

Neutral Citation No. - 2023:AHC-LKO:81954-DB

Court No. - 1

Case :- WRIT - A No. - 2000807 of 2015

Petitioner :- Rajendra Prasad Mishra

Respondent :- Union Of India Throu General Manager Northern Railway And Ors.

Counsel for Petitioner :- Vishvajeet Singh, Kamlesh Kumar Singh, Nitin Kumar Mishra

Counsel for Respondent :- Pankaj Srivastava, Akansha Dubey, Arun Kumar Verma, Pratul Kumar Srivastava

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard learned counsel for the parties.
- (2) In the instant writ petition, the petitioner (Rajendra Prasad Mishra) has prayed for the following reliefs:-

“(i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned judgment and order dated 20.02.2014 passed by the Central Administrative Tribunal, Lucknow Bench, in Original Application No. 198 of 2007, impugned punishment order dated 17.08.2004, order dated 28.01.2005 rejecting the appeal of the applicant, and letter dated 28.04.2006 communicating the petitioner regarding rejection of Revision (as contained in Annexure Nos.1, 2, 3, and 4 to the writ petition) after summoning the original records.

(ii) Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing the opposite parties to reinstate the petitioner forthwith with all consequential and ancillary benefits including the seniority, promotion and arrears of pay etc.

(iii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) Allow the writ petition with costs in favour of the petitioner.”

- (3) It is a strange case where the petitioner (Rajendra Prasad Mishra) had entered into the service of Railways as Porter after regularization on 19.12.1987 has ended his services from the post of Porter by way of punishment of removal from service mainly on the ground that the petitioner (Rajendra Prasad Mishra) left his duties on 24.11.2000 during 09.30 a.m. to 14.00 p.m. without any information after taking charge of his duty. When the petitioner approached the Tribunal assailing the order of dismissal passed by the Disciplinary Authority and questioning the quantum of punishment imposed upon him, the Tribunal has dismissed the Original Application observing that the as stated by the Apex Court in umpteen cases, the Tribunal has no power to interfere in the discretion exercised by the disciplinary authority both on the question of fact and law including quantum of punishment.
- (4) The events leading to the filing of this petition are recapitulated in brief as under:

While the petitioner (Rajendra Prasad Mishra) was working on the post of Ticket Collector at Barabanki, a charge sheet was served upon him on the following charges:-

“(i) Shri R. P. Mishra left his duties on 24.11.2000 during 9.30 a.m. to 14.00 p.m. without any information after taking charge of his duty.

(ii) Shri R. P. Mishra ran away from his duty when a vigilance check was conducted on 24.11.2000 and one of his colleague demanded and accepted Rs.100/- from decoy passenger and did not issue any receipt and when vigilance inspector asked him/colleague to get his cash check he pushed him and ran away. Shri Mishra also ran away from his duty to avoid detection of his friends. He did not turn up inspite of repeated announcement til 14.00 hrs.

(iii) Shri Mishra did not mark his attendance in attendance register and duty roster with mala fide intention.”

On completion of inquiry, the Inquiry Officer submitted his inquiry report holding the delinquent employee as guilty and the Disciplinary Authority passed the punishment order of removal from service against him on 17.08.2004. The appeal preferred against the punishment order was rejected and in the revision also, the charged officer tasted the same fate.

When the petitioner failed to get relief from the Disciplinary Authority, Appellate Authority and the Revisional Authority, he approached the Central Administrative Tribunal by filing Original Application and pointed out that the quantum of punishment is disproportionate to the charges levelled against him, therefore, the punishment order is liable to be set aside.

The Tribunal after considering all the aspects of the matter came to the conclusion that the Tribunal was not vested with the power to substantiate the punishment imposed by the Disciplinary Authority; rather it is the power of Appellate Authority to review it.

Being aggrieved, the instant writ petition has been filed by the petitioner, as stated here-in-above.

- (5) Learned counsel for the petitioner has submitted that the material relied upon by the respondents has not been supplied to him. He has further submitted that even the charge sheet was issued on three charges and out of three, two were found proved. Neither the punishing authority nor the appellate authority has given an audience to defend his case. He further stated that the punishment inflicted by the punishing authority and confirmed by the Appellate Authority are excessive.
- (6) Learned counsel appearing for the Railways has submitted that in addition to the present inquiry, the petitioner while posted as Ticket Collector, Shahganj was subjected to another inquiry which culminated into an order of compulsory retirement

passed on 18.11.2022. When he preferred an appeal against the punishment order dated 18.11.2022, it was modified from compulsory retirement to reversion to the post of Porter vide order dated 02.04.2003. Pursuant to the order dated 02.04.2003, the petitioner was reverted to the post of Porter in the scale of Rs.2550-3200 and he joined on the post accordingly. However, the petitioner did not prefer any revision in this regard.

- (7) He further submitted that a notice was issued to the petitioner to submit his defence note/reply upto 15.01.2023, but he failed to tender his reply. In these circumstances, the inquiry was conducted *ex parte* and charge Nos.1 and 3 were found proved against the petitioner, whereas charge No.2 was not proved. The Inquiry Officer forwarded the inquiry report to the Divisional Commercial Manager, Northern Railway, Lucknow on 10.03.2003 and the same was confronted to the petitioner for submission of his reply to the inquiry report on 09.07.2003. When the petitioner did not adhere, the impugned order of punishment of removal from service dated 17.08.2004 was finally passed.
- (8) The petitioner preferred an appeal against the order of punishment dated 17.08.2004 which was rejected by the Appellate Authority/Senior Divisional Operating Manager, Northern Railway, Lucknow on 18.10.2004.
- (9) He has next submitted that though second appeal is not maintainable, but when the petitioner preferred an appeal to the Additional Divisional Railway Manager on 03.11.2004, it was rejected vide order dated 28.01.2005. Thereafter, when the petitioner preferred yet another appeal to the Divisional Railway Manager, Lucknow on 23.02.2006, without following the due procedure, which was rejected on 19.04.2006 being not maintainable and the communication was conveyed to the petitioner vide order dated 28.04.2006.

- (10) Lastly, he has submitted that since the petitioner was in possession of accommodation of the railway quarters after his removal from service and despite notice dated 30.03.2007, he did not vacate the same, hence a sum of Rs.3,68,847/- was imposed upon him in the form of damages.
- (11) Considered the submissions made by the learned Counsel for the parties and perused the material available on record of the writ petition.
- (12) Admittedly, the petitioner was removed from service for his unauthorized absence on **24.11.2020 for four hours**. However, out of three charges levelled against the petitioner two were proved. It is evidently clear from record that the petitioner was not afforded opportunity of hearing at any stage of inquiry. As stated by the respondents that the petitioner was directed to submit his reply by 15.01.2023 to the show cause notice, but a copy of the notice has not been brought on record to show that it was served on the petitioner. The denial of opportunity before the punishment order was issued is crystal clear. However, when the punishment order was passed, the petitioner immediately preferred an appeal and of course, according to the respondents, he preferred a second appeal, which of course is not maintainable as per Rules. Thereafter, the appeals preferred by the petitioner were either rejected or treated as not maintainable for the reason whatsoever.
- (13) For ready reference, the order dated 17.08.2004 by the Disciplinary Authority, contained in Annexure No.2 to the writ petition, is as under:-

“Case No. Vig./C/LCS/2K-152A

I have gone through the enquiry report and the findings in this case, where in two charges out of three have been proved.

The charge that Sh. R. P. Mishra, the then T.C. (now Porter FTG) remained absent from duty from 09.30 hours to 14.00 hours on 24.11.2000 without any information stands proved.

And also the charge that Sh.R.P. Mishra, failed to mark his attendance in attendance register and duty roster stands proved as well.

(It is worth mentioning here that Sh. R. P. Mishra while working as T.C. in another case, was imposed with a Punishment of Compulsory Retirement from service but was subsequently reinstated and reverted from T.C. to that of a Porter in Gr. Rs.2550-3250 and fixed on the lowest stage of the grade.

This indicates that Sh. R. P. Mishra has not learned any lesson and in further absconding from essential duty at FTG w.e.f. 20.9.2003 and onwards, and thus seems not interested in Railway Service at all.

A punishment of removal from service is imposed upon.”

- (14) A perusal of the above order indicates that as to when the petitioner was given notice to respond to the inquiry report and as to whether the petitioner has submitted his reply or not which are essential for considering the case of the petitioner are missing. More over, the inquiry was conducted for his unauthorized absence for few hours on 24.11.2000, but in the penultimate paragraph of the order, it is mentioned that since he was absconding from 20.09.2003, he seems to be not interested in railway service at all. In these circumstances, the order of removal from service has been passed, which is not at all warranted.
- (15) When the petitioner preferred an appeal before the Appellate Authority, the order passed on his appeal dated 28.01.2005 is as under:-

“I have gone through the appeal of Sh. R. P. Mishra Ex.Porter/Fursatganj and charge sheet,

*enquiry findings alongwith other relevant records on the case. I found that **all the charges has been proved against him during the course of enquiry as per evidence on record and statement of witnesses.***

I also found that has been given all opportunities to defend himself as per the rules & to ensure natural justice. The punishment awarded to his is adequate to meet the ends of justice on view of the gravity of misconduct committed by him.

*In his appeal he has also not brought anything new which may reduce the gravity of misconduct committed by him. **I therefore reject his appeal as devoid of merit & confirm the punishment of removal from service imposed upon him,***"

- (16) Conspicuously, it is clear from the aforesaid order that the Appellate Authority has not looked into the averments made in the appeal. Out of three charges, only two charges were found proved, however, in the order, it has been mentioned that all the charges were proved against the petitioner during the course of enquiry.
- (17) Since beginning, the petitioner's grouse is that the punishment imposed upon him is not commensurate with the charges levelled against him. Though the same grievance has been raised at each and every stage, it has not been looked into either by the Punishment Authority or by the Appellate Authority. When the same grievance was brought to the notice of Tribunal, the Tribunal has observed that the power of reviewing the punishment imposed upon the petitioner is not within its jurisdiction.
- (18) In the entire counter affidavit, the respondents have not responded to the plea of excessive punishment raised by the petitioner. In these circumstances, we are of the firm opinion that the punishment order passed by the Disciplinary Authority needs to be reviewed. While doing so, we are also conscious of the fact that the power to review the punishment imposed by the

authority cannot be exercised by the Tribunal and the High Courts, as held by the Apex Court in number of cases. Some of the judgments passed by Hon'ble Supreme Court are as under:-

- (19) It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances **where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.**
- (20) In the above context, following are the observations made by a three-Judge Bench of this Court in *B.C. Chaturvedi v. Union of India and Others [(1995) 6 SCC 749]*:-

“12. 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare

cases, impose appropriate punishment with cogent reasons in support thereof.” [Emphasis laid]

- (21) In ***State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya [(2011) 4 SCC 584]***, a two Judge Bench of this Court held as below :

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India , Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil). [Emphasis laid]

- (22) In ***Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu [(2008) 5 SCC 569]***, a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that :

“21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily

not be invoked when the misconduct stands proved.”

- (23) Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in ***Union of India and Others v. P. Gunasekaran [(2015) 2 SCC 610]*** held thus :

“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, reappreciating even the evidence before the enquiry officer. The finding on Charge I 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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 considerations extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (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) reappreciate 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.”

- (24) In *Union of India and Others v. Ex. Constable Ram Karan* [(2022) 1 SCC 373], a two Judge Bench of this Court made the following pertinent observations :

“23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”

- (25) In view of what has been stated above, the matter ought to have been relegated to the Disciplinary Authority for passing appropriate orders, but during pendency of instant writ petition, Sri Rajendra Prasad Mishra who had filed the petition has left for heavenly abode on 16.04.2017 leaving behind his widowed wife, two sons and one daughter. The fact of death of the

petitioner was brought on record by means of an application for substitution (C. M. Application No. 85506 of 2017) which was allowed vide order 24.08.2017 substituting the legal heirs in place of petitioner.

- (26) Considering the aforesaid circumstances, the writ petition is **allowed** and the judgment and order passed by the Tribunal dated 20.02.2014 in Original Application No. 198 of 2007, impugned punishment order dated 17.08.2004, rejection of appeal dated 28.01.2005 and communication of letter dated 28.04.2006 regarding rejection of revision are quashed.
- (27) Consequently, the legal heirs of petitioner (Rajendra Prasad Mishra) are entitled for ancillary benefits, in accordance with law and for this purpose, the respondents are directed to pass orders, in accordance with law, within two months from the date of production of a certified copy of this order. Though we have refrained from defining and specifying the ancillary benefits but it is expected of the disciplinary authority and the higher authorities to take a sympathetic view in this regard by passing an appropriate order.

[Om Prakash Shukla,J.] [Attai Rahman Masoodi,J.]

Order Date :- 13.12.2023

Vipul/lakshman