Enquiry

There are two other considerations to which reference must be made. In its judgment the High Court has observed that the oral evidence admittedly did not support the case against the respondent. The use of the word "admittedly", in our opinion amounts, somewhat to an overstatement; and the discussion that follows this overstatement in the judgment indicates an attempt to appreciate the evidence which it would ordinarily not be open to the High Court to do in writ proceedings. The same comment falls to be made in regard to the discussion in the judgment of the High Court where it considered the question about the interpretation of the word "Chatrapur Saheb". The High Court has observed that "in the absence of a clear evidence on the point the inference drawn by the Tribunal that Chatrapur Saheb meant the respondent would not be justified. This observation clearly indicates that the High Court was attempting to appreciate evidence. The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the question about the identity of the individual indicated by the expression "Chatrapur Saheb". Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate.

Whether or not the evidence on which the Tribunal relied was satisfactory & sufficient for justifying its conclusion cannot be considered in writ petition

The High Court has also commented on the fact that the Tribunal should have examined Banjorji before relying upon statements made by him in his letter addressed to Mr. Patnaik. There is some force in this argument; but the finding of the Tribunal in regard to the purchase of the Austin car is based on several other considerations all of which have been duly proved. In fact about the main features of this transaction there was no serious controversy between the parties. The parties were at issue on the question as to the effect of these broad features but that clearly is a question of fact which fell within the jurisdiction of the Tribunal. We have carefully considered the reasons given by the High Court in its judgment under appeal but we are unable to accept the contention pressed before us by Mr. Sinha for the respondent, that the conclusion of the High Court is right when it says that the Tribunal's findings against the respondent were based on no evidence. Whether or not the High Court or this court agrees with the conclusions of the Tribunal is another matter. The question to be considered is whether the said conclusions could be set aside on narrow ground that they are not supported by any evidence. In our opinion, it is difficult to accept the view that there is no evidence in support of the conclusions recorded by the Tribunal against the respondent." (State of Orissa *Versus* Murlidhar Jena, A.I.R. 1963 S.C. 404).

the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, does not apply and even if that rule is not applied, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 26 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disable themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very fact of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art 236 of the Constitution.....

In a petition under Art. 226 High Court is not a Court of Appeal over the decisions of the departmental authorities. It is not the function of the High Court to review the evidence & arrive at an independent finding on evidence. Departmental authorities are the sole judges of facts if inquiry is otherwise properly held.

In our judgment the proceedings before the departmental authorities were regular and were not vitiated on account of any breach of the rules of natural justice. The conclusions of the departmental officers were fully borne out by the evidence before them and the High Court had no jurisdiction to set aside the orders either on the ground that the "approach to the evidence was not consistent with the approach in a criminal case," nor on the ground that the High Court would have on that evidence come to a different conclusion. The respondent had also ample opportunity of examining his witnesses after he was informed of the charge against him. The conclusion recorded by the punishing authority was therefore not open to be canvassed, nor was the liability of the respondent to be punished by removal from service open to question before the High Court." (State of Andhra Pradesh *Versus* S. Sree Rama Rao, A.I.R. 1963 S.C. 1723).

High Court can not set aside an order on the ground that the Court would have come to a different conclusion on the evidence